

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-Q

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

For the quarterly period ended September 30, 2022
OR

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

Commission File No. 001-35210



INNOVATE

INNOVATE CORP.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)
295 Madison Avenue, 12th Floor, New York, NY
(Address of principal executive offices)

54-1708481
(I.R.S. Employer
Identification No.)
10017
(Zip Code)

(212) 235-2690

(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	VATE	New York Stock Exchange
Preferred Stock Purchase Rights	N/A	New York Stock Exchange

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

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

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

Large accelerated filer Accelerated filer
Non-accelerated filer Smaller reporting company
Emerging growth company

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

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

As of October 31, 2022, 78,355,954 shares of common stock, par value \$0.001, were outstanding.

**INNOVATE CORP.
INDEX TO FORM 10-Q**

Item 1.	Financial Statements	2
	Condensed Consolidated Statements of Operations	2
	Condensed Consolidated Statements of Comprehensive Loss	3
	Condensed Consolidated Balance Sheets	4
	Condensed Consolidated Statements of Stockholders' Deficit	5
	Condensed Consolidated Statements of Cash Flows	7
	Notes to Condensed Consolidated Financial Statements	8
	(1) Organization and Business	8
	(2) Summary of Significant Accounting Policies	8
	(3) Revenue and Contracts in Process	10
	(4) Accounts Receivable, net	12
	(5) Inventory	12
	(6) Investments	13
	(7) Property, Plant and Equipment, net	14
	(8) Goodwill and Intangibles, net	14
	(9) Acquisitions	15
	(10) Dispositions, Deconsolidations and Discontinued Operations	16
	(11) Leases	18
	(12) Other Non-Current Assets	20
	(13) Accrued Liabilities	20
	(14) Debt Obligations	20
	(15) Other Non-Current Liabilities	23
	(16) Income Taxes	23
	(17) Commitments and Contingencies	24
	(18) Share-based Compensation	27
	(19) Temporary Equity	28
	(20) Related Parties	30
	(21) Operating Segments and Related Information	31
	(22) Basic and Diluted Loss Per Common Share	33
	(23) Fair Value of Financial Instruments	35
	(24) Supplementary Financial Information	36
	(25) Subsequent Events	36
Item 2.	Management's Discussion and Analysis of Financial Condition and Results of Operations	37
Item 3.	Quantitative and Qualitative Disclosures about Market Risk	56
Item 4.	Controls and Procedures	56
PART II. OTHER INFORMATION		
Item 1.	Legal Proceedings	57
Item 1A.	Risk Factors	57
Item 6.	Exhibits	57

INNOVATE CORP.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited, in millions, except per share amounts)

PART I: FINANCIAL INFORMATION

Item 1. Unaudited Financial Statements

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Revenue	\$ 423.0	\$ 394.8	\$ 1,228.0	\$ 810.4
Cost of revenue	364.6	339.7	1,069.5	688.4
Gross profit	58.4	55.1	158.5	122.0
Operating expenses:				
Selling, general and administrative	45.6	44.3	130.3	120.9
Depreciation and amortization	6.8	8.9	20.6	17.6
Other operating (income) loss	(0.6)	0.8	0.7	1.0
Income (loss) from operations	6.6	1.1	6.9	(17.5)
Other (expense) income:				
Interest expense	(13.3)	(12.8)	(38.4)	(46.6)
Loss on early extinguishment or restructuring of debt	—	(0.1)	—	(12.5)
Loss from equity investees	(1.1)	(2.9)	(2.1)	(4.8)
Other (expense) income, net	(0.9)	0.6	0.5	4.4
Loss from continuing operations before income taxes	(8.7)	(14.1)	(33.1)	(77.0)
Income tax benefit (expense)	2.0	(0.1)	(1.6)	(3.8)
Loss from continuing operations	(6.7)	(14.2)	(34.7)	(80.8)
Loss from discontinued operations (including net loss on disposal of \$200.3 million and \$159.9 million for the three and nine months ended September 30, 2021, respectively)	—	(200.3)	—	(149.9)
Net loss	(6.7)	(214.5)	(34.7)	(230.7)
Net loss attributable to noncontrolling interest and redeemable noncontrolling interest	1.3	2.6	4.5	7.9
Net loss attributable to INNOVATE Corp.	(5.4)	(211.9)	(30.2)	(222.8)
Less: Preferred dividends and deemed dividends from conversions	1.2	1.1	3.6	1.7
Net loss attributable to common stock and participating preferred stockholders	\$ (6.6)	\$ (213.0)	\$ (33.8)	\$ (224.5)
Loss per common share - continuing operations				
Basic	\$ (0.09)	\$ (0.16)	\$ (0.44)	\$ (0.98)
Diluted	\$ (0.09)	\$ (0.16)	\$ (0.44)	\$ (0.98)
Loss per common share - discontinued operations				
Basic	\$ —	\$ (2.59)	\$ —	\$ (1.94)
Diluted	\$ —	\$ (2.59)	\$ —	\$ (1.94)
Loss per share - Net loss attributable to common stock and participating preferred stockholders				
Basic	\$ (0.09)	\$ (2.75)	\$ (0.44)	\$ (2.92)
Diluted	\$ (0.09)	\$ (2.75)	\$ (0.44)	\$ (2.92)
Weighted average common shares outstanding:				
Basic	77.6	77.2	77.5	77.0
Diluted	77.6	77.2	77.5	77.0

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

INNOVATE CORP.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS
(Unaudited, in millions)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Net loss	\$ (6.7)	\$ (214.5)	\$ (34.7)	\$ (230.7)
Other comprehensive loss				
Foreign currency translation adjustment, net of tax	(2.0)	(1.2)	(3.8)	(2.4)
Unrealized loss on available-for-sale securities, net of tax	—	—	—	(57.7)
Dispositions	—	(334.0)	—	(334.0)
Other comprehensive loss	\$ (2.0)	\$ (335.2)	\$ (3.8)	\$ (394.1)
Comprehensive loss	(8.7)	(549.7)	(38.5)	(624.8)
Comprehensive loss attributable to noncontrolling interests and redeemable noncontrolling interests	1.5	2.6	4.8	8.0
Comprehensive loss attributable to INNOVATE Corp.	\$ (7.2)	\$ (547.1)	\$ (33.7)	\$ (616.8)

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

INNOVATE CORP.
CONDENSED CONSOLIDATED BALANCE SHEETS
(Unaudited, in millions, except share amounts)

	September 30, 2022	December 31, 2021
Assets		
Current assets		
Cash and cash equivalents	\$ 25.8	\$ 45.5
Accounts receivable, net	327.9	247.1
Contract assets	156.0	118.6
Inventory	20.7	17.0
Restricted cash	0.4	2.0
Assets held for sale	—	1.5
Other current assets	13.5	10.9
Total current assets	544.3	442.6
Investments	57.7	56.0
Deferred tax asset	2.7	3.0
Property, plant and equipment, net	168.0	169.9
Goodwill	126.8	127.4
Intangibles, net	194.3	208.4
Other assets	71.4	73.3
Total assets	\$ 1,165.2	\$ 1,080.6
Liabilities, temporary equity and stockholders' deficit		
Current liabilities		
Accounts payable	\$ 213.0	\$ 179.2
Accrued liabilities	88.2	93.4
Current portion of debt obligations	81.4	69.5
Contract liabilities	95.4	79.1
Other current liabilities	20.1	18.3
Total current liabilities	498.1	439.5
Deferred tax liability	10.2	9.1
Debt obligations	627.9	556.8
Other liabilities	57.6	63.3
Total liabilities	\$ 1,193.8	\$ 1,068.7
Commitments and contingencies		
Temporary equity		
Preferred stock	17.9	18.8
Redeemable noncontrolling interest	45.0	49.3
Total temporary equity	62.9	68.1
Stockholders' deficit		
Common stock, \$0.001 par value	0.1	0.1
Shares authorized: 160,000,000 as of both September 30, 2022 and December 31, 2021		
Shares issued: 79,784,214 and 79,225,964 as of September 30, 2022 and December 31, 2021, respectively		
Shares outstanding: 78,394,998 and 77,836,748 as of September 30, 2022 and December 31, 2021, respectively		
Additional paid-in capital	330.2	330.6
Treasury stock, at cost: 1,389,216 shares as of both September 30, 2022 and December 31, 2021	(5.2)	(5.2)
Accumulated deficit	(446.4)	(416.2)
Accumulated other comprehensive income	2.9	6.4
Total INNOVATE Corp. stockholders' deficit	(118.4)	(84.3)
Noncontrolling interest	26.9	28.1
Total stockholders' deficit	(91.5)	(56.2)
Total liabilities, temporary equity and stockholders' deficit	\$ 1,165.2	\$ 1,080.6

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

INNOVATE CORP.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT
(Unaudited, in millions)

	Common Stock		Additional Paid-In Capital	Treasury Stock	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Total INNOVATE Stockholders' Deficit	Non-controlling Interest	Total Stockholders' Deficit	Temporary Equity
	Shares	Amount								
Balance as of June 30, 2022	78.4	\$ 0.1	\$ 330.7	\$ (5.2)	\$ (441.0)	\$ 4.7	\$ (110.7)	\$ 26.6	\$ (84.1)	\$ 65.0
Share-based compensation	—	—	0.4	—	—	—	0.4	—	0.4	—
Stock dividends and accretion	—	—	(0.9)	—	—	—	(0.9)	—	(0.9)	(0.3)
Transactions with noncontrolling interests	—	—	—	—	—	—	—	(0.2)	(0.2)	0.1
Net (loss) income	—	—	—	—	(5.4)	—	(5.4)	0.6	(4.8)	(1.9)
Other comprehensive loss	—	—	—	—	—	(1.8)	(1.8)	(0.1)	(1.9)	—
Balance as of September 30, 2022	78.4	\$ 0.1	\$ 330.2	\$ (5.2)	\$ (446.4)	\$ 2.9	\$ (118.4)	\$ 26.9	\$ (91.5)	\$ 62.9

	Common Stock		Additional Paid-In Capital	Treasury Stock	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Total INNOVATE Stockholders' Deficit	Non-controlling Interest	Total Stockholders' Deficit	Temporary Equity
	Shares	Amount								
Balance as of December 31, 2021	77.8	\$ 0.1	\$ 330.6	\$ (5.2)	\$ (416.2)	\$ 6.4	\$ (84.3)	\$ 28.1	\$ (56.2)	\$ 68.1
Share-based compensation	—	—	1.7	—	—	—	1.7	—	1.7	—
Fair value adjustment to redeemable noncontrolling interest	—	—	0.1	—	—	—	0.1	—	0.1	(0.1)
Stock dividends and accretion	—	—	(1.7)	—	—	—	(1.7)	(1.3)	(3.0)	(0.9)
Issuance of common stock	0.6	—	—	—	—	—	—	—	—	—
Issuance of preferred stock for dividend	—	—	(0.9)	—	—	—	(0.9)	—	(0.9)	0.9
Transactions with noncontrolling interests	—	—	0.1	—	—	—	0.1	(0.4)	(0.3)	0.2
Other	—	—	0.3	—	—	—	0.3	—	0.3	—
Net (loss) income	—	—	—	—	(30.2)	—	(30.2)	0.8	(29.4)	(5.3)
Other comprehensive loss	—	—	—	—	—	(3.5)	(3.5)	(0.3)	(3.8)	—
Balance as of September 30, 2022	78.4	\$ 0.1	\$ 330.2	\$ (5.2)	\$ (446.4)	\$ 2.9	\$ (118.4)	\$ 26.9	\$ (91.5)	\$ 62.9

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

INNOVATE CORP.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT
(Unaudited, in millions)

	Common Stock		Additional Paid-In Capital	Treasury Stock	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Total INNOVATE Stockholders' Equity (Deficit)	Non-controlling Interest	Total Stockholders' Equity (Deficit)	Temporary Equity
	Shares	Amount								
Balance as of June 30, 2021	77.8	\$ 0.1	\$ 354.8	\$ (5.2)	\$ (199.6)	\$ 338.2	\$ 488.3	\$ 23.2	\$ 511.5	\$ 6.2
Share-based compensation	—	—	0.4	—	—	—	0.4	—	0.4	—
Fair value adjustment to redeemable noncontrolling interest	—	—	—	—	—	—	—	—	—	0.1
Preferred stock dividend	—	—	(1.1)	—	—	—	(1.1)	—	(1.1)	—
Issuance of preferred stock	—	—	—	—	—	—	—	—	—	19.1
Issuance of redeemable noncontrolling interest	—	—	—	—	—	—	—	—	—	40.9
Purchase of preferred stock by subsidiary	—	—	(0.1)	—	—	—	(0.1)	—	(0.1)	—
Transactions with noncontrolling interests	—	—	(22.4)	—	—	—	(22.4)	5.3	(17.1)	5.6
Other	—	—	(0.4)	—	—	—	(0.4)	—	(0.4)	—
Net loss	—	—	—	—	(211.9)	—	(211.9)	(1.0)	(212.9)	(1.6)
Other comprehensive loss	—	—	—	—	—	(335.0)	(335.0)	—	(335.0)	—
Balance as of September 30, 2021	77.8	\$ 0.1	\$ 331.2	\$ (5.2)	\$ (411.5)	\$ 3.2	\$ (82.2)	\$ 27.5	\$ (54.7)	\$ 70.3

	Common Stock		Additional Paid-In Capital	Treasury Stock	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Total INNOVATE Stockholders' Equity (Deficit)	Non-controlling Interest	Total Stockholders' Equity (Deficit)	Temporary Equity
	Shares	Amount								
Balance as of December 31, 2020	76.7	\$ 0.1	\$ 355.7	\$ (4.2)	\$ (188.7)	\$ 396.9	\$ 559.8	\$ 40.4	\$ 600.2	\$ 15.7
Share-based compensation	—	—	1.7	—	—	—	1.7	—	1.7	—
Fair value adjustment to redeemable noncontrolling interest	—	—	(0.3)	—	—	—	(0.3)	—	(0.3)	0.4
Taxes paid in lieu of shares issued for share-based compensation	—	—	—	(1.0)	—	—	(1.0)	—	(1.0)	—
Preferred stock dividend	—	—	(1.4)	—	—	—	(1.4)	—	(1.4)	—
Issuance of common stock	1.1	—	0.7	—	—	—	0.7	—	0.7	—
Issuance of preferred stock	—	—	—	—	—	—	—	—	—	19.1
Issuance of nonredeemable controlling interest	—	—	—	—	—	—	—	—	—	40.9
Purchase of preferred stock by subsidiary	—	—	(0.3)	—	—	—	(0.3)	—	(0.3)	—
Redemption of preferred shares	—	—	—	—	—	—	—	—	—	(10.4)
Transactions with noncontrolling interests	—	—	(21.6)	—	—	—	(21.6)	(9.7)	(31.3)	9.4
Other	—	—	(3.3)	—	—	—	(3.3)	—	(3.3)	—
Net loss	—	—	—	—	(222.8)	—	(222.8)	(3.1)	(225.9)	(4.8)
Other comprehensive loss	—	—	—	—	—	(393.7)	(393.7)	(0.1)	(393.8)	—
Balance as of September 30, 2021	77.8	\$ 0.1	\$ 331.2	\$ (5.2)	\$ (411.5)	\$ 3.2	\$ (82.2)	\$ 27.5	\$ (54.7)	\$ 70.3

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

INNOVATE CORP.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited, in millions)

	Nine Months Ended September 30,	
	2022	2021
Cash flows from operating activities		
Net loss	\$ (34.7)	\$ (230.7)
Less: Loss from discontinued operations, net of tax	—	(149.9)
	(34.7)	(80.8)
Adjustments to reconcile net loss to cash used in continuing operating activities		
Share-based compensation expense	1.7	1.7
Depreciation and amortization	31.8	26.0
Amortization of deferred financing costs and debt discount	3.2	9.4
Loss on extinguishment of debt	—	12.5
Loss from equity investees	2.1	4.8
Asset impairment expense	2.0	2.7
Deferred income taxes	1.2	1.1
Other operating activities, net	(2.7)	(5.0)
Changes in assets and liabilities, net of acquisitions:		
Accounts receivable	(77.0)	(78.3)
Contract assets	(37.4)	(27.2)
Other current assets	(1.1)	(0.4)
Inventory	(3.7)	(1.8)
Other assets	10.2	7.9
Accounts payable	31.5	65.7
Accrued liabilities	(5.6)	6.7
Contract liabilities	16.3	16.8
Other current liabilities	(4.9)	(2.8)
Other liabilities	(5.1)	(7.1)
Cash used in continuing operating activities	(72.2)	(48.1)
Cash provided by discontinued operating activities	—	33.5
Cash used in operating activities	(72.2)	(14.6)
Cash flows from investing activities		
Purchase of property, plant and equipment	(16.3)	(15.0)
Proceeds from disposal of property, plant and equipment	1.9	12.5
Loan to equity method investee	(4.5)	—
Cash received from dispositions, net of cash disposed	—	74.0
Extraordinary dividend received in business disposition	—	62.5
Cash paid for acquisitions, net of cash acquired	—	(128.5)
Other investing activities	0.6	0.9
Cash (used in) provided by continuing investing activities	(18.3)	6.4
Cash used in discontinued investing activities	—	(221.3)
Cash used in investing activities	(18.3)	(214.9)
Cash flows from financing activities		
Proceeds from debt obligations, net of deferred financing costs	9.9	452.3
Principal payments on debt obligations	(23.7)	(454.8)
Proceeds from line of credit, net of deferred financing costs	176.8	156.0
Payments on line of credit	(85.1)	(78.5)
Redemption of preferred stock	—	(10.4)
Cash received by subsidiary to issue preferred stock	—	10.5
Transactions with noncontrolling interests	—	(9.5)
Dividend payments	(3.9)	(2.0)
Other financing activities	(0.8)	(1.4)
Cash provided by continuing financing activities	73.2	62.2
Cash used in discontinued financing activities	—	(7.6)
Cash provided by financing activities	73.2	54.6
Effects of exchange rate changes on cash, cash equivalents and restricted cash	(2.5)	(1.7)
Net decrease in cash and cash equivalents, including restricted cash and cash classified within assets held for sale	(19.8)	(176.6)
Less: Net decrease in cash and cash equivalents from discontinued operations	—	(195.4)
Net change in cash, cash equivalents and restricted cash	(19.8)	18.8
Cash, cash equivalents and restricted cash, beginning of period	47.5	45.3
Cash, cash equivalents and restricted cash, end of period	\$ 27.7	\$ 64.1

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

INNOVATE CORP.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Organization and Business

INNOVATE Corp. ("INNOVATE" and, together with its consolidated subsidiaries, the "Company", "we" and "our") is a diversified holding company that has a portfolio of subsidiaries in a variety of operating segments. We seek to grow these businesses so that they can generate long-term sustainable free cash flow and attractive returns in order to maximize value for all stakeholders. While the Company generally intends to acquire controlling equity interests in its operating subsidiaries, the Company may invest to a limited extent in a variety of noncontrolling equity interest positions or debt instruments. The Company's shares of common stock trade on the NYSE under the symbol "VATE".

The Company currently has three reportable segments, plus our Other segment, based on management's organization of the enterprise: Infrastructure, Life Sciences, Spectrum, and Other which includes businesses that do not meet the separately reportable segment thresholds.

1. Our Infrastructure segment is comprised of DBM Global Inc. ("DBMG") and its wholly-owned subsidiaries. DBMG is a fully integrated industrial construction, structural steel and facility maintenance provider that provides fabrication and erection of structural steel and heavy steel plate services and also fabricates trusses and girders and specializes in the fabrication and erection of large-diameter water pipe and water storage tanks, as well as 3-D Building Information Modeling ("BIM") and detailing. DBMG provides these services on commercial, industrial, and infrastructure construction projects such as high- and low-rise buildings and office complexes, hotels and casinos, convention centers, sports arenas and stadiums, shopping malls, hospitals, dams, bridges, mines, metal processing, refineries, pulp and paper mills and power plants. Through GrayWolf Industrial Inc. ("GrayWolf"), DBMG provides integrated solutions for digital engineering, modeling and detailing, construction, heavy equipment installation and facility services including maintenance, repair, and installation to a diverse range of end markets. Through Aitken Manufacturing, Inc., DBMG manufactures pollution control scrubbers, tunnel liners, pressure vessels, strainers, filters, separators and a variety of customized products. Through Banker Steel Holdco, LLC ("Banker Steel"), DBMG provides full-service fabricated structural steel and erection services primarily for the East Coast and Southeast commercial and industrial construction market, in addition to full design-assist services. The Company maintains an approximately 91% controlling interest in DBMG.

2. Our Life Sciences segment is comprised of Pansend Life Sciences, LLC ("Pansend"), its subsidiaries and equity method investments. Pansend maintains controlling interests of approximately 80% in Genovel Orthopedics, Inc. ("Genovel"), which seeks to develop products to treat early osteoarthritis of the knee and approximately 56% in R2 Technologies, Inc. ("R2"), which develops aesthetic and medical technologies for the skin. Pansend also invests in other early stage or developmental stage healthcare companies including an approximately 47% interest in MediBeacon Inc. ("MediBeacon"), a medical technology company specializing in the advances of fluorescent tracer agents and transdermal measurement, potentially enabling real-time, direct monitoring of kidney function, and an approximately 26% interest in Triple Ring Technologies, Inc ("Triple Ring"), a science and technology co-development company.

3. Our Spectrum segment is comprised of HC2 Broadcasting Holdings Inc. ("Broadcasting") and its subsidiaries. Broadcasting strategically acquires and operates over-the-air broadcasting stations across the United States. In addition, Broadcasting, through its wholly-owned subsidiary, HC2 Network Inc. ("Network"), operates Azteca America, a Spanish-language broadcast network offering high quality Hispanic content to a diverse demographic across the United States. The Company maintains a 98% controlling interest in Broadcasting and maintains a controlling interest of approximately 77%, inclusive of approximately 10% proxy and voting rights from minority holders of DTV America Corporation ("DTV").

4. Our Other segment represents all other businesses or investments that do not meet the definition of a segment individually or in the aggregate. Included in the Other segment is the former Marine Services segment, which includes its holding company, Global Marine Holdings, LLC ("GMH"), in which the Company maintains approximately 73% controlling interest. GMH results include the current and prior year equity investment in HMN Technologies Co., Ltd. ("HMN"), its 19% equity method investment, and the discontinued operations of Global Marine Systems Limited ("GMSL"). Also included in the Other segment is the discontinued operations of Beyond6, Inc. ("Beyond6"), and Continental Insurance Group ("CIG").

2. Summary of Significant Accounting Policies

Principles of Consolidation

The accompanying unaudited Condensed Consolidated Financial Statements include the accounts of the Company, its wholly owned subsidiaries and all other subsidiaries over which the Company exerts control. All intercompany profits, transactions and balances have been eliminated in consolidation. For the three and nine months ended September 30, 2022, the results of DBMG, Pansend, Genovel, R2, Broadcasting, and GMH have been consolidated into the Company's results based on guidance from the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC" 810, *Consolidation*). The remaining interests not owned by the Company are presented as a noncontrolling interest component of total equity.

Basis of Presentation

The accompanying unaudited Condensed Consolidated Financial Statements of the Company included herein have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC"). The financial statements reflect all adjustments that are, in the opinion of management, necessary for a fair statement of such information. All such adjustments are of a normal recurring nature. Certain information and note disclosures, including a description of significant accounting policies normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP"), have been condensed or omitted in these interim financial statements pursuant to such rules and regulations. Certain prior amounts have been reclassified or combined to conform to the current year presentation.

These interim financial statements should be read in conjunction with the Company's annual audited Consolidated Financial Statements and notes thereto included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2021, filed with the SEC on March 9, 2022. The results of operations for the three and nine months ended September 30, 2022 are not necessarily indicative of the results for any subsequent periods or the entire fiscal year ending December 31, 2022.

Use of Estimates and Assumptions

The preparation of the Company's Condensed Consolidated Financial Statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates and assumptions used.

Liquidity

At this time, we believe that we will be able to continue to meet our liquidity requirements and fund our fixed obligations (such as debt service and operating leases) and other cash needs for our operations for at least the next twelve months from the issuance of the Condensed Consolidated Financial Statements through a combination of available cash and distributions from our subsidiaries. The ability of INNOVATE's subsidiaries to make distributions to INNOVATE is subject to numerous factors, including restrictions contained in each subsidiary's financing agreements, availability of sufficient funds at each subsidiary and the approval of such payment by each subsidiary's board of directors, which must consider various factors, including general economic and business conditions, tax considerations, strategic plans, financial results and condition, expansion plans, any contractual, legal or regulatory restrictions on the payment of dividends, and such other factors each subsidiary's board of directors considers relevant. Although the Company believes, to the extent needed, that it will be able to raise additional debt or equity capital, refinance indebtedness or preferred stock, enter into other financing arrangements or engage in asset sales and sales of certain investments sufficient to fund any cash needs that we are not able to satisfy with the funds on hand or expected to be provided by our subsidiaries, there can be no assurance that it will be able to do so on terms satisfactory to the Company, if at all. Such financing options, if pursued, may also ultimately have the effect of negatively impacting our liquidity profile and prospects over the long-term and dilute holders of common stock. Our ability to sell assets and certain of our investments to meet our existing financing needs may also be limited by our existing financing instruments. In addition, the sale of assets or the Company's investments may also make the Company less attractive to potential investors or future financing partners.

COVID-19

There are many uncertainties regarding the current coronavirus ("COVID-19") pandemic, and the Company continues to closely monitor the impact of the COVID-19 pandemic, including the effectiveness of the vaccine programs, on all aspects of its business, including how it will impact its customers, employees, suppliers, vendors, business partners and distribution channels and any potential prolonging or worsening of the pandemic due to COVID-19 variants. We are unable to predict the impact that COVID-19 will have on the Company's financial position and operating results due to numerous uncertainties. However, as the pandemic continues, it may have an adverse effect on the Company's results of operations, financial condition, or liquidity.

COVID-19 has continued to cause supply chain challenges related to labor shortages and supply chain disruptions, which may create significant delays in our ability to complete projects or deliver products. The receipt of material from impacted areas has been slowed or disrupted and our suppliers are expected to face similar challenges in fulfilling or placing orders, including jurisdictions such as Greater China which continue to have government-mandated lockdowns. In addition, reductions in the number of ocean carrier voyages, ocean freight capacity issues, congestion at major international gateways and other economic factors continue to persist worldwide due to COVID-19 and worldwide supply impacts as there is much greater demand for shipping and reduced capacity and equipment, which has resulted in recent price increases per shipping container. In addition, in the United States, trucking costs have risen dramatically due to driver shortages and increased labor costs, as well as new federal and state safety, environmental and labor regulations. These changes may disrupt our supply chain, which may result in a delay in the completion of our projects and cause us to incur significant additional costs. Although we may attempt to pass on certain of these increased costs to our customers, we may not be able to pass all of these cost increases on to our customers. As a result, our margins may be adversely impacted by such cost increases. These supply chain disruptions and transportation challenges could have a material adverse effect on our results of operations or financial condition.

The Company expects to continue to assess the evolving impact of the COVID-19 pandemic.

INNOVATE CORP.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – CONTINUED
(Unaudited)

Accounting Pronouncements Adopted in the Current Year

There were no new accounting pronouncements adopted during the nine months ended September 30, 2022.

Accounting Pronouncements to be Adopted in 2023

Credit Loss Standard

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments - Credit Losses (Topic 326), Measurement of Credit Losses on Financial Instruments*. This new standard and its related amendments change the impairment model for most financial assets that are measured at amortized cost and certain other instruments, including trade receivables and contract assets, from an incurred loss model to an expected loss model and adds certain new required disclosures. Under the expected loss model, entities will recognize estimated credit losses over the entire contractual term of the instrument rather than delaying recognition of credit losses until it is probable the loss has been incurred. The Company is required to adopt Topic 326 on January 1, 2023. The Company is currently evaluating the application of the new standard and does not expect the adoption to have a significant impact on the Company's financial statements.

Subsequent Events

ASC 855, *Subsequent Events* requires the Company to evaluate events that occur after the balance sheet date as of which the financial statements are issued, and to determine whether adjustments to or additional disclosures in the financial statements are necessary. See Note 25. Subsequent Events for any subsequent events.

3. Revenue and Contracts in Process

Revenue from contracts with customers consist of the following (in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Revenue				
Infrastructure	\$ 412.7	\$ 383.0	\$ 1,197.0	\$ 776.3
Life Sciences	1.2	1.6	3.0	2.8
Spectrum	9.1	10.2	28.0	31.3
Total revenue	<u>\$ 423.0</u>	<u>\$ 394.8</u>	<u>\$ 1,228.0</u>	<u>\$ 810.4</u>

Accounts receivables, net, from contracts with customers consist of the following (in millions):

	September 30, 2022	December 31, 2021
Accounts receivables with customers		
Infrastructure	\$ 313.9	\$ 226.8
Life Sciences	0.8	0.3
Spectrum	7.1	9.4
Total accounts receivables with customers	<u>\$ 321.8</u>	<u>\$ 236.5</u>

Contract assets and contract liabilities and recognized earnings consist of the following (in millions):

	September 30, 2022	December 31, 2021
Costs incurred on contracts in progress	\$ 2,098.3	\$ 2,161.5
Estimated earnings	343.5	316.4
Contract revenue earned on uncompleted contracts	2,441.8	2,477.9
Less: progress billings	2,381.2	2,438.4
	<u>\$ 60.6</u>	<u>\$ 39.5</u>

The above is included in the accompanying consolidated balance sheets under the following line items:

Contract assets	\$ 156.0	\$ 118.6
Contract liabilities	(95.4)	(79.1)
	<u>\$ 60.6</u>	<u>\$ 39.5</u>

INNOVATE CORP.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – CONTINUED
(Unaudited)

Infrastructure Segment

The following table disaggregates DBMG's revenue by market (in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Commercial	\$ 187.3	\$ 207.0	\$ 643.9	\$ 343.3
Industrial	96.3	92.9	270.5	207.9
Healthcare	36.0	17.1	93.3	37.2
Convention	55.5	23.4	97.2	51.7
Transportation	15.0	16.0	32.9	40.0
Leisure	7.9	4.8	17.7	16.5
Government	10.9	15.9	27.4	54.6
Other	3.7	5.9	13.7	25.1
Total revenue from contracts with customers	412.6	383.0	1,196.6	776.3
Other revenue	0.1	—	0.4	—
Total Infrastructure segment revenue	\$ 412.7	\$ 383.0	\$ 1,197.0	\$ 776.3

Contract assets and contract liabilities consisted of the following (in millions):

	September 30, 2022	December 31, 2021
Cost in excess of billings	\$ 85.4	\$ 68.3
Conditional retainage	70.6	50.3
Contract assets	\$ 156.0	\$ 118.6
Billings in excess of costs	\$ (152.7)	\$ (137.6)
Conditional retainage	57.3	58.5
Contract liabilities	\$ (95.4)	\$ (79.1)

The change in contract assets is a result of the recording of \$171.4 million of contract assets driven by new commercial projects, offset by \$134.0 million of contract assets transferred to receivables from contract assets recognized at the beginning of the period.

The change in contract liabilities is a result of periodic contract liabilities of \$93.2 million driven largely by new commercial projects, offset by revenue recognized that was included in the contract liability balance at the beginning of the period in the amount of \$76.9 million.

Transaction Price Allocated to Remaining Unsatisfied Performance Obligations

As of September 30, 2022, the transaction price allocated to remaining unsatisfied performance obligations consisted of the following (in millions):

	Within One Year	Within Five Years	Total
Commercial	\$ 409.7	\$ 110.4	\$ 520.1
Industrial	243.4	18.5	261.9
Transportation	332.9	97.6	430.5
Government	13.2	—	13.2
Leisure	6.6	—	6.6
Healthcare	418.9	108.9	527.8
Convention	132.0	8.0	140.0
Other	3.0	—	3.0
Remaining unsatisfied performance obligations	\$ 1,559.7	\$ 343.4	\$ 1,903.1

DBMG's remaining unsatisfied performance obligations increase with awards of new contracts and decrease as it performs work and recognizes revenue on existing contracts. DBMG includes a project within its remaining unsatisfied performance obligations at such time the project is awarded and agreement on contract terms has been reached. DBMG's remaining unsatisfied performance obligations include amounts related to contracts for which a fixed price contract value is not assigned when a reasonable estimate of total transaction price can be made. DBMG expects to recognize this revenue within the next thirty-six months.

INNOVATE CORP.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – CONTINUED
(Unaudited)

Remaining unsatisfied performance obligations include unrecognized revenues to be realized from uncompleted construction contracts. Although many of DBMG's contracts are subject to cancellation at the election of its customers, in accordance with industry practice, DBMG does not limit the amount of unrecognized revenue included within its remaining unsatisfied performance obligations due to the inherent substantial economic penalty that would be incurred by its customers upon cancellation.

Life Sciences Segment

The following table disaggregates the Life Sciences segment's revenue by type (in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Systems and consumables revenue	\$ 1.2	\$ 1.6	\$ 3.0	\$ 2.8
Total Life Sciences segment revenue	\$ 1.2	\$ 1.6	\$ 3.0	\$ 2.8

Spectrum Segment

The following table disaggregates the Spectrum segment's revenue by type (in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Broadcast station	\$ 4.7	\$ 4.7	\$ 14.2	\$ 13.6
Network advertising	3.4	4.2	10.7	13.7
Network distribution	0.8	0.8	2.2	2.5
Other	0.2	0.5	0.9	1.5
Total Spectrum segment revenue	\$ 9.1	\$ 10.2	\$ 28.0	\$ 31.3

As of September 30, 2022, the transaction price allocated to remaining unsatisfied performance obligations consisted of \$3.4 million of broadcast station revenues, \$0.1 million of network advertising and \$0.1 million of other revenues, of which \$2.8 million is expected to be recognized within one year and \$0.8 million is expected to be recognized within the next thirty-six months.

4. Accounts Receivable, Net

Accounts receivable, net consist of the following (in millions):

	September 30, 2022	December 31, 2021
Contracts in progress	\$ 313.9	\$ 226.8
Unbilled retentions	0.4	0.4
Trade receivables	7.8	9.9
Other receivables	6.1	10.6
Allowance for doubtful accounts	(0.3)	(0.6)
Total	\$ 327.9	\$ 247.1

5. Inventory

Inventory consists of the following (in millions):

	September 30, 2022	December 31, 2021
Raw materials and consumables	\$ 17.3	\$ 14.3
Work in process	0.8	1.2
Finished goods	2.6	1.5
Total inventory	\$ 20.7	\$ 17.0

INNOVATE CORP.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – CONTINUED
(Unaudited)

6. Investments

The carrying values of the Company's investments were as follows (in millions):

	September 30, 2022			
	Measurement Alternative ⁽¹⁾	Equity Method	Fair Value	Total
Common stock	\$ —	\$ 2.9	\$ —	\$ 2.9
Preferred stock and fixed maturities	—	0.5	5.6	6.1
Put option	11.3	—	—	11.3
Investment in securities	—	37.4	—	37.4
Total	\$ 11.3	\$ 40.8	\$ 5.6	\$ 57.7

	December 31, 2021			
	Measurement Alternative ⁽¹⁾	Equity Method	Fair Value	Total
Common stock	\$ —	\$ 2.1	\$ —	\$ 2.1
Preferred stock and fixed maturities	0.5	2.1	5.4	8.0
Put option	11.3	—	—	11.3
Investment in securities	—	34.6	—	34.6
Total	\$ 11.8	\$ 38.8	\$ 5.4	\$ 56.0

⁽¹⁾ The Company accounts for its equity securities without readily determinable fair values under the measurement alternative election of ASC 321, whereby the Company can elect to measure an equity security without a readily determinable fair value, that does not qualify for the practical expedient to estimate fair value (net asset value), at its cost minus impairment, if any.

Pansend accounts for MediBeacon's preferred stock as an equity method investment, inclusive of any fixed maturity securities issued by Pansend to MediBeacon. During the nine months ended September 30, 2022, Pansend issued MediBeacon a \$4.5 million 8.0% convertible note due March 2025, increasing the total outstanding principal to \$5.0 million. The increase in the net basis was partially offset by additional equity method losses recognized on MediBeacon.

Equity Method Investments

The Company's share of net loss from its equity method investments was \$1.1 million and \$2.9 million for the three months ended September 30, 2022 and 2021, respectively. The Company's share of net loss from its equity method investments totaled \$2.1 million and \$4.8 million for the nine months ended September 30, 2022 and 2021, respectively. The Company accounts for its Triple Ring equity method investment results on a one-month lag basis.

The following tables provide summarized financial information for the Company's equity method investments (in millions):

	September 30, 2022	December 31, 2021
Assets	\$ 645.4	\$ 604.5
Liabilities	530.4	481.5
Equity	\$ 115.0	\$ 123.0

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Total revenues	\$ 149.8	\$ 92.0	\$ 359.1	\$ 390.6
Gross profit	\$ 23.1	\$ 14.4	\$ 68.0	\$ 58.7
Operating income (loss)	\$ 2.5	\$ (7.1)	\$ 7.9	\$ (6.2)
Net income (loss)	\$ 0.1	\$ (8.4)	\$ 6.9	\$ (8.3)

INNOVATE CORP.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – CONTINUED
(Unaudited)

7. Property, Plant & Equipment, Net

Property, plant and equipment, net, consists of the following (in millions):

	September 30, 2022	December 31, 2021
Equipment, furniture and fixtures, and software	\$ 192.1	\$ 180.7
Building and leasehold improvements	44.8	43.0
Land	26.1	24.1
Construction in progress	9.3	8.9
Plant and transportation equipment	8.3	8.3
	<u>\$ 280.6</u>	<u>\$ 265.0</u>
Less: Accumulated depreciation	112.6	95.1
Total	<u>\$ 168.0</u>	<u>\$ 169.9</u>

Depreciation expense was \$6.6 million and \$7.8 million for the three months ended September 30, 2022 and 2021, respectively. These amounts included \$3.9 million and \$3.4 million of depreciation expense recognized within cost of revenue for the three months ended September 30, 2022 and 2021, respectively.

Depreciation expense was \$19.3 million and \$17.7 million for the nine months ended September 30, 2022 and 2021, respectively. These amounts included \$11.2 million and \$8.4 million of depreciation expense recognized within cost of revenue for the nine months ended September 30, 2022 and 2021, respectively.

As of September 30, 2022 and December 31, 2021, the aggregate net book value of equipment under capital leases totaled \$2.2 million and \$0.2 million, respectively.

8. Goodwill and Intangibles, Net

Goodwill

The carrying amount of goodwill by segment was as follows (in millions):

	Infrastructure	Spectrum	Total
Balance at December 31, 2021	\$ 106.0	\$ 21.4	\$ 127.4
Translation	(0.6)	—	(0.6)
Balance as of September 30, 2022	<u>\$ 105.4</u>	<u>\$ 21.4</u>	<u>\$ 126.8</u>

Indefinite-lived Intangible Assets

The carrying amount of indefinite-lived intangible assets was as follows (in millions):

	September 30, 2022	December 31, 2021
FCC licenses	\$ 106.4	\$ 106.5
Total	<u>\$ 106.4</u>	<u>\$ 106.5</u>

For the nine months ended September 30, 2022 and 2021, the Company recorded impairment charges of \$0.1 million and \$2.7 million, respectively, which is reflected in Other operating (income) loss, related to non-core FCC licenses which were sold or expired in order to bring their carrying value equal to the agreed upon sales price prior to the execution of the sale or expiration.

INNOVATE CORP.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – CONTINUED
(Unaudited)

Definite Lived Intangible Assets

The gross carrying amounts and accumulated amortization of definite lived intangible assets by major intangible asset class were as follows (in millions):

	Weighted-Average Original Useful Life	September 30, 2022			December 31, 2021		
		Gross Carrying Amount	Accumulated Amortization	Net	Gross Carrying Amount	Accumulated Amortization	Net
Trade names	14 years	\$ 25.4	\$ (7.6)	\$ 17.8	\$ 25.4	\$ (6.3)	\$ 19.1
Customer relationships and contracts	11 years	87.5	(31.8)	55.7	87.7	(21.6)	66.1
Channel sharing arrangements	35 years	12.6	(1.4)	11.2	12.6	(1.1)	11.5
Other	12 years	4.1	(0.9)	3.2	8.5	(3.3)	5.2
Total		\$ 129.6	\$ (41.7)	\$ 87.9	\$ 134.2	\$ (32.3)	\$ 101.9

For the nine months ended September 30, 2022, the Company recorded impairment charges to definite lived intangible assets of \$1.5 million in Other operating (income) loss related to the impairment of the HC2 Network Program License Agreement ("PLA") due to a decline in performance.

Amortization expense for definite lived intangible assets was \$4.1 million and \$4.5 million for the three months ended September 30, 2022 and 2021, respectively, and was included in Depreciation and amortization in our Condensed Consolidated Statements of Operations.

Amortization expense for definite lived intangible assets was \$12.5 million and \$8.3 million for the nine months ended September 30, 2022 and 2021, respectively, and was included in Depreciation and amortization in our Condensed Consolidated Statements of Operations.

Amortization

Future estimated annual amortization expense for intangible assets is as follows (in millions):

	Estimated Amortization
2022	\$ 4.1
2023	11.0
2024	7.4
2025	7.2
2026	6.9
Thereafter	51.3
Total	\$ 87.9

9. Acquisitions

Infrastructure Segment

Banker Steel Acquisition

On March 15, 2021, the Company announced that DBMG entered into an agreement to acquire 100% of Banker Steel Holdco LLC ("Banker Steel") for \$145.0 million, which closed on May 27, 2021. The acquisition was financed with \$64.1 million from a partial draw on a new \$110.0 million revolving credit facility, \$49.6 million of sellers' notes, \$6.3 million of assumed debt of Banker Steel, and \$25.0 million in cash received from INNOVATE in the settlement of certain intercompany balances.

Banker Steel, which is included in the Company's Infrastructure segment, provides full-service fabricated structural steel and erection services primarily for the East Coast and Southeast commercial and industrial construction market, in addition to full design-assist services. Banker Steel consists of six operating companies: Banker Steel Co., LLC; NYC Constructors, LLC; Memco LLC; Derr & Isbell Construction LLC; Innovative Detailing and Engineering Solutions; and Lynchburg Freight and Specialty LLC.

INNOVATE CORP.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – CONTINUED
(Unaudited)

Results of Operations and Unaudited Supplemental Pro Forma Information

The following table presents the unaudited results of operations data for the nine months ended September 30, 2021 for Banker Steel from the date of acquisition (in millions):

	Nine Months Ended September 30, 2021
Revenue	\$ 153.8
Income from operations	\$ 7.3
Net income attributable to INNOVATE	\$ 4.5

The following table presents unaudited consolidated pro forma results of operations data as if the acquisition of Banker Steel had occurred at the beginning of the prior period. This information does not purport to be indicative of the actual results that would have occurred if the acquisitions had actually been completed on the date indicated, nor is it necessarily indicative of the future operating results or the financial position of the combined company (in millions):

	Nine Months Ended September 30, 2021
Revenue	\$ 1,007.9
Loss from operations	\$ (6.0)
Net loss attributable to INNOVATE	\$ (214.5)

10. Dispositions, Deconsolidations and Discontinued Operations

Sale of CIG

The sale of CIG closed on July 1, 2021 to Continental General Holdings LLC ("Continental"), an entity controlled by Michael Gorzynski, a former director of the Company who also serves as executive chairman of Continental since October 2020. Our previous segment incorporating CIG (the "Insurance segment"), which primarily consisted of a closed block of long-term care insurance, had a book value, inclusive of intercompany eliminations, at the time of the sale of \$544.0 million, inclusive of \$344.0 million of Accumulated other comprehensive income ("AOCI"). The carrying value of the Insurance segment at the time of sale excluded cash of \$62.5 million and investments of \$26.7 million which were distributed to the Company through an extraordinary dividend immediately prior to the sale. The extraordinary dividend was approved by our domestic regulator in connection with the approval of the sale. The amount included in AOCI was reversed from equity at the time of the sale and offset the loss recognized.

While several factors impacted the fair value of the Insurance segment at the end of 2019, following discussions with our domestic regulator, changes in the asset management fee arrangement and expectations of future dividends primarily and ultimately resulted in the full impairment of the goodwill associated with the Insurance segment during the year ended December 31, 2019. While these factors did not have a major impact on the operations of the stand-alone business, they did have a significant impact on the economic benefit that could be realized by the Company.

As a result of the factors described above, combined with the risks associated with the long-term care insurance industry, the Company exited the Insurance segment and sold the business resulting in a \$200.8 million loss on the sale of CIG in the third quarter of 2021.

On September 3, 2022, INNOVATE and Continental entered into a tax cooperation agreement permitting Continental General Insurance Company ("CGIC") to consolidate into INNOVATE's 2021 U.S. tax return for the six-month period INNOVATE owned CGIC, allowing CGIC to shield some of its income tax liability by utilizing a portion of INNOVATE's Net Operating Losses ("NOLs") while also converting a portion of INNOVATE's IRC Sec. 163(j) carryforward assets into NOLs. See Note 16. Income Taxes for additional information regarding income tax attributes.

The net tax savings of \$2.9 million on CGIC's income tax liability was split between CGIC and INNOVATE in accordance with the tax sharing agreement, which was executed on October 11, 2022. INNOVATE recognized a current income tax benefit of \$2.9 million in the current period and expects to receive \$1.2 million as a result of the tax sharing agreement during the fourth quarter of 2022. As CGIC is no longer a subsidiary of INNOVATE, the \$1.7 million tax benefit to be received by CGIC tax share is treated as a deemed contribution, and INNOVATE recognizes an additional \$1.7 million loss related to the previous sale of the subsidiary, through continuing operations.

Sale of Beyond6

On December 31, 2020, the Company announced a plan to sell Beyond6 to an affiliate of Mercuria Investments US, Inc., pursuant to an Agreement and Plan of Merger (the "Merger Agreement") among Beyond6, Greenfill, Inc., a Delaware corporation ("Parent"), Greenfill Merger Inc., a newly-formed Delaware corporation and wholly-owned subsidiary of the Parent, and an affiliate of INNOVATE as the Stockholder Representative for the Beyond6 stockholders, for a total purchase price, net of Beyond6's debt and transaction expenses, customary purchase price adjustments and escrow arrangements, of approximately \$106.5 million. Net proceeds received by INNOVATE at closing was cash consideration of approximately \$70.0 million. The sale closed on January 15, 2021. During the first quarter of 2021, the Company recognized a \$39.2 million gain on the sale. During the third quarter of 2021, as a result of releases of related escrows and hold backs, the Company recognized an additional \$0.5 million gain on the sale.

A portion of the proceeds from the sale of Beyond6 were used to repay \$15.0 million of the then outstanding balance under the 6.75% line of credit with MSD PCOF Partners IX, LLC ("Revolving Credit Agreement") and repay \$27.9 million of the Company's 2021 Senior Secured Notes.

Sale of GMSL

On January 30, 2020, the Company announced that, through its indirect subsidiary, GMH, in which the Company holds an approximately 73% controlling interest, the Company entered into a definitive agreement to sell 100% of the shares of GMSL to Trafalgar AcquisitionCo, Ltd. and an affiliate of J.F. Lehman & Company, LLC. The total base consideration was \$250.0 million, subject to customary purchase price adjustments, working capital adjustments, and a potential earn-out of up to \$12.5 million at such time, if any, if J.F. Lehman & Company, LLC and its investment affiliates achieve a specified multiple of their invested capital.

The purchase price is subject to customary potential downward or upward post-closing adjustments based on net working capital, cash, unpaid transaction expenses, indebtedness and certain of the Company's pre-closing paid capital expenditures. The Share Purchase Agreement contained customary representations, warranties and covenants for a transaction of this nature.

The transaction closed on February 28, 2020. GMH received approximately \$144.0 million of net proceeds from the sale, of which \$36.8 million and \$5.5 million were paid to noncontrolling interest holders and redeemable noncontrolling interest holders, respectively. INNOVATE received net proceeds of approximately \$100.8 million. In connection with the closing of the transaction, the purchaser deposited (i) \$1.25 million of the base price into an escrow fund for the purpose of securing certain indemnification obligations for losses payable in the first twelve months after closing and (ii) \$1.91 million of the base price into an escrow fund for the purpose of securing a purchase price adjustment, if any, in favor of purchaser. Following the closing, the purchaser paid an amount equal to \$2.4 million on the earlier of December 31, 2020 and the date on which a cash collateralized bonding facility was released.

In the first quarter of 2020, the Company recorded a \$39.3 million loss on the sale and recognized a \$31.3 million of Accumulated other comprehensive loss, which was comprised of \$17.2 million of actuarial losses on pension and \$14.1 million of currency translation adjustments. During the fourth quarter of 2020, the Company recognized a gain on sale of \$2.4 million as a result of the cash collateralized bonding facility release. During the first quarter of 2021, the Company recognized a gain of \$1.2 million as a result of indemnity release.

INNOVATE CORP.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – CONTINUED
(Unaudited)

Discontinued Operations Reporting

The results of Beyond6 and CIG and the related expenses directly attributable to the entities were reported as discontinued operations. The discontinued operations of Beyond6, and CIG are included in the Company's Other Segment. Summarized operating results of the discontinued operations are as follows (in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Revenue	\$ —	\$ —	\$ —	\$ 1.7
Life, accident and health earned premiums, net	—	—	—	55.7
Net investment income	—	—	—	92.4
Realized/unrealized gains on investments	—	—	—	5.1
Total revenue	—	—	—	154.9
Cost of revenue	—	—	—	0.8
Policy benefits, changes in reserves, and commissions	—	—	—	126.0
Selling, general and administrative	—	—	—	21.1
Depreciation and amortization	—	—	—	(11.0)
Income from operations	—	—	—	18.0
Interest expense	—	—	—	(0.5)
Loss on sale and liquidation of subsidiaries	—	(200.3)	—	(159.9)
Other loss	—	—	—	(3.1)
Pre-tax loss from discontinued operations	—	(200.3)	—	(145.5)
Income tax expense	—	—	—	(4.4)
Loss from discontinued operations	\$ —	\$ (200.3)	\$ —	\$ (149.9)

Assets Held for Sale

As of September 30, 2022 the Company had no assets held for sale, and as of December 31, 2021, the Company had approximately \$1.5 million of other current assets related to discontinued operations which were classified in Assets held for sale in the Condensed Consolidated Balance Sheet.

11. Leases

Operating lease right-of-use-assets and assets held under finance leases are recognized in the Condensed Consolidated Balance Sheets within Other assets and Property, plant and equipment, net, respectively. Operating lease liabilities and finance lease liabilities are recognized in the Condensed Consolidated Balance Sheets within Other liabilities and Debt obligations, respectively. As of September 30, 2022 and December 31, 2021, lease right-of-use assets and lease liabilities consist of the following (in millions):

	September 30, 2022	December 31, 2021
Right-of-use assets:		
Operating lease (Other assets)	\$ 65.7	\$ 69.6
Finance lease (Property, plant and equipment, net)	2.2	0.2
Total right-of-use assets	\$ 67.9	\$ 69.8
Lease liabilities:		
Current portion of operating lease (Other current liabilities)	\$ 17.3	\$ 15.5
Non-current portion of operating lease (Other liabilities)	53.2	58.5
Finance lease (Debt obligations)	2.2	0.1
Total lease liabilities	\$ 72.7	\$ 74.1

The tables below present financial information associated with the Company's leases. The Company has entered into operating and finance lease agreements primarily for land, office space, equipment and vehicles, expiring between 2022 and 2045.

INNOVATE CORP.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – CONTINUED
(Unaudited)

The following table summarizes the components of lease expense (in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Finance lease cost:				
Amortization of right-of-use assets	\$ 0.1	\$ 0.2	\$ 0.2	\$ 0.8
Interest on lease liabilities	—	—	—	—
Net finance lease cost	0.1	0.2	0.2	0.8
Operating lease cost	5.8	7.9	17.6	15.7
Variable lease cost	0.1	0.1	0.4	0.3
Sublease income	(0.1)	—	(0.5)	—
Total lease cost	<u>\$ 5.9</u>	<u>\$ 8.2</u>	<u>\$ 17.7</u>	<u>\$ 16.8</u>

Cash flow information related to leases is as follows (in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Cash paid for amounts included in the measurement of lease liabilities:				
Financing cash flows from finance leases	\$ —	\$ 0.1	\$ 0.1	\$ 0.6
Operating cash flows from operating leases	\$ 5.6	\$ 8.1	\$ 17.6	\$ 16.0
Right-of-use assets obtained in exchange for new lease liabilities:				
Finance leases	\$ 1.7	\$ —	\$ 2.2	\$ —
Operating leases	\$ 2.8	\$ 1.7	\$ 10.5	\$ 42.9

The weighted-average remaining lease term and the weighted-average discount rate for finance leases and operating leases for the periods presented are as follows:

	September 30, 2022	December 31, 2021
Weighted-average remaining lease term (years) - operating lease	7.5	7.5
Weighted-average remaining lease term (years) - finance lease	1.6	2.3
Weighted-average discount rate - operating lease	5.4 %	5.4 %
Weighted-average discount rate - finance lease	5.6 %	4.2 %

As of September 30, 2022, undiscounted cash flows for finance and operating leases are as follows (in millions):

	Operating Leases	Finance Leases
2022	\$ 5.1	\$ 0.1
2023	19.2	1.8
2024	13.4	0.3
2025	10.0	0.1
2026	6.8	—
Thereafter	31.6	—
Total future lease payments	<u>86.1</u>	<u>2.3</u>
Less: Present values	<u>(15.6)</u>	<u>(0.1)</u>
Total lease liability balance	<u>\$ 70.5</u>	<u>\$ 2.2</u>

In November 2021, INNOVATE Corp. entered into a ten-year lease agreement for a special purpose space in Palm Beach, Florida. The new lease has not yet commenced, but will require future monthly lease payments of approximately \$0.2 million over the entire lease term and yearly common area maintenance charges of \$0.6 million, both of which are subject to 3% annual upward adjustments, with total square footage of 20,950. The new lease also provides for the Company to receive an allowance from the landlord of \$2.1 million to be used toward costs to design, engineer, install, supply and construct improvements, payable at the end of the construction period. The future lease payments and unexpended amounts under the allowance are not yet recorded on our consolidated balance sheet. We expect the accounting lease commencement date for this initial portion of the lease for financial reporting purposes to begin in 2024.

INNOVATE CORP.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – CONTINUED
(Unaudited)

In December 2021, the Company entered into a five-year lease agreement with an option to extend the lease for another five years for office space in West Palm Beach, Florida. The new lease has not commenced yet, but will require future monthly lease payments of approximately \$0.14 million over the entire lease term, subject to 3% annual upward adjustment, with total square footage of 15,786. The future lease payments are not yet recorded on our consolidated balance sheet, as the building is still under construction. We expect the accounting lease commencement date for this initial portion of the lease for financial reporting purposes to begin in 2024.

12. Other Assets

Other assets, which are reflected in non-current assets in the Condensed Consolidated Balance Sheets, consist of the following (in millions):

	September 30, 2022	December 31, 2021
Right-of-use assets	\$ 65.7	\$ 69.6
Restricted cash - non-current	1.5	—
Other	4.2	3.7
Total other assets	<u>\$ 71.4</u>	<u>\$ 73.3</u>

For the nine months ended September 30, 2022, the Company recorded impairment charges to right-of-use assets of \$0.4 million, which are reflected in Other operating (income) loss, related to FCC licenses impaired. Refer to Note 8. Goodwill and Intangibles, Net for additional information.

13. Accrued Liabilities

Accrued liabilities consist of the following (in millions):

	September 30, 2022	December 31, 2021
Accrued expenses and other current liabilities	\$ 21.7	\$ 24.5
Accrued payroll and employee benefits	40.4	38.9
Accrued interest	25.8	29.6
Accrued income taxes	0.3	0.4
Total accrued liabilities	<u>\$ 88.2</u>	<u>\$ 93.4</u>

14. Debt Obligations

Debt obligations consist of the following (in millions):

	September 30, 2022	December 31, 2021
Infrastructure		
3.25% Note due 2026	\$ 101.0	\$ 107.2
PRIME minus 0.85% Line of Credit due 2024	107.7	30.4
4.00% Note due 2024	17.5	25.0
8.00% Note due 2024	19.1	19.6
11.00% Note due 2024	—	6.3
Obligations under finance leases	2.2	0.1
Spectrum		
8.50% Note due 2022	19.3	19.3
10.50% Note due 2022	32.9	32.9
Life Sciences		
12.00% Note due 2022	10.0	—
Non-Operating Corporate		
8.50% Senior Secured Notes, due 2026	330.0	330.0
7.50% Convertible Senior Notes, due 2026	51.8	51.8
7.50% Convertible Senior Notes, due 2022	—	3.2
LIBOR plus 5.75% Line of Credit due 2024	20.0	5.0
	<u>711.5</u>	<u>630.8</u>
Unamortized issuance discount, issuance premium, and deferred financing costs	(2.2)	(4.5)
Less: current portion of debt obligations	<u>(81.4)</u>	<u>(69.5)</u>
Debt obligations	<u>\$ 627.9</u>	<u>\$ 556.8</u>

INNOVATE CORP.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – CONTINUED
(Unaudited)

Aggregate finance lease and debt payments, including interest, are as follows (in millions):

	Finance Leases	Debt	Total
2022	\$ 0.1	\$ 79.2	\$ 79.3
2023	1.8	62.3	64.1
2024	0.3	194.2	194.5
2025	0.1	41.2	41.3
2026	—	469.8	469.8
Thereafter	—	—	—
Total minimum principal and interest payments	2.3	846.7	849.0
Less: Amount representing interest	(0.1)	(137.4)	(137.5)
Total aggregate finance lease and debt payments	<u>\$ 2.2</u>	<u>\$ 709.3</u>	<u>\$ 711.5</u>

The interest rates on the finance leases range from approximately 2.0% to 6.0%.

Infrastructure

In May 2021, DBMG repaid its LIBOR plus 1.50% revolving line of credit (the "Revolving Line") under the Credit and Security Agreement with Wells Fargo Bank and its term loan due 2023 (the "TCW Loan") under a financing agreement with TCW Asset Management Company LLC. In addition, DBMG entered into a new credit facility with UMB Bank ("UMB"). Under the terms of the agreement, UMB agreed to a \$110.0 million term loan ("UMB Term Loan") and \$110.0 million revolving credit agreement ("UMB Revolving Line"). The UMB Term loan expires in 2026 and will bear interest at a rate of 3.25% with an effective interest rate of 3.25%. The UMB Revolving Line expires in 2024 and bears interest at a rate of Prime Rate minus 0.85%. The proceeds were used to fully repay DBMG's existing debt obligations, fund a portion of the Banker Steel acquisition, and provide additional working capital capacity to DBMG.

The 2021 extinguishment of the Revolving Line and the TCW Loan yielded a loss on extinguishment of \$1.6 million included in Loss on early extinguishment or restructuring of debt in the Condensed Consolidated Statement of Operations.

The UMB Revolving Line associated with our Infrastructure segment contains customary restrictive and financial covenants related to debt levels and performance, including a Fixed Coverage Ratio covenant, as defined in the agreement. On August 2, 2022, DBMG negotiated and finalized an amendment to its UMB Revolving Line which included a retrospective change to the terms of the Fixed Coverage Ratio, and an increase in the UMB Revolving Line commitment from \$110.0 million to \$135.0 million, among other things.

Spectrum

On October 24, 2019, Spectrum issued \$78.7 million 364-day secured notes (the "2020 Notes"). The 2020 Notes were comprised of a \$36.2 million, 8.50% tranche funded by an affiliate of MSD Partners, L.P. (the "8.50% Note"). The remaining \$42.5 million, 10.50% tranche (the "10.50% Note") was a modification of the existing Secured Note, with certain institutional investors. The 2020 Notes had an original maturity date of October 2020, and were amended multiple times during 2020 as further described below. The net proceeds from the financing were used to retire Broadcasting's existing debt, as well as fund acquisitions, working capital and general corporate purposes. In connection with the issuance of the 10.50% Note due 2020, Spectrum issued warrants to the same institutional investors to purchase 50,000 shares of common stock at \$176.4 per share for a total purchase price of \$8.8 million, or net settled, if exercised as of the issuance date, and as may be adjusted at any future exercise of the warrant pursuant to its terms. The warrant has a five-year term and is immediately exercisable.

In February 2020, Spectrum amended its agreement governing its 8.50% Note funded by MSD Partners, L.P., increasing the principal balance to \$39.3 million. The proceeds were used to repay principal and interest on existing debt. In August 2020, Spectrum modified its agreement with MSD Partners, L.P. and Great American Life Insurance Company to extend the maturity on its 8.50% Note and 10.50% Note to October 2021. In September 2020, Spectrum further amended its agreement governing its 8.50% Note, increasing the principal balance by \$4.0 million to \$43.3 million. The proceeds were used to repay principal and interest on existing debt and for general business purposes. In November 2020, Spectrum paid down \$2.9 million of its 8.50% Note and \$3.0 million on other various notes. In December 2020, Spectrum paid down \$21.0 million and \$9.6 million of its 8.50% Note and 10.50% Note, respectively from the proceeds from the sale of stations. On August 30, 2021, Broadcasting repurchased \$1.0 million of DTV's outstanding notes payable, inclusive of accrued interest, to certain institutional investors. Also on August 30, 2021, DTV extended its remaining outstanding notes by 60 days.

On October 21, 2021, Broadcasting entered into the Fifth Omnibus Amendment to Secured Notes, Consent and Second Amendment to Asset Sale Under Secured Notes and Intercreditor Agreement (the "Amendment"), which, among other things, extended \$52.2 million of its Senior Secured Notes, due October 21, 2021, through November 30, 2022. Concurrently, Broadcasting completed the last of a series of repurchases of all the outstanding secured notes, inclusive of accrued interest, of DTV America Corporation ("DTV") for a total consideration of \$6.2 million using a combination of cash on hand and proceeds from the sales on non-core assets.

INNOVATE CORP.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – CONTINUED
(Unaudited)

On October 26, 2021, Broadcasting repurchased the outstanding convertible promissory notes of DTV for a total consideration of \$0.7 million using proceeds from the sales of non-core assets. Subsequent to these acquisitions, DTV's debt is held by Broadcasting and eliminated in consolidation.

Life Sciences

On June 27, 2022, R2 Technologies issued a \$0.5 million short-term 90-day 12.0% bridge financing loan with Lancer Capital, LLC, a related party, an entity controlled by Avram A. Glazer, the Chairman of the Board of Directors. On July 13, 2022, R2 Technologies entered into a note purchase agreement with Lancer Capital, LLC. The note payable bears interest at 12.0% per annum and was funded in two tranches. The first tranche of \$5.0 million closed on July 13, 2022, and included the settlement of a \$0.5 million short-term 90-day 12.0% bridge financing loan made on June 27, 2022 by Lancer Capital, LLC, and an additional \$4.5 million in cash. The second tranche of \$5.0 million closed on August 8, 2022. The note is payable on the earlier of December 31, 2022 or within five business days from the date on which R2 Technologies receives greater than \$10.0 million from an equity or debt financing event.

For the three and nine months ended September 30, 2022, R2 Technologies recognized interest expense related to the contractual interest coupon with Lancer Capital, LLC of \$0.2 million.

Non-Operating Corporate

2026 Senior Secured Notes

On February 1, 2021, INNOVATE repaid its 2021 Senior Secured Notes and issued \$330.0 million aggregate principal amount of 8.50% senior secured notes due 2026 (the "2026 Senior Secured Notes"). The 2026 Senior Secured Notes were issued under an indenture dated February 1, 2021, by and among the Company, the guarantors party thereto and U.S. Bank National Association, a national banking association ("U.S. Bank"), as trustee (the "Secured Indenture"). In addition, the Company entered into exchange agreements with certain holders of approximately \$51.8 million aggregate principal amount of its existing \$55.0 million 7.50% convertible senior notes due 2022 (the "2022 Convertible Notes"), pursuant to which the Company exchanged such holders' 2022 Convertible Notes for newly issued 7.50% convertible notes due 2026 (the "2026 Convertible Notes"). The 2026 Senior Secured Notes were issued in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended.

The Company accounted for the transactions under the debt extinguishment model as the present value of cash flows under the terms of the 2026 Senior Secured Notes and 2026 Convertible Notes was at least 10% different from the present value of the remaining cash flows under the 2021 Senior Secured Notes and the 2022 Convertible Notes. The extinguishment of the 2021 Senior Secured Notes yielded a loss on extinguishment of \$4.5 million. The extinguishment of the \$51.8 million of 2022 Convertible Notes yielded a loss on extinguishment of \$5.5 million, an acceleration of the amortization of discount of \$5.3 million, and extinguishment of the bifurcated conversion option classified as equity of \$7.7 million.

The 2026 Senior Secured Notes were issued at 100% of par, with a stated interest rate of 8.50% and an effective interest rate of 9.26%, which reflects \$2.7 million of deferred financing fees. For the nine months ended September 30, 2022 and 2021, interest expense recognized for the period relating to both the contractual interest coupon and amortization of the deferred financing fees was \$22.6 million and \$19.7 million, respectively.

2026 Convertible Notes

As of September 30, 2022, the 2026 Convertible Notes had a net carrying value of \$59.8 million and an unamortized premium of \$8.8 million. Based on the closing price of our common stock of \$0.70 on September 30, 2022, the if-converted value of the 2026 Convertible Notes did not exceed its principal value. For the nine months ended September 30, 2022 and 2021, interest expense recognized for the period relating to both the contractual interest coupon and amortization of discount net of premium was \$1.5 million and \$1.3 million, respectively.

2022 Convertible Notes

On June 1, 2022, the 2022 Convertible Notes of \$3.2 million matured, and the Company repaid the principal and accrued interest upon maturity. For the nine months ended September 30, 2022 and 2021, interest expense recognized for the period relating to both the contractual interest coupon and amortization of the discount on the 2022 Convertible Notes was \$0.2 million and \$0.3 million, respectively.

INNOVATE CORP.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – CONTINUED
(Unaudited)

Line of Credit

On February 23, 2021, the Company entered into a third amendment (the "Amendment") of the 6.75% line of credit with MSD PCOF Partners IX, LLC ("Revolving Credit Agreement"). Among other things, the Amendment (i) increases the aggregate principal amount of the Revolving Credit Agreement to \$20.0 million, (ii) extends the maturity date of the Revolving Credit Agreement to February 23, 2024, (iii) updates the affirmative and negative covenants contained in the Amended Credit Agreement so that they are substantially consistent with the affirmative and negative covenants contained in the indenture that governs the 2026 Senior Secured Notes and (iv) reduces the interest rate margin applicable to loans borrowed under the Amended Credit Agreement to 5.75% from the 6.75% described above. Except as modified by the Amendment, the terms of the Revolving Credit Agreement remain in effect. In May 2021, INNOVATE drew \$5.0 million under the Revolving Credit Agreement. In July 2022, the Company drew an additional \$15.0 million under the Revolving Credit Agreement.

INNOVATE is in compliance with its debt covenants as of September 30, 2022.

15. Other Liabilities

Other liabilities, which are reflected in non-current liabilities in the Condensed Consolidated Balance Sheets, consist of the following (in millions):

	September 30, 2022	December 31, 2021
Lease liability, net of current portion	\$ 53.2	\$ 58.5
Other	4.4	4.8
Total other liabilities	<u>\$ 57.6</u>	<u>\$ 63.3</u>

16. Income Taxes

The Company used the Annual Effective Tax Rate ("ETR") approach of ASC 740-270, Interim Reporting, to calculate its 2022 interim tax provision.

Income tax benefit was \$2.0 million and an expense of \$0.1 million for the three months ended September 30, 2022 and 2021, respectively. The income tax benefit recorded for the three months ended September 30, 2022 relates to the net tax savings of \$2.9 million from the CGIC consolidation in the 2021 tax return, resulting in a partial release of the valuation allowance. See Note 10. Dispositions, Deconsolidations and Discontinued Operations for information regarding the transaction. This was partially offset by income tax expense as calculated under ASC 740 for taxpaying entities. Additionally, the tax benefits associated with losses generated by the INNOVATE Corp. U.S. consolidated income tax return and certain other businesses have been reduced by a full valuation allowance as we do not believe it is more-likely-than-not that the losses will be utilized. The income tax expense recorded for the three months ended September 30, 2021 primarily related to the projected expense as calculated under ASC 740 for taxpaying entities. Additionally, the tax benefits associated with losses generated by the INNOVATE Corp. U.S. consolidated income tax return and certain other businesses have been reduced by a full valuation allowance as we do not believe it is more-likely-than-not that the losses will be utilized.

Income tax expense was \$1.6 million and \$3.8 million for the nine months ended September 30, 2022 and 2021, respectively. The income tax expense recorded for the nine months ended September 30, 2022 primarily relates to the projected expense as calculated under ASC 740 for taxpaying entities. Additionally, the tax benefits associated with losses generated by the INNOVATE Corp. U.S. consolidated income tax return and certain other businesses have been reduced by a full valuation allowance as we do not believe it is more-likely-than-not that the losses will be utilized. This was partially offset by the net tax savings of \$2.9 million from the CGIC consolidation in the 2021 tax return, resulting in a partial release of the valuation allowance. The income tax expense recorded for the nine months ended September 30, 2021 primarily relates to the projected expense as calculated under ASC 740 for taxpaying entities. Additionally, the tax benefits associated with losses generated by the INNOVATE Corp. U.S. consolidated income tax return and certain other businesses have been reduced by a full valuation allowance as we do not believe it is more-likely-than-not that the losses will be utilized.

Net Operating Losses

At December 31, 2021, the Company had gross U.S. net operating loss carryforwards available to reduce future taxable income in the amount of \$239.6 million, of which a portion is subject to annual limitation under IRC Sec. 382. This includes \$75.1 million of additional U.S. net operating loss carryforwards resulting from the CGIC consolidation in the 2021 tax return. See Note 10. Dispositions, Deconsolidations and Discontinued Operations for information regarding the transaction. Based on estimates as of September 30, 2022, the Company expects that approximately \$170.9 million of the gross U.S. net operating loss carryforwards would be available to offset taxable income in 2022. This estimate may change based on changes to actual results reported on the 2021 U.S. tax return. The amount of U.S. net operating loss carryforwards reflected in the financial statements differs from the amounts reported on the U.S. tax return due to uncertain tax positions related to tax laws and regulations that are subject to varied interpretation by the IRS.

Additionally, as of December 31, 2021, the Company had \$103.9 million of gross U.S. net operating loss carryforwards from its subsidiaries that do not qualify to be included in the INNOVATE Corp. U.S. consolidated income tax return, including \$66.1 million from R2, \$33.5 million from DTV America, and other entities of \$4.3 million.

Unrecognized Tax Benefits

The Company follows the provision of ASC 740-10, Income Taxes, which prescribes a comprehensive model for how a company should recognize, measure, present, and disclose in its financial statements uncertain tax positions that the Company has taken or expects to take on a tax return. The Company is subject to challenge from various taxing authorities relative to certain tax planning strategies, including certain intercompany transactions as well as regulatory taxes.

The Company did not have any unrecognized tax benefits as of December 31, 2021 related to uncertain tax positions that would impact the effective income tax rate if recognized. The Company has reduced the net operating loss carryforward by \$58.7 million for uncertain tax positions based on our interpretation of tax laws and regulations that are subject to varied interpretation by the IRS.

Examinations

The Company conducts business globally, and as a result, the Company or one or more of its subsidiaries files income tax returns in the United States federal jurisdiction and various state and foreign jurisdictions. In the normal course of business the Company is subject to examination by taxing authorities throughout the world. The open tax years contain matters that could be subject to differing interpretations of applicable tax laws and regulations as they relate to the amount, character, timing or inclusion of revenue and expenses or the applicability of income tax credits for the relevant tax period. Given the nature of tax audits there is a risk that disputes may arise. Tax years 2002 - 2020 remain open for examination.

17. Commitments and Contingencies

Litigation

The Company is subject to claims and legal proceedings that arise in the ordinary course of business. Such matters are inherently uncertain, and there can be no guarantee that the outcome of any such matter will be decided favorably to the Company or that the resolution of any such matter will not have a material adverse effect upon the Company's Condensed Consolidated Financial Statements. The Company does not believe that any of such pending claims and legal proceedings will have a material adverse effect on its Condensed Consolidated Financial Statements. The Company records a liability in its Condensed Consolidated Financial Statements for these matters when a loss is known or considered probable and the amount can be reasonably estimated. The Company reviews these estimates each accounting period as additional information is known and adjusts the loss provision when appropriate. If a matter is both probable to result in a liability and the amount of loss can be reasonably estimated, the Company estimates and discloses the possible loss or range of loss to the extent necessary for its Condensed Consolidated Financial Statements not to be misleading. If the loss is not probable or cannot be reasonably estimated, a liability is not recorded in the Company's Condensed Consolidated Financial Statements. Any legal or other expenses associated with the litigation are accrued for as the expenses are incurred.

Based on a review of the current facts and circumstances with counsel in each of the matters disclosed, management has provided for what is believed to be a reasonable estimate of loss exposure. While acknowledging the uncertainties of litigation, management believes that the ultimate outcome of litigation will not have a material effect on its financial position and will defend itself vigorously.

VAT assessment

On February 20, 2017, and on August 15, 2017, the Company's subsidiary, PTGi International Carrier Services Ltd. ("PTGi-ICS Ltd"), received notices from Her Majesty's Revenue and Customs office in the U.K. ("HMRC") indicating that it was required to pay certain Value-Added Taxes ("VAT") for the 2015 and 2016 tax years. On February 15, 2022, the Upper Tribunal (Tax and Chancery) Chamber (the "Tax Tribunal") found in favor of PTGi-ICS Ltd. HMRC has acknowledged that it will not appeal the Tax Tribunal's decision and it must pay reasonable legal fees incurred by PTGi-ICS Ltd. On August 1, 2022 ICS received £1.1 million (\$1.3 million) from HMRC for the VAT refunds previously withheld. ICS is waiting on the repayment of the outstanding interest and costs. The Company is working with HMRC agents to obtain full resolution.

Fair Value Investments Litigation

On October 1, 2020, Fair Value Investments Incorporated (“FVI”) filed a putative stockholder class action and derivative complaint in the Delaware Court of Chancery (the “Court”) against INNOVATE Corp. and certain of DBMG’s current and former officers and directors, including current and former INNOVATE officers and directors AJ Stahl, Kenneth S. Courtis, Robert V. Leffler, Jr., Philip A. Falcone, Michael J. Sena, and Paul Voigt (together with INNOVATE, the “INNOVATE Defendants”) styled Fair Value Investments Incorporated v. Roach, et al., C.A. No. 2020-0847-JTL (Del. Ch.) (the “FVI Action”). In the FVI Action, FVI alleges that the Company, in its capacity as DBMG’s controlling stockholder, and DBMG’s current and former officers and directors breached their fiduciary duties to DBMG and DBMG’s minority stockholders by approving certain transactions that allegedly provide disproportionate benefits to the Company. FVI challenges the following transactions: (i) DBMG’s payments to the Company from 2016–present pursuant to a Tax Sharing Agreement between DBMG and the Company; (ii) DBMG acting as a guarantor or providing collateral for loans taken on by the Company; (iii) DBMG’s issuance of dividends to its common and preferred stockholders in 2017–2020; (iv) DBMG’s issuance of preferred stock to the Company to finance DBMG’s 2018 acquisition of GrayWolf Industrial; and (v) the Company’s appointment of directors to DBMG’s board of directors by written consent in lieu of holding an annual stockholder meeting.

On February 23, 2021, FVI filed an Amended Verified Stockholder Class Action Complaint (the “Amended Complaint”). In the Amended Complaint, FVI named two additional defendants: the Company’s Chief Executive Officer, Wayne Barr, and DBMG’s General Counsel, Scott D. Sherman. The Amended Complaint includes additional fact allegations in support of the largely similar claims raised in the original complaint. Defendants moved to dismiss the Amended Complaint on April 23, 2021. The Court heard argument on the motions to dismiss on January 21, 2022. Ruling from the bench, the Court granted Defendants’ motions to dismiss, in part. The Court dismissed all claims against all individual defendants other than Ronald Yagoda, including all claims against Messrs. Barr, Stahl, Courtis, Leffler, Falcone, Sena, and Voigt. As to the two remaining defendants - INNOVATE Corp. and Yagoda - the Court dismissed all claims regarding: (i) DBMG acting as a guarantor or providing collateral for loans by the Company; (ii) DBMG’s issuance of dividends to its common and preferred stockholders in 2017–2020; (iii) the Company’s appointment of directors to DBMG’s board of directors by written consent in lieu of holding an annual stockholder meeting; and (iv) DBMG’s payments to the Company in 2016 and May 2017 pursuant to a Tax Sharing Agreement between DBMG and the Company. The Company believes the surviving claims in the FVI Amended Complaint relating to (i) DBMG’s payments to the Company after May 2017 pursuant to a Tax Sharing Agreement between DBMG and the Company and (ii) DBMG’s issuance of preferred stock to the Company to finance DBMG’s 2018 acquisition of GrayWolf Industrial are without merit. Discovery on the two remaining claims is underway and, if necessary, trial in this action is expected to occur in the second half of 2023. The Company intends to vigorously defend this litigation.

DTV Derivative Litigation

On March 15, 2021, twenty-two DTV stockholders and eight holders of DTV stock options filed a stockholder class action and derivative complaint in the Delaware Court of Chancery in an action styled Bocock, et al., v. HC2 Holdings, Inc. et al., C.A. No. 2021-0224 (Del. Ch.). Plaintiffs named as defendants INNOVATE Corp. (f/k/a HC2 Holdings, Inc.), HC2 Broadcasting Holdings, Inc., HC2 Broadcasting Inc., and Continental General Insurance Corporation (the “INNOVATE Entities”) and certain current and former officers and directors of the INNOVATE Entities and DTV, including Philip Falcone, Michael Sena, Wayne Barr, Jr., Les Levi, Paul Voigt, Ivan Minkov, and Paul Robinson (the “Individual Defendants”). Plaintiffs principally allege that the defendants breached their fiduciary duties and/or aided and abetted breaches of fiduciary duty by participating in a “scheme” in which the INNOVATE Entities (i) acquired majority voting and operating control over DTV; (ii) exploited that control to misappropriate DTV’s assets and business opportunities for the benefit of the INNOVATE Entities; and (iii) purchased DTV stock at a discount to fair value and diminished the value of DTV stock options. Plaintiffs allege that the Individual Defendants (i) “prompted” the INNOVATE Entities to purchase more than 100 low-power television (“LPTV”) broadcast stations originally identified for potential acquisition by DTV, (ii) allowed the INNOVATE Entities to misappropriate DTV technology, known as “DTV Cast,” (iii) caused DTV to transfer unspecified LPTV broadcasting station licenses to INNOVATE affiliates “without paying any value,” and (iv) transferred to the INNOVATE Entities unspecified DTV broadcasting stations that had been “repacked” by the FCC. Defendants moved to dismiss the Complaint on May 19, 2021. On June 23, 2021, plaintiffs amended their complaint. In the amended complaint, plaintiffs assert the same claims they asserted in their initial complaint, added a claim for waste associated with DTV’s purported transfer of licenses and construction permits for less than fair value, and dropped Paul Robinson as a defendant. Defendants moved to dismiss the amended complaint in its entirety on August 25, 2021, and the parties completed briefing on the motions to dismiss on November 10, 2021. The Court heard argument on the motions to dismiss on March 29, 2022. On June 28, 2022, the Court requested that the parties submit supplemental briefing on the motions to dismiss by July 20, 2022. The parties completed the supplemental briefing on July 20, 2022.

On October 28, 2022, the Court issued a Memorandum Opinion on Defendants' motion to dismiss the Complaint. First, the Court dismissed all claims against Continental General Insurance Corporation for lack of personal jurisdiction. Second, the Court dismissed all claims the stockholder plaintiffs purported to assert directly. Third, the Court dismissed as time-barred all claims challenging conduct that occurred before March 15, 2018, including claims challenging (i) the November 2017 acquisition of Azteca America by INNOVATE; (ii) INNOVATE's purported usurpation of the so-called "DTV Cast" technology; and (iii) the WFWC-CD Station acquisition. Fourth, the Court dismissed claims associated with the INNOVATE Entities' purported purchases of unidentified broadcasting stations. Fifth, the Court dismissed all claims challenging the Expense Sharing Agreement, and the Right to Use Agreement between INNOVATE and DTV, and certain Stock-Based Compensation Agreements. Sixth, the Court dismissed the aiding and abetting claim against the INNOVATE Entities. Seventh, the Court dismissed the civil conspiracy claim as to all defendants. Lastly, the Court dismissed the option-holders' claim for tortious interference with prospective business opportunities. Thus, after the Court issued its October 28, 2022 Memorandum Opinion, the only claims to survive Defendants' motion to dismiss are (i) a derivative claim against the INNOVATE Entities (other than Continental General), Levi, and Falcone for breach of fiduciary duty in connection with the \$0.1 million Frank Digital acquisition; (ii) a derivative claim for breach of fiduciary duty against the INNOVATE Entities (other than Continental General), in their capacities as DTV's controlling stockholders, relating to the sale of six licenses (for less than \$0.5 million) in connection with the Gray Media sale; (iii) a derivative claim for breach of fiduciary duty against the INNOVATE Entities (other than Continental General) and Levi in connection with the transfer of licenses ultimately sold to TV-49 for \$0.1 million; and (iv) a derivative claim for waste against Levi and Falcone in connection with the sale of two stations to Lowcountry, which Lowcountry later sold for \$0.2 million and \$0.4 million, respectively. The Company believes these remaining claims are without merit, and the Company intends to vigorously defend this litigation.

Insurance Company Books and Records Demand

On July 28, 2021, the Company received a demand from a company stockholder pursuant to 8 Del. C. § 220 to inspect books and records of the Company relating to, among other things, the Company's sale of its Insurance segment. The Company has responded to the demand and cannot determine at this time if the books and records demand will lead to litigation.

INNOVATE Books and Records Demand

On June 6, 2022, the Company received a demand from a Company stockholder pursuant to 8 Del. C. § 220 to inspect books and records of the Company relating to, among other things, the Company's lease agreement for a special purpose space in Palm Beach, Florida; the request by certain Company stockholders for a waiver of the share purchase limitations in the Company's Tax Benefits Preservation Plan; and the receipt of a letter by the Audit Committee of the Board on May 18, 2022 from Michael Gorzynski, on behalf of MG Capital Management, Ltd. The Company has responded to the demand and cannot determine at this time if the books and records demand will lead to litigation.

Other Commitments and Contingencies

Letters of Credit and Performance Bonds

As of September 30, 2022, DBMG had outstanding letters of credit of \$2.6 million under credit and security agreements and performance bonds of \$1,057.8 million. As of December 31, 2021, DBM had outstanding letters of credit of \$13.5 million under credit and security agreements and performance bonds of \$900.8 million. DBMG's contract arrangements with customers sometimes require DBMG to provide performance bonds to partially secure its obligations under its contracts. Bonding requirements typically arise in connection with private contracts and sometimes with respect to certain public work projects. DBMG's performance bonds are obtained through surety companies and typically cover the entire project price.

HMN Equity Interest

On October 30, 2019, the Company announced the sale of its New Saxon 2019 Limited ("New Saxon") stake in HMN, its 49% joint venture with Huawei Technologies Co., Ltd., to Hengtong Optic-Electric Co Ltd ("Hengtong"). Under the terms of the agreement, the sale of New Saxon's 49% interest in HMN will be affected in two tranches. The first tranche, the sale of the portion of New Saxon's 30% interest of HMN, closed on May 12, 2020 (the "First HMN Close"). The remaining 19% interest of HMN is retained by New Saxon and subject to a put option agreement by New Saxon, exercisable starting on the second year anniversary of the closing date of the First HMN Close at a price equal to the greater of the share price paid for the 30% interest or fair market value as of the exercisable date.

On June 24, 2022, New Saxon entered into a supplemental agreement for the outright sale of its remaining 19% interest in HMN, which also changed the buyers from a Hong Kong entity to three Chinese entities. There is no guarantee that the transaction will be consummated in the anticipated timeframe, on the contemplated terms or at all. The new agreement preserves the rights under the original put option agreement and the Company has the ability to exercise the put option after October 31, 2022. The significant terms and structure of the transaction have not otherwise changed, and the transaction still requires cash settlement.

INNOVATE CORP.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – CONTINUED
(Unaudited)

18. Share-based Compensation

Total share-based compensation expense recognized by the Company and its subsidiaries under all equity compensation arrangements was \$0.4 million for both the three months ended September 30, 2022 and 2021, and was \$1.7 million for both the nine months ended September 30, 2022 and 2021.

All grants are time based and vest either immediately or over a period established at grant, typically with a requisite service period of two to three years for the employee to vest in the stock-based award, subject to discretion by Compensation Committee of the Board of Directors. There are no other substantive conditions for vesting. The Company recognizes compensation expense for equity awards, reduced by actual forfeitures, using the straight-line basis.

Restricted Stock

A summary of INNOVATE's restricted stock activity is as follows:

	Shares	Weighted Average Grant Date Fair Value
Unvested - December 31, 2020	628,433	\$ 3.93
Granted	593,458	\$ 3.81
Vested	(514,543)	\$ 3.89
Forfeited	(151,469)	\$ 4.13
Unvested - December 31, 2021	555,879	\$ 3.79
Granted	599,797	\$ 3.57
Vested	(292,091)	\$ 3.81
Forfeited	(45,289)	\$ 3.68
Unvested - September 30, 2022	<u>818,296</u>	<u>\$ 3.63</u>

The aggregate fair value of the restricted stock awards which vested during the nine months ended September 30, 2022 was \$0.8 million. As of September 30, 2022, the total unrecognized stock-based compensation expense related to unvested restricted stock was \$2.2 million. The unrecognized compensation cost is expected to be recognized over the remaining weighted average period of 2.2 years.

Stock Options

A summary of INNOVATE's stock option activity is as follows:

	Shares	Weighted Average Exercise Price
Outstanding - December 31, 2020	4,739,858	\$ 5.13
Expired	(23,999)	\$ 5.31
Outstanding - December 31, 2021	4,715,859	\$ 5.13
Granted	280,791	\$ 3.25
Exercised	—	—
Forfeited	—	—
Expired	(1,500)	\$ 4.06
Outstanding - September 30, 2022	<u>4,995,150</u>	<u>\$ 5.02</u>
Eligible for exercise	<u>4,995,150</u>	<u>\$ 5.02</u>

The weighted average grant-date fair value of stock options granted during the period was \$1.47. As of September 30, 2022, the intrinsic value and average remaining life of the Company's outstanding and exercisable stock options were zero and approximately 2.1 years, respectively. The maximum contractual term of the Company's exercisable stock options is approximately 10 years. As of September 30, 2022, there were no unvested stock options and no unrecognized stock-based compensation expenses related to unvested stock options.

19. Temporary Equity

Preferred Shares

The Company's preferred shares authorized, issued and outstanding consisted of the following:

	September 30, 2022	December 31, 2021
Preferred shares authorized, \$0.001 par value	20,000,000	20,000,000
Series A-3 shares issued and outstanding	6,125	6,125
Series A-4 shares issued and outstanding	10,000	10,000

Preferred Share Activity

Series A-3 and A-4 Share Issuance and Conversion

On July 1, 2021 (the "Exchange Date") as a part of the sale of CIG, INNOVATE entered into an exchange agreement (the "Exchange Agreement") with the now deconsolidated CGIC, who held the remaining shares of the Series A and Series A-2 Preferred Stock and was eliminated in consolidation prior to the sale of the Insurance segment on July 1, 2021. Per the Exchange Agreement, INNOVATE exchanged 6,125 shares of the Series A and 10,000 shares of the Series A-2 shares that CGIC held for an equivalent number of Series A-3 Convertible Participating Preferred Stock ("Series A-3") and Series A-4 Convertible Participating Preferred Stock ("Series A-4"), respectively. The terms remained substantially the same, except that the Series A-3 and Series A-4 will mature on July 1, 2026. A cash payment of \$0.3 million was made as a part of the exchange for accrued and unpaid dividends on the Series A and Series A-2 being exchanged.

Upon issuance of the Series A-3 and Series A-4 Preferred Stock on July 1, 2021, the Series A-3 and Series A-4 have been classified as temporary equity in the Company's Consolidated Balance Sheet with a combined redemption value of \$16.1 million with a current fair value as of September 30, 2022 of \$17.9 million.

Dividends. The Series A-3 and Series A-4 Preferred Stock accrue a cumulative quarterly cash dividend at an annualized rate of 7.50%. The accrued values of the Series A-3 and Series A-4 Preferred Stock accrete quarterly at an annualized rate of 4.00% that is reduced to 2.00% or 0.0% if the Company achieves specified rates of growth measured by increases in its net asset value; provided, that the accreting dividend rate will be 7.25% in the event that (A) the daily volume weighted average price ("VWAP") of the Company's common stock is less than a certain threshold amount, (B) the Company's common stock is not registered under Section 12(b) of the Securities Exchange Act of 1934, as amended, (C) the Company's common stock is not listed on certain national securities exchanges or the Company is delinquent in the payment of any cash dividends. The Series A-3 and Series A-4 Preferred Stock is also entitled to participate in cash and in-kind distributions to holders of shares of Company's common stock on an as-converted basis.

Subsequent Measurement. The Company has elected to account for the Series A-3 and Series A-4 Preferred Stock by immediately recognizing changes in the redemption value as they occur. The carrying value of the Series A-3 and Series A-4 Preferred Stock will be adjusted to equal what the redemption amount would be as if the redemption were to occur at the end of the reporting period as if it were also the redemption date for the Series A-3 and Series A-4 Preferred Stock. Any cash dividends paid will directly reduce the carrying value of the Series A-3 and Series A-4 Preferred Stock until the carrying value equals the redemption value. The Company has a history of paying dividends on its preferred stock and expects to continue to pay such dividends each quarter.

Optional Conversion. Each share of Series A-3 and Series A-4 may be converted by the holder into shares of the Company's common stock at any time based on the then-applicable Conversion Price. Each share of Series A-3 is initially convertible at a conversion price of \$4.25 (as it may be adjusted from time to time, the "Series A-3 Conversion Price"), and each share of Series A-4 is initially convertible at a conversion price of \$8.25 (as it may be adjusted from time to time, the "Series A-4 Conversion Price") ("collectively the "Conversion Prices"). The Conversion Prices are subject to adjustment for dividends, certain distributions, stock splits, combinations, reclassifications, reorganizations, mergers, recapitalizations and similar events, as well as in connection with issuances of equity or equity-linked or other comparable securities by the Company at a price per share (or with a conversion or exercise price or effective issue price) that is below the Conversion Prices' (which adjustment shall be made on a weighted average basis). Actual conversion prices at the time of the exchange were \$3.52 for the Series A and \$5.33 for the Series A-2.

Redemption by the Holder / Automatic Conversion. On July 1, 2026, holders of the Series A-3 and Series A-4 shall be entitled to cause the Company to redeem the Series A-3 and Series A-4 at the accrued value per share plus accrued but unpaid dividends (to the extent not included in the accrued value of Series A-3 and Series A-4). Each share of Series A-3 and Series A-4 that is not so redeemed will be automatically converted into shares of the Company's common stock at the Conversion Price then in effect.

Upon a change of control (as defined in each Certificate of Designation) holders of the Series A-3 and Series A-4 shall be entitled to cause the Company to redeem their shares of Series A-3 and Series A-4 at a price per share of Series A-3 and Series A-4 equal to the greater of (i) the accrued value of the Series A-3 and Series A-4, plus any accrued and unpaid dividends (to the extent not included in the accrued value of Series A-3 and Series A-4 Preferred Stock), and (ii) the value that would be received if the share of Series A-3 and Series A-4 were converted into shares of the Company's common stock immediately prior to the change of control.

INNOVATE CORP.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – CONTINUED
(Unaudited)

Redemption by the Company / "Company Call Option". At any time after the third anniversary of the Original Issue Date, May 29, 2014, the Company may redeem the Series A-3/Series A-4, in whole but not in part, at a price per share generally equal to 150% of the accrued value per share, plus accrued but unpaid dividends (to the extent not included in the accrued value of the Series A-3/Series A-4), subject to the holder's right to convert prior to such redemption.

Forced Conversion. The Company may force conversion of the Series A-3 and Series A-4 into shares of the Company's common stock if the common stock's thirty-day VWAP exceeds 150% of the then-applicable Conversion Price and the Common Stock's daily VWAP exceeds 150% of the then-applicable Conversion Price for at least twenty trading days out of the thirty trading day period used to calculate the thirty-day VWAP. In the event of a forced conversion, the holders of Series A-3 and Series A-4 will have the ability to elect cash settlement in lieu of conversion if certain market liquidity thresholds for the Company's common stock are not achieved.

Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Company (any such event, a "Liquidation Event"), the holders of Series A-3 and Series A-4 will be entitled to receive per share the greater of (i) the accrued value of the Series A-3 and Series A-4, plus any accrued and unpaid dividends (to the extent not included in the accrued value of Series A-3 and Series A-4), and (ii) the value that would be received if the share of Series A-3 and Series A-4 were converted into shares of the Company's common stock immediately prior to such occurrence. The Series A-3 and Series A-4 will rank junior to any existing or future indebtedness but senior to the Company's common stock and any future equity securities other than any future senior or pari passu preferred stock issued in compliance with each Certificate of Designation. The Series A-3 Preferred Stock and the Series A-4 Preferred Stock rank at parity.

Voting Rights. Except as required by applicable law, the holders of the shares of the Series A-3 and Series A-4 will be entitled to vote on an as-converted basis with the holders of the Series A-3 Preferred Stock and the Series A-4 Preferred Stock (on an as-converted basis), as applicable, and the holders of the Company's common stock on all matters submitted to a vote of the holders of the Company's common stock with the holders of Series A-3 Preferred Stock and Series A-4 Preferred Stock on certain matters, and separately as a class on certain limited matters.

Consent Rights. For so long as any of the Series A-3 and Series A-4 is outstanding, consent of the holders of shares representing at least 75% of certain of the Series A-3 and Series A-4 then outstanding is required for certain material actions.

Participation Rights. Pursuant to the securities purchase agreements entered into with the initial purchasers of the Series A-3 Preferred Stock and the Series A-4 Preferred Stock, subject to meeting certain ownership thresholds, certain purchasers of the Series A-3 Preferred Stock and the Series A-4 Preferred Stock are entitled to participate, on a pro-rata basis in accordance with their ownership percentage, determined on an as-converted basis, in issuances of equity and equity linked securities by the Company. In addition, subject to meeting certain ownership thresholds, certain initial purchasers of the Series A-3 Preferred Stock and the Series A-4 Preferred Stock will be entitled to participate in issuances of preferred securities and in debt transactions of the Company.

As of September 30, 2022, Series A-3 Preferred Stock and Series A-4 Preferred Stock were convertible into 1,740,700 and 1,875,533 shares, respectively, of INNOVATE's common stock.

Preferred Share Dividends

During the nine months ended September 30, 2022 and 2021, INNOVATE's Board of Directors (the "Board") declared cash dividends with respect to INNOVATE's issued and outstanding Preferred Stock, excluding the Series A and Series A-2 Preferred Stock which was owned by CGIC and was eliminated in consolidation prior to the sale of the Insurance segment on July 1, 2021, as presented in the following table (in millions):

2022				
Declaration Date		March 31, 2022	June 30, 2022	September 30, 2022
Holders of Record Date		March 31, 2022	June 30, 2022	September 30, 2022
Payment Date		April 15, 2022	July 15, 2022	October 15, 2022
Total Dividend	\$	0.3	\$ 0.3	\$ 0.3

2021				
Declaration Date		March 31, 2021	May 29, 2021	September 30, 2021
Holders of Record Date		March 31, 2021	May 29, 2021	September 30, 2021
Payment Date		April 15, 2021	June 4, 2021	October 15, 2021
Total Dividend	\$	0.2	\$ 0.1	\$ 0.3

INNOVATE CORP.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – CONTINUED
(Unaudited)

DBMGi Series A Preferred Stock Issuance

On November 30, 2018, CGIC purchased 40,000 shares of DBMGi's Series A Preferred Stock, which was eliminated in consolidation. On July 1, 2021, as a part of the sale of CIG which resulted in the deconsolidation of the entity, INNOVATE was deemed to have issued \$40.9 million of DBMGi Series A Preferred Stock to the now deconsolidated CGIC. Upon issuance of the DBMGi Series A Preferred Stock on July 1, 2021, the DBMGi Series A Preferred Stock has been classified as temporary equity in the Company's Balance Sheet.

Redemption Option. The DBMGi Preferred Stock is redeemable at any time, in whole or in part, at the option of the Company, or at any time or by the holder prior to July 2026.

Dividends. The DBMGi Series A Preferred Stock will accrue a cumulative quarterly cash or payment in kind dividend at a rate of (a) for the first five years following the date of issuance, (i) 9.00% per annum if dividends are paid in kind or (ii) 8.25% per annum if dividends are paid in cash and (b) starting on the fifth anniversary of the date of issuance, a rate per annum equal to (i) LIBOR (as defined in the Certificate of Designation) plus a spread of 5.85% (together, the "LIBOR Rate") per annum, plus 0.75% if dividends are paid in kind or (ii) the LIBOR Rate per annum in the case of dividends paid in cash. Subsequent to the transition away from LIBOR beginning in 2023, the Certificate of Designation allows for a LIBOR Successor Rate, which allows the Company to reasonably determine an alternate benchmark rate (including any mathematical or other adjustments to the benchmarks (if any) incorporated therein) giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such alternative benchmarks.

Subsequent Measurement. The DBMGi Series A Preferred Stock will be subsequently measured each reporting period at its maximum redemption value, which is equal to the stated value plus all accrued, accumulated and unpaid dividends as of the end of each reporting period as they are currently redeemable. The Company pays accrued dividends quarterly in cash (with an option to PIK), and the Company does not expect to make any subsequent measurement adjustments recorded to the initial carrying amount. As such no accretion will be recognized until future dividend payments would otherwise reduce the carrying value below its redemption value. In such a case, the Company will adjust the carrying value to its maximum redemption amount.

During the nine months ending September 30, 2022 and 2021, DBMGi's Board of Directors declared dividends with respect to DBMGi's issued and outstanding Preferred Stock, as presented in the following table (in millions):

2022

Declaration Date	March 31, 2022	June 30, 2022	September 30, 2022
Holders of Record Date	March 31, 2022	June 30, 2022	September 30, 2022
Payment Date	April 15, 2022	July 15, 2022	October 15, 2022
Total Dividend*	\$ 0.9	\$ 0.9	\$ 0.9

*The dividends paid on April 15, 2022 and October 15, 2022 were paid in cash. The DBMGi Board of Directors elected to pay the second quarter dividend payable July 15, 2022 in shares.

2021

Declaration Date	September 30, 2021
Holders of Record Date	September 30, 2021
Payment Date	October 15, 2021
Total Dividend	\$ 0.8

20. Related Parties

Non-Operating Corporate

In September 2018, the Company entered into a 75-month lease for office space. As part of the agreement, INNOVATE was able to pay a lower security deposit and lease payments, and received favorable lease terms as consideration for landlord required cross default language in the event of default of the shared space leased by Harbinger Capital Partners, a company controlled by INNOVATE's former CEO and formerly a related party, in the same building. With the adoption of ASC 842, as of January 1, 2019, this lease was recognized as a right-of-use asset and lease liability on the Condensed Consolidated Balance Sheets.

Infrastructure

Banker Steel, a subsidiary of DBMG, has leased two office spaces from 2940 Fulks St LLC, a related party that is owned by Donald Banker, CEO of Banker Steel and a related party, with monthly lease payments of \$10 thousand and a total lease liability of \$0.1 million. For the three months ended September 30, 2022 and 2021, DBMG incurred lease expense of \$24 thousand and \$23 thousand, respectively, and for the nine months ended September 30, 2022 and 2021, DBMG incurred lease expense of \$72 thousand and \$31 thousand, respectively.

INNOVATE CORP.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – CONTINUED
(Unaudited)

Banker Steel has leased one plane from Banker Aviation LLC, a related party that is owned by Donald Banker, a related party, with monthly lease payments of \$0.1 million and a total lease liability of \$1.6 million. During the first quarter 2022, one of the two plane leases was terminated. For the three months ended September 30, 2022 and 2021, DBMG incurred lease expense of \$0.3 million and \$0.4 million, respectively, and for the nine months ended September 30, 2022 and 2021, DBMG incurred lease expense of \$1.0 million and \$0.6 million, respectively.

Banker Steel also had a subordinated 11.0% note payable of \$6.3 million to Donald Banker, a related party, which was redeemed in full by DBMG on April 4, 2022. For the three months ended September 30, 2022 and 2021, DBMG incurred interest expense of zero and \$0.1 million, respectively, and for both the nine months ended September 30, 2022 and 2021, DBMG incurred interest expense of \$0.2 million. Refer to Note 14. Debt Obligations for additional information.

Life Sciences

For the three and nine months ended September 30, 2022, R2 Technologies incurred approximately \$0.1 million and \$0.3 million, respectively, of stock compensation and royalty expenses that were paid to Blossom Innovations, LLC, an investor and a related party of R2 Technologies.

On June 27, 2022, R2 Technologies issued a \$0.5 million short-term 90-day 12.0% bridge financing loan with Lancer Capital, LLC, a related party, an entity controlled by Avram A. Glazer, Chairman of the Board of Directors of INNOVATE. On July 13, 2022, R2 Technologies entered into a note purchase agreement with Lancer Capital, LLC. The note payable will bear interest at 12.0% per annum, and will be funded in two tranches. The first tranche of \$5.0 million closed on July 13, 2022, and included the settlement of a \$0.5 million short-term 90-day 12.0% bridge financing loan made on June 27, 2022 by Lancer Capital, LLC, and an additional \$4.5 million in cash. The second tranche of \$5.0 million closed on August 8, 2022. The note is payable on the earlier of December 31, 2022 or within five business days from the date on which R2 Technologies receives greater than \$10.0 million from an equity or debt financing event. For the three and nine months ended September 30, 2022, R2 Technologies recognized interest expense related to the contractual interest coupon with Lancer Capital, LLC of \$0.2 million.

21. Operating Segments and Related Information

The Company currently has one primary reportable geographic segment - United States and primarily all revenue is derived in the United States. The Company has three reportable operating segments, plus our Other segment, based on management's organization of the enterprise - Infrastructure, Life Sciences, Spectrum, and Other. We also have included a Non-operating Corporate segment. All inter-segment revenues are eliminated on consolidation.

The Company's revenue concentrations of 10% and greater are as follows:

	Segment	Three Months Ended September 30,		Nine Months Ended September 30,	
		2022	2021	2022	2021
Customer A	Infrastructure	25.2%	18.9%	24.2%	12.2%
Customer B	Infrastructure	*	13.0%	*	*
Customer C	Infrastructure	10.1%	*	*	*

*Less than 10% revenue concentration

Summarized financial information with respect to the Company's operating segments is as follows (in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Revenue				
Infrastructure	\$ 412.7	\$ 383.0	\$ 1,197.0	\$ 776.3
Life Sciences	1.2	1.6	3.0	2.8
Spectrum	9.1	10.2	28.0	31.3
Total revenue	\$ 423.0	\$ 394.8	\$ 1,228.0	\$ 810.4

INNOVATE CORP.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – CONTINUED
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Income (loss) from operations				
Infrastructure	\$ 18.5	\$ 12.6	\$ 42.2	\$ 17.0
Life Sciences	(5.5)	(4.9)	(15.7)	(14.2)
Spectrum	(0.6)	(1.2)	(4.1)	(1.0)
Other	(0.3)	(1.0)	(0.4)	(1.6)
Non-operating Corporate	(5.5)	(4.4)	(15.1)	(17.7)
Total income (loss) from operations	<u>\$ 6.6</u>	<u>\$ 1.1</u>	<u>\$ 6.9</u>	<u>\$ (17.5)</u>

A reconciliation of the Company's consolidated segment operating income (loss) to consolidated loss from continuing operations before income taxes is as follows (in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Income (loss) from operations	\$ 6.6	\$ 1.1	\$ 6.9	\$ (17.5)
Interest expense	(13.3)	(12.8)	(38.4)	(46.6)
Loss on early extinguishment or restructuring of debt	—	(0.1)	—	(12.5)
Loss from equity investees	(1.1)	(2.9)	(2.1)	(4.8)
Other (expense) income, net	(0.9)	0.6	0.5	4.4
Loss from continuing operations before income taxes	<u>\$ (8.7)</u>	<u>\$ (14.1)</u>	<u>\$ (33.1)</u>	<u>\$ (77.0)</u>

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Depreciation and Amortization				
Infrastructure	\$ 5.3	\$ 7.4	\$ 15.9	\$ 13.1
Infrastructure recognized within cost of revenue	3.9	3.4	11.2	8.4
Total Infrastructure	9.2	10.8	27.1	21.5
Life Sciences	0.1	—	0.2	0.1
Spectrum	1.4	1.4	4.4	4.3
Non-operating Corporate	—	0.1	0.1	0.1
Total depreciation and amortization	<u>\$ 10.7</u>	<u>\$ 12.3</u>	<u>\$ 31.8</u>	<u>\$ 26.0</u>

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Capital Expenditures ^(*)				
Infrastructure	\$ 6.9	\$ 6.1	\$ 13.5	\$ 11.6
Life Sciences	0.2	—	0.3	0.5
Spectrum	0.4	0.9	2.5	2.9
Total	<u>\$ 7.5</u>	<u>\$ 7.0</u>	<u>\$ 16.3</u>	<u>\$ 15.0</u>

^(*)The above capital expenditures exclude assets acquired under terms of capital lease and vendor financing obligations.

	September 30,	December 31,
	2022	2021
Investments		
Infrastructure	\$ —	\$ 0.7
Life Sciences	9.0	10.2
Other	48.7	45.1
Total	<u>\$ 57.7</u>	<u>\$ 56.0</u>

INNOVATE CORP.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – CONTINUED
(Unaudited)

	September 30, 2022	December 31, 2021
Equity Method Investments (included in Investments above)		
Infrastructure	\$ —	\$ 0.7
Life Sciences	3.4	4.2
Other	37.4	33.9
Total	<u>\$ 40.8</u>	<u>\$ 38.8</u>
	September 30, 2022	December 31, 2021
Total Assets		
Infrastructure	\$ 893.3	\$ 786.4
Life Sciences	18.8	22.0
Spectrum	191.0	198.9
Other	50.4	48.0
Non-operating Corporate	11.7	25.3
Total	<u>\$ 1,165.2</u>	<u>\$ 1,080.6</u>

22. Basic and Diluted Loss Per Common Share

Earnings per share ("EPS") is calculated using the two-class method, which allocates earnings among common stock and participating securities to calculate EPS when an entity's capital structure includes either two or more classes of common stock or common stock and participating securities. Unvested share-based payment awards that contain non-forfeitable rights to dividends or dividend equivalents (whether paid or unpaid) are participating securities. As such, shares of any unvested restricted stock of the Company are considered participating securities. The dilutive effect of options and their equivalents (including non-vested stock issued under stock-based compensation plans), is computed using the "if-converted method" as this measurement was determined to be more dilutive between the two available methods in each period.

The Company had no dilutive common share equivalents during the three and nine months ended September 30, 2022 and 2021 due to results from continuing operations being a loss, net of tax. The following table presents a reconciliation of net loss used in the basic and diluted EPS calculations (in millions, except per share amounts):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Loss from continuing operations	\$ (6.7)	\$ (14.2)	\$ (34.7)	\$ (80.8)
Loss from continuing operations attributable to noncontrolling interest and redeemable noncontrolling interest	1.3	2.6	4.5	7.0
Loss from continuing operations attributable to INNOVATE Corp.	(5.4)	(11.6)	(30.2)	(73.8)
Less: Preferred dividends and deemed dividends from conversions	1.2	1.1	3.6	1.7
Loss from continuing operations attributable to INNOVATE common stockholders	(6.6)	(12.7)	(33.8)	(75.5)
Loss from discontinued operations	—	(200.3)	—	(149.9)
Loss from discontinued operations attributable to noncontrolling interest and redeemable noncontrolling interest	—	—	—	0.9
Loss from discontinued operations, net of tax and noncontrolling interest	—	(200.3)	—	(149.0)
Net loss attributable to common stock and participating preferred stockholders	<u>\$ (6.6)</u>	<u>\$ (213.0)</u>	<u>\$ (33.8)</u>	<u>\$ (224.5)</u>
Earnings allocable to common shares:				
Participating shares at end of period:				
Weighted-average common stock outstanding	77.6	77.2	77.5	77.0
Unvested restricted stock	—	—	—	—
Preferred stock (as-converted basis)	—	—	—	—
Total	77.6	77.2	77.5	77.0

INNOVATE CORP.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – CONTINUED
(Unaudited)

Percentage of loss allocated to:

Common stock	100.0 %	100.0 %	100.0 %	100.0 %
Unvested restricted stock	— %	— %	— %	— %
Preferred stock	— %	— %	— %	— %

Numerator for loss per share, basic:

Net loss from continuing operations attributable to common stock, basic	\$ (6.6)	\$ (12.7)	\$ (33.8)	\$ (75.5)
Net loss from discontinued operations attributable to common stock, basic	—	(200.3)	—	(149.0)
Net loss attributable to common stock, basic	<u>\$ (6.6)</u>	<u>\$ (213.0)</u>	<u>\$ (33.8)</u>	<u>\$ (224.5)</u>

Earnings allocable to common shares, diluted:

Numerator for loss per share, diluted

Net loss from continuing operations attributable to common stock, basic	\$ (6.6)	\$ (12.7)	\$ (33.8)	\$ (75.5)
Net loss from discontinued operations attributable to common stock, basic	—	(200.3)	—	(149.0)
Net loss attributable to common stock, basic	<u>\$ (6.6)</u>	<u>\$ (213.0)</u>	<u>\$ (33.8)</u>	<u>\$ (224.5)</u>

Denominator for basic and dilutive loss per share

Weighted average common shares outstanding - basic	77.6	77.2	77.5	77.0
Effect of assumed shares under treasury stock method for stock options and restricted shares and if-converted method for convertible instruments	—	—	—	—
Weighted average common shares outstanding - diluted	<u>77.6</u>	<u>77.2</u>	<u>77.5</u>	<u>77.0</u>

Loss per share - continuing operations

Basic	\$ (0.09)	\$ (0.16)	\$ (0.44)	\$ (0.98)
Diluted	\$ (0.09)	\$ (0.16)	\$ (0.44)	\$ (0.98)

Loss per share - discontinued operations

Basic	\$ —	\$ (2.59)	\$ —	\$ (1.94)
Diluted	\$ —	\$ (2.59)	\$ —	\$ (1.94)

Loss per share - Net loss attributable to common stock and participating preferred stockholders

Basic	\$ (0.09)	\$ (2.75)	\$ (0.44)	\$ (2.92)
Diluted	\$ (0.09)	\$ (2.75)	\$ (0.44)	\$ (2.92)

INNOVATE CORP.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – CONTINUED
(Unaudited)

23. Fair Value of Financial Instruments

Fair Value of Financial Instruments Not Measured at Fair Value

The following table presents the carrying amounts and estimated fair values of the Company’s financial instruments, which were not measured at fair value on a recurring basis. The table excludes carrying amounts for cash and cash equivalents and restricted cash, accounts receivable and contract assets, accounts payable, contract liabilities and other current liabilities, and other assets and liabilities that approximate fair value due to relatively short periods to maturity (in millions):

September 30, 2022

	Carrying Value	Estimated Fair Value	Fair Value Measurement Using:		
			Level 1	Level 2	Level 3
Assets					
Other invested assets	\$ 11.3	\$ 11.3	\$ —	\$ —	\$ 11.3
Total assets not accounted for at fair value	\$ 11.3	\$ 11.3	\$ —	\$ —	\$ 11.3
Liabilities					
Debt obligations ⁽¹⁾	\$ 707.1	\$ 637.5	\$ —	\$ 637.5	\$ —
Total liabilities not accounted for at fair value	\$ 707.1	\$ 637.5	\$ —	\$ 637.5	\$ —

December 31, 2021

	Carrying Value	Estimated Fair Value	Fair Value Measurement Using:		
			Level 1	Level 2	Level 3
Assets					
Other invested assets	\$ 11.3	\$ 11.3	\$ —	\$ —	\$ 11.3
Total assets not accounted for at fair value	\$ 11.3	\$ 11.3	\$ —	\$ —	\$ 11.3
Liabilities					
Debt obligations ⁽¹⁾	\$ 626.3	\$ 648.2	\$ —	\$ 648.2	\$ —
Total liabilities not accounted for at fair value	\$ 626.3	\$ 648.2	\$ —	\$ 648.2	\$ —

⁽¹⁾ Excludes operating lease obligations accounted for under ASC 842, *Leases*.

Debt Obligations. The fair value of the Company’s long-term obligations was determined using reporting from Citadel Securities. The methodology combines direct market observations from contributed sources with quantitative pricing models to generate evaluated prices and classified as Level 2.

INNOVATE CORP.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – CONTINUED
(Unaudited)

24. Supplementary Financial Information

Supplemental Cash Flow Information

The following table provides a reconciliation of cash, cash equivalents and restricted cash to amounts reported within the Condensed Consolidated Balance Sheets and Condensed Consolidated Statements of Cash Flows (in millions):

	September 30,	
	2022	2021
Cash and cash equivalents, beginning of period	\$ 45.5	\$ 43.8
Restricted cash	2.0	1.5
Restricted cash included in other assets (non-current)	—	—
Total cash, cash equivalents and restricted cash	<u>\$ 47.5</u>	<u>\$ 45.3</u>
Cash and cash equivalents, end of period	\$ 25.8	\$ 55.5
Restricted cash	0.4	8.6
Restricted cash included in other assets (non-current)	1.5	—
Total cash and cash equivalents and restricted cash	<u>\$ 27.7</u>	<u>\$ 64.1</u>
Cash and cash equivalents classified in Assets held for sale, beginning of period	\$ —	\$ 195.2
Restricted cash classified in Assets held for sale	—	0.2
Total cash and cash equivalents and restricted cash classified in Assets held for sale	<u>\$ —</u>	<u>\$ 195.4</u>
Cash and cash equivalents classified in Assets held for sale, end of period	\$ —	\$ —
Restricted cash classified in Assets held for sale	—	—
Total cash and cash equivalents and restricted cash classified in Assets held for sale	<u>\$ —</u>	<u>\$ —</u>
Supplemental cash flow information:		
Cash paid for interest	\$ 38.9	\$ 31.3
Cash paid for taxes, net of refunds	\$ 3.8	\$ 4.3
Non-cash investing and financing activities:		
Property, plant and equipment included in accounts payable	\$ 0.9	\$ 2.1
Issuance of preferred stock	\$ 0.9	\$ 19.1
Issuance of redeemable noncontrolling interest	\$ —	\$ 40.9
Extinguishment of convertible note in exchange	\$ —	\$ 51.8
Issuance of convertible note in exchange	\$ —	\$ (51.8)
Debt assumed in acquisitions	\$ —	\$ 6.3

25. Subsequent Events

None.

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

You should read the following discussion and analysis of our financial condition and results of operations together with the consolidated annual audited financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2021, filed with the SEC on March 9, 2022 (the "2021 Annual Report") and the unaudited condensed consolidated financial statements and related notes included in this Quarterly Report on Form 10-Q. Some of the information contained in this discussion and analysis includes forward-looking statements that involve risks and uncertainties. You should review the "Risk Factors" section in our 2021 Annual Report as well as the section below entitled "Special Note Regarding Forward-Looking Statements" for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

Unless the context otherwise requires, in this Quarterly Report on Form 10-Q, "INNOVATE" means INNOVATE Corp. and the "Company," "we" and "our" mean INNOVATE together with its consolidated subsidiaries. "U.S. GAAP" means accounting principles accepted in the United States of America.

Our Business

We are a diversified holding company with principal operations conducted through three operating platforms or reportable segments: Infrastructure ("DBMG"), Life Sciences ("Pansend"), and Spectrum ("Broadcasting"), plus our Other segment, which includes businesses that do not meet the separately reportable segment thresholds.

Our Operations

Refer to Note 1. Organization and Business to our Condensed Consolidated Financial Statements for additional information.

Cyclical Patterns

Our segments' operations can be highly cyclical. Our volume of business in our Infrastructure segment may be adversely affected by declines or delays in projects, which may vary by geographic region. Project schedules, particularly in connection with large, complex, and longer-term projects can also create fluctuations in the services provided, which may adversely affect us in a given period.

For example, in connection with larger, more complicated projects, the timing of obtaining permits and other approvals may be delayed, and we may need to maintain a portion of our workforce and equipment in an underutilized capacity to ensure we are strategically positioned to deliver on such projects when they move forward.

Examples of other items that may cause our results or demand for our services to fluctuate materially from quarter to quarter include: weather or project site conditions; financial condition of our customers and their access to capital; margins of projects performed during any particular period; rising interest rates and inflation; and economic, political and market conditions on a regional, national or global scale.

Accordingly, our operating results in any particular period may not be indicative of the results that can be expected for any other period.

Recent Developments

COVID-19 Impact on our Business

On March 11, 2020, the World Health Organization declared the outbreak of a novel coronavirus ("COVID-19") as a pandemic, and on March 13, 2020, the United States declared the pandemic to be a national emergency. As COVID-19 spread throughout the country, the situation has continued to evolve, including the adoption of the COVID-19 vaccine and the reopening of state economies.

The Company's top priority has been to protect its employees and their families and those of the Company's customers. The Company continues to take precautionary measures as directed by health authorities and local governments, where applicable, including changing operational procedures, providing additional protective gear and cleaning to protect personnel and customers who request it, which has resulted and may continue to result in disruptions to and increased costs of the Company's operations. We may take further action as may be required by government authorities or that we determine are in the best interests of our employees, customers, partners, vendors, and suppliers. Work-from-home and other measures introduce additional operational risks, including cybersecurity risks, and have changed the way we conduct some of our operations. After the vaccine rollout commenced, most employees have begun to return to the office or worksites, either full-time or part-time. There is no certainty that such measures will be sufficient to mitigate the risks posed by the virus, including any new strains of the virus, and illness and workforce disruptions could lead to unavailability of key personnel and harm our ability to perform critical functions.

The extent of the impact of COVID-19 on our operational and financial performance will depend on future developments, including, but not limited to, the outbreak of any new strains of the coronavirus, any related travel advisories and restrictions, lockdowns and quarantine measures enacted by foreign governments, such as China, and its impact to the U.S. and global financial markets, all of which are highly uncertain and cannot be predicted. Preventing the effects from and responding to this market disruption if any other public health threat, related or otherwise, may further increase costs of our business and may have a material adverse effect on our business, financial condition, and results of operations.

COVID-19 has caused supply chain challenges related to labor shortages and supply chain disruptions, which may create significant delays in our ability to complete projects or deliver products. The receipt of material from impacted areas has been slowed or disrupted and our suppliers have experienced similar challenges in fulfilling orders due to unavailability of certain materials used in manufacturing. In addition, reductions in the number of ocean carrier voyages, ocean freight capacity issues, congestion at major international gateways and other economic factors continue to persist worldwide due to COVID-19 and worldwide supply impacts as there is much greater demand for shipping and reduced capacity and equipment, which has resulted in price increases per shipping container. In addition, in the United States, trucking costs have continued to rise due to driver shortages and increased labor costs, and new federal and state safety, environmental and labor regulations could be implemented. These changes may disrupt our supply chain, which may result in a delay in the completion of our projects or manufacturing of our products and may cause us to incur significant additional costs. Although we may attempt to pass on certain of these increased costs to our customers, we may not be able to pass all of these cost increases on to our customers. As a result, our margins may be adversely impacted by such cost increases. These supply chain disruptions and transportation challenges could have a material adverse effect on our results of operations or financial condition.

We continue to monitor the evolving situation and guidance from authorities, including federal, state and local public health departments, and may take additional actions based on their recommendations. In these circumstances, there may be developments outside our control requiring us to adjust our plans. As such, given the dynamic nature of this situation, we cannot reasonably estimate the continued impact of COVID-19 on our results of operations, financial condition, or cash flows in the future, but it could have a material adverse impact on our future revenue growth as well as our overall profitability and may lead to revised payment terms with certain of our customers.

During the nine months ended September 30, 2022, the effects of COVID-19 and the related actions undertaken in the U.S. to attempt to control its spread, specifically impacted certain of our segments as follows:

Infrastructure

DBMG was not materially impacted by COVID-19 and did not incur any COVID-19 related costs during the nine months ended September 30, 2022. DBMG continues to perform work on jobs contracted during the last twelve to twenty-four months that had lower point of sale margins to maintain shop capacity and utilization but continues to see an increase in point of sale margins on newer contracted work.

Life Sciences

R2 Technologies' supplier has encountered difficulties obtaining certain materials to manufacture its Glacial Spa and Glacial Rx devices due to supply chain constraints and has experienced longer lead times purchasing materials and obtaining inventory. Additionally, international sales in Greater China have been impacted as a result of government-mandated lockdowns in certain cities, which has resulted in delays in purchase orders by our partners in China.

Spectrum

Spectrum was not materially impacted by COVID-19 during the nine months ended September 30, 2022.

Network Business

The Network business, which is owned by our Spectrum segment, has continued to be impacted by decreasing advertising revenues as a result of a decreased footprint, declining ratings, and increased operating costs. As such, the Company plans to wind down Network in the fourth quarter of 2022.

Financial Presentation Background

In the below section within this Management's Discussion and Analysis of Financial Condition and Results of Operations, we compare, pursuant to U.S. GAAP and SEC disclosure rules, the Company's results of operations for the three and nine months ended September 30, 2022 as compared to the three and nine months ended September 30, 2021.

Results of Operations

The following table summarizes our results of operations and a comparison of the change between the periods (in millions):

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2022	2021	Increase / (Decrease)	2022	2021	Increase / (Decrease)
Revenue						
Infrastructure	\$ 412.7	\$ 383.0	\$ 29.7	\$ 1,197.0	\$ 776.3	\$ 420.7
Life Sciences	1.2	1.6	(0.4)	3.0	2.8	0.2
Spectrum	9.1	10.2	(1.1)	28.0	31.3	(3.3)
Total revenue	\$ 423.0	\$ 394.8	\$ 28.2	\$ 1,228.0	\$ 810.4	\$ 417.6
Income (loss) from operations						
Infrastructure	\$ 18.5	\$ 12.6	\$ 5.9	\$ 42.2	\$ 17.0	\$ 25.2
Life Sciences	(5.5)	(4.9)	(0.6)	(15.7)	(14.2)	(1.5)
Spectrum	(0.6)	(1.2)	0.6	(4.1)	(1.0)	(3.1)
Other	(0.3)	(1.0)	0.7	(0.4)	(1.6)	1.2
Non-operating Corporate	(5.5)	(4.4)	(1.1)	(15.1)	(17.7)	2.6
Total income (loss) from operations	\$ 6.6	\$ 1.1	\$ 5.5	\$ 6.9	\$ (17.5)	\$ 24.4
Interest expense	(13.3)	(12.8)	(0.5)	(38.4)	(46.6)	8.2
Loss on early extinguishment or restructuring of debt	—	(0.1)	0.1	—	(12.5)	12.5
Loss from equity investees	(1.1)	(2.9)	1.8	(2.1)	(4.8)	2.7
Other (expense) income, net	(0.9)	0.6	(1.5)	0.5	4.4	(3.9)
Loss from continuing operations before income taxes	\$ (8.7)	\$ (14.1)	\$ 5.4	\$ (33.1)	\$ (77.0)	\$ 43.9
Income tax benefit (expense)	2.0	(0.1)	2.1	(1.6)	(3.8)	2.2
Loss from continuing operations	\$ (6.7)	\$ (14.2)	\$ 7.5	\$ (34.7)	\$ (80.8)	\$ 46.1
Loss from discontinued operations (including net loss on disposal of \$200.3 million and \$159.9 million for the three and nine months ended September 30, 2021, respectively)	—	(200.3)	200.3	—	(149.9)	149.9
Net loss	\$ (6.7)	\$ (214.5)	\$ 207.8	\$ (34.7)	\$ (230.7)	\$ 196.0
Net loss attributable to noncontrolling interest and redeemable noncontrolling interest	1.3	2.6	(1.3)	4.5	7.9	(3.4)
Net loss attributable to INNOVATE Corp.	\$ (5.4)	\$ (211.9)	\$ 206.5	\$ (30.2)	\$ (222.8)	\$ 192.6
Less: Preferred dividends and deemed dividends from conversions	1.2	1.1	0.1	3.6	1.7	1.9
Net loss attributable to common stock and participating preferred stockholders	\$ (6.6)	\$ (213.0)	\$ 206.4	\$ (33.8)	\$ (224.5)	\$ 190.7

Revenue: Revenue for the three months ended September 30, 2022 increased \$28.2 million to \$423.0 million from \$394.8 million for the three months ended September 30, 2021. The increase in revenue was primarily due to the Infrastructure segment, which had increased market demand along with larger projects entering the market.

Revenue for the nine months ended September 30, 2022 increased \$417.6 million to \$1,228.0 million from \$810.4 million for the nine months ended September 30, 2021. The increase in revenue was primarily due to the Infrastructure segment, which acquired Banker Steel on May 27, 2021, and also had increased market demand along with larger projects entering the market.

Income (loss) from operations: Income from operations for three months ended September 30, 2022 increased \$5.5 million to \$6.6 million from \$1.1 million for the three months ended September 30, 2021. The increase in income from operations was primarily attributable to the Infrastructure segment due to an increase at Banker Steel and increased profit at the fabrication and erection business from larger jobs with increased profits in the current year. The increase in income from operations was partially offset by the Non-operating Corporate segment as a result of a severance accrual in the current period related to the Company's former Chief Legal Officer.

Income from operations for the nine months ended September 30, 2022 increased \$24.4 million to income of \$6.9 million from a loss of \$17.5 million for the nine months ended September 30, 2021. The increase in income from operations was primarily attributable to the Infrastructure segment as a result of the contribution from Banker Steel, which was acquired on May 27, 2021 and increases at DBMG's commercial structural steel fabrication and erection business supported by timing of project work under execution and changes in backlog mix. The increase in income from operations was also attributable to the Non-operating Corporate segment, primarily as a result of decreases in legal, and proxy-related expenses. The increases in income from operations were partially offset by the Spectrum segment as a result of decreased advertising revenues at the Azteca network due to a decreased footprint and declines in paid programming, an increase in expenses at the Azteca network as a result of higher support fees and license royalty expense incurred under the program license agreement ("PLA"), which started in the first quarter of 2022, as well as a decrease in gains from FCC reimbursements.

Interest expense: Interest expense for the three months ended September 30, 2022 increased \$0.5 million to \$13.3 million from \$12.8 million for the three months ended September 30, 2021. The increase was primarily driven by increased outstanding principal balances at Infrastructure over the comparable period.

Interest expense for the nine months ended September 30, 2022 decreased \$8.2 million to \$38.4 million from \$46.6 million for the nine months ended September 30, 2021. The decrease was primarily attributable to Non-Operating Corporate's refinancing of the 2021 Senior Secured Notes in the first quarter of 2021, which decreased the average cost of capital and the total principal outstanding, partially offset by an increase in interest expense at our Infrastructure segment, driven by increased outstanding principal balances.

Loss on early extinguishment or restructuring of debt: Loss on early extinguishment or restructuring of debt was \$0.1 million and \$12.5 million for the three and nine months ended September 30, 2021, respectively. There was no comparable expense in the current period. The expense in the comparable period was driven by the write-off of deferred financing costs and original issuance discount in connection with the refinancing of the 2021 Senior Secured Notes and the 2022 Convertible Notes in the first quarter of 2021, as well as the refinancing of Infrastructure debt in conjunction with the Banker Steel acquisition in the second quarter of 2021.

Loss from equity investees: Loss from equity investees for the three months ended September 30, 2022 decreased \$1.8 million to \$1.1 million from \$2.9 million for the three months ended September 30, 2021. The decrease in loss from equity investees was driven primarily by the equity investment in HMN Technologies Co., Ltd. ("HMN"), as it produced higher income than in the comparable period, which is generally attributable to the timing of project work. This was partially offset by higher equity method losses recorded from our equity investment in MediBeacon, which had an increase in expenses as the investment commenced its US Pivotal Study of the Transdermal Glomerular Filtration Rate ("TGFR") in the second quarter of 2022 to study the viability of real-time, direct monitoring of kidney function.

Loss from equity investees for the nine months ended September 30, 2022 decreased \$2.7 million to \$2.1 million from \$4.8 million for the nine months ended September 30, 2021. The decrease in the loss from equity investees was driven by the equity investment in HMN, as it produced higher income than in the comparable period, which is generally attributable to the timing of project work, as well as higher equity method income recorded from our investment in Triple Ring. This was partially offset by higher equity method losses recorded from our equity investment in MediBeacon, which had an increase in expenses as the investment commenced its US Pivotal Study of the TGFR in the second quarter of 2022 to study the viability of real-time, direct monitoring of kidney function.

Other (expense) income, net: Other (expense) income, net for the three months ended September 30, 2022 decreased \$1.5 million to a loss of \$0.9 million from income of \$0.6 million for the three months ended September 30, 2021. The decrease in other income was primarily attributable to a tax sharing arrangement and consolidation on the 2021 tax return, resulting in a deemed distribution loss of \$1.7 million related to a former subsidiary, CGIC. Refer to Note 10. Dispositions, Deconsolidations and Discontinued Operations in the Condensed Consolidated Financial Statements for additional information. This was partially offset by a fair value adjustment in the current period for an investment at our Life Sciences segment, as well as an increase in foreign currency transaction gains from our Infrastructure segment.

Other income, net for the nine months ended September 30, 2022 decreased \$3.9 million to \$0.5 million from \$4.4 million for the nine months ended September 30, 2021. The decrease in other income was primarily attributable to a tax sharing arrangement and consolidation on the 2021 tax return, resulting in a deemed distribution loss of \$1.7 million related to a former subsidiary, CGIC. Refer to Note 10. Dispositions, Deconsolidations and Discontinued Operations in the Condensed Consolidated Financial Statements for additional information. Additionally contributing to the decrease was the Non-operating Corporate segment, driven by the unrepeated gains on litigation settlement and embedded derivatives recorded in the comparable period, as well as the Infrastructure segment, driven by a litigation settlement paid in the current period. This was partially offset by a fair value adjustment in the current period for our investment at our Life Sciences segment, as well as an increase in foreign currency translation gains at the Infrastructure segment.

Income tax benefit (expense): Income tax benefit (expense) for the three months ended September 30, 2022 decreased \$2.1 million to a benefit of \$2.0 million from an expense of \$0.1 million for the three months ended September 30, 2021. Income tax expense for the nine months ended September 30, 2022 decreased \$2.2 million to \$1.6 million from \$3.8 million for the nine months ended September 30, 2021. The decrease was primarily driven by the net tax savings of \$2.9 million from the CGIC consolidation in the 2021 tax return, resulting in a partial release of the valuation allowance. Refer to Note 10. Dispositions, Deconsolidations and Discontinued Operations in the Condensed Consolidated Financial Statements for additional information. This was partially offset by income tax expense as calculated under ASC 740 for taxpaying entities. Additionally, the tax benefits associated with losses generated by the INNOVATE Corp. U.S. consolidated income tax return and certain other businesses have been reduced by a full valuation allowance as we do not believe it is more-likely-than-not that the losses will be utilized.

Segment Results of Operations

In the Company's Condensed Consolidated Financial Statements, other operating (income) loss includes: (i) (gain) loss on sale or disposal of assets; (ii) lease termination costs; (iii) asset impairment expense; (iv) accretion of asset retirement obligations; and (v) FCC reimbursements. Each table summarizes the results of operations of our operating segments and compares the amount of the change between the periods presented (in millions).

Infrastructure Segment

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2022	2021	Increase / (Decrease)	2022	2021	Increase / (Decrease)
Revenue	\$ 412.7	\$ 383.0	\$ 29.7	\$ 1,197.0	\$ 776.3	\$ 420.7
Cost of revenue	358.7	334.4	24.3	1,052.4	674.1	378.3
Selling, general and administrative	30.2	28.5	1.7	87.1	72.0	15.1
Depreciation and amortization	5.3	7.4	(2.1)	15.9	13.1	2.8
Other operating loss (income)	—	0.1	(0.1)	(0.6)	0.1	(0.7)
Income from operations	\$ 18.5	\$ 12.6	\$ 5.9	\$ 42.2	\$ 17.0	\$ 25.2

Revenue: Revenue from our Infrastructure segment for the three months ended September 30, 2022 increased \$29.7 million to \$412.7 million from \$383.0 million for the three months ended September 30, 2021. The increase was primarily driven by an increase at Banker Steel and DBMG's commercial structural steel fabrication and erection business. This was partially offset by decreases at the industrial maintenance and repair, and construction modeling and detailing businesses due to the completion of unrepeatable, large projects in 2021 and early 2022.

Revenue for the nine months ended September 30, 2022 increased \$420.7 million to \$1,197.0 million from \$776.3 million for the nine months ended September 30, 2021. The increase was primarily driven by DBMG's acquisition of Banker Steel, which was acquired on May 27, 2021. The increase was also attributable to increases at DBMG's commercial structural steel fabrication and erection business supported by timing of project work under execution and changes in backlog mix. This was partially offset by decreases at the industrial maintenance and repair, and construction modeling and detailing businesses due to the completion of projects in 2021.

Cost of revenue: Cost of revenue from our Infrastructure segment for the three months ended September 30, 2022 increased \$24.3 million to \$358.7 million from \$334.4 million for the three months ended September 30, 2021. The increase was primarily driven by Banker Steel and DBMG's commercial structural steel fabrication and erection business due to larger projects. This was partially offset by decreases at the industrial maintenance and repair, and construction modeling and detailing businesses due to the completion of unrepeatable large projects in 2021 and early 2022.

Cost of revenue for the nine months ended September 30, 2022 increased \$378.3 million to \$1,052.4 million from \$674.1 million for the nine months ended September 30, 2021. The increase was primarily driven by DBMG's acquisition of Banker Steel, which was acquired on May 27, 2021 and DBMG's commercial structural steel fabrication and erection business due to larger projects. This was partially offset by decreases at the industrial maintenance and repair, and construction modeling and detailing businesses due to the completion of unrepeatable large projects in 2021.

Selling, general and administrative: Selling, general and administrative expense from our Infrastructure segment for the three months ended September 30, 2022 increased \$1.7 million to \$30.2 million from \$28.5 million for the three months ended September 30, 2021. The increase was primarily driven by an increase in salaries and wage expenses, travel costs, and professional fees, which was partially offset by a decrease in acquisition and integration costs related to Banker Steel.

Selling, general and administrative expense for the nine months ended September 30, 2022 increased \$15.1 million to \$87.1 million from \$72.0 million for the nine months ended September 30, 2021. The increase was primarily driven by the acquisition of Banker Steel, which was acquired on May 27, 2021, as well as increases in salaries and wage expenses, professional fees, and travel costs, which was partially offset by a decrease in acquisition and integration costs related to Banker Steel.

Depreciation and amortization: Depreciation and amortization from our Infrastructure segment for the three months ended September 30, 2022 decreased \$2.1 million to \$5.3 million from \$7.4 million for the three months ended September 30, 2021. The decrease was primarily driven by runoff of depreciation expense related to assets acquired in the 2021 Banker Steel transaction.

Depreciation and amortization for the nine months ended September 30, 2022 increased \$2.8 million to \$15.9 million from \$13.1 million for the nine months ended September 30, 2021. The increase was largely due to the additional amortization and depreciation of assets obtained in the acquisition of Banker Steel in May 2021.

Other operating loss (income): Other operating income from our Infrastructure segment for the nine months ended September 30, 2022 increased \$0.7 million to income of \$0.6 million from a loss of \$0.1 million for the nine months ended September 30, 2021. The increase in other operating income was primarily driven by a gain on disposal of an asset in the current period.

Life Sciences Segment

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2022	2021	Increase / (Decrease)	2022	2021	Increase / (Decrease)
Revenue	\$ 1.2	\$ 1.6	\$ (0.4)	\$ 3.0	\$ 2.8	\$ 0.2
Cost of revenue	1.0	0.9	0.1	2.5	1.5	1.0
Selling, general and administrative	5.6	5.6	—	16.0	15.4	0.6
Depreciation and amortization	0.1	—	0.1	0.2	0.1	0.1
Loss from operations	\$ (5.5)	\$ (4.9)	\$ (0.6)	\$ (15.7)	\$ (14.2)	\$ (1.5)

Revenue: Revenue from our Life Sciences segment for the three months ended September 30, 2022 decreased \$0.4 million to \$1.2 million from \$1.6 million for the three months ended September 30, 2021. The decrease in revenue was attributable to R2, driven by a decrease in Glacial Rx system sales in the U.S., which was partially offset by additional revenues from the launch of the Glacial Spa systems and consumables outside the U.S. at the end of 2021.

Revenue for the nine months ended September 30, 2022 increased \$0.2 million to \$3.0 million from \$2.8 million for the nine months ended September 30, 2021. The increase in revenue was attributable to R2, which was driven by additional revenues from the launch of Glacial Spa systems and consumables outside the U.S. at the end of 2021, which was partially offset by a decrease in Glacial Rx system and consumable sales within the U.S.

Cost of revenue: Cost of revenue from our Life Sciences segment for the three months ended September 30, 2022 increased \$0.1 million to \$1.0 million from \$0.9 million for the three months ended September 30, 2021. Cost of revenue for the nine months ended September 30, 2022 increased \$1.0 million to \$2.5 million from \$1.5 million for the nine months ended September 30, 2021. The increase in cost of revenue was attributable to a change in product mix at R2.

Selling, general and administrative: Selling, general and administrative expenses for the nine months ended September 30, 2022 increased \$0.6 million to \$16.0 million from \$15.4 million for the nine months ended September 30, 2021. The increase was driven by compensation-related growth in the current period, increased clinical expenses due to additional staffing needs and increased clinical studies, and other general staffing increases across the organization as the Company continues commercialization, partially offset by a decrease in R&D.

Spectrum Segment

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2022	2021	Increase / (Decrease)	2022	2021	Increase / (Decrease)
Revenue	\$ 9.1	\$ 10.2	\$ (1.1)	\$ 28.0	\$ 31.3	\$ (3.3)
Cost of revenue	4.9	4.4	0.5	14.6	12.8	1.8
Selling, general and administrative	4.0	4.9	(0.9)	11.8	14.3	(2.5)
Depreciation and amortization	1.4	1.4	—	4.4	4.3	0.1
Other operating (income) loss	(0.6)	0.7	(1.3)	1.3	0.9	0.4
Loss from operations	\$ (0.6)	\$ (1.2)	\$ 0.6	\$ (4.1)	\$ (1.0)	\$ (3.1)

Revenue: Revenue from our Spectrum segment for the three months ended September 30, 2022 decreased \$1.1 million to \$9.1 million from \$10.2 million for the three months ended September 30, 2021. The decrease was primarily driven by a decrease in advertising revenues at the Azteca network due to a decreased footprint and declines in paid programming.

Revenue from our Spectrum segment for the nine months ended September 30, 2022 decreased \$3.3 million to \$28.0 million from \$31.3 million for the nine months ended September 30, 2021. The decrease was primarily driven by a decrease in advertising revenues at the Azteca network due to a decreased footprint and declines in paid programming. This was partially offset by an increase in station revenues as they launched new customers and increased the number of operating stations.

Cost of revenue: Cost of revenue for our Spectrum segment for the three months ended September 30, 2022 increased \$0.5 million to \$4.9 million from \$4.4 million for the three months ended September 30, 2021. Cost of revenue for the nine months ended September 30, 2022 increased \$1.8 million to \$14.6 million from \$12.8 million for the nine months ended September 30, 2021. The overall increases were primarily due to costs related to a higher station count and an increase in expenses at the Azteca network as a result of higher support fees and license royalty expense paid to Azteca International Corporation, which started in the first quarter of 2022.

Selling, general and administrative: Selling, general and administrative expense from our Spectrum segment for the three months ended September 30, 2022 decreased \$0.9 million to \$4.0 million from \$4.9 million for the three months ended September 30, 2021. The decrease was primarily driven by a decrease in salaries and benefit expenses and a decrease in legal expenses.

Selling, general and administrative expense for the nine months ended September 30, 2022 decreased \$2.5 million to \$11.8 million from \$14.3 million for the nine months ended September 30, 2021. The decrease was primarily driven by severance expense incurred in the comparable period, a decrease in salaries and benefit expenses and a decrease in legal expenses. This was partially offset by an increase in bad debt expense.

Other operating (income) loss: Other operating income from our Spectrum segment for the three months ended September 30, 2022 increased \$1.3 million to other operating income of \$0.6 million from other operating expense of \$0.7 million for the three months ended September 30, 2021. The increase in income was primarily related to FCC reimbursements received in the current period, as well as fewer asset impairments in the current period.

Other operating loss for the nine months ended September 30, 2022 increased \$0.4 million to \$1.3 million from \$0.9 million for the nine months ended September 30, 2021. The increase in loss was primarily related to a decrease in FCC reimbursements, which was partially offset by fewer asset impairments in the current period.

Non-operating Corporate

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2022	2021	Increase / (Decrease)	2022	2021	Increase / (Decrease)
Selling, general and administrative	\$ 5.5	\$ 4.3	\$ 1.2	\$ 15.0	\$ 17.6	\$ (2.6)
Depreciation and amortization	—	0.1	(0.1)	0.1	0.1	—
Loss from operations	\$ (5.5)	\$ (4.4)	\$ (1.1)	\$ (15.1)	\$ (17.7)	\$ 2.6

Selling, general and administrative: Selling, general and administrative expenses from our Non-operating Corporate segment for the three months ended September 30, 2022 increased \$1.2 million to \$5.5 million from \$4.3 million for the three months ended September 30, 2021. The increase was driven by severance related to the Company's former Chief Legal Officer accrued in the current period, as well as an increase in legal expenses. This was partially offset by a decrease in non-recurring and acquisition expenses.

Selling, general and administrative expenses for the nine months ended September 30, 2022 decreased \$2.6 million to \$15.0 million from \$17.6 million for the nine months ended September 30, 2021. The decrease was driven by a decrease in legal, disposition and acquisition expense, as well as settlement expense for the Company's former CEO accrued in the prior period. This was partially offset by an increase in severance related to the Company's former Chief Legal Officer, increases in professional fees, and compensation-related expenses.

(Loss) Income from Equity Investees

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2022	2021	Increase / (Decrease)	2022	2021	Increase / (Decrease)
Life Sciences	\$ (2.5)	\$ (2.3)	\$ (0.2)	\$ (5.8)	\$ (5.5)	\$ (0.3)
Other	1.4	(0.6)	2.0	3.7	0.7	3.0
(Loss) from equity investees	\$ (1.1)	\$ (2.9)	\$ 1.8	\$ (2.1)	\$ (4.8)	\$ 2.7

Life Sciences: Loss from equity investees within our Life Sciences segment for the three months ended September 30, 2022 increased \$0.2 million to \$2.5 million from \$2.3 million for the three months ended September 30, 2021. The increase in loss was primarily due to higher equity method losses recorded from our equity investment in MediBeacon, which had an increase in expenses due to the commencement of its US Pivotal Study of the TGFR in the second quarter of 2022 to study the viability of real-time, direct monitoring of kidney function.

Loss from equity investees for the nine months ended September 30, 2022 increased \$0.3 million to \$5.8 million from \$5.5 million for the nine months ended September 30, 2021. The increase in loss was primarily due to higher equity method losses recorded from our equity investment in MediBeacon, which had an increase in expenses as the investment commenced its US Pivotal Study of the TGFR in the second quarter of 2022 to study the viability of real-time, direct monitoring of kidney function. This was partially offset by net higher equity method income recorded from our investment in Triple Ring.

Other: Income from equity investees within our Other segment for the three months ended September 30, 2022 increased \$2.0 million to \$1.4 million from a loss of \$0.6 million for the three months ended September 30, 2021. Income from equity investees for the nine months ended September 30, 2022 increased \$3.0 million to \$3.7 million from \$0.7 million for the nine months ended September 30, 2021. The increases were driven by the equity investment in HMN, as it produced higher income than in the comparable period, which is generally attributable to the timing of project work.

Non-GAAP Financial Measures and Other Information

Adjusted EBITDA

Adjusted EBITDA is not a measurement recognized under U.S. GAAP. In addition, other companies may define Adjusted EBITDA differently than we do, which could limit its usefulness.

Management believes that Adjusted EBITDA provides investors with meaningful information for gaining an understanding of our results as it is frequently used by the financial community to provide insight into an organization's operating trends and facilitates comparisons between peer companies, since interest, taxes, depreciation, amortization and the other items listed in the definition of Adjusted EBITDA below can differ greatly between organizations as a result of differing capital structures and tax strategies. Adjusted EBITDA can also be a useful measure of a company's ability to service debt. While management believes that non-U.S. GAAP measurements are useful supplemental information, such adjusted results are not intended to replace our U.S. GAAP financial results. Using Adjusted EBITDA as a performance measure has inherent limitations as an analytical tool as compared to net income (loss) or other U.S. GAAP financial measures, as this non-GAAP measure excludes certain items, including items that are recurring in nature, which may be meaningful to investors. As a result of the exclusions, Adjusted EBITDA should not be considered in isolation and does not purport to be an alternative to net income (loss) or other U.S. GAAP financial measures as a measure of our operating performance. Adjusted EBITDA excludes the results of operations and any consolidating eliminations of our previous Insurance segment.

The calculation of Adjusted EBITDA, as defined by us, consists of Net income (loss) attributable to INNOVATE Corp., excluding discontinued operations; depreciation and amortization; Other operating (income) loss, which is inclusive of (gain) loss on sale or disposal of assets, lease termination costs, asset impairment expense and FCC reimbursements; interest expense; other (income) expense, net; loss on early extinguishment or restructuring of debt; income tax expense (benefit); noncontrolling interest; share-based compensation expense; non-recurring items; costs associated with the COVID-19 pandemic; and acquisition and disposition costs.

(in millions)	Three months ended September 30, 2022					
	Infrastructure	Life Sciences	Spectrum	Non-operating Corporate	Other and Eliminations	INNOVATE
Net (loss) attributable to INNOVATE Corp.						\$ (5.4)
Less: Discontinued operations						—
Net income (loss) attributable to INNOVATE Corp., excluding discontinued operations	\$ 10.4	\$ (5.5)	\$ (1.4)	\$ (9.6)	\$ 0.7	\$ (5.4)
<u>Adjustments to reconcile net income (loss) to Adjusted EBITDA:</u>						
Depreciation and amortization	5.3	0.1	1.4	—	—	6.8
Depreciation and amortization (included in cost of revenue)	3.9	—	—	—	—	3.9
Other operating (income)	—	—	(0.6)	—	—	(0.6)
Interest expense	2.6	0.2	2.2	8.3	—	13.3
Other (income) expense, net	(0.6)	(0.3)	(1.1)	2.9	—	0.9
Income tax expense (benefit)	5.0	—	—	(7.0)	—	(2.0)
Noncontrolling interest	1.0	(2.2)	(0.4)	—	0.3	(1.3)
Share-based compensation expense	—	0.1	—	0.3	—	0.4
Acquisition and disposition costs	—	—	0.2	0.1	0.1	0.4
Adjusted EBITDA	\$ 27.6	\$ (7.6)	\$ 0.3	\$ (5.0)	\$ 1.1	\$ 16.4

(in millions)

	Three months ended September 30, 2021					
	Infrastructure	Life Sciences	Spectrum	Non-operating Corporate	Other and Eliminations	INNOVATE
Net (loss) attributable to INNOVATE Corp.						\$ (211.9)
Less: Discontinued operations						(200.3)
Net income (loss) attributable to INNOVATE Corp., excluding discontinued operations	\$ 6.9	\$ (5.1)	\$ (4.1)	\$ (8.0)	\$ (1.3)	\$ (11.6)
<u>Adjustments to reconcile net income (loss) to Adjusted EBITDA:</u>						
Depreciation and amortization	7.4	—	1.4	0.1	—	8.9
Depreciation and amortization (included in cost of revenue)	3.4	—	—	—	—	3.4
Other operating loss	0.1	—	0.7	—	—	0.8
Interest expense	2.2	—	2.4	8.2	—	12.8
Other (income) expense, net	(0.3)	—	1.5	(1.8)	—	(0.6)
Loss on early extinguishment or restructuring of debt	—	—	0.1	—	—	0.1
Income tax expense (benefit)	2.9	—	—	(2.8)	—	0.1
Noncontrolling interest	0.7	(2.0)	(0.9)	—	(0.4)	(2.6)
Share-based compensation expense	—	—	0.3	0.1	—	0.4
Nonrecurring Items	(0.1)	—	—	—	—	(0.1)
COVID-19 Costs	0.4	—	—	—	—	0.4
Acquisition and disposition costs	0.8	—	0.4	0.4	0.7	2.3
Adjusted EBITDA	\$ 24.4	\$ (7.1)	\$ 1.8	\$ (3.8)	\$ (1.0)	\$ 14.3

Infrastructure: Net income from our Infrastructure segment for the three months ended September 30, 2022 increased \$3.5 million to \$10.4 million from \$6.9 million for the three months ended September 30, 2021. Adjusted EBITDA from our Infrastructure segment for the three months ended September 30, 2022 increased \$3.2 million to \$27.6 million from \$24.4 million for the three months ended September 30, 2021. The increase in Adjusted EBITDA can be attributed to an increased contribution from the fabrication and erection business and Banker Steel. The increase was partially offset by increases in salaries and wages, travel costs, and professional fees, as well as lower contributions from the industrial maintenance and repair, and construction modeling and detailing businesses.

Life Sciences: Net loss from our Life Sciences segment for the three months ended September 30, 2022 increased \$0.4 million to \$5.5 million from \$5.1 million for the three months ended September 30, 2021. Adjusted EBITDA loss from our Life Sciences segment for the three months ended September 30, 2022 increased \$0.5 million to \$7.6 million from \$7.1 million for the three months ended September 30, 2021. The increase in Adjusted EBITDA loss was primarily driven by a decrease in gross margin at R2 due to change in product mix and an increase in equity method losses recorded for Pansend's investment in MediBeacon.

Spectrum: Net loss from our Spectrum segment for the three months ended September 30, 2022 decreased \$2.7 million to \$1.4 million from \$4.1 million for the three months ended September 30, 2021. Adjusted EBITDA from our Spectrum segment for the three months ended September 30, 2022 decreased \$1.5 million to \$0.3 million from \$1.8 million for the three months ended September 30, 2021. The overall decrease in Adjusted EBITDA was primarily driven by the decrease in advertising revenue at the Azteca network driven by a decreased footprint, declines in paid programming, as well as an increase in expenses at the Azteca network as a result of higher support fees and licensing royalty expense incurred under the PLA, which started in the first quarter of 2022, and an increase in station costs as a result of new station builds. This was partially offset by decrease in legal expenses, commissions and salaries and benefit expenses.

Non-operating Corporate: Net loss from our Non-operating Corporate segment for the three months ended September 30, 2022 increased \$1.6 million to \$9.6 million from \$8.0 million for the three months ended September 30, 2021. Adjusted EBITDA loss from our Non-operating Corporate segment for the three months ended September 30, 2022 increased \$1.2 million to \$5.0 million from \$3.8 million for the three months ended September 30, 2021. The increase in Adjusted EBITDA loss was driven by severance related to the Company's former Chief Legal Officer accrued in the current period, as well as increased legal expenses.

Other and Eliminations: Net income from our Other and Eliminations segment for the three months ended September 30, 2022 increased \$2.0 million to \$0.7 million from a loss of \$1.3 million for the three months ended September 30, 2021. Adjusted EBITDA from our Other segment for the three months ended September 30, 2022 increased \$2.1 million to \$1.1 million from a loss of \$1.0 million for the three months ended September 30, 2021. The improvement in Adjusted EBITDA for our Other and Eliminations segment was primarily driven by the equity investment in HMN, as it produced higher income than in the comparable period, which is generally attributable to the timing of project work.

(in millions)

	Nine months ended September 30, 2022					
	Infrastructure	Life Sciences	Spectrum	Non-operating Corporate	Other and Eliminations	INNOVATE
Net (loss) attributable to INNOVATE Corp.						\$ (30.2)
Less: Discontinued operations						—
Net Income (loss) attributable to INNOVATE Corp., excluding discontinued operations	\$ 23.3	\$ (14.9)	\$ (10.5)	\$ (30.4)	\$ 2.3	\$ (30.2)
<u>Adjustments to reconcile net income (loss) to Adjusted EBITDA:</u>						
Depreciation and amortization	15.9	0.2	4.4	0.1	—	20.6
Depreciation and amortization (included in cost of revenue)	11.2	—	—	—	—	11.2
Other operating (income) loss	(0.6)	—	1.3	—	—	0.7
Interest expense	7.0	0.2	6.1	25.1	—	38.4
Other (income) expense, net	(1.9)	(0.4)	1.8	—	—	(0.5)
Income tax expense (benefit)	11.4	—	—	(9.8)	—	1.6
Noncontrolling interest	2.3	(6.3)	(1.5)	—	1.0	(4.5)
Share-based compensation expense	—	0.3	—	1.4	—	1.7
Nonrecurring items	0.1	—	—	—	—	0.1
Acquisition and disposition costs	0.3	—	0.4	0.6	(0.4)	0.9
Adjusted EBITDA	\$ 69.0	\$ (20.9)	\$ 2.0	\$ (13.0)	\$ 2.9	\$ 40.0

(in millions)

	Nine months ended September 30, 2021					
	Infrastructure	Life Sciences	Spectrum	Non-operating Corporate	Other and Eliminations	INNOVATE
Net (loss) attributable to INNOVATE Corp.						\$ (222.8)
Less: Discontinued operations						(149.9)
Net Income (loss) attributable to INNOVATE Corp., excluding discontinued operations	\$ 8.3	\$ (13.6)	\$ (9.6)	\$ (58.0)	\$ —	\$ (72.9)
<u>Adjustments to reconcile net income (loss) to Adjusted EBITDA:</u>						
Depreciation and amortization	13.1	0.1	4.3	0.1	—	17.6
Depreciation and amortization (included in cost of revenue)	8.4	—	—	—	—	8.4
Other operating loss	0.1	—	0.9	—	—	1.0
Interest expense	6.3	—	7.1	33.2	—	46.6
Other (income) expense, net	(4.2)	—	2.3	(2.5)	—	(4.4)
Loss on early extinguishment or restructuring of debt	1.5	—	1.0	10.0	—	12.5
Income tax expense (benefit)	4.1	—	—	(0.3)	—	3.8
Noncontrolling interest	0.9	(6.0)	(1.9)	—	(0.9)	(7.9)
Share-based compensation expense	—	0.1	0.6	1.0	—	1.7
Nonrecurring items	0.3	—	—	0.5	—	0.8
COVID-19 costs	8.3	—	—	—	—	8.3
Acquisition and disposition costs	2.5	—	0.6	2.5	0.7	6.3
Adjusted EBITDA	\$ 49.6	\$ (19.4)	\$ 5.3	\$ (13.5)	\$ (0.2)	\$ 21.8

Infrastructure: Net income from our Infrastructure segment for the nine months ended September 30, 2022 increased \$15.0 million to \$23.3 million from \$8.3 million for the nine months ended September 30, 2021. Adjusted EBITDA from our Infrastructure segment for the nine months ended September 30, 2022 increased \$19.4 million to \$69.0 million from \$49.6 million for the nine months ended September 30, 2021. The increase in Adjusted EBITDA can be attributed to the contribution of Banker Steel and increased contribution at the fabrication and erection business as a result of larger jobs with increased profits in the current year. The increase was partially offset by an increase in general and administrative expenses due to the acquisition of Banker Steel, increases in salaries and wages, travel costs and professional fees, as well as lower contribution from the industrial maintenance and repair, and construction modeling and detailing businesses.

Life Sciences: Net loss from our Life Sciences segment for the nine months ended September 30, 2022 increased \$1.3 million to \$14.9 million from \$13.6 million for the nine months ended September 30, 2021. Adjusted EBITDA loss from our Life Sciences segment for the nine months ended September 30, 2022 increased \$1.5 million to \$20.9 million from \$19.4 million for the nine months ended September 30, 2021. The increase in Adjusted EBITDA loss was primarily driven by the increase in equity method losses recorded for Pansend's investment in MediBeacon, a decrease in gross margin at R2 due to a change in product mix along with an increase in general and administrative expenses at R2 driven by a severance accrual in the current period, increased clinical expenses due to additional staffing needs and increased clinical studies, and other general staffing increases across the organization as the company continues commercialization, partially offset by a decrease in R&D. This was partially offset by an increase in equity method income recorded for Pansend's investment in Triple Ring.

Spectrum: Net loss from our Spectrum segment for the nine months ended September 30, 2022 increased \$0.9 million to \$10.5 million from \$9.6 million for the nine months ended September 30, 2021. Adjusted EBITDA from our Spectrum segment for the nine months ended September 30, 2022 decreased \$3.3 million to \$2.0 million from \$5.3 million for the nine months ended September 30, 2021. The overall decrease in Adjusted EBITDA was primarily driven by the decrease in revenue at the Azteca network driven by a decreased footprint and a decline in paid programming, as well as an increase in expenses at the Azteca network as a result of higher support fees and license royalty expense incurred under the PLA, which started in the first quarter of 2022, an increase in station costs as a result of new station builds. This was partially offset by unrepeated severance costs in the comparable period and decreased salary and benefit expenses, as well as higher station revenues as the station group launched new customers and grew the number of its operating stations.

Non-operating Corporate: Net loss from our Non-operating Corporate segment for the nine months ended September 30, 2022 decreased \$27.6 million to \$30.4 million from \$58.0 million for the nine months ended September 30, 2021. Adjusted EBITDA loss from our Non-operating Corporate segment for the nine months ended September 30, 2022 decreased \$0.5 million to \$13.0 million from \$13.5 million for the nine months ended September 30, 2021. The decrease in Adjusted EBITDA loss was driven by a decrease in legal expenses, as well as the settlement expense for the Company's former CEO accrued in the prior period. This was partially offset by increased professional fees, additional severance expense in the current period related to the former Chief Legal Officer, and other compensation related items.

Other and Eliminations: Net income from our Other and Eliminations segment for the nine months ended September 30, 2022 increased \$2.3 million to \$2.3 million from zero for the nine months ended September 30, 2021. Adjusted EBITDA from our Other segment for the nine months ended September 30, 2022 increased \$3.1 million to \$2.9 million from a loss of \$0.2 million for the nine months ended September 30, 2021. The improvement in Adjusted EBITDA for our Other and Eliminations segment was primarily driven by our equity investment in HMN, as it produced higher income than in the comparable period, which is generally attributable to the timing of project work.

Adjusted EBITDA by segment is summarized as follows:

(in millions):

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2022	2021	Increase / (Decrease)	2022	2021	Increase / (Decrease)
Infrastructure	\$ 27.6	\$ 24.4	\$ 3.2	\$ 69.0	\$ 49.6	\$ 19.4
Life Sciences	(7.6)	(7.1)	(0.5)	(20.9)	(19.4)	(1.5)
Spectrum	0.3	1.8	(1.5)	2.0	5.3	(3.3)
Non-Operating Corporate	(5.0)	(3.8)	(1.2)	(13.0)	(13.5)	0.5
Other and Eliminations	1.1	(1.0)	2.1	2.9	(0.2)	3.1
Adjusted EBITDA	\$ 16.4	\$ 14.3	\$ 2.1	\$ 40.0	\$ 21.8	\$ 18.2

Backlog

Projects in backlog consist of awarded contracts, letters of intent, notices to proceed, change orders, and purchase orders obtained. Backlog increases as contract commitments are obtained, decreases as revenues are recognized and increases or decreases to reflect modifications in the work to be performed under the contracts. Backlog is converted to sales in future periods as work is performed or projects are completed. Backlog can be significantly affected by the receipt or loss of individual contracts.

Infrastructure Segment

As of September 30, 2022, DBMG's backlog was \$1,916.5 million, consisting of \$1,416.8 million under contracts or purchase orders and \$499.7 million under letters of intent or notices to proceed. Approximately \$953.0 million, representing 49.7% of DBMG's backlog as of September 30, 2022, was attributable to five contracts, letters of intent, notices to proceed or purchase orders. If one or more of these projects terminate or reduce their scope, DBMG's backlog could decrease substantially. DBMG includes an additional \$13.4 million in its backlog that is not included in the remaining unsatisfied performance obligations disclosed in Note 3. Revenue and Contracts in Process. This additional backlog includes commitments under master service agreements that are estimated amounts of work to be performed based on customer communications, historic performance and knowledge of our customers' intentions.

Liquidity and Capital Resources

Short- and Long-Term Liquidity Considerations and Risks

Our Non-Operating Corporate segment consists of holding companies, and its liquidity needs are primarily for interest payments on its 2026 Senior Secured Notes, 2026 Convertible Notes and Revolving Credit Agreement, dividend payments on its Preferred Stock and recurring operational expenses.

As of September 30, 2022, the Company had \$25.8 million of cash and cash equivalents, excluding restricted cash, compared to \$45.5 million as of December 31, 2021. On a stand-alone basis, as of September 30, 2022, the Non-Operating Corporate segment had cash and cash equivalents, excluding restricted cash, of \$5.1 million compared to \$22.0 million at December 31, 2021.

Our subsidiaries' principal liquidity requirements arise from cash used in operating activities, debt service, and capital expenditures, including purchases of steel construction equipment, over-the-air ("OTA") broadcast station equipment, development of back-office systems, operating costs and expenses, and income taxes.

As of September 30, 2022, the Company had \$711.5 million of principal indebtedness on a consolidated basis compared to \$630.8 million as of December 31, 2021, an increase of \$80.7 million, which was primarily due to a \$77.3 million increase in DBMG's Line of Credit to fund working capital requirements, offset in part by recurring principal payments on outstanding debt and repayment of certain instruments.

On a stand-alone basis, as of September 30, 2022 and December 31, 2021, the Non-Operating Corporate segment had indebtedness of \$401.8 million and \$390.0 million, respectively, an increase of \$11.8 million, driven by an increase in the Revolving Credit Agreement of \$15.0 million, partially offset by the \$3.2 million repayment of the 2022 Convertible Note upon maturity. The Non-Operating Corporate segment's stand-alone indebtedness consists of the \$330.0 million aggregate principal amount of 2026 Senior Secured Notes, \$51.8 million aggregate principal amount of 2026 Convertible Notes, and \$20.0 million aggregate principal amount drawn on its Revolving Credit Agreement. The Non-Operating Corporate segment is required to make semi-annual interest payments on its 2026 Senior Secured Notes and 2026 Convertible Notes and quarterly and monthly interest payments on its Revolving Credit Agreement.

INNOVATE received \$5.0 million in tax sharing from its Infrastructure segment during the three months ended September 30, 2022. INNOVATE received \$13.7 million and \$7.6 million in dividends and tax sharing from its Infrastructure segment during the nine months ended September 30, 2022, respectively.

INNOVATE is required to make dividend payments on its outstanding Preferred Stock on January 15th, April 15th, July 15th, and October 15th of each year.

We have financed our growth and operations to date, and expect to finance our future growth and operations, through public offerings and private placements of debt and equity securities, credit facilities, vendor financing, capital lease financing and other financing arrangements, as well as cash generated from the operations of our subsidiaries. In the future, we may also choose to sell assets or certain investments to generate cash.

At this time, we believe that we will be able to continue to meet our liquidity requirements and fund our fixed obligations (such as debt service and operating leases) and other cash needs for our operations for at least the next twelve months from the issuance of the Condensed Consolidated Financial Statements through a combination of available cash and distributions from our subsidiaries. The ability of INNOVATE's subsidiaries to make distributions to INNOVATE is subject to numerous factors, including restrictions contained in each subsidiary's financing agreements, availability of sufficient funds at each subsidiary and the approval of such payment by each subsidiary's board of directors, which must consider various factors, including general economic and business conditions, tax considerations, strategic plans, financial results and condition, expansion plans, any contractual, legal or regulatory restrictions on the payment of dividends, and such other factors each subsidiary's board of directors considers relevant. Although the Company believes, to the extent needed, that it will be able to raise additional debt or equity capital, refinance indebtedness or preferred stock, enter into other financing arrangements or engage in asset sales and sales of certain investments sufficient to fund any cash needs that we are not able to satisfy with the funds on hand or expected to be provided by our subsidiaries, there can be no assurance that it will be able to do so on terms satisfactory to the Company, if at all. Such financing options, if pursued, may also ultimately have the effect of negatively impacting our liquidity profile and prospects over the long-term and dilute the holders of common stock. Our ability to sell assets and certain of our investments to meet our existing financing needs may also be limited by our existing financing instruments. In addition, the sale of assets or the Company's investments may also make the Company less attractive to potential investors or future financing partners.

In September 2018, the Company entered into a 75-month lease for office space. As part of the agreement, INNOVATE was able to pay a lower security deposit and lease payments, and received favorable lease terms as consideration for landlord required cross default language in the event of default of the shared space leased by Harbinger Capital Partners, a company controlled by INNOVATE's former CEO and formerly a related party, in the same building. With the adoption of ASC 842, as of January 1, 2019, this lease was recognized as a right of use asset and lease liability on the Condensed Consolidated Balance Sheets.

DBMG's off-balance sheet arrangements as of September 30, 2022 included letters of credit of \$2.6 million under credit and security agreements and performance bonds of \$1,057.8 million. DBMG's contract arrangements with customers sometimes require DBMG to provide performance bonds to partially secure its obligations under its contracts. Bonding requirements typically arise in connection with private contracts and sometimes with respect to certain public work projects. DBMG's performance bonds are obtained through surety companies and typically cover the entire project price.

COVID-19 Expenditures

We have historically seen significant cost increases, primarily at our Infrastructure segment, driven by expenses associated with maintaining a safe work environment and while executing on its projects. During the nine months ended September 30, 2021, \$8.3 million of COVID-19 costs were incurred. Although the COVID-19 pandemic did not have a material impact on INNOVATE's liquidity for the nine months ended September 30, 2022, management believes the continuation of the pandemic and its related effect on the U.S. and global economies could introduce added pressure on the Company's liquidity position and financial performance. Our sources of liquidity are primarily from the dividends and tax sharing agreement with DBMG, cash proceeds from completed and anticipated monetization's and other arrangements.

Capital Expenditures

Capital expenditures for the periods ended September 30, 2022 and 2021 are set forth in the table below (in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Infrastructure	\$ 6.9	\$ 6.1	\$ 13.5	\$ 11.6
Life Sciences	0.2	—	0.3	0.5
Spectrum	0.4	0.9	2.5	2.9
Total	\$ 7.5	\$ 7.0	\$ 16.3	\$ 15.0

Indebtedness

Non-Operating Corporate

2026 Senior Secured Notes Terms and Conditions

Maturity. The 2026 Senior Secured Notes mature on February 1, 2026.

Interest. The 2026 Senior Secured Notes accrue interest at a rate of 8.50% per year. Interest on the 2026 Senior Secured Notes is paid semi-annually on February 1 and August 1 of each year.

Issue Price. The issue price of the 2026 Senior Secured Notes was 100% of par.

Ranking. The notes and the note guarantees are the Company's and certain of its direct and indirect domestic subsidiaries' (the "Subsidiary Guarantors") general senior secured obligations. The notes and the note guarantees will rank: (i) senior in right of payment to all of the Company's and the Subsidiary Guarantors' future subordinated debt; (ii) equal in right of payment, subject to the priority of any First-Out Obligations (as defined in the Secured Indenture), with all of the Company's and the Subsidiary Guarantors' existing and future senior debt and effectively senior to all of its and the Subsidiary Guarantor's unsecured debt to the extent of the value of the collateral; and (iii) effectively subordinated to all liabilities of its non-guarantor subsidiaries. The notes and the note guarantees are secured on a first-priority basis by substantially all of the Company's assets and the assets of the Subsidiary Guarantors, subject to certain exceptions and permitted liens.

Collateral. The 2026 Senior Secured Notes are secured by a first priority lien on substantially all of the Company's assets (except for certain "Excluded Assets," and subject to certain "Permitted Liens," each as defined in the Secured Indenture), including, without limitation:

- all equity interests owned by the Company or a Subsidiary Guarantor (which, in the case of any equity interest in a foreign subsidiary, will be limited to 100% of the non-voting stock (if any) and 65% of the voting stock of such foreign subsidiary) and the related rights and privileges associated therewith (but excluding Equity Interests of Insurance Subsidiaries (as defined in the Secured Indenture), to the extent the pledge thereof is deemed a "change of control" under applicable insurance regulations);
- all equipment, goods and inventory owned by the Company or a Subsidiary Guarantor;
- all cash and investment securities owned by the Company or a Subsidiary Guarantor;
- all documents, books and records, instruments and chattel paper owned by the Company or a Subsidiary Guarantor;
- all general intangibles owned by the Company or a Subsidiary Guarantor; and
- any proceeds and supporting obligations thereof.

The Secured Indenture permits the Company, under specified circumstances, to incur additional debt in the future that could equally and ratably share in the collateral. The amount of such debt is limited by the covenants contained in the Secured Indenture.

Events of Default. The Secured Indenture contains customary events of default which could, subject to certain conditions, cause the 2026 Senior Secured Notes to become immediately due and payable.

2026 Convertible Notes Terms and Conditions

Maturity. The 2026 Convertible Notes mature on August 1, 2026 unless earlier converted, redeemed or purchased.

Interest. The 2026 Convertible Notes accrue interest at a rate of 7.5% per year. Interest on the 2026 Convertible Notes is paid semi-annually on February 1 and August 1 of each year.

Issue Price. The issue price of the 2026 Convertible Notes was 100% of par.

Ranking. The notes are the Company's general unsecured and unsubordinated obligations and will rank equally in right of payment with all of the Company's existing and future unsecured and unsubordinated indebtedness, and senior in right of payment to any of the Company's future indebtedness that is expressly subordinated to the notes. The notes will be effectively subordinated to all of the Company's existing and future secured indebtedness, including the Company's 2026 Senior Secured Notes, to the extent of the value of the collateral securing that indebtedness, and structurally subordinated to all indebtedness and other liabilities of the Company's subsidiaries, including trade credit.

Optional Redemption. The Company may not redeem the notes prior to August 1, 2023. On or after August 1, 2023, the Company may redeem for cash all of the notes if the last reported sale price of the Company's common stock has been at least 130% of the conversion price then in effect for at least 20 trading days (which need not be consecutive trading days) during any 30 consecutive trading-day period ending within five trading days prior to the date on which the Company provides notice of redemption. The redemption price will equal 100% of the principal amount of the notes being redeemed, plus accrued and unpaid interest, including additional interest, if any, to, but excluding, the redemption date.

Conversion Rights. The 2026 Convertible Notes are convertible into shares of the Company's common stock based on an initial conversion rate of 234.2971 shares of common stock per \$1,000 principal amount of Convertible Notes (equivalent to a conversion price of approximately \$4.27 per share of the Company's common stock), at any time prior to the close of business on the business day immediately preceding the maturity date, in principal amounts of \$1,000 or an integral multiple of \$1,000 in excess thereof. In addition, following a Make-Whole Fundamental Change (as defined in the Convertible Indenture) or the Company's delivery of a notice of redemption for the 2026 Convertible Notes, the Company will, in certain circumstances, increase the conversion rate for a holder who elects to convert its 2026 Convertible Notes in connection with (i) such Make-Whole Fundamental Change or (ii) such notice of redemption. However, to comply with certain listing standards of The New York Stock Exchange, the Company will settle in cash its obligation to increase the conversion rate in connection with a Make-Whole Fundamental Change or redemption until it has obtained the requisite stockholder approval.

Events of Default. The Convertible Indenture contains customary events of default which could, subject to certain conditions, cause the Convertible Notes to become immediately due and payable.

Revolving Credit Agreement

Lender. MSD PCOF Partners IX, LLC ("MSD")

Maturity: The Revolving Credit Agreement has a maturity date of February 23, 2024.

Ranking. Obligations under the Revolving Credit Agreement constitute a First-Out Debt, as defined in the Secured Indenture, and are secured on a pari passu basis with the 2026 Senior Secured Notes.

Collateral: As provided under a Collateral Trust Joinder, the lender was added as a secured party to the Collateral Trust Agreement, and accordingly the pari passu obligations and commitments under the Revolving Credit Agreement are secured equally and ratably by the collateral of the Secured Notes.

Infrastructure

The UMB Term Loan and UMB Revolving Line associated with our Infrastructure segment contains customary restrictive and financial covenants related to debt levels and performance, including a Fixed Coverage Ratio covenant, as defined in the agreement. On August 2, 2022, DBMG negotiated and finalized an amendment to its UMB Revolving Line which included a retrospective change to the terms of the Fixed Coverage Ratio, and an increase in the UMB Revolving Line commitment from \$110.0 million to \$135.0 million, among other things.

Life Sciences and Spectrum

As of September 30, 2022, our Life Sciences and Spectrum segments have principal outstanding debt of \$10.0 million and \$52.2 million, respectively, which will mature in the fourth quarter of 2022. The Company is currently in negotiations to refinance the debt at Spectrum and Life Sciences and intends to satisfy the loan with a debt or equity event. However, there can be no assurance that it will be able to do so on terms satisfactory to the Company, if at all.

See Note 14. Debt Obligations to the Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q for additional details regarding the Company's indebtedness.

Restrictive Covenants

The indenture governing the 2026 Senior Secured Notes dated February 1, 2021, by and among INNOVATE, the guarantors party thereto and U.S. Bank National Association, a national banking association, as trustee (the "Secured Indenture"), contains certain affirmative and negative covenants limiting, among other things, the ability of the Company, and, in certain cases, the Company's subsidiaries, to incur additional indebtedness; create liens; engage in sale-leaseback transactions; pay dividends or make distributions in respect of capital stock; make certain restricted payments; sell assets; engage in transactions with affiliates; or consolidate or merge with, or sell substantially all of its assets to, another person. These covenants are subject to a number of important exceptions and qualifications.

The Company is also required to comply with certain financial maintenance covenants, which are similarly subject to a number of important exceptions and qualifications. These covenants include maintenance of (1) liquidity and (2) collateral coverage.

The maintenance of liquidity covenant provides that the Company will not permit the aggregate amount of (i) all unrestricted cash and Cash Equivalents of the Company and the Subsidiary Guarantors, (ii) amounts available for drawing under revolving credit facilities and undrawn letters of credit of the Company and the Subsidiary Guarantors and (iii) dividends, distributions or payments that are immediately available to be paid to the Company by any of its Restricted Subsidiaries to be less than the Company's obligation to pay interest on the 2026 Senior Secured Notes and all other Debt, including Convertible Preferred Stock mandatory cash dividends or any other mandatory cash pay Preferred Stock but excluding any obligation to pay interest on Convertible Preferred Stock or any other mandatory cash pay Preferred Stock which, in each case, may be paid by accretion or in-kind in accordance with its terms of the Company and its Subsidiary Guarantors for the next six months. As of September 30, 2022, the Company was in compliance with this covenant.

The maintenance of collateral coverage provides that the certain subsidiaries' Collateral Coverage Ratio (as defined in the Secured Indenture as the ratio of (i) the Loan Collateral to (ii) Consolidated Secured Debt (each as defined therein)) calculated on a pro forma basis as of the last day of each fiscal quarter may not be less than 1.50 to 1.00. As of September 30, 2022, the Company was in compliance with this covenant.

The instruments governing the Company's Preferred Stock also limit the Company's and its subsidiaries ability to take certain actions, including, among other things, to incur additional indebtedness; issue additional Preferred Stock; engage in transactions with affiliates; and make certain restricted payments. These limitations are subject to a number of important exceptions and qualifications.

The Company conducted its operations in a manner that resulted in compliance with the Secured Indenture; however, compliance with certain financial covenants for future periods may depend on the Company or one or more of the Company's subsidiaries undertaking one or more non-operational transactions, such as the management of operating cash outflows, a monetization of assets, a debt incurrence or refinancing, the raising of equity capital, or similar transactions. If the Company is unable to remain in compliance and does not make alternate arrangements, an event of default would occur under the Company's Secured Indenture which, among other remedies, could result in the outstanding obligations under the indenture becoming immediately due and payable and permitting the exercise of remedies with respect to the collateral. There is no assurance the Company will be able to complete any non-operational transaction it may undertake to maintain compliance with covenants under the Secured Indenture or, even if the Company completes any such transaction, that it will be able to maintain compliance for any subsequent period.

Summary of Consolidated Cash Flows

The below table summarizes the cash provided or used in our activities and the amount of the respective changes between the periods (in millions):

	Nine Months Ended September 30,		Increase / (Decrease)
	2022	2021	
Cash used in continuing operating activities	\$ (72.2)	\$ (48.1)	\$ (24.1)
Cash provided by discontinued operating activities	—	33.5	(33.5)
Cash used in operating activities	(72.2)	(14.6)	(57.6)
Cash (used in) provided by continuing investing activities	(18.3)	6.4	(24.7)
Cash used in discontinued investing activities	—	(221.3)	221.3
Cash used in investing activities	(18.3)	(214.9)	196.6
Cash provided by continuing financing activities	73.2	62.2	11.0
Cash used in discontinued financing activities	—	(7.6)	7.6
Cash provided by financing activities	73.2	54.6	18.6
Effect of exchange rate changes on cash and cash equivalents	(2.5)	(1.7)	(0.8)
Net decrease in cash and cash equivalents, including restricted cash and cash classified within assets held for sale	\$ (19.8)	\$ (176.6)	\$ 156.8
Less: Net decrease in cash and cash equivalents from discontinued operations	—	(195.4)	195.4
Net change in cash, cash equivalents and restricted cash	\$ (19.8)	\$ 18.8	\$ (38.6)

Operating Activities

Cash used in continuing operating activities was \$72.2 million for the nine months ended September 30, 2022, as compared to \$48.1 million for the nine months ended September 30, 2021. The \$24.1 million increase in cash used from operating activities was primarily due to an increase in working capital at Infrastructure as a result of increased activity as a result of the acquisition of Banker Steel at the end of May 2021, increases in the commercial structural steel fabrication and erection business, and larger backlog combined with the timing of receipt of receivables. This was partially offset by a decrease in net loss from improved operations.

Investing Activities

Cash used by continuing investing activities was \$18.3 million for the nine months ended September 30, 2022 as compared to cash provided by continuing investing activities of \$6.4 million for the nine months ended September 30, 2021. The \$24.7 million decrease in cash from investing activities was primarily due to the sale of Continental and Beyond6 in 2021 for aggregate net proceeds and dividends received of \$136.5 million, unrepeatable sales of non-core assets at our Spectrum segment in 2021, additional investing outlays in the current period at our Life Sciences segment to purchase an additional convertible note from MediBeacon, partially offset by the acquisition of Banker Steel for \$128.5 million in the comparable period.

Financing Activities

Cash provided by continuing financing activities was \$73.2 million for the nine months ended September 30, 2022 as compared to \$62.2 million for the nine months ended September 30, 2021, an increase of \$11.0 million. Cash provided by financing activities for the nine months ended September 30, 2022 relates primarily to our Infrastructure segment's increase on its revolving line of credit to fund working capital requirements on larger, more complex jobs, and an additional \$10.0 million of short-term note financing at R2 from Lancer Capital in the current period, partially offset by principal payments on debt obligations, payments of dividends and other financing activities. Cash provided by financing activities for the nine months ended September 30, 2021 was primarily due to the 2021 refinancing of the Infrastructure notes in conjunction with the acquisition of Banker Steel; financing activities at our Life Sciences segment related to the \$10.0 million investment by Huadong into R2 in the first quarter of 2021, which was partially offset by a redemption by INNOVATE of its preferred stock of \$10.4 million, transactions with noncontrolling interests, payment of dividends and other financing activities.

Discontinued Operations

Cash from discontinued operations was zero for the nine months ended September 30, 2022 as compared to cash used by discontinued operations of \$195.4 million for the nine months ended September 30, 2021. The \$195.4 million decrease in cash used was primarily due to the 2021 sales of the Insurance segment and Beyond6, which did not have any activity in the current period.

Infrastructure

Cash Flows

Cash flows from operating activities are the principal source of cash used to fund DBMG's operating expenses, interest payments on debt, and capital expenditures. DBMG's short-term cash needs are primarily for working capital to support operations including receivables, inventories, and other costs incurred in performing its contracts. DBMG attempts to structure the payment arrangements under its contracts to match costs incurred under the project. To the extent it is able to bill in advance of costs incurred, DBMG generates working capital through billings in excess of costs and recognized earnings on uncompleted contracts. DBMG relies on its credit facilities to meet its working capital needs. DBMG believes that its existing borrowing availability together with cash from operations will be adequate to meet all funding requirements for its operating expenses, interest payments on debt and capital expenditures for the foreseeable future.

DBMG is required to make monthly or quarterly interest payments on all of its debt. Based upon the September 30, 2022 debt balance, DBMG anticipates that its interest payments will be approximately \$2.8 million for the last remaining quarter of 2022.

DBMG believes that its available funds, cash generated by operating activities and funds available under its bank credit facilities will be sufficient to fund its capital expenditures and its working capital needs. However, DBMG may expand its operations through future acquisitions and may require additional equity or debt financing.

Discontinued Operations

We had several entities classified as discontinued operations for the nine months ended September 30, 2021. Accordingly, revenue, costs, and expenses of the discontinued operations were excluded from continuing operations. The entities reported in discontinued operations are as follows:

- On December 31, 2020, the Company signed the Merger Agreement to sell Beyond6. The sale closed on January 15, 2021. During the first quarter of 2021, the Company recognized a \$39.2 million gain on the sale. During the third quarter of 2021, as a result of releases of related escrows and holdbacks, the Company recognized an additional \$0.5 million gain on the sale.
- The sale of CIG closed on July 1, 2021 to Continental General Holdings LLC, an entity controlled by Michael Gorzynski, a former director of the Company who also serves as executive chairman of Continental since October 2020. The Company recorded a \$200.8 million loss on the sale.

Cash flows from discontinued operations are reported in the Statement of Cash Flows as a separate line item within the Operations, Investing and Financing activities sections for each year presented.

In the absence of cash flows from the discontinued operations, the Company does not expect there to be an impact on liquidity at the Company.

New Accounting Pronouncements

For a discussion of our New Accounting Pronouncements, refer to Note 2. Summary of Significant Accounting Policies to our Condensed Consolidated Financial Statements (Unaudited) included in this Quarterly Report on Form 10-Q.

Critical Accounting Estimates

There have been no material changes in the Company's critical accounting policies during the period ended September 30, 2022. For information about critical accounting policies and estimates, refer to "Critical Accounting Estimates" under Item 7 of our 2021 Annual Report.

Related Party Transactions

For a discussion of our Related Party Transactions, refer to Note 20. Related Parties to our Condensed Consolidated Financial Statements (Unaudited) included in this Quarterly Report on Form 10-Q.

Corporate Information

INNOVATE, a Delaware corporation, was incorporated in 1994. The Company's executive offices are located at 295 Madison Avenue, 12th Floor, New York, NY, 10017. The Company's telephone number is (212) 235-2690. Our Internet address is www.innovatecorp.com. We make available free of charge through our Internet website our 2021 Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to those reports filed or furnished pursuant to the Securities Exchange Act of 1934, as amended, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. The information on or accessible through our website is not a part of this Quarterly Report on Form 10-Q.

Special Note Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q contains or incorporates a number of "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Such statements are based on current expectations, and are not strictly historical statements. In some cases, you can identify forward-looking statements by terminology such as "if," "may," "should," "believe," "anticipate," "future," "forward," "potential," "estimate," "opportunity," "goal," "objective," "growth," "outcome," "could," "expect," "intend," "plan," "strategy," "provide," "commitment," "result," "seek," "pursue," "ongoing," "include" or in the negative of such terms or comparable terminology. These forward-looking statements inherently involve certain risks and uncertainties and are not guarantees of performance, results, or the creation of stockholder value, although they are based on our current plans or assessments which we believe to be reasonable as of the date hereof.

Factors that could cause actual results, events and developments to differ include, without limitation: the ability of our subsidiaries (including, target businesses following their acquisition) to generate sufficient net income and cash flows to make upstream cash distributions, capital market conditions, our and our subsidiaries' ability to identify any suitable future acquisition opportunities, efficiencies/cost avoidance, cost savings, income and margins, growth, economies of scale, combined operations, future economic performance, conditions to, and the timetable for, completing the integration of financial reporting of acquired or target businesses with INNOVATE or the applicable subsidiary of INNOVATE, completing future acquisitions and dispositions, litigation, potential and contingent liabilities, management's plans, changes in regulations and taxes.

We claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995 for all forward-looking statements.

Forward-looking statements are not guarantees of performance. You should understand that the following important factors, in addition to those discussed under the section entitled "Risk Factors" in our 2021 Annual Report, could affect our future results and could cause those results or other outcomes to differ materially from those expressed or implied in the forward-looking statements. You should also understand that many factors described under one heading below may apply to more than one section in which we have grouped them for the purpose of this presentation. As a result, you should consider all of the following factors, together with all of the other information presented herein, in evaluating our business and that of our subsidiaries.

INNOVATE Corp. and Subsidiaries

Our actual results or other outcomes may differ from those expressed or implied by forward-looking statements contained herein due to a variety of important factors, including, without limitation, the following:

- the effect of the novel coronavirus ("COVID-19") pandemic and related governmental responses on our business, financial condition and results of operations;
- the impact of recent supply chain disruptions, labor shortages and increases in overall price levels, including in transportation costs;
- the impact of a higher interest rate environment;
- the effects related to or resulting from Russia's military action in Ukraine, including the imposition of additional sanctions and export controls, as well as the broader impact to financial markets and the global macroeconomic and geopolitical environment;
- limitations on our ability to successfully identify any strategic acquisitions or business opportunities and to compete for these opportunities with others who have greater resources;
- our possible inability to generate sufficient liquidity, margins, earnings per share, cash flow and working capital from our operating segments;
- the impact of catastrophic events, including natural disasters, pandemic illness and the outbreak of war, or acts of terrorism;
- our dependence on distributions from our subsidiaries to fund our operations and payments on our obligations;
- the impact on our business and financial condition of our substantial indebtedness and the significant additional indebtedness and other financing obligations we may incur;
- the impact of covenants in the Indenture governing INNOVATE's 2026 Senior Secured Notes, 2026 Convertible Notes, and Revolving Credit Agreement, the Certificates of Designation governing INNOVATE's Preferred Stock and all other subsidiary debt obligations as summarized in Note 14. Debt Obligations to our Condensed Consolidated Financial Statements (Unaudited) included in this Quarterly Report on Form 10-Q and future financing agreements on our ability to operate our business and finance our pursuit of acquisition opportunities;
- our ability to remain in compliance with the listing standards of the New York Stock Exchange;
- our dependence on certain key personnel;
- uncertain global economic conditions in the markets in which our operating segments conduct their businesses;
- the ability of our operating segments to attract and retain customers;
- increased competition in the markets in which our operating segments conduct their businesses;
- our expectations regarding the timing, extent and effectiveness of our cost reduction initiatives and management's ability to moderate or control discretionary spending;
- management's plans, goals, forecasts, expectations, guidance, objectives, strategies and timing for future operations, acquisitions, synergies, asset dispositions, fixed asset and goodwill impairment charges, tax and withholding expense, selling, general and administrative expenses, product plans, performance and results;
- management's assessment of market factors and competitive developments, including pricing actions and regulatory rulings;

- the impact of additional material charges associated with our oversight of acquired or target businesses and the integration of our financial reporting;
- the impact of expending significant resources in considering acquisition targets or business opportunities that are not consummated;
- our expectations and timing with respect to our ordinary course acquisition activity and whether such acquisitions are accretive or dilutive to stockholders;
- our expectations and timing with respect to any strategic dispositions and sales of our operating subsidiaries, or businesses, including the anticipated wind-down of our Network business by our Spectrum segment, that we may make in the future and the effect of any such dispositions or sales on our results of operations;
- the possibility of indemnification claims arising out of divestitures of businesses;
- potential impacts on our business resulting from climate change, greenhouse gas regulations, and the impact of climate change-related changes in the frequency and severity of weather patterns;
- tax consequences associated with our acquisition, holding and disposition of target companies and assets;
- the effect any interests our officers, directors, stockholders and their respective affiliates may have in certain transactions in which we are involved;
- our ability to effectively increase the size of our organization, if needed, and manage our growth;
- the potential for, and our ability to, remediate future material weaknesses in our internal controls over financial reporting;
- our possible inability to raise additional capital when needed or refinance our existing debt, on attractive terms, or at all; and
- our possible inability to hire and retain qualified executive management, sales, technical and other personnel.

Infrastructure / DBM Global Inc.

Our actual results or other outcomes of DBMG, and, thus, our Infrastructure segment, may differ from those expressed or implied by forward-looking statements contained herein due to a variety of important factors, including, without limitation, the following:

- the impact of inflationary pressures;
- our ability to maintain efficient staffing and productivity as well as delays and cancellations as a result of the COVID-19 pandemic;
- its ability to realize cost savings from expected performance of contracts, whether as a result of improper estimates, performance, or otherwise;
- potential impediments and limitations on our ability to complete ordinary course acquisitions in anticipated time frames or at all;
- uncertain timing and funding of new contract awards, as well as project cancellations;
- cost overruns on fixed-price or similar contracts or failure to receive timely or proper payments on cost-reimbursable contracts, whether as a result of improper estimates, performance, disputes, or otherwise;
- risks associated with labor productivity, including performance of subcontractors that DBMG hires to complete projects;
- its ability to settle or negotiate unapproved change orders and claims;
- changes in the costs or availability of, or delivery schedule for, equipment, components, materials, labor or subcontractors;
- adverse impacts from weather affecting DBMG's performance and timeliness of completion of projects, which could lead to increased costs and affect the quality, costs or availability of, or delivery schedule for, equipment, components, materials, labor or subcontractors;
- fluctuating revenue resulting from a number of factors, including the cyclical nature of the individual markets in which our customers operate;
- adverse outcomes of pending claims or litigation or the possibility of new claims or litigation, and the potential effect of such claims or litigation on DBMG's business, financial condition, results of operations or cash flow;
- our possible inability to raise additional capital when needed or refinance our existing debt, on attractive terms, or at all; and
- lack of necessary liquidity to provide bid, performance, advance payment and retention bonds, guarantees, or letters of credit securing DBMG's obligations under bids and contracts or to finance expenditures prior to the receipt of payment for the performance of contracts.

Life Sciences / Pansend Life Sciences, LLC

Our actual results or other outcomes of Pansend Life Sciences, LLC, and, thus, our Life Sciences segment, may differ from those expressed or implied by forward-looking statements contained herein due to a variety of important factors, including, without limitation, the following:

- our Life Sciences segment's ability to invest in development stage companies;
- our Life Sciences segment's ability to develop products and treatments related to its portfolio companies;
- medical advances in healthcare and biotechnology; and
- governmental regulation in the healthcare industry.

Spectrum / HC2 Broadcasting Holdings Inc.

Our actual results or other outcomes of Broadcasting, and, thus, our Spectrum segment, may differ from those expressed or implied by forward-looking statements contained herein due to a variety of important factors, including, without limitation, the following:

- our ability to attract advertisers during the COVID-19 pandemic;
- our Spectrum segment's ability to operate in highly competitive markets and maintain market share;
- our Spectrum segment's ability to effectively implement its business strategy or be successful in the operation of its business;
- our Spectrum's segment possible inability to raise additional capital when needed or refinance its existing debt, on attractive terms, or at all;
- new and growing sources of competition in the broadcasting industry; and
- FCC regulation of the television broadcasting industry.

Other

Our actual results or other outcomes of our Other segment may differ from those expressed or implied by forward-looking statements contained herein due to a variety of important factors, including, without limitation, the following:

- risks associated with our equity method investment that operates in China (i.e., HMN International Co., Ltd F/K/A Huawei Marine Systems Co. Limited, a Hong Kong holding company with a Chinese operating subsidiary), including the exercisability of New Saxon 2019 Ltd.'s put option pertaining to its 19% interest in HMN;
- the possibility that our sale of the remaining 19% interest of New Saxon in HMN to Hengtong may not be consummated in the anticipated timeframe, on the contemplated terms or at all; and
- the risk that unexpected costs will be incurred in connection with the completion of the sale of our interest in HMN to Hengtong.

We caution the reader that undue reliance should not be placed on any forward-looking statements, which speak only as of the date of this document. Neither we nor any of our subsidiaries undertake any duty or responsibility to update any of these forward-looking statements to reflect events or circumstances after the date of this document or to reflect actual outcomes, except as required by applicable law.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

None.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our management evaluated, with the participation of our Chief Executive Officer and Chief Financial Officer, the effectiveness of our disclosure controls and procedures as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934 as amended (the "Exchange Act") as of the end of the period covered by this report. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of September 30, 2022, our disclosure controls and procedures were effective. Disclosure controls and procedures mean our controls and other procedures that are designed to ensure that information required to be disclosed by us in our reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in our reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

There have been no changes in our internal control over financial reporting that occurred during the fiscal period ended September 30, 2022, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II - OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

The Company is subject to claims and legal proceedings that arise in the ordinary course of business. Such matters are inherently uncertain, and there can be no guarantee that the outcome of any such matter will be decided favorably to the Company or that the resolution of any such matter will not have a material adverse effect upon the Company's Condensed Consolidated Financial Statements. The Company does not believe that any of such pending claims and legal proceedings will have a material adverse effect on its Condensed Consolidated Financial Statements. The Company records a liability in its Condensed Consolidated Financial Statements for these matters when a loss is known or considered probable and the amount can be reasonably estimated. The Company reviews these estimates each accounting period as additional information is known and adjusts the loss provision when appropriate. If a matter is both probable to result in a liability and the amounts of loss can be reasonably estimated, the Company estimates and discloses the possible loss or range of loss to the extent necessary for the Condensed Consolidated Financial Statements not to be misleading. If the loss is not probable or cannot be reasonably estimated, a liability is not recorded in its Condensed Consolidated Financial Statements. See Note 17. Commitments and Contingencies to our unaudited Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q.

ITEM 1A. RISK FACTORS

Persistent inflation and economic uncertainty may negatively impact DBMG's business.

Inflation in the United States and worldwide has increased DBMG's costs and may result in additional cost increases, including of steel and welding wire components and other inputs that are critical to the completion of DBMG's projects, may cause additional shortages of supplies and components, may increase cost of borrowing, and may continue to reduce DBMG's purchasing power, all of which would have a negative impact on DBMG's results of operation. Due to competitive pressure and pressure from DBMG's customers, DBMG may not be able to offset the impacts of inflation in the price of its products. Additionally, continued inflation and economic uncertainty may result in DBMG's customers decreasing the scope, canceling, or delaying projects in process.

Our failure to meet the continued listing requirements of NYSE could result in a delisting of our securities, which in turn could adversely affect our financial condition and the market for our common stock.

On October 27, 2022, the Company was notified by NYSE that the average closing price of the Company's common stock had fallen below \$1.00 per share over a period of 30 consecutive trading days, which is the minimum average share price required by Section 802.01C of the NYSE Listed Company Manual ("Section 802.01C"). The Company has six months following receipt of the notification to regain compliance with the minimum share price requirement. If the Company does not regain compliance with the minimum share price requirement, we expect that our common stock will be delisted from NYSE. If the common stock ultimately were to be delisted from NYSE, it could negatively impact the Company by, among other things, (i) reducing the liquidity and market price of the Company's common stock; (ii) reducing the number of investors willing to hold or acquire the Company's common stock, which could negatively impact the Company's ability to raise equity financing; and (iii) limiting the Company's ability to sell its common stock in certain states within the United States, also potentially impacting the Company's ability to raise financing. If the Company's common stock is delisted from NYSE, the price paid by investors may not be recovered. As of the filing date of this Quarterly Report, the Company has not regained compliance with Section 802.01C.

ITEM 6. EXHIBITS

(a) Exhibits

Please note that the agreements included as exhibits to this Form 10-Q are included to provide information regarding their terms and are not intended to provide any other factual or disclosure information about INNOVATE Corp. or the other parties to the agreements. The agreements may contain representations and warranties by each of the parties to the applicable agreement that have been made solely for the benefit of the other parties to the applicable agreement and may not describe the actual state of affairs as of the date they were made or at any other time.

Exhibit Number	Description
10.1	First Amendment to Credit Agreement dated as of August 2, 2022, among DBM Global Inc. and the Other Borrowers, the Lenders, UMB Bank, as Administrative Agent and BMO Harris Bank N.A., as Syndication Agent (filed herewith).
10.2	Separation and Release Agreement by and between INNOVATE Corp. and Joseph A. Ferraro dated September 13, 2022 (incorporated by reference to Exhibit 10.1 to INNOVATE's Current Report on Form 8-K, filed on September 16, 2022) (File No. 001-35210).
10.3	Senior Secured Promissory Note, dated as of July 13, 2022 by and between R2 Technologies, Inc. and Lancer Capital LLC (filed herewith)
10.4	Senior Secured Promissory Note, dated as of August 8, 2022 by and between R2 Technologies, Inc. and Lancer Capital LLC (filed herewith)
31.1	Rule 13a-14(a)/15d-14(a) Certification of Chief Executive Officer (filed herewith).

Exhibit Number	Description
31.2	Rule 13a-14(a)/15d-14(a) Certification of Chief Financial Officer (filed herewith).
32.1*	Section 1350 Certification of Chief Executive Officer and Chief Financial Officer (furnished herewith).
101	The following materials from the registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2022, formatted in extensible business reporting language (XBRL); (i) Condensed Consolidated Statements of Operations for the three and nine months ended September 30, 2022 and 2021, (ii) Condensed Consolidated Statements of Comprehensive Income (Loss) for the three and nine months ended September 30, 2022 and 2021, (iii) Condensed Consolidated Balance Sheets as of September 30, 2022 and December 31, 2021, (iv) Condensed Consolidated Statements of Stockholders' (Deficit) Equity for the three and nine months ended September 30, 2022 and 2021, (v) Condensed Consolidated Statements of Cash Flows for the nine months ended September 30, 2022 and 2021, and (vi) Notes to Condensed Consolidated Financial Statements (filed herewith).
104	Inline XBRL for the cover page of this Quarterly Report on Form 10-Q, included in the Exhibit 101 Inline XBRL Document Set.

* These certifications are being "furnished" and will not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liability of that section. Such certifications will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934, as amended, except to the extent that the registrant specifically incorporates it by reference.

SIGNATURES

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

Date:

November 2, 2022

INNOVATE Corp.

By: /S/ MICHAEL J. SENA

Michael J. Sena
Chief Financial Officer
(Duly Authorized Officer and Principal Financial and Accounting Officer)

FIRST AMENDMENT TO CREDIT AGREEMENT

DATED AS OF

August 2, 2022

AMONG

DBM GLOBAL INC. AND THE OTHER BORROWERS,

THE LENDERS,

AND

**UMB BANK, N.A.,
AS ADMINISTRATIVE AGENT**

**BMO HARRIS BANK N.A.,
AS SYNDICATION AGENT**

FIRST AMENDMENT TO CREDIT AGREEMENT

THIS FIRST AMENDMENT TO CREDIT AGREEMENT is dated as of August 2, 2022 (the “Effective Date”), by and among **DBM GLOBAL INC.**, a Delaware corporation (“Holdings”), the other Borrowers listed on Schedule 1.1 hereto (together with Holdings, each a “Borrower” and collectively the “Borrowers”), the **LENDERS**, which are party hereto from time to time (each a “Lender” and collectively the “Lenders”) and **UMB BANK, N.A.**, a national banking association, as Letter of Credit Issuer and as Administrative Agent (the “Administrative Agent”).

IN CONSIDERATION of the mutual covenants, conditions and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed that:

ARTICLE I DEFINITIONS

When used herein, the following terms shall have the meanings specified:

1.1 Amendment. “Amendment” shall mean this First Amendment to Credit Agreement.

1.2 Credit Agreement. “Credit Agreement” shall mean the Credit Agreement by and among the Borrowers, the several financial institutions from time to time party thereto as Lenders, and the Administrative Agent, dated as of May 27, 2021, together with all of the Schedules and Exhibits attached thereto.

1.3 Other Terms. The other capitalized terms used in this Amendment shall have the definitions assigned in the Credit Agreement.

ARTICLE II AMENDMENTS

The Credit Agreement is amended as follows:

2.1 The Credit Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the bold, double-underlined text (indicated textually in the same manner as the following example: **underlined text**) as set forth in the Credit Agreement attached as Exhibit A hereto.

2.2 Except as expressly amended by this Amendment, all of the terms and conditions of the Credit Agreement shall remain in full force and effect and shall apply to any advance thereunder.

ARTICLE III REPRESENTATIONS AND WARRANTIES

Each Borrower hereby represents and warrants to the Administrative Agent and the Lenders that:

3.1 Credit Agreement. All of the representations and warranties made by Borrowers in the Credit Agreement are true and correct on the date of this Amendment, provided that Lenders acknowledge that steps have been taken to dissolve Schuff Steel Management Company – Colorado L.L.C. and Schuff Steel Management Company – Southeast L.L.C., and Lenders consent to such dissolution. No Default or Event of Default under the Credit Agreement has occurred and is continuing as of the date of this Amendment.

3.2 Authorization; Enforceability. The making, execution and delivery of this Amendment and performance of and compliance with the terms of the Credit Agreement, as amended have been duly authorized by all necessary corporate action and limited liability company action, as applicable, by Borrowers. This Amendment is the valid and binding obligation of each Borrower, enforceable against each Borrower in accordance with its terms.

3.3 Absence of Conflicting Obligations. The making, execution and delivery of this Amendment, and performance of and compliance with the terms of the Credit Agreement, as amended, do not violate any presently existing provision of law or the articles of incorporation, articles of organization, bylaws or operating agreement, as applicable, of any Borrower or any agreement to which any Borrower is a party or by which it is bound.

3.4 Collateral Documents. All of the Obligations, as amended by this Amendment, shall be secured by all of the Collateral Documents. The Borrowers acknowledge and agree that the Collateral Documents are fully enforceable against each Borrower party thereto strictly in accordance with their terms and the Borrowers hereby reaffirm each of the Collateral Documents and acknowledge and agree that the Liens created by the Collateral Documents are valid, effective, properly perfected

and enforceable first priority Liens, subject to Permitted Liens. Each of the Borrowers hereby reaffirms the grant of all Liens it has previously granted to the Administrative Agent.

3.5 Reaffirmation of Loan Documents. Each Borrower hereby (i) confirms that it has requested the Administrative Agent and the Lenders to enter into this Amendment, (ii) acknowledges that the Administrative Agent and the Lenders would not enter into this Amendment in the absence of the reaffirmation of each of the Loan Documents and the Obligations to which it is a party and that the Administrative Agent and the Lenders are thus relying on such reaffirmation and (iii) reaffirms each of the Loan Documents and the Obligations in each and every respect, including, without limitation, the validity of any and all obligations under each of the Loan Documents and the Obligations (as defined in the Credit Agreement, as amended by this Amendment). Each Borrower acknowledges and agrees that the Loan Documents all continue in full force and effect, and the Administrative Agent and the Lenders retain all of their rights and remedies under the Loan Documents. Each Borrower acknowledges and agrees that all Loan Documents and Collateral Documents previously executed by it shall secure all amounts owed by any Borrower to any one or more of the Administrative Agent and Lenders and their respective affiliates. Each Borrower hereby acknowledges and agrees that the

obligations which are secured by any Collateral Document executed by it shall include all Obligations, including, without limitation, all principal of and interest on the Notes and the Loans, as all such Obligations are amended as provided in the Credit Agreement as amended by this Amendment, and all obligations with respect to Letters of Credit and Hedging Obligations.

3.6 Governing Law; Jurisdiction; Waiver of Jury Trial. The governing law, jurisdiction and waiver of jury trial provisions contained in Article XV of the Credit Agreement are hereby incorporated by reference *mutatis mutandis*.

ARTICLE IV MISCELLANEOUS

4.1 Continuance of Credit Agreement. Except as specifically amended by this Amendment, the Credit Agreement shall remain in full force and effect.

4.2 Survival. All agreements, representations and warranties made in this Amendment or in any documents delivered pursuant to this Amendment shall survive the execution of this Amendment and the delivery of any such document.

4.3 Counterparts; Headings. This Amendment may be executed in several counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same agreement. Article and Section headings in this Amendment are inserted for convenience of reference only and shall not constitute a part hereof.

4.4 Severability. Any provision of this Amendment which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Amendment or affecting the validity or enforceability of such provision in any other jurisdiction.

4.5 Effectiveness. This Amendment shall be effective as of the Effective Date upon receipt by the Administrative Agent of each of the following, which are in form and substance acceptable to the Administrative Agent and executed as appropriate:

(a) this Amendment;

(b) a Revolving Loan Note in favor of each Lender, each in the amount of such Lender's Revolving Loan Commitment;

(c) Legal Opinion of Borrowers' counsel;

(d) copies of resolutions of each Borrower's and each Guarantor's Board of Directors (or similar governing body) authorizing the execution, delivery and performance of, as applicable, this Amendment, the Consent and Ratification, the Revolving Loan Notes and such other documents as Administrative Agent may request and the consummation of the transactions contemplated hereby and thereby, together with specimen signatures of the persons authorized to execute such documents on each Borrower's and each Guarantor's behalf, all certified in each instance by its Secretary or Assistant Secretary; and

(e) receipt by Administrative Agent of such additional supporting documents and materials as Administrative Agent may reasonably request.

4.6 Fees and Expenses. The Borrowers shall pay all reasonable fees and expenses of the Administrative Agent related to the execution and delivery of this Amendment and the related documents including reasonable attorneys' fees and title company expenses related thereto.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Credit Agreement as of the day and year first written above.

ADMINISTRATIVE AGENT AND LENDER:

UMB BANK, N.A., as a Lender and as Administrative Agent

By: /s/ Kyle McMillian
Name: Kyle McMillian
Title: Senior Vice President

[Signature Page - First Amendment to Credit Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Credit Agreement as of the day and year first written above.

SYNDICATION AGENT AND LENDER:

BMO HARRIS BANK N.A., as a Lender and as Syndication Agent

By: /s/ James Stephens
Name: James Stephens

Contact:
BMO HARRIS BANK N.A.
320 S. Canal, 15th Floor
Chicago, IL 60606
Attn: John Armstrong

[Signature Page - First Amendment to Credit Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Credit Agreement as of the day and year first written above.

LENDER:

ARIZONA BANK & TRUST, as a Lender

By: /s/ Troy R. Norris
Name: Troy R. Norris
Title: SVP

[Signature Page - First Amendment to Credit Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Credit Agreement as of the day and year first written above.

LENDER:

FIFTH THIRD BANK, NATIONAL ASSOCIATION, as a Lender

By: /s/ Patrick Roy
Name: Patrick Roy
Title: Commercial RM, AVP

[Signature Page - First Amendment to Credit Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Credit Agreement as of the day and year first written above.

LENDER:

ACADEMY BANK, as a Lender

By: /s/ Brian Bower
Name: Brian Bower
Title: SVP

[Signature Page - First Amendment to Credit Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Credit Agreement as of the day and year first written above.

BORROWERS:

AITKEN MANUFACTURING INC.

By: /s/ Michael R. Hill
Michael R. Hill, Vice President, Chief Financial Officer,
Secretary, and Treasurer

DBM GLOBAL INC.

By: /s/ Michael R. Hill
Michael R. Hill, Vice President, Chief Financial Officer,
Secretary, and Treasurer

DBM VIRCON SERVICES (USA) INC.

By: /s/ Michael R. Hill
Michael R. Hill, Chairman, President, Secretary, and
Treasurer

GRAYWOLF INDUSTRIAL, INC.

By: /s/ Michael R. Hill
Michael R. Hill, Vice President

GRAYWOLF INTEGRATED CONSTRUCTION COMPANY

By: /s/ Michael R. Hill
Michael R. Hill, Vice President

**SCHUFF STEEL MANAGEMENT COMPANY –
SOUTHWEST, INC.**

By: /s/ Michael R. Hill
Michael R. Hill, Vice President, Chief Financial Officer,
Secretary, and Treasurer

[Signature Page - First Amendment to Credit Agreement]

SCHUFF STEEL COMPANY

By: /s/ Michael R. Hill
Michael R. Hill, Vice President, Chief Financial Officer,
Secretary, and Treasurer

MILCO NATIONAL CONSTRUCTORS, INC.

By: /s/ Michael R. Hill
Michael R. Hill, Vice President

**GRAYWOLF INTEGRATED CONSTRUCTION COMPANY –
SOUTHEAST, INC.**

By: /s/ Michael R. Hill
Michael R. Hill, Vice President

BANKER STEEL CO., L.L.C.

By: /s/ Michael R. Hill
Michael R. Hill, Vice President and Treasurer

BANKER STEEL HOLDCO LLC

By: /s/ Michael R. Hill
Michael R. Hill, Chief Financial Officer and Treasurer

BANKER STEEL SOUTH, LLC

By: /s/ Michael R. Hill
Michael R. Hill, Vice President and Treasurer

DERR AND ISBELL CONSTRUCTION, LLC

By: /s/ Michael R. Hill
Michael R. Hill, Vice President and Treasurer

INNOVATIVE ENGINEERING SOLUTIONS LLC

By: /s/ Michael R. Hill
Michael R. Hill, Vice President and Treasurer

LYNCHBURG FREIGHT & SPECIALTY LLC

By: /s/ Michael R. Hill
Michael R. Hill, Vice President and Treasurer

MEMCO LLC

By: /s/ Michael R. Hill
Michael R. Hill, Vice President and Treasurer

NYC CONSTRUCTORS, LLC

By: /s/ Michael R. Hill
Michael R. Hill, Vice President and Treasurer

NYC EQUIPMENT COMPANY, LLC

By: /s/ Michael R. Hill
Michael R. Hill, Vice President and Treasurer

NYC EQUIPMENT COMPANY, LLC

By: /s/ Michael R. Hill
Michael R. Hill, Vice President and Treasurer

NYCC CONSTRUCTION SERVICES, LLC

By: /s/ Michael R. Hill
Michael R. Hill, Vice President and Treasurer

US CONSTRUCTION SERVICES INC.

By: /s/ Michael R. Hill
Michael R. Hill, Vice President and Treasurer

US ERECTORS LLC

By: /s/ Michael R. Hill
Michael R. Hill, Vice President and Treasurer

[Signature Page - First Amendment to Credit Agreement]

CONSENT OF GUARANTORS

Each of the undersigned Guarantors (a) is a party to the Guaranty dated May 27, 2021 and executed by the Guarantors in favor of Administrative Agent and is also a party to certain other Loan Documents, (b) is not a party to the foregoing First Amendment to Credit Agreement, (b) consents to the foregoing First Amendment to Credit Agreement, and (c) reaffirms such Guaranty and each of the Loan Documents to which it is a party and the Obligations in each and every respect, including, without limitation, the validity of any and all obligations under each of the Loan Documents and the Obligations (as defined in the Credit Agreement, as amended by the foregoing First Amendment to Credit Agreement). Each of the Guarantors agree that all of the Obligations, as amended by the foregoing First Amendment to Credit Agreement, shall be secured by all of the Collateral Documents to which such Guarantors are a party. Each Guarantor acknowledges and agrees that all Loan Documents and Collateral Documents previously executed by it shall secure all amounts owed by any Borrower to any one or more of the Administrative Agent and Lenders and their respective affiliates. Each Guarantor hereby acknowledges and agrees that the obligations which are secured by any Collateral Document executed by it shall include all Obligations, including, without limitation, all principal of and interest on the Notes and the Loans, as all such Obligations are amended as provided in the Credit Agreement as amended by the foregoing First Amendment to Credit Agreement, and all obligations with respect to Letters of Credit and Hedging Obligations. The Guarantors acknowledge and agree that the Collateral Documents to which such Guarantors a party are fully enforceable against each Guarantor party thereto strictly in accordance with their terms and the Guarantors hereby reaffirm each of the Collateral Documents and acknowledge and agree that the Liens created by the Collateral Documents are valid, effective, properly perfected and enforceable first priority Liens, subject to Permitted Liens. Each of the Guarantors hereby reaffirms the grant of all Liens it has previously granted to the Administrative Agent.

ADDISON STRUCTURAL SERVICES, INC.

By: /s/ Michael R. Hill
Michael R. Hill, Chairman, President, Secretary, and Treasurer

CB-HORN HOLDINGS, INC.

By: /s/ Michael R. Hill
Michael R. Hill, Vice President

[Signature Page - Consent of Guarantors (First Amendment to Credit Agreement)]

DBM GLOBAL HOLDINGS INC.

By: /s/ Michael R. Hill
Michael R. Hill, Chairman, President, Secretary, and Treasurer

DBM GLOBAL – NORTH AMERICA INC.

By: /s/ Michael R. Hill
Michael R. Hill, Chairman, President, Secretary, and Treasurer

INNOVATIVE STRUCTURAL SYSTEMS INC.

By: /s/ Michael R. Hill
Michael R. Hill, Chairman, President, Secretary, and Treasurer

M. INDUSTRIAL MECHANICAL, INC.

By: /s/ Michael R. Hill
Michael R. Hill, Vice President

MIDWEST ENVIRONMENTAL, INC.

By: /s/ Michael R. Hill
Michael R. Hill, Vice President

[Signature Page - Consent of Guarantors (First Amendment to Credit Agreement)]

ON-TIME STEEL MANAGEMENT HOLDING, INC.

By: /s/ Michael R. Hill
Michael R. Hill, Vice President, Chief Financial Officer,
Secretary, and Treasurer

PDC SERVICES (USA) INC.

By: /s/ Michael R. Hill
Michael R. Hill, Chairman, President, Secretary, and Treasurer

QUINCY JOIST COMPANY

By: /s/ Michael R. Hill
Michael R. Hill, Vice President, Chief Financial Officer,
Secretary, and Treasurer

SCHUFF PREMIER SERVICES LLC

By: /s/ Michael R. Hill
Michael R. Hill, Manager

SCHUFF STEEL – ATLANTIC, LLC

By: /s/ Michael R. Hill
Michael R. Hill, Manager

[Signature Page - Consent of Guarantors (First Amendment to Credit Agreement)]

TITAN FABRICATORS, INC.

By: /s/ Michael R. Hill
Michael R. Hill, Vice President

[Signature Page - Consent of Guarantors (First Amendment to Credit Agreement)]

SCHEDULE 1.1**BORROWERS**

ENTITY	JURISDICTION INCORPORATED/ORGANIZED
DBM Global Inc.	Delaware
GrayWolf Industrial, Inc.	Delaware
Schuff Steel Management Company – Southwest, Inc.	Delaware
Schuff Steel Company	Delaware
Aitken Manufacturing Inc.	Delaware
DBM Vircon Services (USA) Inc.	Arizona
GrayWolf Integrated Construction Company	Delaware
Milco National Constructors, Inc.	Delaware
GrayWolf Integrated Construction Company-Southeast, Inc.	Georgia
Banker Steel Holdco LLC	Delaware
Banker Steel Co., L.L.C.	Delaware
Banker Steel South, LLC	Virginia
US Erectors LLC	Delaware
NYC Constructors, LLC	Delaware
Derr and Isbell Construction, LLC	Texas
Memco LLC	Delaware
Lynchburg Freight & Specialty LLC	Delaware
NYC Equipment Company, LLC	Virginia
Innovative Engineering Solutions LLC	Delaware
US Construction Services Inc.	Delaware
NYCC Construction Services, LLC	Delaware

EXHIBIT A

Amended Credit Agreement

See Attached

CREDIT AGREEMENT

DATED AS OF May 27, 2021

AMONG

DBM GLOBAL INC. AND THE OTHER BORROWERS, THE

LENDERS,

AND

UMB BANK, N.A.,

AS ADMINISTRATIVE AGENT

BMO HARRIS BANK N.A., AS

SYNDICATION AGENT

TABLE OF CONTENTS

		Page
ARTICLE I	DEFINITIONS	1
1.1	Definitions	1
1.2	Computation of Time Periods	22
1.3	Other Definitional Terms; Interpretative Provisions; Governing Decisions	22
ARTICLE II	THE CREDITS	23
2.1	Revolving Commitment	23
2.2	Term Loan Commitment	23
2.3	Required and Optional Payments; Termination	23
2.4	Revolving Loan Borrowing; Ratable Loans	25
2.5	Interest Rates	25
2.6	Fees	26
2.7	Method of Payment of Loans	26
2.8	Evidence of Indebtedness	27
2.9	Telephonic Notices	27
2.1	Calculation and Payment of Interest	28
2.11	Notification of Advances, Interest Rates, and Prepayments	28
2.12	Lending Installations	28
2.13	Non-Receipt of Funds by the Administrative Agent	28
2.14	Facility Letters of Credit	29
2.15	Replacement of Lender	33
2.16	Limitation of Interest	34
2.17	Defaulting Lenders	34
ARTICLE III	YIELD PROTECTION; TAXES	38
3.1	Yield Protection	38
3.2	Changes in Capital Adequacy Regulations	39
3.3	Taxes	40
ARTICLE IV	CONDITIONS PRECEDENT	44
4.1	Initial Credit Extension	44
4.2	Each Credit Extension	48
4.3	Surveys	48
4.4	Collateral Access Agreements	49
ARTICLE V	REPRESENTATIONS AND WARRANTIES	49

TABLE OF CONTENTS
(continued)

	Page	
5.1	Existence and Standing	49
5.2	Authorization and Validity	49
5.3	No Conflict; Government Consent	49
5.4	Financial Statements	50
5.5	Material Adverse Change	50
5.6	Taxes	50
5.7	Litigation and Contingent Obligations	50
5.8	Subsidiaries	50
5.9	ERISA	50
5.1	Accuracy of Information	51
5.11	Regulations; Margin Stock	51
5.12	Material Agreements	51
5.13	Compliance with Laws	51
5.14	Ownership of Properties	51
5.15	Plan Assets; Prohibited Transactions	51
5.16	Environmental Matters	52
5.17	Investment Company Act	52
5.18	Insurance	52
5.19	Subordinated Indebtedness	52
5.2	Solvency	52
5.21	No Default	53
5.22	Anti-Corruption Laws; Sanctions	53
5.23	Real Property	53
5.24	Intellectual Property	53
ARTICLE VI	COVENANTS	53
6.1	Financial Reporting	53
6.2	Use of Proceeds	54
6.3	Notice of Material Events	55
6.4	Conduct of Business	56
6.5	Taxes	56
6.6	Insurance	56
6.7	Compliance with Laws and Material Contractual Obligations	56

TABLE OF CONTENTS
(continued)

	Page	
6.8	Maintenance of Properties	56
6.9	Books and Records; Inspection	57
6.10	Indebtedness	57
6.11	Merger	58
6.12	Sale of Assets	59
6.13	Acquisitions	59
6.14	Liens	59
6.15	Affiliates	60
6.16	Subordinated Indebtedness	61
6.17	Sale of Accounts	61
6.18	Restricted Payments	61
6.19	Financial Covenants	61
6.20	Collateral Audits/Inspections	61
6.21	Anti-Money Laundering Compliance	62
6.22	Deposit Accounts	62
6.23	Investments	62
6.24	Further Assurances	63
ARTICLE VII	DEFAULTS	63
ARTICLE VIII	ACCELERATION, WAIVERS, AMENDMENTS AND REMEDIES	66
8.1	Acceleration; Remedies	66
8.2	Application of Funds	67
8.3	Amendments	68
8.4	Preservation of Rights	69
ARTICLE IX	GENERAL PROVISIONS	69
9.1	Survival of Representations	69
9.2	Governmental Regulation	69
9.3	Headings	70
9.4	Entire Agreement	70
9.5	Several Obligations; Benefits of this Agreement	70
9.6	Expenses; Indemnification	70
9.7	Numbers of Documents	71
9.8	Accounting	71

TABLE OF CONTENTS
(continued)

	Page	
9.9	Severability of Provisions	71
9.10	Nonliability of Lenders	72
9.11	Confidentiality	72
9.12	Nonreliance	72
9.13	Disclosure	73
9.14	USA PATRIOT ACT NOTIFICATION	73
9.15	Borrower Agent Designation; Nature of Relationship	73
9.16	Waiver of Subrogation	74
9.17	Common Enterprise	74
9.18	Concerning Joint and Several Liability of Borrowers	74
9.19	Conflicts	76
9.20	Closing Date Joinder	76
ARTICLE X	THE ADMINISTRATION AGENT	77
10.1	Appointment; Nature of Relationship	77
10.2	Powers	77
10.3	General Immunity	77
10.4	No Responsibility for Loans, Recitals, etc.	77
10.5	Action on Instructions of Lenders	78
10.6	Employment of Agents and Counsel	78
10.7	Reliance on Documents; Counsel	78
10.8	Administrative Agent's Reimbursement and Indemnification	79
10.9	Notice of Event of Default	79
10.10	Rights as a Lender	79
10.11	Lender Credit Decision, Legal Representation	80
10.12	Successor Administrative Agent	80
10.13	Delegation to Affiliates	81
10.14	Execution of Collateral Documents	81
10.15	Collateral and Guarantor Releases	81
10.16	No Advisory or Fiduciary Responsibility	82
10.17	Acknowledgements Regarding Erroneous Payments	82
ARTICLE XI	SETTOFF; RATABLE PAYMENTS	83
11.1	Setoff	83

TABLE OF CONTENTS
(continued)

		Page
11.2	Ratable Payments	84
ARTICLE XII	BENEFIT OF AGREEMENT; ASSIGNMENT, PARTICIPATIONS	84
12.1	Successors and Assigns	84
12.2	Participations	85
12.3	Assignments	86
ARTICLE XIII	NOTICES	88
13.1	Notices; Effectiveness; Electronic Communication	88
ARTICLE XIV	COUNTERPARTS; INTEGRATION; EFFECTIVENESS; ELECTRONIC EXECUTION; ELECTRONIC RECORDS	90
14.1	Counterparts; Effectiveness	90
14.2	Electronic Execution of Assignments	90
14.3	Electronic Records	90
ARTICLE XV	CHOICE OF LAW; CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL; STATUTORY STATEMENTS	91
15.1	CHOICE OF LAW	91
15.2	CONSENT TO JURISDICTION	91
15.3	WAIVER OF JURY TRIAL	91

TABLE OF CONTENTS
(continued)

Page

Exhibit A – Required Opinions
Exhibit B – Form of Compliance Certificate
Exhibit C – Form of Assignment and Assumption Agreement
Exhibit D – Form of Borrowing Notice
Exhibit E-1 – Form of Revolving Loan Note
Exhibit E-2 – Form of Term Note
Exhibit H – Closing Documents

Schedule 1.1 – List of Borrowers
Schedule 1.2 – List of Guarantors
Schedule 2 – Lenders, Commitments, and Pro Rata Shares
Schedule 4.4 – Collateral Access Agreement Locations
Schedule 5.8 – Subsidiaries
Schedule 5.23 – Mortgaged Property
Schedule 5.23A – Real Property
Schedule 6.10 – Debt
Schedule 6.14 – Existing Liens
Schedule 6.23 - Investments

CREDIT AGREEMENT

This Credit Agreement (the “Agreement”), dated as of May 27, 2021, is by and among **DBM GLOBAL INC.**, a Delaware corporation (“Holdings”), the other Borrowers listed on Schedule 1.1 hereto (together with Holdings, each a “Borrower” and collectively the “Borrowers”), the **LENDERS**, which are party hereto from time to time (each a “Lender” and collectively the “Lenders”) and **UMB BANK, N.A.**, a national banking association, as Letter of Credit Issuer and as Administrative Agent. The parties hereto agree as follows:

PRELIMINARY STATEMENTS:

(1) Contemporaneously with the making of the initial disbursement of proceeds of the Loans, the Initial Borrowers will consummate the Banker Steel Acquisition and the Banker Steel Borrowers will automatically be joined hereto as provided in Section 9.20.

(2) The Borrowers have requested that the Lenders make the Loans to the Borrowers to pay existing indebtedness, for the Banker Steel Acquisition and for working capital.

(3) The Lenders are willing to make the Loans, subject to and upon the terms and conditions set forth herein, and in reliance on the terms and provisions of Section 9.20.

ARTICLE I

DEFINITIONS

1.1 Definitions.

As used in this Agreement:

“Acquisition” means any transaction, or any series of related transactions, consummated on or after the date of this Agreement, by which a Borrower or any of its Subsidiaries (i) acquires any going-concern business or all or substantially all of the assets of any firm, corporation or limited liability company, or division thereof, whether through purchase of assets, merger or otherwise or (ii) directly or indirectly acquires (in one transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes) of the securities of a corporation which have ordinary voting power for the election of directors (other than securities having such power only by reason of the happening of a contingency) or a majority (by percentage or voting power) of the outstanding ownership interests of a partnership or limited liability company.

“Administrative Agent” means UMB Bank, N.A., in its capacity as contractual representative of the Lenders pursuant to Article X, and not in its individual capacity as a Lender.

“Advance” means a borrowing hereunder of Revolving Loans or Term Loans. “Affected Lender”

is defined in Section 2.15.

“Affiliate(s)” of any Person means any other Person directly or indirectly controlling, controlled by or under common control with such Person, including, without limitation, such Person’s Subsidiaries. A Person shall be deemed to control another Person if the controlling Person owns 10% or more of any class of Equity Interests of the controlled Person or possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of the controlled Person, whether through ownership, by contract or otherwise.

“Agreement” means this Credit Agreement, as it may be amended or modified and in effect from time to time.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to a Borrower or its Subsidiaries from time to time concerning or relating to bribery or corruption.

“Authorized Officer” means any of the President or Chief Financial Officer of Holdings, acting singly.

“Available Aggregate Revolving Commitment” means, at any time, the Revolving Commitments then in effect *minus* the Revolving Exposures at such time.

“Banker Steel” means Banker Steel Holdco LLC.

“Banker Steel Acquisition” means the acquisition of Banker Steel and its subsidiaries on terms previously disclosed to the Lenders.

“Banker Steel Acquisition Documents” means, collectively, (a) the Banker Steel Purchase Agreement, (b) the other documents, instruments and agreements relating to the Baker Steel Acquisition.

“Banker Steel Borrowers” means the Borrowers identified as Banker Steel Borrowers on Schedule 1.1.

“Banker Steel Purchase Agreement” means the Membership Interest Purchase Agreement dated March 12, 2021 among Bridge Fabrication Banker Holdings LLC, The Banker Family Irrevocable Trust #3 U/A/D December 22, 2009, Chesley F. McPhatter, III, and Richard Plant, as the sellers, Bridge Fabrication Banker Holdings LLC, as the sellers’ representative, and Holdings, as the purchaser.

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

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

“Borrower” and “Borrowers” shall have the meaning ascribed to them in the opening paragraph of this Agreement and shall include any other parties who may become Borrowers hereunder by joinder or otherwise.

“Borrower Agent” is defined in Section 9.15.

“Borrowing Date” means a date on which an Advance is made or a Facility Letter of Credit is issued hereunder.

“Borrowing Notice” is defined in Section 2.4.

“Business Day” means a day (other than a Saturday or Sunday) on which banks generally are open in Phoenix, Arizona for the conduct of substantially all of their commercial lending activities and interbank wire transfers can be made on the Fedwire system.

“Capital Expenditures” means, without duplication, any expenditures for any purchase or other acquisition of any asset which would be classified as a fixed or capital asset on a consolidated balance sheet of Holdings and its Subsidiaries prepared in accordance with GAAP.

“Cash Management Services” means any banking services that are provided (i) to a Borrower or any Subsidiary by a Person that is the Administrative Agent, the Letter of Credit Issuer or any other Lender (or any Affiliate of any of the foregoing) at the time such banking service is entered into, or (ii) to a Borrower or any Subsidiary by a Person at the time such Person becomes the Administrative Agent, the Letter of Credit Issuer or any other Lender (or any Affiliate of any of the foregoing), including without limitation: (a) credit cards, (b) credit card processing services, (c) debit cards, (d) purchase cards, (e) stored value cards, (f) freight payable transactions, (g) automated clearing house or wire transfer services, or (h) treasury management, including controlled disbursement, consolidated account, lockbox, overdraft, return items, sweep and interstate depository network services.

“Change in Control” means (a) Holdings shall cease to own directly or indirectly, free and clear of all Liens or other encumbrances, 100% of the outstanding voting Equity Interests of each other Borrower, each Guarantor and each Foreign Subsidiary; or (b) HC2 Holdings shall cease to own, directly or indirectly, free and clear of Liens and other encumbrances, at least 51% of the outstanding voting Equity Interests of Holdings, or (c) the acquisition, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect on the date hereof) of Equity Interests representing more than 20% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of HC2 Holdings, other than any such Person or group holding more than 20% of such voting power on the date hereof.

“Change in Law” means the adoption of or change in any law, governmental or quasi- governmental rule, regulation, policy, guideline, interpretation, or directive (whether or not having the force of law) or in the interpretation, promulgation, implementation or administration thereof by any Governmental or quasi-Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, including, notwithstanding the foregoing, all requests, rules, guidelines or directives (x) in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act or (y) promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States financial regulatory authorities, in each case of clauses (x) and (y), regardless of the date enacted, adopted, issued, promulgated or implemented, or compliance by any Lender or applicable Lending Installation or the Letter of Credit Issuer with any request or directive (whether or not having the force of law) of any such authority, central

bank or comparable agency.

“Code” means the Internal Revenue Code of 1986, as amended, reformed or otherwise modified from time to time.

“Collateral” means any and all Property and proceeds thereof in which a security interest or Lien is granted or is required to be granted by any Borrower or Guarantor or any Subsidiaries of Holdings to secure all or any portion of the Obligations. Notwithstanding anything herein or in any other Loan Document to the contrary, except as expressly stated below in this definition of “Collateral,” in no event shall the Collateral be deemed to include (a) any of the outstanding equity interests in a Foreign Subsidiary (i) in excess of 65% of the voting power of all classes of equity interests of such Foreign Subsidiary entitled to vote in the election of directors or other similar body of such Foreign Subsidiary, or (ii) to the extent that the pledge thereof is prohibited by the laws of the jurisdiction of such Foreign Subsidiary’s organization; (b) any equity interest in any Foreign Subsidiary that is not a first-tier Subsidiary of any one or more Borrowers or Guarantors; (c) any lease, license, contract, property rights or agreement to which a Borrower or a Guarantor is a party or any such Borrower’s or Guarantor’s rights or interests thereunder, if, and for so long as and to the extent that, the grant of the security interest would constitute or result in (i) the abandonment, invalidation or unenforceability of any material right, title or interest of such Borrower or Guarantor therein, or (ii) a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract, property rights or agreement (other than to the extent that any item referenced in the foregoing clause (i) or (ii) would be rendered ineffective or would not occur pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the applicable Uniform Commercial Code (or any successor provision or provisions), any other applicable law or principles of equity), provided, however, that the security interest (x) shall attach immediately when the condition causing the foregoing clause (i) or (ii) to apply is remedied, (y) shall attach immediately to any severable term of such lease, license, contract, property rights or agreement to the extent that such attachment does not result in any of the consequences specified in (i) or (ii) above, and (z) shall attach immediately to any such lease, license, contract, property rights or agreement to which the account debtor or such Borrower’s or Guarantor’s counterparty has consented to such attachment; (d) any equity interest acquired after the date hereof that is an equity interest in any entity other than a Subsidiary of any Borrower or Guarantor, if (i) the terms of the organizational documents of the issuer of such equity interests do not permit the grant of the security interest in such equity interests by the owner thereof and the applicable Borrower or Guarantor, after employing commercially reasonable efforts, has been unable to obtain any approval or consent to the creation of the security interest therein that is required under such organizational documents, (ii) such acquisition is permitted under this Agreement, and (iii) Required Lenders have consented to such organizational documents; and (e) any application to register any trademark or service mark prior to the filing under applicable law of a certified statement of use (or the equivalent) for such trademark or service mark to the extent the creation of a security interest therein or the grant of a mortgage thereon would void or invalidate such trademark or service mark. Notwithstanding that as of the Effective Date Collateral does not include any of the outstanding equity interests in a Foreign Subsidiary in excess of 65% of the voting power of all classes of equity interests of such Foreign Subsidiary entitled to vote in the election of directors or other similar body of such Foreign Subsidiary, Administrative Agent may require that such equity interests in one or more first-tier Foreign Subsidiaries of any one or more Borrowers or Guarantors be added as collateral to the extent that the pledge thereof is not

prohibited by the laws of the jurisdiction of such Foreign Subsidiary's organization and the pledge thereof will not result in adverse tax consequences to the Borrower.

"Collateral Documents" means, collectively, the Security Agreements, and all other agreements, instruments and documents that are intended to create, perfect or evidence Liens upon the Collateral as security for payment of the Obligations, including without limitation, all other security agreements, pledge agreements, financing statements, mortgages, assignments and deeds of trust, whether now, or hereafter executed by one or more of Borrowers, Guarantors or any Subsidiaries of Holdings and delivered to the Administrative Agent.

"Collateral Shortfall Amount" is defined in Section 8.1(a).

"Commitment" means a Term Loan Commitment or a Revolving Commitment.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Contingent Obligation" of a Person means any agreement, undertaking or arrangement by which such Person assumes, guarantees, endorses, contingently agrees to purchase or provide funds for the payment of, or otherwise becomes or is contingently liable upon, the obligation or liability of any other Person, or agrees to maintain the net worth or working capital or other financial condition of any other Person, or otherwise assures any creditor of such other Person against loss, including, without limitation, any comfort letter, operating agreement, take-or-pay contract or the obligations of any such Person as general partner of a partnership with respect to the liabilities of the partnership.

"Control Agreement" means an agreement, in form and substance reasonably satisfactory to the Administrative Agent, among a Borrower or any Subsidiary, a banking institution holding such Person's funds, and the Administrative Agent with respect to collection and control of all deposits and balances held in an account maintained by such Person with such banking institution.

"Credit Extension" means the making of an Advance or the issuance of a Facility Letter of Credit hereunder.

"Debtor Relief Laws" means the Bankruptcy Code of the United States of America, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

"Default" means an event which but for the lapse of time or the giving of notice, or both, would constitute an Event of Default.

"Defaulting Lender" means, subject to Section 2.17(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within three (3) Business Days after the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and Holdings in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any

applicable default, shall be specifically identified in such writing) has not been satisfied or waived, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within three (3) Business Days after the date when due, (b) has notified Holdings and the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or Holdings, to confirm in writing to the Administrative Agent and Holdings that it will comply with its prospective funding obligations hereunder (*provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and Holdings), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets (other than an Undisclosed Administration), including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.17(b)) upon delivery of written notice of such determination to Holdings and each Lender.

"Default Rate" has the meaning provided in Section 2.5.2

"Deposits" is defined in Section 11.1.

"Disposition" means a sale, transfer or other disposition of Property.

"Dollar" and "\$" means the lawful currency of the United States of America.

"Dollar Amount" means, on any date of determination with respect to any amount, such amount in Dollars as determined by the Administrative Agent.

"Domestic Subsidiary" means any Subsidiary other than a Foreign Subsidiary.

"EBITDA" means, for any period, Net Income for such period plus (a) without duplication and to the extent deducted in determining Net Income for such period, the sum of (i) Interest Expense for such period, (ii) income tax expense for such period, (iii) all amounts attributable to depreciation and amortization expense for such period, and (iv) to the extent

approved by Administrative Agent, non-cash and non-recurring expenses, minus (b) without duplication and to the extent included in Net Income, (i) any cash payments made during such period in respect of non-cash charges taken in a prior period and (ii) any extraordinary gains and any non-cash items of income for such period, all calculated for Holdings and its Subsidiaries on a consolidated basis in accordance with GAAP. Notwithstanding the foregoing, for purposes of this Agreement, the EBITDA of Holdings and its Subsidiaries shall be deemed to be the following amounts for the periods set forth below:

<u>Period</u>	<u>EBITDA Amount</u>
First Quarter Ending September 26, 2020	\$29,046,000.00
Fiscal Quarter Ending January 2, 2021	\$32,952,000.00
Fiscal Quarter Ending April 3, 2021	\$17,959,000.00

“ECP” means an “eligible contract participant” as defined in Section 1(a)(18) of the Commodity Exchange Act or any regulations promulgated thereunder and the applicable rules issued by the Commodity Futures Trading Commission and/or the SEC.

“Effective Date” means the date on which the conditions specified in Section 4.1 are satisfied.

“Eligible Assignee” means any Person except a natural Person (or holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person), a Borrower, any of a Borrower’s Affiliates or Subsidiaries or any Defaulting Lender or any of its Subsidiaries.

“Environmental Indemnification Agreement” means the Environmental Indemnification Agreement dated the date hereof and executed by Borrowers and Guarantors in favor of Administrative Agent, as it may be amended, restated otherwise modified from time to time.

“Environmental Laws” means any and all federal, state, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements and other governmental restrictions relating to (i) the protection of the environment, (ii) personal injury or property damage relating to the release or discharge of Hazardous Materials, (iii) emissions, discharges or releases of pollutants, contaminants, hazardous substances or wastes into surface water, groundwater, land or air, or (iv) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, hazardous substances or wastes or the clean-up or other remediation thereof.

“Equity Interests” means all shares, interests or other equivalents, however designated, of or in a corporation, limited liability company, or partnership, whether or not voting, including but not limited to common stock, member interests, partnership interests, warrants, preferred stock, convertible debentures, and all agreements, instruments and documents convertible, in whole or in part, into any one or more or all of the foregoing.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any rule or regulation issued thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with a Borrower or Guarantor, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the failure with respect to any Plan to satisfy the “minimum funding standard” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by a Borrower, a Guarantor or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by a Borrower, a Guarantor or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by a Borrower, a Guarantor or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal of a Borrower, a Guarantor or any ERISA Affiliate from any Plan or Multiemployer Plan; or (g) the receipt by a Borrower, a Guarantor or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from a Borrower, a Guarantor or any ERISA Affiliate of any notice, concerning the imposition upon a Borrower, a Guarantor or any ERISA Affiliate of withdrawal liability under Section 4201 of ERISA or a determination that a Multiemployer Plan is, or is expected to be, insolvent, within the meaning of Title IV of ERISA.

“Event of Default” is defined in Article VII.

“Excluded Swap Obligation” means, with respect to any Borrower or Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guarantee of such Borrower or Guarantor of, or the grant by such Borrower or Guarantor of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Borrower or Guarantor’s failure for any reason to constitute an ECP at the time the guarantee of such Borrower or Guarantor or the grant of such security interest becomes or would become effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee or security interest is or becomes illegal.

“Excluded Taxes” means, in the case of each Lender or applicable Lending Installation, the Letter of Credit Issuer, and the Administrative Agent, (i) Taxes imposed on its overall net income, franchise Taxes, and branch profits Taxes imposed on it, by the respective jurisdiction under the laws of which such Lender, the Letter of Credit Issuer or the Administrative Agent is incorporated or is organized or in which its principal executive office is located or, in the case of

a Lender, in which such Lender's applicable Lending Installation is located, (ii) in the case of a Non-U.S. Lender, any U.S. federal withholding Tax that is imposed on amounts payable to such Non-U.S. Lender pursuant to the laws in effect at the time such Non-U.S. Lender becomes a party to this Agreement or designates a new Lending Installation, except in each case to the extent that, pursuant to Section 3.3(a), amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Installation, or is attributable to the Non-U.S. Lender's failure to comply with Section 3.3(f), and (iii) any U.S. federal withholding Taxes imposed by FATCA.

"Facility Letter of Credit" is defined in Section 2.14(a)

"Facility Letter of Credit Application" is defined in Section 2.14(c).

"Facility Letter of Credit Collateral Account" is defined in Section 2.14(k).

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

"Federal Funds Effective Rate" means, for any day, the rate calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depository institutions, as determined in such manner as shall be set forth on the Federal Reserve Bank of New York's Website from time to time, and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the effective federal funds rate, provided that, if the Federal Funds Effective Rate as so determined would be less than 1.0%, such rate shall be deemed to be 1.0% for the purposes of this Agreement.

"Finance Lease" of a Person means any lease of Property by such Person as lessee which would be classified and accounted for as a finance lease on a balance sheet of such Person prepared in accordance with GAAP.

"Finance Lease Obligations" of a Person means the amount of the obligations of such Person under Finance Leases which would be shown as a liability on a balance sheet of such Person prepared in accordance with GAAP.

"First Amendment Date" means August 2, 2022.

"First Amendment Increase" means the \$25,000,000.00 increase in the Revolving Commitment effective on the First Amendment Date.

"Fixed Charges" means, for any period, without duplication, the sum of (a) cash Interest Expense, (b) scheduled principal payments on Indebtedness, (c) other payments made on Subordinated Indebtedness, and (d) Finance Lease payments, ~~and (e) Operating Lease payments,~~

all calculated for Holdings and its Subsidiaries on a consolidated basis in accordance with GAAP.

“Fixed Charge Coverage Ratio” means, for any period, the ratio of (a) EBITDA *minus* Unfinanced Capital Expenditures *minus* expense for taxes paid in cash (including any amount paid under the Borrowers' tax sharing arrangement with HC2 Holdings), *minus* Restricted Payments paid in cash to (b) Fixed Charges, all calculated for the Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP.

“Foreign Subsidiary” means each Subsidiary of a Borrower that is organized under the laws of any jurisdiction other than the United States or any state thereof or the District of Columbia and that is conducting the majority of its business outside of the United States.

“Fronting Exposure” means, at any time there is a Defaulting Lender, with respect to the Letter of Credit Issuer, such Defaulting Lender’s ratable share of the Letter of Credit Obligations with respect to Facility Letters of Credit issued by the Letter of Credit Issuer other than Letter of Credit Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or cash collateralized in accordance with the terms hereof.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States, applied in a manner consistent with that used in preparing the financial statements referred to in Section 5.4, subject at all times to Section 9.8.

“Governmental Authority” means the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including, without limitation, any supra-national bodies such as the European Union or the European Central Bank) and any group or body charged with setting financial accounting or regulatory capital rules or standards (including, without limitation, the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervisory Practices or any successor or similar authority to any of the foregoing).

“Governmental Obligations” means noncallable direct general obligations of the United States of America or obligations the payment of principal of and interest on which is unconditionally guaranteed by the United States of America.

[“GrayWolf Specified Properties” is defined in Section 6.24\(a\)](#)

“Guarantor” means any guarantor which agrees to guaranty all or any portion of the Obligations of one or more Borrowers and their respective successors and assigns, including but not limited to the parties listed on Schedule 1.2 to this Agreement.

“Guaranty” means any guaranty executed by a Borrower or Guarantor in favor of the Administrative Agent, for the ratable benefit of the Lenders, whether now existing or made in the future.

“Hazardous Material” means any explosive or radioactive substances or wastes, any hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes, per- and polyfluoroalkyl substances, all “Hazardous Substances” as defined by the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC 9601 et seq. (“CERCLA”), and any other substances or wastes of any nature regulated pursuant to any Environmental Law.

“HC2 Holdings” means HC2 Holdings, Inc., a Delaware corporation.

“Hedging Agreement” means any interest rate, currency or commodity swap agreement, cap agreement or collar agreement, and any other agreement or arrangement designed to protect a Person against fluctuations in interest rates, currency exchange rates or commodity prices.

“Hedging Obligation” means, with respect to any Person, any liability of such Person under any Hedging Agreement. The amount of any Person’s obligation in respect of any Hedging Obligation will be deemed to be the incremental obligation that would be reflected in the financial statements of such Person in accordance with GAAP.

“Highest Lawful Rate” means, on any day, the maximum non-usurious rate of interest permitted for that day by applicable federal or state law stated as a rate per annum.

“Indebtedness” of a Person means such Person’s (i) obligations for borrowed money (including the Obligations under this Agreement and the other Loan Documents), (ii) obligations representing the deferred purchase price of Property or services (other than accounts payable arising in the ordinary course of such Person’s business payable on terms customary in the trade), (iii) obligations, whether or not assumed, secured by Liens or payable out of the proceeds or production from Property now or hereafter owned or acquired by such Person, (iv) obligations which are evidenced by notes, acceptances, or other instruments, (v) obligations to purchase securities or other Property arising out of or in connection with the sale of the same or substantially similar securities or Property, (vi) Finance Lease Obligations, (vii) obligations as an account party with respect to standby and commercial Letters of Credit, (viii) Contingent Obligations of such Person, (ix) any other obligation for borrowed money or other financial accommodation which in accordance with GAAP would be shown as a liability on the consolidated balance sheet of such Person, and (x) guaranties of any of the foregoing.

“Indemnified Taxes” means Taxes imposed on or with respect to any payment made by or on account of any obligation of any Borrower under any Loan Document, other than Excluded Taxes and Other Taxes.

“Initial Borrowers” means the Borrowers identified as Initial Borrowers on Schedule 1.1.

“Interest Expense” means, with reference to any period, total interest expense (including that attributable to Finance Lease Obligations) of Holdings and its Subsidiaries for such period with respect to all outstanding Indebtedness of Holdings and its Subsidiaries (including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptances and net costs under Hedging Agreements in respect of interest rates, to the extent such net costs are allocable. to such period in accordance with GAAP), calculated for

Holdings and its Subsidiaries on a consolidated basis for such period in accordance with GAAP.

“Investment” of a Person means (a) any loan, advance (other than commission, travel and similar advances to officers and employees made in the ordinary course of business), extension of credit (other than accounts receivable arising in the ordinary course of business on terms customary in the trade) or contribution of capital by such Person; (b) stocks, bonds, mutual funds, partnership interests, notes, debentures or other securities (including warrants or options to purchase securities) or other equity interests owned by such Person; (c) any deposit accounts and certificate of deposit owned by such Person; and (d) structured notes, derivative financial instruments and other similar instruments or contracts owned by such Person.

“Lenders” means the lending institutions listed on the signature pages of this Agreement and their respective successors and assigns.

“Lending Installation” means, with respect to a Lender, the Letter of Credit Issuer or the Administrative Agent, the office, branch, subsidiary or affiliate of such Lender, the Letter of Credit Issuer or the Administrative Agent listed on the signature pages hereof or designated pursuant to Section 2.12.

“Letter of Credit” means a letter of credit or similar instrument which is issued upon the application of a Person or upon which a Person is an account party or for which a Person is in any way liable.

“Letter of Credit Fee” is defined in Section 2.14(d).

“Letter of Credit Issuer” means UMB Bank, N.A. in its capacity as issuer of Facility Letters of Credit hereunder.

“Letter of Credit Obligations” means, at any time, the sum, without duplication, of (i) the aggregate undrawn stated amount under all Facility Letters of Credit outstanding at such time plus (ii) the aggregate unpaid amount at such time of all Reimbursement Obligations.

“Letter of Credit Payment Date” is defined in Section 2.14(e).

“Lien” means any lien (statutory or other), mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, the interest of a vendor or lessor under any conditional sale, Finance Lease or other title retention agreement).

“Loan” means a Revolving Loan or a Term Loan.

“Loan Documents” means this Agreement, the Facility Letter of Credit Applications, the Collateral Documents, the Environmental Indemnification Agreement, each Guaranty, each Note, each Subordination Agreement and any other document or agreement, now or in the future, executed by a Borrower or a Guarantor for the benefit of the Administrative Agent or any Lender in connection with this Agreement.

“Material Adverse Effect” means a material adverse effect on (i) the business, Property, liabilities (actual and contingent), operations or condition (financial or otherwise), results of operations, or prospects of Holdings and its Subsidiaries taken as a whole, (ii) the ability of any Borrower or any Guarantor to perform its obligations under the Loan Documents to which it is a party, (iii) the validity or enforceability of any of the Loan Documents or the rights or remedies of the Administrative Agent, the Letter of Credit Issuer or the Lenders under the Loan Documents, or (iv) the perfection or priority of any Lien on any material portion of the Collateral.

“Material Indebtedness” means Indebtedness of a Borrower or any Subsidiary in an outstanding principal amount of \$2,000,000.00 or more in the aggregate (or the equivalent thereof in any currency other than Dollars).

“Material Indebtedness Agreement” means any agreement evidencing, securing or relating to Material Indebtedness (whether or not an amount of Indebtedness constituting Material Indebtedness is outstanding thereunder).

“Minimum Collateral Amount” means, with respect to a Defaulting Lender, at any time, (i) with respect to cash collateral consisting of cash or deposit account balances, an amount equal to 105% of the Fronting Exposure of the Letter of Credit Issuer with respect to such Defaulting Lender for all Facility Letters of Credit issued and outstanding at such time and (ii) otherwise, an amount determined by the Administrative Agent and the Letter of Credit Issuer in their sole discretion.

“Modify” and “Modification” are defined in Section 2.14(a).

“Multiemployer Plan” means a Plan maintained pursuant to a collective bargaining agreement or any other arrangement to which a Borrower, a Guarantor or any ERISA Affiliate is a party to which more than one employer is obligated to make contributions.

“Net Income” means, for any period, the consolidated net income (or loss) determined for Holdings and its Subsidiaries on a consolidated basis in accordance with GAAP; provided that there shall be excluded (a) the income (or deficit) of any Person (other than a Person acquired as part of the Banker Steel Acquisition) accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with the Borrower or any Subsidiary, and (b) the income (or deficit) of any Person (other than a Subsidiary) in which the Borrower or any Subsidiary has an ownership interest, except (i) to the extent that any such income is actually received by the Borrower or such Subsidiary in the form of dividends or similar distributions on account of such Borrower's or such Subsidiary's ownership interest, or (ii) if such net income is required to be included in the consolidated net income of Holdings and its Subsidiaries in accordance with GAAP, and (c) the undistributed earnings of any Subsidiary, to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any contractual obligation (other than under any Loan Document) or requirement of law applicable to such Subsidiary.

“Net Proceeds” means, with respect to any event, (a) the cash proceeds received in respect of such event including (i) any cash received in respect of any non-cash proceeds

(including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but excluding any interest payments), but only as and when received, (ii) in the case of a casualty, insurance proceeds and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments, minus (b) the sum of (i) all reasonable fees and out-of-pocket expenses paid to third parties (other than Affiliates) in connection with such event, (ii) in the case of Disposition of an asset (including pursuant to a sale and leaseback transaction or a casualty or a condemnation or similar proceeding), the amount of all payments required to be made as a result of such event to repay Indebtedness (other than Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such event and (iii) the amount of all taxes paid (or reasonably estimated to be payable) during the year that such event occurred or the next succeeding year and that are directly attributable to such event (as determined reasonably and in good faith by Borrowers).

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Note” means any note issued pursuant to this Agreement, including but not limited to any Revolving Loan Note or Term Note in favor of a Lender.

“Obligations” means all unpaid principal of and accrued and unpaid interest on the Loans, all Letter of Credit Obligations, all obligations in connection with Cash Management Services, all Hedging Obligations, all accrued and unpaid fees, and all expenses, reimbursements, indemnities and other obligations of a Borrower to the Lenders or to any Lender, the Administrative Agent or any indemnified party arising under the Loan Documents (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding). Notwithstanding the foregoing, as to each Borrower or Guarantor (including as to any Collateral Documents executed by such Borrower or Guarantor), “Obligations” shall exclude any obligation that is an Excluded Swap Obligation as to such Borrower or Guarantor.

“OFAC” means the U.S. Department of the Treasury’s Office of Foreign Assets Control, and any successor thereto.

“Operating Lease” of a Person means any lease of Property (other than a Finance Lease) by such Person as lessee.

“Operating Lease Obligations” means, as of any date of determination, the amount obtained by aggregating the present values, determined in the case of each particular Operating Lease by applying a discount rate (which discount rate shall equal the discount rate which would be applied under GAAP if such Operating Lease were a Finance Lease) from the date on which each fixed lease payment is due under such Operating Lease to such date of determination, of all fixed lease payments due under all Operating Leases of the Borrowers and their Subsidiaries.

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document.

“Participant” is defined in Section 12.2(a).

“Participant Register” is defined in Section 12.2(c).

“PATRIOT Act” means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), as amended from time to time, and any successor statute.

“Payment Date” means the last day of each calendar month, the Revolving Loan Maturity Date and the Term Loan Maturity Date, *provided*, that if such day is not a Business Day, the Payment Date shall be the immediately succeeding Business Day.

“PBG” means the Pension Benefit Guaranty Corporation or any successor thereto.

“Permitted Acquisition” means any Acquisition made by a Borrower or any of its Subsidiaries, *provided* that, (a) as of the date of the consummation of such Acquisition, no Default or Event of Default shall have occurred and be continuing or would result after giving effect to such Acquisition, and the representation and warranty contained in Section 5.11 shall be true both before and after giving effect to such Acquisition, (b) such Acquisition is consummated on a non-hostile basis pursuant to a negotiated acquisition agreement that has been (if required by the governing documents of the seller or entity to be acquired) approved by the board of directors or other applicable governing body of the seller or entity to be acquired, and no material challenge to such Acquisition (excluding the exercise of appraisal rights) shall be pending or threatened by any shareholder or director of the seller or entity to be acquired, (c) the business to be acquired in such Acquisition is in the same line of business as a Borrower’s or a Subsidiary’s line of business or incidental thereto, (d) as of the date of the consummation of such Acquisition, all material approvals required in connection therewith shall have been obtained, (e) the Borrowers shall have furnished to the Administrative Agent a certificate demonstrating in reasonable detail a pro forma compliance with the financial covenants contained in Section 6.19 for such period, in each case, calculated as if such Acquisition, including the consideration therefor, had been consummated on the first day of such period, (f) any entity acquired in such Acquisition, and the entity acquiring assets in such Acquisition, will become a Guarantor hereunder in accordance with Section 6.24, and (g) the aggregate purchase price (including deferred purchase price) for such Acquisitions does not exceed \$25,000,000.00 for any single Acquisition or \$35,000,000.00 for all Acquisitions during the term of this Agreement (in each case, excluding the Banker Steel Acquisition).

“Permitted Foreign Subsidiary Investment” means (a) loans and capital contributions to Foreign Subsidiaries made prior to the date of this Agreement, and (b) loans and capital contributions to Foreign Subsidiaries made on or after the date of this Agreement that meet the following conditions:

(i) No Default or Event of Default exists and such Investment will not cause a Default or Event of Default; and

(ii) Such Investments are in an aggregate amount not to exceed \$5,000,000.00 at any one time; provided that such Investments may exceed \$5,000,000 in the aggregate for a period of time not in excess of 120 days in any fiscal year so long as such Investments do not at any time exceed \$6,000,000.00 in the aggregate.

“Permitted Investments” shall mean with respect to any Person:

(a) Governmental Obligations;

(b) Obligations of a state or commonwealth of the United States or the obligations of the District of Columbia or any possession of the United States, or any political subdivision of any of the foregoing, which are described in Section 103(a) of the Code and are graded in any of the highest three (3) major grades as determined by at least one Rating Agency; or secured, as to payments of principal and interest, by a letter of credit provided by a financial institution or insurance provided by a bond insurance company which in each case is itself or its debt is rated in one of the highest three (3) major grades as determined by at least one Rating Agency;

(c) Banker’s acceptances, commercial accounts, demand deposit accounts, certificates of deposit, other time deposits or depository receipts issued by or maintained with Administrative Agent, any Lender or any Affiliate thereof, or any bank, trust company, savings and loan association, savings bank or other financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and whose reported capital and surplus equal at least \$250,000,000.00, provided that such minimum capital and surplus requirement shall not apply to demand deposit accounts maintained in the ordinary course of business;

(d) Commercial paper rated at the time of purchase within the two highest classifications established by not less than two Rating Agencies, and which matures within 270 days after the date of issue;

(e) Secured repurchase agreements against obligations itemized in paragraph (a) above, and executed by a bank or trust company or by members of the association of primary dealers or other recognized dealers in United States government securities, the market value of which must be maintained at levels at least equal to the amounts advanced; and

(f) Any fund or other pooling arrangement which exclusively purchases and holds the investments itemized in (a) through (e) above.

“Permitted Liens” means the Liens permitted pursuant to Section 6.14.

“Person(s)” means any natural person, corporation, firm, joint venture, partnership, limited liability company, association, enterprise, trust or other entity or organization, or any government or political subdivision or any agency, department or instrumentality thereof.

“Plan” means an employee pension benefit plan which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code or Section 302 of ERISA as to which a Borrower or any ERISA Affiliate may have any liability.

“Prepayment Event” means:

(a) any Disposition (including pursuant to a sale and leaseback transaction) of any

Property of Holdings or any Subsidiary, other than sales of inventory in the ordinary course of business; or

(b) any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any Property of Holdings or any Subsidiary; or

(c) the issuance by Holdings of any Equity Interests, or the receipt by Holdings of any capital contribution (other than any capital contribution used to fund the Banker Steel Acquisition); or

(d) the incurrence by Holdings or any Subsidiary of any Indebtedness, other than Indebtedness permitted under Section 6.10.

“Prime Rate” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the United States. Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“Property” of a Person means any and all property, whether real, personal, tangible, intangible, or mixed, of such Person, or other assets owned, leased or operated by such Person.

“Pro Rata Share” shall mean:

(a) with respect to a Lender’s obligation to make Revolving Loans and receive payments of principal, interest, fees, costs and expenses with respect thereto, (x) prior to the Revolving Commitments being terminated or reduced to zero, the percentage obtained by dividing (i) such Lender’s Revolving Commitment by (ii) the total Revolving Commitment and (y) from and after the time the Revolving Commitments have been terminated or reduced to zero, the percentage obtained by dividing (i) the aggregate unpaid principal amount of such Lender’s Revolving Exposure by (ii) the aggregate unpaid principal amount of the Revolving Exposure of all Lenders;

(b) with respect to a Lender’s obligation to make a Term Loan and receive payments of interest, fees, and principal with respect thereto, the percentage obtained by dividing (i) the unpaid principal amount of such Lender’s Term Loan by (ii) the unpaid principal amount of all Term Loans of all Lenders;

(c) with respect to all other matters as to a particular Lender, the percentage obtained by dividing (i) such Lender’s Revolving Commitment (or if the Revolving Commitments have been terminated or reduced to zero, the aggregate unpaid principal amount of such Lender’s Revolving Exposure), plus the unpaid principal amount of such Lender’s Term Loan, by (ii) the aggregate amount of the Revolving Commitments of all Lenders (or if the Revolving Commitments have been terminated or reduced to zero, the aggregate unpaid principal amount of the Revolving Exposure of all Lenders), plus the unpaid principal amount of all Term Loans of all Lenders.

“Purchasers” is defined in Section 12.3(a).

“Rating Agency” shall mean Moody’s Investor Services, Inc., Standard and Poor’s Ratings Services, their respective successors or any other nationally recognized statistical rating organization which is acceptable to the Administrative Agent.

“Register” is defined in Section 12.3(d).

“Regulation U” means Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor or other regulation or official interpretation of said Board of Governors relating to the extension of credit by banks for the purpose of purchasing or carrying margin stocks applicable to member banks of the Federal Reserve System.

“Reimbursement Obligations” means, at any time, the aggregate of all obligations of the Borrowers then outstanding under Section 2.14 to reimburse the Letter of Credit Issuer for amounts paid by the Letter of Credit Issuer in respect of any one or more drawings under Facility Letters of Credit.

“Related Fund” means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course and that is administered, advised or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers, advises or manages a Lender.

“Reports” is defined in Section 9.6(a).

“Required Lenders” means (i) at least two Lenders that are not Affiliates of each other and that have greater than fifty percent of Pro Rata Share as determined pursuant to clause (c) of the definition of Pro Rata Share; provided that at any time there are two or fewer Lenders, “Required Lenders” means Lenders holding one hundred percent of Pro Rata Share as determined pursuant to clause (c) of the definition of Pro Rata Share. The Commitments and Revolving Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other Property) with respect to any Equity Interest in a Borrower or any Subsidiary, or any payment (whether in cash, securities or other Property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in a Borrower or any Subsidiary thereof or any option, warrant or other right to acquire any such Equity Interest in a Borrower or any Subsidiary thereof.

“Revolving Commitment” means, for each Lender, the obligation, if any, of such Lender to make Revolving Loans to, and participate in Facility Letters of Credit issued upon the application of, the Borrowers, expressed as an amount representing the maximum possible aggregate amount of such Lender’s Revolving Exposure hereunder. The initial amount of each Revolving Lender’s Revolving Commitment is set forth on Schedule 2. As of the ~~date of this Agreement~~First Amendment Date, the aggregate amount of the Revolving Lenders’ Revolving Commitments is \$~~110,000,000.00~~135,000,000.00.

“Revolving Exposure” means, with respect to any Lender at any time, the sum of (i) the aggregate principal Dollar Amount of such Lender’s Revolving Loans outstanding at such time, plus (ii) an amount equal to its Pro Rata Share of the Letter of Credit Obligations at such time.

“Revolving Lender” means, as of any date of determination, a Lender with a Revolving Commitment or, if the Revolving Commitments have terminated or expired, a Lender with Revolving Exposure.

“Revolving Loan” means, with respect to a Lender, such Lender’s loan made pursuant to its commitment to lend set forth in Section 2.1.

“Revolving Loan Interest Rate” means for any day, the rate per annum set forth below opposite the applicable Level then in effect (based on the Senior Funded Indebtedness to EBITDA Ratio):

Level	Senior Funded Indebtedness to EBITDA Ratio	Revolving Loan Interest Rate
I	< 1.00 to 1.00	Prime Rate minus 1.60%
II	≥ 1.00 to 1.00 and < 1.50 to 1.0	Prime Rate minus 1.35%
III	≥ 1.50 to 1.00 and < 2.00 to 1.0	Prime Rate minus 1.10%
IV	≥ 2.00 to 1.0	Prime Rate minus 0.85%

Any increase or decrease in the Revolving Loan Interest Rate resulting from a change in the Senior Funded Indebtedness to EBITDA Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.1(c); provided, however, that if a Compliance Certificate is not delivered when due in accordance with such Section, then, upon the request of the Required Lenders, the rate set forth in Level IV shall apply, in each case as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and in each case shall remain in effect until the first Business Day following the date on which such Compliance Certificate is delivered. In addition, at all times while the Default Rate is in effect the rate set forth in Level IV shall apply.

If, as a result of any restatement of or other adjustment to the financial statements of Holdings or any Subsidiary or for any other reason, the Borrowers, or the Lenders determine that (i) the Senior Funded Indebtedness to EBITDA Ratio as calculated by the Borrowers as of any applicable date was inaccurate and (ii) a proper calculation of the Senior Funded Indebtedness to EBITDA Ratio would have resulted in higher pricing for such period, the Borrowers shall

immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to any Borrower under the Bankruptcy Code of the United States, automatically and without further action by the Administrative Agent, any Lender or the Letter of Credit Issuer), an amount equal to the excess of the amount of interest that should have been paid for such period over the amount of interest and fees actually paid for such period.

This paragraph shall not limit the rights of the Administrative Agent, the Letter of Credit Issuer or any Lender under any provision of this Agreement to payment of interest on any Obligations at the Default Rate. The Borrowers' obligations under this paragraph shall survive the termination of the Commitments and the repayment of all other Obligations hereunder.

The initial Revolving Loan Interest Rate shall be as set forth in Level III until the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.1(c) for the fiscal quarter ending on July 3, 2021 to the Administrative Agent.

"Revolving Loan Maturity Date" means May 31, 2024.

"Revolving Loan Note" means any note or notes executed by Borrowers evidencing Revolving Loans.

"Risk-Based Capital Guidelines" means (i) the risk-based capital guidelines in effect in the United States on the date of this Agreement, including transition rules, and (ii) the corresponding capital regulations promulgated by regulatory authorities outside the United States, including transition rules, and, in each case, any amendments to such regulations.

"Sanctioned Country" means, at any time, a country, region or territory which is the subject or target of any Sanctions.

"Sanctioned Person" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

"Sanctions" means sanctions administered or enforced from time to time by the U.S. government, including those administered by OFAC or the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority.

"Security Agreement" means, collectively, all Security Agreements executed by one or more of Borrowers and Guarantors in favor of the Administrative Agent, as amended, restated, supplemented or otherwise modified, renewed or replaced from time to time pursuant to the terms hereof and thereof.

“Senior Funded Indebtedness” means, at any date, the aggregate principal amount of total Indebtedness of Holdings and its Subsidiaries on a consolidated basis, including Finance Lease Obligations but excluding undrawn amounts under Letters of Credit and Operating Lease Obligations, *minus* the sum of (to the extent included in Indebtedness) (a) accounts payable arising from the purchase of goods and services in the ordinary course of business, (b) accrued expenses or losses, (c) deferred revenues or gains, and (d) Subordinated Indebtedness, all determined for Holdings and its Subsidiaries on a consolidated basis at such date, in accordance with GAAP.

“Senior Funded Indebtedness to EBITDA Ratio” means, at any date, the ratio of (a) Senior Funded Indebtedness for such date to (b) EBITDA for the period of four fiscal quarters ended on or most recently prior to such date.

“Side Letter” means the Side Letter as defined in the Subordination Agreement between Administrative Agent and The Banker Family Irrevocable Trust #3 U/A/D December 22, 2009 and the Subordination Agreement between Administrative Agent and Donald Banker,

“Subordination Agreements” means (a) the Subordination and Intercreditor Agreement dated the date hereof between Administrative Agent and the sellers in the Banker Steel Acquisition, (b) the Subordination and Intercreditor Agreement dated the date hereof between Administrative Agent and The Banker Family Irrevocable Trust #3 U/A/D December 22, 2009, (c) the Subordination and Intercreditor Agreement dated the date hereof between Administrative Agent and Donald Banker, and (d) all other subordination agreements executed by a holder of Subordinated Indebtedness in favor of the Administrative Agent and the Lenders from time to time after the Effective Date, in each case in form and substance satisfactory to Administrative Agent and Required Lenders; as amended, restated or otherwise modified from time to time.

“Subordinated Indebtedness” of a Person means any Indebtedness of such Person the payment of which is subordinated to payment of the Obligations to the written satisfaction of the Required Lenders. For avoidance of doubt, amounts owing under the Side Letter are Subordinated Indebtedness.

“Subsidiary” of a Person means (i) any corporation more than 50% of the outstanding securities having ordinary voting power of which shall at the time be owned or controlled, directly or indirectly, by such Person or by one or more of its Subsidiaries or by such Person and one or more of its Subsidiaries, or (ii) any partnership, limited liability company, association, joint venture or similar business organization more than 50% of the ownership interests having ordinary voting power of which shall at the time be so owned or controlled. Unless otherwise expressly provided, all references herein to a “Subsidiary” shall mean a Subsidiary of Holdings.

“Swap Obligation” means any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act or any rules or regulations promulgated thereunder.

“Tangible Assets” shall mean the total of all assets appearing on the consolidated balance sheet of Holdings prepared in accordance with GAAP (with inventory being valued at the lower of cost or market), after deducting all proper reserves (including reserves for depreciation) minus

the sum of (i) goodwill, patents, trademarks, prepaid expenses, deposits, deferred charges and other personal property which is classified as intangible property in accordance with GAAP, and (ii) any amounts due from shareholders, Affiliates, officers or employees of the Borrowers.

“Taxes” means any and all present or future taxes, duties, levies, imposts, deductions, fees, assessments, charges or withholdings, and any and all liabilities with respect to the foregoing, including interest, additions to tax and penalties applicable thereto.

“Term Loan” has the meaning given in Section 2.2.

“Term Loan Commitment” means, as to any Lender, the commitment of such Lender to make a Term Loan pursuant to Section 2.2. The amount of each Lender’s Term Loan Commitment on the Effective Date is set forth on Schedule 2 and, on the date hereof, the aggregate amount of the Term Loan Commitments is \$110,000,000.00.

“Term Loan Maturity Date” means May 31, 2026.

“Term Note” means any note or notes executed by Borrowers evidencing any portion of the Term Loan.

“Title Insurer” means Fidelity National Title Insurance Company.

“Transferee” is defined in Section 12.3(e).

“UMB Bank, N.A.” means UMB Bank, N.A., a national banking association, in its individual capacity, and its successors.

“Undisclosed Administration” means in relation to a Lender the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official by a supervisory authority or regulator under or based on the law in the country where such Lender is subject to home jurisdiction supervision if applicable law requires that such appointment is not to be publicly disclosed.

“Unfinanced Capital Expenditures” means, for any period, Capital Expenditures made during such period which are not financed from the proceeds of any Indebtedness (other than the Revolving Loans or other revolving Indebtedness; it being understood and agreed that, to the extent any Capital Expenditures are financed with Revolving Loans or other revolving indebtedness, such Capital Expenditures shall be deemed Unfinanced Capital Expenditures).

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms.

1.2 Computation of Time Periods. In this Agreement, in the computation of a period of time from a specified date to a later specified date, unless otherwise stated the word “from” means “from and including” and the word “to” or “until” each means “to but excluding”.

1.3 Other Definitional Terms; Interpretative Provisions; Governing Decisions. The words “hereof,” “herein” and “hereunder” and words of similar import when used in this

Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to Sections, Exhibits, schedules and like references are to this Agreement unless otherwise expressly provided. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The term “shall” shall have the same meaning as the term “will”. Unless the context in which used herein otherwise clearly requires, “or” has the inclusive meaning represented by the phrase “and/or.” All incorporation by reference of covenants, terms, definitions or other provisions from other agreements are incorporated into this Agreement as if such provisions were fully set forth herein, and such incorporation shall include all necessary definitions and related provisions from such other agreements but including only amendments thereto agreed to by the Lenders, and shall survive any termination of such other agreements until the Obligations under this Agreement and the other Loan Documents are irrevocably paid in full (other than inchoate indemnity obligations and Obligations that have been cash collateralized to the satisfaction of Administrative Agent, Letter of Credit Issuer and Lenders), all Facility Letters of Credit have expired without renewal or been returned to Letter of Credit Issuer, and the Revolving Commitments are terminated. Any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time and any successor law or regulation. References to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, to the extent permitted hereby and (c) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, supplemented, restated or otherwise modified from time to time to the extent not otherwise stated herein or prohibited hereby and in effect at any given time.

ARTICLE II

THE CREDITS

2.1 Revolving Commitment. From and including the date of this Agreement and prior to the Revolving Loan Maturity Date, each Lender severally agrees, on the terms and conditions set forth in this Agreement, to make Revolving Loans to the Borrowers and participate in Facility Letters of Credit issued upon the request of the Borrowers, *provided* that, after giving effect to the making of each such Revolving Loan and the issuance of each such Facility Letter of Credit, the Dollar Amount of such Lender’s Revolving Exposure shall not exceed its Revolving Commitment. All Revolving Loans shall be made in Dollars. Subject to the terms of this Agreement, the Borrowers may borrow, repay and reborrow the Revolving Loans at any time prior to the Revolving Loan Maturity Date.

2.2 Term Loan Commitment. Each Lender with a Term Loan Commitment severally agrees to make a loan to Borrowers in Dollars (the “Term Loan”) on the Effective Date in the amount of such Lender’s Term Loan Commitment. The Commitments of the Lenders to make Term Loans shall expire concurrently with the making of the Term Loan on the Effective Date.

2.3 Required and Optional Payments; Termination.

(a) Scheduled Payments.

(i) Revolving Loans. If at any time the Dollar Amount of the aggregate Revolving Exposures exceeds the aggregate Revolving Commitments, the Borrowers shall immediately make a payment on the Loans to eliminate such excess. Unless sooner paid in full, the outstanding principal balance of the Revolving Loans and all accrued and unpaid interest on Revolving Loans shall be paid in full on the Revolving Loan Maturity Date.

(ii) Term Loans. The Term Loan of each Lender shall be paid in installments equal to such Lender's Pro Rata Share of monthly payments of principal and interest of the Term Loan equal to \$775,827.76 per month, payable on each Payment Date, commencing June 30, 2021. Unless sooner paid in full, the outstanding principal balance of the Term Loan and all accrued and unpaid interest on the Term Loan shall be paid in full on the Term Loan Maturity Date.

(iii) Maturity Dates. The outstanding balance of the Revolving Exposure and all other then outstanding Obligations under this Agreement and the other Loan Documents (other than the Term Loan) shall be paid in full by the Borrowers and all Facility Letters of Credit terminated and returned to the Letter of Credit Issuer (or cash collateralized to the satisfaction of Administrative Agent, the Letter of Credit Issuer and Lenders) on the Revolving Loan Maturity Date. The outstanding balance of the Term Loan and all other then outstanding Obligations under this Agreement and the other Loan Documents shall be paid in full by the Borrowers on the Term Loan Maturity Date.

(b) Optional Prepayments. Any Borrower may from time to time (i) pay all outstanding Advances, or (ii) pay any portion of the outstanding Advances in the amount of \$1,000,000.00 or a greater amount that is a multiple of \$500,000.00 (or the aggregate amount of the outstanding Loans at such time), in each case upon same day notice to the Administrative Agent, provided that in connection with any prepayment of the Term Loan, Borrowers shall pay any amount required under Section 2.6.4.

(c) Mandatory Prepayments. In the event and on each occasion that any Net Proceeds are received by or on behalf of Holdings or any Subsidiary in respect of any Prepayment Event, the Borrowers shall, immediately after such Net Proceeds are received by Holdings or any Subsidiary, prepay the Obligations and cash collateralize the Letter of Credit Obligations in an aggregate amount equal to 100% of such Net Proceeds, provided that, in the case of any event described in clause (a) or (b) of the definition of the term "Prepayment Event", if the Borrowers shall deliver to the Lender a certificate of an Authorized Officer to the effect that the Borrowers intend to apply the Net Proceeds from such event (or a portion thereof specified in such certificate), within 90 days after receipt of such Net Proceeds, to acquire (or replace or rebuild) real property, equipment or other tangible assets (excluding inventory) to be used in the business of Holdings and its Subsidiaries, and certifying that no Default or Event of Default has occurred and is continuing, then no prepayment shall be required pursuant to this paragraph in respect of the Net Proceeds specified in such certificate, provided that to the extent of any such Net

Proceeds that have not been so applied by the end of such 90-day period, a prepayment shall be required at such time in an amount equal to such Net Proceeds that have not been so applied.

(d) Application of Prepayments.

(i) All prepayments made pursuant to Section 2.3(b) (A) if made with respect to the Term Loans, shall be applied to reduce the subsequent scheduled repayments of Term Loans to be made pursuant to Section 2.3(a) in inverse order of maturity or (B) if made with respect to the Revolving Loans, to prepay such Loans in accordance with the Lender's respective Pro Rata Share without a corresponding reduction in the Revolving Commitments and to cash collateralize outstanding Letter of Credit Obligations.

(ii) All prepayments required to be made pursuant to Section 2.3(c) shall be applied, first to prepay the Term Loans and shall be applied to reduce the subsequent scheduled repayments of Term Loans to be made pursuant to Section 2.3(a) in inverse order of maturity and second to prepay the Revolving Loans without a corresponding reduction in the Revolving Commitment and third to cash collateralize outstanding Letter of Credit Obligations; provided that all prepayments required to be made pursuant to Section 2.3(c) with respect to Net Proceeds arising from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding, to the extent they arise from casualties or losses to cash or inventory shall be applied, first, to prepay the Revolving Loans with a corresponding reduction in the Revolving Commitment and second, to cash collateralize outstanding Letter of Credit Obligations, and third, to prepay the Term Loans (allocated and applied to subsequent scheduled repayments as set forth above).

2.4 Revolving Loan Borrowing; Ratable Loans. For Revolving Loans, unless otherwise agreed by Administrative Agent, Holdings, as Borrower Agent, shall give the Administrative Agent irrevocable notice in the form of Exhibit D (a "Borrowing Notice") not later than 10:00 a.m. (Phoenix, Arizona time) on the Borrowing Date, specifying: (a) the Borrowing Date, which shall be a Business Day, of such Advance, and (b) the aggregate amount of such Advance. The aggregate amount of any Advance of a Revolving Loan shall be the amount of \$1,000,000.00 or a greater amount that is a multiple of \$500,000.00. Not later than 4:00 PM (Phoenix, Arizona time) on each Borrowing Date, each Lender shall make available its Revolving Loans in funds immediately available to the Administrative Agent at its address specified pursuant to Article XIII. The Administrative Agent will make the funds so received from the Lenders available to Holdings at the Administrative Agent's aforesaid address. Each Advance of Revolving Loans shall be made from the several Revolving Lenders ratably according to their Pro Rata Shares.

2.5 Interest Rates.

2.5.1 Interest Rates. Each Advance shall bear interest on the outstanding principal amount thereof, for each day from and including the date such Advance is made, to

but excluding the date it is repaid, at a rate per annum equal to (a) in the case of Revolving Loans, the Revolving Loan Interest Rate for such day, and (b) in the case of Term Loans, 3.25% per annum, in each case subject to Section 2.5.2. Changes in the rate of interest on any Advance of Revolving Loans will take effect simultaneously with each change in the Revolving Loan Interest Rate.

2.5.2 Rates Applicable After Event of Default. Notwithstanding anything to the contrary contained herein, during the continuance of an Event of Default the Required Lenders may, at their option, by notice from the Administrative Agent to Holdings (which notice may be revoked at the option of the Required Lenders notwithstanding any provision of Section 8.3 requiring unanimous consent of the Lenders to changes in interest rates), declare that each Advance shall bear interest at a rate per annum equal to the rate otherwise in effect from time to time *plus* 2.00% per annum (the “Default Rate”), and the Letter of Credit Fee shall be increased by 2.00% per annum, *provided* that, during the continuance of an Event of Default under Sections 7.2, 7.5 or 7.6, the interest rates set forth above shall be applicable automatically to all Advances without any election or action on the part of the Administrative Agent or any Lender. After an Event of Default has been waived, the interest rate applicable to advances and the Letter of Credit Fee shall revert to the rates applicable prior to the occurrence of an Event of Default.

2.6 Fees.

2.6.1 Upfront Fee. The Borrowers agree to pay to the Administrative Agent for the account of each Lender according to its Pro Rata Share of the Loans on the Effective Date, an upfront fee equal to 0.25% *times* the sum of such Lender's Revolving Commitment plus such Lender's Term Loan Commitment as of the Effective Date.

2.6.2 Administrative Fee. The Borrowers agree to pay the Administrative Agent for the account of Administrative Agent on the Effective Date, an administrative fee equal to 0.10% *times* the aggregate Commitments as of the Effective Date.

2.6.3 Commitment Fee. The Borrowers agree to pay to the Administrative Agent for the account of each Lender according to its Pro Rata Share of the Revolving Loans a commitment fee at a per annum rate equal to 0.25% per annum *times* the average daily Available Aggregate Revolving Commitment from the date hereof to and including the Revolving Loan Maturity Date, payable in arrears on each Payment Date.

2.6.4 Prepayment Fees. Borrowers shall pay a prepayment fee for the benefit of the Lenders based on each Lender's Pro Rata Share of the Term Loan upon any prepayment of the Term Loan in an amount equal to the Prepayment Percentage *times* the principal amount prepaid. The “Prepayment Percentage” shall equal (a) three percent (3.0%) to but excluding the first anniversary of the date of this Agreement, (b) two percent (2.0%) from and including the first anniversary of the date of this Agreement to but excluding the second anniversary of the date of this Agreement, and (c) one percent (1.0%) from and including the second anniversary of the date of this Agreement to but excluding the third anniversary of the date of this Agreement. Such fees shall be due and payable on the date of the applicable prepayment. For purposes of this Section 2.6.4, acceleration of the Loans following an Event of Default

shall be considered a prepayment in full of the Loans; accordingly, the prepayment fee described in this Section shall be part of the Obligations and may be included by the Administrative Agent and Lenders in any judgment taken against the Borrower. The Borrower acknowledges that the prepayment fee described in this Section is a reasonable estimate of the cost to the Lenders resulting from the prepayment or acceleration of the Loans and is not imposed as a penalty. Notwithstanding the foregoing, no fee shall be payable under this Section 2.6.4 as a result of (x) a termination of this Agreement in connection with a restructuring or refinancing of the Commitments with Administrative Agent, (y) any prepayment made with excess cash arising from Borrower's operations, or (z) any prepayment made with proceeds of asset sales by Borrowers.

2.6.5 First Amendment Fees. The Borrowers agree to pay to the Administrative Agent for the account of each Lender on the First Amendment Date, a fee equal to the sum of (a) 0.25% times the portion of such Lender's Revolving Commitment that is part of the First Amendment Increase, plus (b) 0.15% times sum of the amount of such Lender's Revolving Commitment, excluding the portion of such Lender's Revolving Commitment referenced in the foregoing clause (a), plus such Lender's Term Loan Commitment as of the First Amendment Date.

2.7 Method of Payment of Loans. Each Advance shall be repaid and each payment of interest thereon shall be paid in Dollars. All payments of the Obligations under this Agreement and the other Loan Documents shall be made, without setoff, deduction, or counterclaim, in immediately available funds to the Administrative Agent at the Administrative Agent's address specified pursuant to Article XIII, or at any other Lending Installation of the Administrative Agent specified in writing by the Administrative Agent to Holdings, by 12:00 noon (Phoenix, Arizona time) on the date when due and shall (except (a) in the case of Reimbursement Obligations for which the Letter of Credit Issuer has not been fully indemnified by the Lenders, or (b) as otherwise specifically required hereunder) be applied ratably by the Administrative Agent among the Lenders. Each payment delivered to the Administrative Agent for the account of any Lender shall be delivered promptly, but in any event within one (1) Business Day of receipt thereof, by the Administrative Agent to such Lender in the same type of funds that the Administrative Agent received at its address specified pursuant to Article XIII or at any Lending Installation specified in a notice received by the Administrative Agent from such Lender. The Administrative Agent is hereby authorized to charge the account of Holdings maintained with UMB Bank, N.A., for each payment of principal, interest, Reimbursement Obligations and fees as it becomes due hereunder. Each reference to the Administrative Agent in this Section 2.7 shall also be deemed to refer, and shall apply equally, to the Letter of Credit Issuer, in the case of payments required to be made by a Borrower to the Letter of Credit Issuer pursuant to Section 2.14(f).

2.8 Evidence of Indebtedness. Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrowers to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(a) The Administrative Agent shall also maintain accounts in which it will record (i) the amount of each Loan made hereunder, (ii) the amount of any principal

or interest due and payable or to become due and payable from the Borrowers to each Lender hereunder, and (iii) the original stated amount of each Facility Letter of Credit and the amount of Letter of Credit Obligations outstanding at any time, and (iv) the amount of any sum received by the Administrative Agent hereunder from the Borrowers and each Lender's share thereof.

(b) The entries maintained in the accounts maintained pursuant to this Section 2.8 shall be *prima facie* evidence of the existence and amounts of the Obligations therein recorded; *provided, however*, that the failure of the Administrative Agent or any Lender to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrowers to repay the Obligations in accordance with their terms.

(c) Any Lender may request through the Administrative Agent that the Loans made by such Lender be evidenced by a promissory note, substantially in the form of Exhibit E-1 or E-2, as applicable (each a "Note"). In such event, the Borrowers shall prepare, execute and deliver to such Lender such Note or Notes payable to the order of such Lender.

2.9 Telephonic Notices. The Borrowers hereby authorize the Lenders and the Administrative Agent to extend Advances and to transfer funds based on telephonic notices made by any Person or Persons the Administrative Agent or any Lender in good faith believes to be acting on behalf of a Borrower, it being understood that the foregoing authorization is specifically intended to allow Borrowing Notices to be given telephonically. Each Borrower agrees to deliver promptly to the Administrative Agent a written confirmation (which may include e-mail) of each telephonic notice authenticated by an Authorized Officer. If the written confirmation differs in any material respect from the action taken by the Administrative Agent and the Lenders, the records of the Administrative Agent and the Lenders shall govern absent manifest error. The parties agree to prepare appropriate documentation to correct any such error within ten (10) days after discovery by any party to this Agreement.

2.10 Calculation and Payment of Interest. Interest accrued on each Advance shall be payable on each Payment Date, commencing with the first Payment Date to occur after the Effective Date. Interest accrued pursuant to Section 2.5.2 shall be payable on demand. Interest on all Advances and fees shall be calculated for actual days elapsed on the basis of a 360-day year. Interest shall be payable for the day an Advance is made but not for the day of any payment on the amount paid if payment is received prior to 12:00 p.m. (Phoenix, Arizona time) at the place of payment. If any payment of principal or interest on an Advance shall become due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day.

2.11 Notification of Advances, Interest Rates, and Prepayments. Promptly after receipt thereof, the Administrative Agent will notify each Lender of the contents of each Borrowing Notice and repayment notice received by it hereunder. Promptly after notice from the Letter of Credit Issuer, the Administrative Agent will notify each Lender of the contents of each request for issuance of a Facility Letter of Credit hereunder. The Administrative Agent will notify each Lender of the interest rate applicable to each Advance promptly upon determination of such

interest rate and will give each Lender prompt notice of each change in the applicable interest rate.

2.12 Lending Installations. Each of the Administrative Agent, the Letter of Credit Issuer and the Lenders may designate its Lending Installation; each Lender may book its Advances and its participation in any Letter of Credit Obligations; and the Letter of Credit Issuer may book the Facility Letters of Credit at any Lending Installation selected by Administrative Agent, such Lender or the Letter of Credit Issuer, as the case may be, and may change its Lending Installation from time to time. All terms of this Agreement shall apply to any such Lending Installation and the Loans, Facility Letters of Credit, participations in Letter of Credit Obligations and any Notes issued hereunder shall be deemed held by each Lender or the Letter of Credit Issuer, as the case may be, for the benefit of any such Lending Installation. Each Lender and the Letter of Credit Issuer may, by written notice to the Administrative Agent and Holdings in accordance with Article XIII, designate replacement or additional Lending Installations through which Loans will be made by it or Facility Letters of Credit will be issued by it and for whose account Loan payments or payments with respect to Facility Letters of Credit are to be made.

2.13 Non-Receipt of Funds by the Administrative Agent. Unless the Borrowers or a Lender, as the case may be, notify the Administrative Agent prior to the date on which it is scheduled to make payment to the Administrative Agent of (a) in the case of a Lender, the proceeds of a Loan or (b) in the case of the Borrowers, a payment of principal, interest or fees to the Administrative Agent for the account of the Lenders, that it does not intend to make such payment, the Administrative Agent may assume that such payment has been made. The Administrative Agent may, but shall not be obligated to, make the amount of such payment available to the intended recipient in reliance upon such assumption. If such Lender or the Borrowers, as the case may be, have not in fact made such payment to the Administrative Agent, the recipient of such payment shall, on demand by the Administrative Agent, repay to the Administrative Agent the amount so made available together with interest thereon in respect of each day during the period commencing on the date such amount was so made available by the Administrative Agent until the date the Administrative Agent recovers such amount at a rate per annum equal to (x) in the case of payment by a Lender, the Federal Funds Effective Rate for such day for the first three (3) days and, thereafter, the interest rate applicable to the relevant Loan or (y) in the case of payment by the Borrowers, the interest rate applicable to the relevant Loan.

2.14 Facility Letters of Credit.

(a) Issuance. The Letter of Credit Issuer hereby agrees, on the terms and conditions set forth in this Agreement, to issue Letters of Credit denominated in Dollars (each, a "Facility Letter of Credit") and to renew, extend, increase, decrease or otherwise modify each Facility Letter of Credit ("Modify," and each such action a "Modification"), from time to time from and including the date of this Agreement and prior to the Revolving Loan Maturity Date upon the request of the Borrowers; provided that immediately after each such Facility Letter of Credit is issued or Modified, the aggregate Dollar Amount of the outstanding Letter of Credit Obligations shall not cause (i) the aggregate amount of Letter of Credit Obligations at any time to exceed \$25,000,000.00,

or (ii) a Lender's Revolving Exposure to exceed its Revolving Commitment. No Facility Letter of Credit shall have an expiry date later than the earlier to occur of (x) the fifth Business Day prior to the Revolving Loan Maturity Date and (y) one (1) year after its issuance; provided, however, that the expiry date of a Facility Letter of Credit may be up to one (1) year later than the fifth Business Day prior to the Revolving Loan Maturity Date if the Borrowers have posted on or before the fifth Business Day prior to the Revolving Loan Maturity Date cash collateral in the Facility Letter of Credit Collateral Account on terms satisfactory to the Administrative Agent in an amount equal to 105% of the Letter of Credit Obligations with respect to such Facility Letter of Credit. Notwithstanding anything herein to the contrary, the Letter of Credit Issuer shall have no obligation hereunder to issue any Facility Letter of Credit the proceeds of which would be made available to any Person (i) to fund any activity or business of or with any Sanctioned Person, or in any country or territory that, at the time of such funding, is the subject of any Sanctions or (ii) in any manner that would result in a violation of any Sanctions by any party to this Agreement.

(b) **Participations.** Upon the issuance by the Letter of Credit Issuer of a Facility Letter of Credit, the Letter of Credit Issuer shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably sold to each Lender, and each Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Letter of Credit Issuer, a participation in such Facility Letter of Credit (and each Modification thereof) and the related Letter of Credit Obligations in proportion to its Pro Rata Share.

(c) **Notice.** The Borrowers shall give the Administrative Agent notice prior to 10:00 a.m. (Phoenix, Arizona time) at least five (5) Business Days prior to the proposed date of issuance of each Facility Letter of Credit, specifying the beneficiary, the proposed date of issuance and the expiry date of such Facility Letter of Credit, and describing the proposed terms of such Facility Letter of Credit and the nature of the transactions proposed to be supported thereby. Upon receipt of such notice, the Administrative Agent shall promptly notify the Letter of Credit Issuer and each Lender of the contents thereof and of the amount of such Lender's participation in such proposed Facility Letter of Credit. The issuance by the Letter of Credit Issuer of any Facility Letter of Credit shall, in addition to the conditions precedent set forth in Article IV, be subject to the conditions precedent that such Facility Letter of Credit shall be satisfactory to the Letter of Credit Issuer and that the Borrowers shall have executed and delivered such application agreement and/or such other instruments and agreements relating to such Facility Letter of Credit as the Letter of Credit Issuer shall have reasonably requested (each, a "Facility Letter of Credit Application"). The Letter of Credit Issuer shall have no independent duty to ascertain whether the conditions set forth in Article IV have been satisfied; provided, however, that the Letter of Credit Issuer shall not issue a Facility Letter of Credit if, on or before the proposed date of issuance, the Letter of Credit Issuer shall have received notice from the Administrative Agent or the Required Lenders that any such condition has not been satisfied or waived. In the event of any conflict between the terms of this Agreement and the terms of any Facility Letter of Credit Application, the terms of this Agreement shall control.

(d) Letter of Credit Fees. The Borrowers shall pay to the Administrative Agent, for the account of the Lenders ratably in accordance with their respective Pro Rata Shares, with respect to each Facility Letter of Credit, a letter of credit fee at a per annum rate equal to 1.25% on the maximum stated amount of such Facility Letter of Credit (after giving effect to any scheduled increases or decreases) for the period from the date of issuance to the scheduled expiration date of such Facility Letter of Credit, such fee to be payable on or before the date of issuance (the "Letter of Credit Fee").

(e) Administration; Reimbursement by Lenders. Upon receipt of any demand for payment under any Facility Letter of Credit from the beneficiary of such Facility Letter of Credit, the Letter of Credit Issuer shall notify the Administrative Agent and the Administrative Agent shall promptly notify Holdings and each other Lender as to the amount to be paid by the Letter of Credit Issuer as a result of such demand and the proposed payment date (the "Letter of Credit Payment Date"). The responsibility of the Letter of Credit Issuer to the Borrowers and each Lender shall be only to determine that the documents (including each demand for payment) delivered under each Facility Letter of Credit in connection with such presentment shall be in conformity in all material respects with such Facility Letter of Credit. The Letter of Credit Issuer shall endeavor to exercise the same care in the issuance and administration of the Facility Letters of Credit as it does with respect to letters of credit in which no participations are granted, it being understood that each Lender shall be unconditionally and irrevocably liable without regard to the occurrence of any Event of Default or any condition precedent whatsoever, to reimburse the Letter of Credit Issuer on demand for (i) such Lender's Pro Rata Share of the amount of each payment made by the Letter of Credit Issuer under each Facility Letter of Credit to the extent such amount is not reimbursed by the Borrowers pursuant to Section 2.14(f) below and there are not funds available in the Facility Letter of Credit Collateral Account to cover the same, plus (ii) interest on the foregoing amount to be reimbursed by such Lender, for each day from the date of the Letter of Credit Issuer's demand for such reimbursement (or, if such demand is made after 11:00 a.m. (Phoenix, Arizona time) on such date, from the next succeeding Business Day) to the date on which such Lender pays the amount to be reimbursed by it a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(f) Reimbursement by Borrowers. The Borrowers shall be irrevocably and unconditionally obligated to reimburse the Letter of Credit Issuer on or before the applicable Letter of Credit Payment Date for any amounts to be paid by the Letter of Credit Issuer upon any drawing under any Facility Letter of Credit, without presentment, demand, protest or other formalities of any kind; provided that neither the Borrowers nor any Lender shall hereby be precluded from asserting any claim for direct (but not consequential) damages suffered by the Borrowers or such Lender to the extent, but only to the extent, caused by (i) the willful misconduct or gross negligence of the Letter of Credit Issuer in determining whether a request presented under any Facility Letter of Credit issued by it complied with the terms of such Facility Letter of Credit or (ii) the Letter of Credit Issuer's failure to pay under any Facility Letter of Credit issued by it after the presentation to it of a request strictly complying with the terms and conditions of such Facility Letter of Credit. All such amounts paid by the Letter of Credit Issuer and

remaining unpaid by the Borrowers shall bear interest, payable on demand, for each day until paid at a rate per annum equal to (x) the Revolving Loan Interest Rate for such day if such day falls on or before the applicable Letter of Credit Payment Date and (y) the sum of 2.00% per annum plus the Revolving Loan Interest Rate for such day if such day falls after such Letter of Credit Payment Date. The Letter of Credit Issuer will pay to each Lender ratably in accordance with its Pro Rata Share all amounts received by it from the Borrowers for application in payment, in whole or in part, of the Reimbursement Obligation in respect of any Facility Letter of Credit issued by the Letter of Credit Issuer, but only to the extent such Lender has made payment to the Letter of Credit Issuer in respect of such Facility Letter of Credit pursuant to Section 2.14(e). Subject to the terms and conditions of this Agreement (including without limitation the submission of a Borrowing Notice in compliance with Section 2.4 and the satisfaction of the applicable conditions precedent set forth in Article IV), the Borrowers may request an Advance hereunder for the purpose of satisfying any Reimbursement Obligation.

(g) Obligations Absolute. The Borrowers' obligations under this Section 2.14 shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment which the Borrowers may have or have had against the Letter of Credit Issuer, any Lender or any beneficiary of a Facility Letter of Credit. The Borrowers further agree with the Letter of Credit Issuer and the Lenders that the Letter of Credit Issuer and the Lenders shall not be responsible for, and the Borrowers' Reimbursement Obligation in respect of any Facility Letter of Credit shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even if such documents should in fact prove to be in any or all respects invalid, fraudulent or forged, or any dispute between or among the Borrowers, any of their Affiliates, the beneficiary of any Facility Letter of Credit or any financing institution or other party to whom any Facility Letter of Credit may be transferred or any claims or defenses whatsoever of the Borrowers or of any of their Affiliates against the beneficiary of any Facility Letter of Credit or any such transferee. The Letter of Credit Issuer shall not be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Facility Letter of Credit. The Borrowers agree that any action taken or omitted by the Letter of Credit Issuer or any Lender under or in connection with each Facility Letter of Credit and the related drafts and documents, if done without gross negligence or willful misconduct, shall be binding upon the Borrowers and shall not put the Letter of Credit Issuer or any Lender under any liability to the Borrowers.

(h) Actions of Letter of Credit Issuer. The Letter of Credit Issuer shall be entitled to rely, and shall be fully protected in relying, upon any Facility Letter of Credit, draft, writing, resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, facsimile, telex, teletype or electronic mail message, statement, order or other document believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by the Letter of Credit Issuer. The Letter of Credit Issuer shall be fully justified in failing or refusing to take any action under this Agreement unless it shall first have received such advice or concurrence of the Required Lenders as it reasonably deems appropriate or it shall first be indemnified to its

reasonable satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Notwithstanding any other provision of this Section 2.14, the Letter of Credit Issuer shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement in accordance with a request of the Required Lenders, and such request and any action taken or failure to act pursuant thereto shall be binding upon the Lenders and any future holders of a participation in any Facility Letter of Credit.

(i) Indemnification. The Borrowers hereby agree to indemnify and hold harmless each Lender, the Letter of Credit Issuer and the Administrative Agent, and their respective directors, officers, agents and employees from and against any and all claims and damages, losses, liabilities, costs or expenses (including reasonable counsel fees and disbursements) which such Lender, the Letter of Credit Issuer or the Administrative Agent may incur (or which may be claimed against such Lender, the Letter of Credit Issuer or the Administrative Agent by any Person whatsoever) by reason of or in connection with the issuance, execution and delivery or transfer of or payment or failure to pay under any Facility Letter of Credit or any actual or proposed use of any Facility Letter of Credit, including, without limitation, any claims, damages, losses, liabilities, costs or expenses (including reasonable counsel fees and disbursements) which the Letter of Credit Issuer may incur (i) by reason of or in connection with the failure of any other Lender to fulfill or comply with its obligations to the Letter of Credit Issuer hereunder (but nothing herein contained shall affect any rights the Borrowers may have against any Defaulting Lender) or (ii) by reason of or on account of the Letter of Credit Issuer issuing any Facility Letter of Credit which specifies that the term “Beneficiary” included therein includes any successor by operation of law of the named Beneficiary, but which Facility Letter of Credit does not require that any drawing by any such successor Beneficiary be accompanied by a copy of a legal document, satisfactory to the Letter of Credit Issuer, evidencing the appointment of such successor Beneficiary; provided that the Borrowers shall not be required to indemnify any Lender, the Letter of Credit Issuer or the Administrative Agent for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by (x) the willful misconduct or gross negligence of the Letter of Credit Issuer in determining whether a request presented under any Facility Letter of Credit complied with the terms of such Facility Letter of Credit or (y) the Letter of Credit Issuer’s failure to pay under any Facility Letter of Credit after the presentation to it of a request strictly complying with the terms and conditions of such Facility Letter of Credit. Nothing in this Section 2.14(i) is intended to limit the obligations of the Borrowers under any other provision of this Agreement.

(j) Lenders’ Indemnification. Each Lender shall, ratably in accordance with its Pro Rata Share, indemnify the Letter of Credit Issuer, its affiliates and their respective directors, officers, agents and employees (to the extent not reimbursed by the Borrowers) against any cost, expense (including reasonable counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from such indemnitees’ gross negligence or willful misconduct or the Letter of Credit Issuer’s failure to pay under any Facility Letter of Credit after the presentation to it of a request strictly complying with the terms and conditions of the Facility Letter of Credit) that such indemnitees may suffer

or incur in connection with this Section 2.14 or any action taken or omitted by such indemnitees hereunder.

(k) Facility Letter of Credit Collateral Account. The Borrowers agree that they will, upon the request of the Administrative Agent or the Required Lenders and until the final expiration date of any Facility Letter of Credit and thereafter as long as any amount is payable to the Letter of Credit Issuer or the Lenders in respect of any Facility Letter of Credit, maintain a special collateral account pursuant to arrangements satisfactory to the Administrative Agent (the "Facility Letter of Credit Collateral Account"), in the name of Borrowers but under the sole dominion and control of the Administrative Agent, for the benefit of the Lenders. The Borrowers hereby pledge, assign and grant to the Administrative Agent, on behalf of and for the ratable benefit of the Lenders and the Letter of Credit Issuer, a security interest in all of the Borrowers' right, title and interest in and to all funds which may from time to time be on deposit in the Facility Letter of Credit Collateral Account to secure the prompt and complete payment and performance of the Obligations.

2.15 Replacement of Lender. If the Borrowers are required pursuant to Section 3.1 or 3.2 to make any additional payment to any Lender, or if any Lender declines to approve an amendment or waiver that is approved by the Required Lenders but that requires the consent of all Lenders or all affected Lenders to become effective, or if any Lender becomes a Defaulting Lender (any Lender so affected an "Affected Lender"), the Borrowers may elect, if such amounts continue to be charged or such suspension is still effective, to replace such Affected Lender as a Lender party to this Agreement upon at least five (5) Business Days' prior written notice to such Affected Lender, which such notice shall specify an effective date for such replacement, which date shall not be later than fifteen (15) Business Days after the date such notice is given, *provided* that no Default or Event of Default shall have occurred and be continuing at the time of such replacement, and *provided further* that, concurrently with such replacement, (a) another bank or other entity which is reasonably satisfactory to the Borrowers and the Administrative Agent and, to the Borrowers' and the Administrative Agent's reasonable satisfaction, which other bank or entity does not suffer from and is not impacted by the issue or event causing the replacement of the Affected Lender, shall agree, as of such date, to purchase for cash at par the Advances and other Obligations due to the Affected Lender under this Agreement and the other Loan Documents pursuant to an assignment substantially in the form of Exhibit C and to become a Lender for all purposes under this Agreement and to assume all obligations of the Affected Lender to be terminated as of such date and to comply with the requirements of Section 12.3 applicable to assignments, and (b) the Borrowers shall pay to such Affected Lender in same day funds on the day of such replacement all interest, fees and other amounts then accrued but unpaid to such Affected Lender by the Borrowers hereunder to and including the date of termination, including without limitation payments due to such Affected Lender. If the Affected Lender shall refuse or fail to execute and deliver any such assignment prior to the effective date of such replacement, Administrative Agent may, but shall not be required to, execute and deliver such assignment in the name or and on behalf of Affected Lender, and irrespective of whether Administrative Agent executes and delivers such assignment, the Affected Lender shall be deemed to have executed and delivered such assignment. A Lender shall not be required to make any such assignment or be replaced if, prior thereto, as a result of a waiver by such Lender

or otherwise, the circumstances entitling the Borrowers to require such assignment and replacement cease to apply.

2.16 Limitation of Interest. The Borrowers, the Administrative Agent and the Lenders intend to strictly comply with all applicable laws, including applicable usury laws. Accordingly, the provisions of this Section 2.16 shall govern and control over every other provision of this Agreement or any other Loan Document which conflicts or is inconsistent with this Section 2.16, even if such provision declares that it controls. As used in this Section 2.16, the term “interest” includes the aggregate of all charges, fees, benefits or other compensation which constitute interest under applicable law, *provided* that, to the maximum extent permitted by applicable law, (a) any non-principal payment shall be characterized as an expense or as compensation for something other than the use, forbearance or detention of money and not as interest, and (b) all interest at any time contracted for, reserved, charged or received shall be amortized, prorated, allocated and spread, in equal parts during the full term of this Agreement. In no event shall the Borrowers or any other Person be obligated to pay, or any Lender have any right or privilege to reserve, receive or retain, (x) any interest in excess of the maximum amount of nonusurious interest permitted under the applicable laws (if any) of the United States or of any applicable state, or (y) total interest in excess of the amount which such Lender could lawfully have contracted for, reserved, received, retained or charged had the interest been calculated for the full term of this Agreement at the Highest Lawful Rate. None of the terms and provisions contained in this Agreement or in any other Loan Document which directly or indirectly relate to interest shall ever be construed without reference to this Section 2.16, or be construed to create a contract to pay for the use, forbearance or detention of money at an interest rate in excess of the Highest Lawful Rate.

2.17 Defaulting Lenders.

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Waivers and Amendments. Such Defaulting Lender’s right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.1 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the Letter of Credit Issuer hereunder; *third*, to cash collateralize the Letter of Credit Issuer’s Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.17(d); *fourth*, as the

Borrowers may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrowers, to be held in a deposit account (including the Facility Letter of Credit Collateral Account) and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) cash collateralize the Letter of Credit Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Facility Letters of Credit issued under this Agreement, in accordance with Section 2.17(d); *sixth*, to the payment of any amounts owing to the Lenders, the Letter of Credit Issuer as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Letter of Credit Issuer against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *eighth*, if so determined by the Administrative Agent, distributed to the Lenders other than the Defaulting Lender until the ratio of the Revolving Exposures of such Lenders to the Aggregate Outstanding Revolving Exposures of all Revolving Lenders equals such ratio immediately prior to the Defaulting Lender's failure to fund any portion of any Loans or participations in Facility Letters of Credit; and *ninth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans or Facility Letter of Credit issuances in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Facility Letters of Credit were issued at a time when the conditions set forth in Section 4.2 were satisfied or waived, such payment shall be applied solely to pay the Credit Extensions of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Credit Extensions of such Defaulting Lender until such time as all Loans and funded and unfunded participations in Letter of Credit Obligations are held by the Lenders pro rata in accordance with the Commitments. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(1) For commitment fees: No Defaulting Lender shall be entitled to receive any commitment fee for any period during which that Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(2) Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its ratable share of the stated amount of Facility Letters of Credit for which it has provided cash collateral pursuant to Section 2.17(d).

(3) With respect to any fee not required to be paid to any Defaulting Lender pursuant to clause (1) or (2) above, the Borrowers shall

(x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letter of Credit Obligations that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the Letter of Credit Issuer the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to the Letter of Credit Issuer's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in Letter of Credit Obligations shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Pro Rata Shares (calculated without regard to such Defaulting Lender's Revolving Commitment) but only to the extent that (x) the conditions set forth in Section 4.2 are satisfied at the time of such reallocation (and, unless the Borrowers shall have otherwise notified the Administrative Agent at such time, the Borrowers shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Revolving Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrowers shall, without prejudice to any right or remedy available to it hereunder or under law, cash collateralize the Letter of Credit Issuer's Fronting Exposure in accordance with the procedures set forth in Section 2.17(d).

(b) Defaulting Lender Cure. If the Borrowers, the Administrative Agent and the Letter of Credit Issuer agree in writing to allow a Defaulting Lender to cure its default hereunder ("Permission to Cure"), the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any cash collateral), such Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded

participations in Facility Letters of Credit to be held pro rata by the Lenders in accordance with the Revolving Commitments (without giving effect to Section 2.17(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; and *provided, further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Notwithstanding the foregoing, a Defaulting Lender shall be allowed to cure its default hereunder in accordance with the foregoing requirements of this Section 2.17(b) without Permission to Cure if (i) such default arises out of such Lender's failure to fund all or any portion of its Loans, or its failure to pay the Administrative Agent or any other Lender any amount required hereunder, within one (1) Business Day after the date due; and (ii) such default has not occurred more than twice before the pending default to be cured.

(c) New Facility Letters of Credit. So long as any Lender is a Defaulting Lender, the Letter of Credit Issuer shall not be required to issue, extend, renew or increase any Facility Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

(d) Cash Collateral. At any time that there shall exist a Defaulting Lender, within one (1) Business Day following the written request of the Administrative Agent or the Letter of Credit Issuer (with a copy to the Administrative Agent) the Borrowers shall cash collateralize the Letter of Credit Issuer's Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to Section 2.17(a)(iv) and any cash collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(i) Grant of Security Interest. The Borrowers, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grant to the Administrative Agent, for the benefit of the Letter of Credit Issuer, and agree to maintain, a first priority security interest in all cash collateral as security for the Defaulting Lender's obligation to fund participations in respect of Letter of Credit Obligations, to be applied pursuant to clause (ii) below. If at any time the Administrative Agent determines that cash collateral is subject to any right or claim of any Person other than the Administrative Agent and the Letter of Credit Issuer as herein provided, or that the total amount of such cash collateral is less than the Minimum Collateral Amount, the Borrowers will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional cash collateral in an amount sufficient to eliminate such deficiency (after giving effect to any cash collateral provided by the Defaulting Lender).

(ii) Application. Notwithstanding anything to the contrary contained in this Agreement, cash collateral provided under this Section 2.17 in respect of Facility Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of Letter of Credit

Obligations (including, as to cash collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the cash collateral was so provided, prior to any other application of such Property as may otherwise be provided for herein.

(iii) Termination of Requirement. Cash collateral (or the appropriate portion thereof) provided to reduce the Letter of Credit Issuer's Fronting Exposure shall no longer be required to be held as cash collateral pursuant to this Section 2.17(d) following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (ii) the determination by the Administrative Agent and the Letter of Credit Issuer that there exists excess cash collateral; provided that, subject to this Section 2.17 the Person providing cash collateral and the Letter of Credit Issuer may agree that cash collateral shall be held to support future anticipated Fronting Exposure or other obligations and provided further that to the extent that such cash collateral was provided by the Borrower, such cash collateral shall remain subject to the security interest granted pursuant to the Loan Documents.

ARTICLE III

YIELD PROTECTION; TAXES

3.1 Yield Protection. If, on or after the date of this Agreement, there occurs any Change in Law which:

(a) subjects any Lender or any applicable Lending Installation, the Letter of Credit Issuer, or the Administrative Agent to any Taxes (other than with respect to Indemnified Taxes, Excluded Taxes, and Other Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, or

(b) imposes or increases or deems applicable any reserve, assessment, insurance charge, special deposit, liquidity or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender or any applicable Lending Installation or the Letter of Credit Issuer), or

(c) imposes any other condition (other than Taxes) the result of which is to increase the cost to any Lender or any applicable Lending Installation or the Letter of Credit Issuer of making, funding or maintaining its Loans, or of issuing or participating in Facility Letters of Credit, or reduces any amount receivable by any Lender or any applicable Lending Installation or the Letter of Credit Issuer in connection with its Loans, Facility Letters of Credit or participations therein, or requires any Lender or any applicable Lending Installation or the Letter of Credit Issuer to make any payment calculated by reference to the amount of Loans, Facility Letters of Credit or participations therein held or interest or Letter of Credit Fees received by it, by an amount deemed material by such Lender or the Letter of Credit Issuer as the case may be,

and the result of any of the foregoing is to increase the cost to such Person of making or maintaining its Loans or Revolving Commitment or of issuing or participating in Facility Letters of Credit or to reduce the amount received by such Person in connection with such Loans or Revolving Commitment, Facility Letters of Credit or participations therein, then, within fifteen (15) days after demand by such Person, the Borrowers shall pay such Person, as the case may be, such additional amount or amounts as will compensate such Person for such increased cost or reduction in amount received. Failure or delay on the part of any such Person to demand compensation pursuant to this Section 3.1 shall not constitute a waiver of such Person's right to demand such compensation; *provided* that the Borrowers shall not be required to compensate a Person pursuant to this Section 3.1 for any increased costs or reductions suffered more than 270 days prior to the date that such Person notifies the Borrowers of the Change in Law giving rise to such increased costs or reductions and of such Person's intention to claim compensation therefor; *provided further*, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

3.2 Changes in Capital Adequacy Regulations. If a Lender or the Letter of Credit Issuer determines that the amount of capital or liquidity required or expected to be maintained by such Lender or the Letter of Credit Issuer, any Lending Installation of such Lender or the Letter of Credit Issuer, or any corporation or holding company controlling such Lender or the Letter of Credit Issuer is increased as a result of (a) a Change in Law or (b) any change on or after the date of this Agreement in the Risk-Based Capital Guidelines, then, within fifteen (15) days after demand by such Lender or the Letter of Credit Issuer, the Borrowers shall pay such Lender or the Letter of Credit Issuer the amount necessary to compensate for any shortfall in the rate of return on the portion of such increased capital or liquidity which such Lender or the Letter of Credit Issuer determines is attributable to this Agreement, its Term Loans, its Revolving Exposure or its Revolving Commitment to make Revolving Loans and issue or participate in Facility Letters of Credit, as the case may be, hereunder (after taking into account such Lender's or the Letter of Credit Issuer's policies as to capital adequacy or liquidity), in each case that is attributable to such Change in Law or change in the Risk-Based Capital Guidelines, as applicable. Failure or delay on the part of such Lender or the Letter of Credit Issuer to demand compensation pursuant to this Section 3.2 shall not constitute a waiver of such Lender's or the Letter of Credit Issuer's right to demand such compensation; *provided* that the Borrowers shall not be required to compensate any Lender or the Letter of Credit Issuer pursuant to this Section 3.2 for any shortfall suffered more than 270 days prior to the date that such Lender or the Letter of Credit Issuer notifies the Borrowers of the Change in Law or change in the Risk-Based Capital Guidelines giving rise to such shortfall and of such Lender's or the Letter of Credit Issuer's intention to claim compensation therefor; *provided further*, that if the Change in Law or change in Risk-Based Capital Guidelines giving rise to such shortfall is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

3.3 Taxes.

(a) Any and all payments by or on account of any obligation of any Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law requires the deduction

or withholding of any Tax from any such payment, then the applicable Borrower shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax or Other Tax, then the sum payable by the applicable Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 3.3) the applicable Lender, the Letter of Credit Issuer or the Administrative Agent receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) The Borrowers shall timely pay to the relevant Governmental Authority in accordance with applicable law or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) The Borrowers shall indemnify the Lender, the Letter of Credit Issuer or the Administrative Agent, within fifteen (15) days after demand therefor, for the full amount of any Indemnified Taxes and Other Taxes (including Indemnified Taxes and Other Taxes imposed or asserted on or attributable to amounts payable under this Section 3.3) payable or paid by such Lender, the Letter of Credit Issuer or the Administrative Agent or required to be withheld or deducted from a payment to such Lender, the Letter of Credit Issuer or the Administrative Agent and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes and Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority.

(d) Each Lender shall severally indemnify the Administrative Agent, within fifteen (15) days after demand therefor, for (i) any Indemnified Taxes and Other Taxes attributable to such Lender (but only to the extent that any Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and Other Taxes and without limiting the obligation of the Borrowers to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 12.2(c) relating to the maintenance of a Participant Register, and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (d).

(e) As soon as practicable after any payment of Taxes by any Borrower to a Governmental Authority pursuant to this Section 3.3, such Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrowers and the Administrative Agent, at the time or times reasonably requested by the Borrowers or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrowers or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrowers or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrowers or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

Without limiting the generality of the foregoing,

(1) any Lender that is a United States Person for U.S. federal income Tax purposes shall deliver to the Borrowers and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding Tax;

(2) any Non-U.S. Lender shall, to the extent it is legally entitled to do so, deliver to the Borrowers and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Non-U.S. Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), whichever of the following is applicable:

a) in the case of a Non-U.S. Lender claiming the benefits of an income Tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such Tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such Tax treaty;

b) executed copies of IRS Form W-8ECI;

c) in the case of a Non-U.S. Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate to the effect that such

Non-U.S. Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of any Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” related to any Borrower as described in Section 881(c)(3)(C) of the Code and (y) executed copies of IRS Form W- 8BEN or IRS Form W-8BEN-E; or

d) to the extent a Non-U.S. Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, IRS Form W-8IMY or IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable.

(3) any Non-U.S. Lender shall, to the extent it is legally entitled to do so, deliver to the Borrowers and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Non-U.S. Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrowers or the Administrative Agent to determine the withholding or deduction required to be made; and

(4) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrowers and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrowers or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrowers or the Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (D), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

(i) Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update

such form or certification or promptly notify the Borrowers and the Administrative Agent in writing of its legal inability to do so.

(g) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.3 (including by the payment of additional amounts pursuant to this Section 3.3), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 3.3 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Each party's obligations under this Section 3.3 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Revolving Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

ARTICLE IV

CONDITIONS PRECEDENT

4.1 Initial Credit Extension. The Lenders shall not be required to make the initial Credit Extension hereunder unless each of the following conditions is satisfied:

(a) The Administrative Agent shall have received duly executed counterparts of all of the Loan Documents, including this Agreement, the Notes and the Collateral Documents.

(b) The Administrative Agent shall have received a certificate, signed by an Authorized Officer, stating that on the date of the initial Credit Extension (i) no Default or Event of Default has occurred and is continuing and (ii) the representations and warranties contained in Article V are (x) with respect to any representations or warranties that contain a materiality qualifier, true and correct in all respects as of such date, except to the extent any such representation or warranty is stated to relate solely to an earlier date, in which case such representation or warranty shall have been true and correct in all

respects on and as of such earlier date and (y) with respect to any representations or warranties that do not contain a materiality qualifier, true and correct in all material respects as of such date, except to the extent any such representation or warranty is stated to relate solely to an earlier date, in which case such representation or warranty shall have been true and correct in all material respects on and as of such earlier date.

(c) The Administrative Agent shall have received a written opinion of the Borrowers' counsel, in form and substance acceptable to the Administrative Agent, addressed to the Lenders, substantially covering the opinions set forth in Exhibit A and such other opinions reasonably required by the Administrative Agent. The Borrowers' counsel shall be reasonably acceptable to the Administrative Agent.

(d) The Administrative Agent and the Lenders shall be satisfied in all respects with (i) the terms and conditions of, and the structure of, the Banker Steel Acquisition, and (ii) the Banker Steel Acquisition Documents.

(e) The Administrative Agent shall have received such documents and certificates relating to the organization, existence and good standing of each Borrower and each initial Guarantor, the authorization of the transactions contemplated hereby and any other legal matters relating to each Borrower and such Guarantors, the Loan Documents or the transactions contemplated hereby, all in form and substance satisfactory to the Administrative Agent and its counsel and as further described in the list of closing documents attached as Exhibit H.

(f) The Administrative Agent shall have received any and all fees, costs and expenses owing to it.

(g) The Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Effective Date, including, to the extent invoiced, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Borrowers hereunder.

(h) There shall not have occurred a material adverse change (i) in the business, Property, liabilities (actual and contingent), operations or condition (financial or otherwise), results of operations, or prospects of the Borrowers and their Subsidiaries taken as a whole, since January 2, 2021 or (ii) in the facts and information regarding such entities as represented by such entities to date.

(i) The Administrative Agent shall have received evidence of all governmental, equity holder and third party consents and approvals necessary in connection with the contemplated financing and all applicable waiting periods shall have expired without any action being taken by any authority that would be reasonably likely to restrain, prevent or impose any material adverse conditions on the Borrowers and their Subsidiaries, taken as a whole, and no law or regulation shall be applicable which in the reasonable judgment of the Administrative Agent could have such effect.

(j) No action, suit, investigation or proceeding is pending or, to the knowledge of Borrowers, threatened in any court or before any arbitrator or

Governmental Authority that would reasonably be expected to result in a Material Adverse Effect or which seeks to prevent, enjoin or delay the making of any Credit Extensions.

(k) The Administrative Agent shall have received: (i) pro forma financial statements giving effect to the initial Credit Extensions contemplated hereby and the Banker Steel Acquisition, which demonstrate, in the Administrative Agent's reasonable judgment, together with all other information then available to the Administrative Agent, that the Borrowers can repay their debts and satisfy their other obligations as and when they become due, and can comply with the financial covenants set forth in Section 6.19, and (ii) such information as the Administrative Agent may reasonably request to confirm the tax, legal, and business assumptions made in such pro forma financial statement.

(l) The Administrative Agent shall have received evidence of current insurance coverage in form, scope and substance reasonably satisfactory to the Administrative Agent and otherwise in compliance with the terms of Sections 5.18 and 6.6.

(m) The Administrative Agent shall have received a preliminary title report issued by Title Insurer showing the condition of title of each real property listed on Schedule 5.23 hereto with such real property's legal description, a copy of all documents listed as exceptions to said title report, and a copy of all documents that evidence the vesting of the ownership of such real property.

(n) The Administrative Agent shall have received Title Insurer's commitment to issue a Loan Policy of Title Insurance, with a liability limit of not less than the aggregate face amount of the Notes, insuring Administrative Agent's interest under the Collateral Documents applicable to each of the real properties listed on Schedule 5.23, for the ratable benefit of Lenders, together with such reinsurance or coinsurance agreements and endorsements to said policy as Administrative Agent may require, for each of the real properties listed on Schedule 5.23.

(o) The Administrative Agent shall have received a current survey of each of the real properties listed on Schedule 5.23, other than the properties governed by Section 4.3, including dimensions, delineations and locations of all easements thereto, certified to Administrative Agent and in form and substance acceptable to Administrative Agent, and satisfactory to Title Insurer if required by it.

(p) The Administrative Agent shall have received Title Affidavits for each of the real properties listed on Schedule 5.23, and Survey Affidavits for each of the real properties listed on Schedule 5.23, other than the properties governed by Section 4.3, in each case in form and substance acceptable to Administrative Agent, and satisfactory to Title Insurer if required by it.

(q) The Administrative Agent shall have received evidence that each of the real properties listed on Schedule 5.23 is not located in an area designated by the Secretary of Housing and Urban Development as a special flood hazard area, or that

flood hazard insurance coverage acceptable to Administrative Agent in its sole discretion is in place.

(r) The Administrative Agent shall have received (a) copies of a Phase I report with respect to each of the real properties listed on Schedule 5.23, each prepared by an independent environmental consultant acceptable to Administrative Agent, which reports shall be addressed to Administrative Agent or accompanied by a reliance letter addressed to Administrative Agent, and (b) insurance against environmental risks with respect to the real properties listed on Schedule 5.23 in form and substance satisfactory to Administrative Agent.

(s) The Administrative Agent shall have received evidence, in form and substance acceptable to Administrative Agent, and Title Insurer if required by it, that each of the real properties listed on Schedule 5.23 is properly zoned for its current and/or intended use.

(t) The Administrative Agent shall have received evidence of a certificate of occupancy and all permits required for the occupancy and use of each of the real properties listed on Schedule 5.23.

(u) The Administrative Agent shall have received evidence, in form and substance acceptable to Administrative Agent, and Title Insurer if required by it, that all real estate and property taxes for each of the real properties listed on Schedule 5.23 have been paid in full.

(v) The Administrative Agent shall have received, for each of the real properties listed on Schedule 5.23, a written appraisal report prepared by an appraiser acceptable to Administrative Agent in its sole discretion and prepared in compliance with applicable regulatory requirements including, without limitation, the Financial Institutions Recovery, Reform and Enforcement Act of 1989, as amended from time to time, and subject to Administrative Agent's customary independent appraisal requirements, setting forth the fair market value of the applicable real property.

(w) The Administrative Agent shall have received the results of a recent lien search in each of the jurisdictions where the initial Borrowers are organized, and such search shall reveal no Liens on any of the assets of the initial Borrowers except for Liens permitted by Section 6.14 or discharged on or prior to the Effective Date pursuant to a payoff letter or other documentation satisfactory to the Administrative Agent.

(x) The Administrative Agent shall have received copies of all leases related to any of the real properties listed on Schedule 5.23.

(y) The Administrative Agent shall have received such subordination agreements and tenant estoppel certificates as Administrative Agent may request with respect to any tenants for the real properties listed on Schedule 5.23.

(z) The Administrative Agent shall have received a written appraisal report prepared by an appraiser acceptable to Administrative Agent in its sole discretion,

subject to Administrative Agent's customary independent appraisal requirements, setting forth the fair market value of all equipment owned by Borrowers.

(aa) The Administrative Agent shall have received a payoff letter and UCC-3 termination statements from Wells Fargo Bank, N.A. and TCW Asset Management Company LLC, in each case acceptable to Administrative Agent in its sole discretion.

(bb) Each document (including any Uniform Commercial Code financing statement) required by the Collateral Documents or under law or reasonably requested by the Administrative Agent to be filed, registered or recorded in order to create in favor of the Administrative Agent, for the benefit of the Lenders, a perfected Lien on the Collateral described herein, prior and superior in right to any other Person, shall be in proper form for filing, registration or recordation.

(cc) Upon the reasonable request of any Lender made at least ten days prior to the Effective Date, each Borrower must have provided to such Lender the documentation and other information so requested in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including the PATRIOT Act, in each case at least five days prior to the Effective Date.

(dd) At least five Business Days prior to the Effective Date, if a Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, such Borrower must deliver a Beneficial Ownership Certification in relation to such Borrower.

(ee) Borrowers shall have satisfied any and all of Administrative Agent's loan opening requirements or conditions, including without limitation to execution of such additional agreements, instruments, documents, certificates, account opening forms, signature cards, and other instruments as Administrative Agent may require or request.

4.2 Each Credit Extension. The Lenders shall not (except as otherwise set forth in Section 2.14(e) with respect to Revolving Loans made for any Reimbursement Obligations for draws under a Facility Letter of Credit) be required to make any Credit Extension unless on the applicable Borrowing Date:

(a) There exists no Default or Event of Default, nor would a Default or Event of Default result from such Credit Extension.

(b) The representations and warranties contained in Article V are (i) with respect to any representations or warranties that contain a materiality qualifier, true and correct in all respects as of such Borrowing Date, except to the extent any such representation or warranty is stated to relate solely to an earlier date, in which case such representation or warranty shall have been true and correct in all respects on and as of such earlier date and (ii) with respect to any representations or warranties that do not contain a materiality qualifier, true and correct in all material respects as of such Borrowing Date, except to the extent any such representation or warranty is stated to relate solely to an earlier date, in which case such representation or warranty shall have been true and correct in all material respects on and as of such earlier date.

(c) No event shall have occurred and no condition shall exist which has or which could be reasonably expected to have a Material Adverse Effect.

(d) Administrative Agent shall have received a Borrowing Notice or request for issuance of a Facility Letter of Credit, as applicable.

(e) Borrowers shall have satisfied any and all of Administrative Agent's reasonable and customary requirements or conditions, including without limitation the execution of such additional agreements, instruments, documents, certificates, account opening forms, signature cards, and other instruments as Administrative Agent may require or request.

Each Borrowing Notice or request for issuance of a Facility Letter of Credit with respect to each such Credit Extension shall constitute a representation and warranty by Borrowers that the conditions contained in this Section 4.2 have been satisfied.

4.3 Surveys. Prior to any Credit Extension after the date which is ninety (90) days after the date hereof, Borrower shall deliver to the Administrative Agent a current survey of each of the real properties listed on Schedule 5.23 and identified below, including dimensions, delineations and locations of all easements thereto, certified to Administrative Agent and in form and substance acceptable to Administrative Agent, and satisfactory to Title Insurer if required by it. It shall be an Event of Default if Borrower fails to deliver such surveys with such period with respect to the property located on Buchanan St. in Phoenix, AZ and the properties located in Eloy, AZ, Bellemont, AZ, Stockton, CA, Houston, TX and Ottawa, KS.

4.4 Collateral Access Agreements. Prior to any Credit Extension after the date which is thirty (30) days after the date hereof, Borrower shall deliver to the Administrative Agent a waiver and agreement from the lessor of each of the real properties listed on Schedule 4.4 in form and substance acceptable to Administrative Agent. It shall be an Event of Default if Borrower fails to deliver each such agreement with such period.

4.5 Equipment Appraisals. Prior to any Credit Extension after the date which is ninety (90) days after the date hereof, Administrative Agent shall have receive updated appraisals of the equipment acquired in the Banker Steel Acquisition in form and substance acceptable to Administrative Agent. It shall be an Event of Default if Administrative Agent does not receive any such appraisal with such period.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

The Borrowers represent and warrant to the Lenders that:

5.1 Existence and Standing. Each of the Borrowers and their Subsidiaries is a corporation, partnership or limited liability company duly and properly incorporated or formed, as the case may be, validly existing and (to the extent such concept applies to such entity) in

good standing under the laws of its jurisdiction of incorporation or organization and has all requisite authority to conduct its business in each jurisdiction in which its business is conducted.

5.2 Authorization and Validity. Each Borrower, Guarantor, and Subsidiary of Holdings has the power and authority and legal right to execute and deliver the Loan Documents to which it is a party and to perform its obligations thereunder. The execution and delivery by each Borrower, Guarantor, and Subsidiary of Holdings of the Loan Documents to which it is a party and the performance of its obligations thereunder have been duly authorized by proper corporate or limited liability company proceedings, and the Loan Documents constitute legal, valid and binding obligations of the Borrowers, Guarantors, and Subsidiaries of Holdings party thereto enforceable against the Borrowers, Guarantors, and Subsidiaries of Holdings in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

5.3 No Conflict; Government Consent. Neither the execution and delivery by the Borrowers and Guarantors of the Loan Documents to which each is a party, nor the consummation of the transactions therein contemplated, nor compliance with the provisions thereof will violate (i) any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the Borrowers or any of their Subsidiaries or (ii) the Borrowers' or any Subsidiary's articles or certificate of incorporation, partnership agreement, certificate of partnership, articles or certificate of organization, by-laws, or operating or other management agreement, as the case may be, or (iii) the provisions of any indenture, instrument or agreement to which the Borrowers or any of their Subsidiaries is a party or is subject, or by which it, or its Property, is bound, or conflict with or constitute a default thereunder, or result in, or require, the creation or imposition of any Lien in, of or on the Property of the Borrowers or a Subsidiary pursuant to the terms of any such indenture, instrument or agreement. No order, consent, adjudication, approval, license, authorization, or validation of, or filing, recording or registration with, or exemption by, or other action in respect of any governmental or public body or authority, or any subdivision thereof, which has not been obtained by the Borrowers or any of their Subsidiaries, is required to be obtained by the Borrowers or any of their Subsidiaries in connection with the execution and delivery of the Loan Documents, the borrowings under this Agreement, the payment and performance by the Borrowers and Guarantors of the Obligations or the legality, validity, binding effect or enforceability of any of the Loan Documents.

5.4 Financial Statements. The January 2, 2021 audited consolidated financial statements of Holdings and its Subsidiaries were prepared in accordance with GAAP in effect on the date such statements were prepared, and the unaudited financial statements of Holdings and its Subsidiaries dated as of April 3, 2021 were prepared on a materially consistent basis with prior financial statements; and each such financial statements fairly present the consolidated financial condition and operations of Holdings and its Subsidiaries at such dates and the consolidated results of their operations for the periods then ended.

5.5 Material Adverse Change. Since the date of the most recent audited financial statements delivered to the Administrative Agent there has been no change in the business, Property, prospects, condition (financial or otherwise) or results of operations of Holdings and its Subsidiaries which could reasonably be expected to have a Material Adverse Effect.

5.6 Taxes. The Borrowers and their Subsidiaries have filed all United States federal and state income Tax returns and all other material Tax returns which are required to be filed by them and have paid all United States federal and state income Taxes and all other material Taxes due from the Borrowers and their Subsidiaries, including, without limitation, pursuant to any assessment received by the Borrowers or any of their Subsidiaries, except such Taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided in accordance with GAAP and as to which no Lien exists. No Tax Liens have been filed and no claims are being asserted with respect to any such Taxes. The charges, accruals and reserves on the books of Holdings and its Subsidiaries in respect of any Taxes or other governmental charges are adequate.

5.7 Litigation and Contingent Obligations. There is no litigation, arbitration, governmental investigation, proceeding or inquiry pending or, to the knowledge of any of their officers, threatened against or affecting a Borrower or any of its Subsidiaries which could reasonably be expected to have a Material Adverse Effect or which seeks to prevent, enjoin or delay the making of any Credit Extensions. Other than any liability incident to any litigation, arbitration or proceeding which could not reasonably be expected to have a Material Adverse Effect, no Borrower has material Contingent Obligations not provided for or disclosed in the financial statements referred to in Section 5.4.

5.8 Subsidiaries. Schedule 5.8 contains an accurate list of all Subsidiaries of Holdings as of the date of this Agreement, setting forth their respective jurisdictions of organization and the percentage of their respective capital stock or other ownership interests owned by the Borrowers or other Subsidiaries. All of the issued and outstanding shares of capital stock or other ownership interests of such Subsidiaries have been (to the extent such concepts are relevant with respect to such ownership interests) duly authorized and issued and are fully paid and non-assessable.

5.9 ERISA. With respect to each Plan, each Borrower, each Subsidiary and all ERISA Affiliates have paid all required minimum contributions and installments on or before the due dates provided under Section 430(j) of the Code and could not reasonably be subject to a lien under Section 430(k) of the Code or Title IV of ERISA. Neither any Borrower, any Subsidiary nor any ERISA Affiliate has filed, pursuant to Section 412(c) of the Code or Section 302(c) of ERISA, an application for a waiver of the minimum funding standard. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect.

5.10 Accuracy of Information.

(a) No information, exhibit or report furnished by the Borrowers or any of their Subsidiaries to the Administrative Agent or to any Lender in connection with the negotiation of, or compliance with, the Loan Documents contained any material misstatement of fact or omitted to state a material fact or any fact necessary to make the statements contained therein not misleading.

(b) As of the Effective Date and as of each date on which a notice is required under Section 6.3(f), the information included in any Beneficial Ownership Certification is true and correct in all respects.

5.11 Regulations; Margin Stock. Neither any Borrower nor any Subsidiary owns or is carrying any Margin Stock or is engaged principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying any Margin Stock. Neither the making of any Loans nor the use of the proceeds of any Loan will violate, or be inconsistent with, the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System or any other regulation of the Board of Governors of the Federal Reserve System.

5.12 Material Agreements. None of the Borrowers nor any Subsidiary of any Borrower is a party to any agreement or instrument or subject to any charter or other corporate restriction which could reasonably be expected to have a Material Adverse Effect. None of the Borrowers nor any Subsidiary of the Borrowers is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in (i) any agreement to which it is a party, which default could reasonably be expected to have a Material Adverse Effect or (ii) any agreement or instrument evidencing or governing Indebtedness.

5.13 Compliance With Laws. Each Borrower and its Subsidiaries are in compliance in all material respects with all applicable statutes, rules, regulations, orders and restrictions of any domestic or foreign government or any instrumentality or agency thereof having jurisdiction over the conduct of their respective businesses or the ownership of their respective Property.

5.14 Ownership of Properties. On the date of this Agreement, each Borrower and its Subsidiaries will have good title, free of all Liens other than those permitted by Section 6.14, to all of their respective Property and assets reflected in Holdings' most recent consolidated financial statements provided to the Administrative Agent as owned by Holdings and its Subsidiaries (other than as may have been disposed of in a manner permitted by Section 6.12(a)).

5.15 Plan Assets; Prohibited Transactions. No Borrower or Subsidiary is an entity deemed to hold "plan assets" within the meaning of 29 C.F.R. § 2510.3-101, as modified by Section 3(42) of ERISA, of an employee benefit plan (as defined in Section 3(3) of ERISA) which is subject to Title I of ERISA or any plan (within the meaning of Section 4975 of the Code) which is subject to Section 4975 of the Code, and neither the execution of this Agreement nor the making of Credit Extensions hereunder gives rise to a prohibited transaction within the meaning of Section 406 of ERISA or Section 4975 of the Code. No Borrower or Subsidiary is subject to any law, rule or regulation which is substantially similar to the prohibited transaction provisions of Section 406 of ERISA or Section 4975 of the Code.

5.16 Environmental Matters.

(a) The Property and operations of each Borrower and each of their Subsidiaries are in material compliance with applicable Environmental Laws and no Borrower or Subsidiary is subject to any liability under Environmental Laws that individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

(b) No Borrower or Subsidiary is aware that, or has received any notice to the effect that (i) its Property and/or operations are not in material compliance with any of the requirements of applicable Environmental Laws, (ii) any location to which any Borrower or Subsidiary has actually or allegedly sent materials for disposal or recycling is the subject of environmental investigation or remediation pursuant to Environmental Laws, or (iii) its Property and/or operations are the subject of any federal, state or local remedial action, or investigation evaluating whether any remedial action is needed, which, with respect to (i) through (iii), such non-compliance or remedial action individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

(c) there has been no release of Hazardous Materials at, from, or affecting the Property in concentrations that exceed applicable local, state, or federal standards for the current and expected future use of the Property, the remediation of which to meet applicable standards could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.17 Investment Company Act. None of the Borrowers nor any Subsidiary of the Borrowers is an “investment company” or a company “controlled” by an “investment company”, within the meaning of the Investment Company Act of 1940.

5.18 Insurance. Holdings maintains, and has caused each Subsidiary to maintain, with financially sound and reputable insurance companies, insurance on all their Property, liability insurance and environmental insurance in such amounts, subject to such deductibles and self- insurance retentions and covering such Properties and risks as is consistent with sound business practice.

5.19 Subordinated Indebtedness. The Obligations constitute senior Indebtedness which is entitled to the benefits of the subordination provisions of all agreements evidencing or governing outstanding Subordinated Indebtedness.

5.20 Solvency.

(a) Immediately after the consummation of the Banker Steel Acquisition and the other transactions to occur on the Effective Date and immediately following the making of each Credit Extension and after giving effect to the application of the proceeds of each Credit Extension, (a) the fair value of the assets of Holdings and its Subsidiaries on a consolidated basis, at a fair valuation, will exceed the debts and liabilities, subordinated, contingent or otherwise, of Holdings and its Subsidiaries on a consolidated basis; (b) the present fair saleable value of the Property of Holdings and its Subsidiaries on a consolidated basis will be greater than the amount that will be required to pay the probable liability of Holdings and its Subsidiaries on a consolidated basis on their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (c) Holdings and its Subsidiaries on a consolidated basis will be able to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (d) Holdings and its Subsidiaries on a consolidated basis will not have unreasonably small capital with

which to conduct the businesses in which they are engaged as such businesses are now conducted and are proposed to be conducted after the Effective Date.

(b) Holdings does not intend to, or to permit any of its Subsidiaries to, and does not believe that it or any of its Subsidiaries will, incur debts beyond its ability to pay such debts as they mature.

5.21 No Default. No Default or Event of Default has occurred and is continuing.

5.22 Anti-Corruption Laws; Sanctions. Holdings, its Subsidiaries and their respective officers and employees and to the knowledge of Holdings, its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of Holdings, any Subsidiary or to the knowledge of Holdings, any of their respective directors, officers or employees, is a Sanctioned Person.

5.23 Real Property. Set forth on Schedule 5.23A is a complete and accurate list, as of the Effective Date, of the addresses of all real property owned or leased by any Borrower or Subsidiary, together with, in the case of leased property, the names and mailing addresses of the lessors of such property.

5.24 Intellectual Property. Each Borrower and each of their Subsidiaries owns and possesses or has a license or other right to use all patents, patent rights, trademarks, trademark rights, trade names, trade name rights, service marks, service mark rights and copyrights as are necessary for the conduct of the businesses of the Borrowers and their Subsidiaries, without any infringement upon rights of others that could reasonably be expected to have a Material Adverse Effect.

ARTICLE VI COVENANTS

During the term of this Agreement, unless the Required Lenders shall otherwise consent in writing:

6.1 Financial Reporting. Holdings will maintain, for itself and each Subsidiary, a system of accounting established and administered in accordance with GAAP, and furnish to the Administrative Agent and the Lenders:

(a) Within 120 days after the close of each of its fiscal years, an unqualified audit report, with no going concern modifier, certified by independent certified public accountants acceptable to the Administrative Agent and the Lenders, prepared in accordance with GAAP on a consolidating and consolidated basis for itself and its Subsidiaries, including balance sheets as of the end of such period, related profit and loss and reconciliation of surplus statements, and a statement of cash flows, accompanied by any management letter prepared by said accountants.

(b) Within 45 days after the close of each of its fiscal quarters (or 75 days in the case of the last quarter of any fiscal year) for itself and its Subsidiaries, consolidating

and consolidated financial statements and consolidating and consolidated unaudited balance sheets as of the close of each such period and a statement of cash flows for the period from the beginning of such fiscal year to the end of such quarter, all certified by its chief financial officer.

(c) Together with the financial statements required under Sections 6.1(a) and (b), a Compliance Certificate in substantially the form of Exhibit B signed by Holdings' as Borrower Agent showing the calculations necessary to determine compliance with this Agreement and stating that no Default or Event of Default exists, or if any Default or Event of Default exists, stating the nature and status thereof.

(d) Within 30 days after the end of each calendar month, an accounts receivables aging report, and order backlog and work in process schedules for the Borrowers and their Subsidiaries.

(e) As soon as practicable, and in any event not later than 30 days after the commencement of each fiscal year of Holdings, financial projections for the Borrowers and their Subsidiaries for such fiscal year (including monthly operating and cash flow budgets) prepared in a manner consistent with the projections delivered by the Borrowers to the Administrative Agent prior to the Effective Date or otherwise in a manner reasonably satisfactory to the Administrative Agent, accompanied by a certificate of an Authorized Officer to the effect that (i) such projections were prepared by the Borrowers in good faith, (ii) the Borrowers have a reasonable basis for the assumptions contained in such projections and (iii) such projections have been prepared in accordance with such assumptions.

(f) Such other information as the Administrative Agent or any Lender may from time to time reasonably request, including information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" requirements under the PATRIOT Act or other applicable anti-money laundering laws.

(g) If any information which is required to be furnished to the Lenders under this Section 6.1 is required by law or regulation to be filed by any Borrower with a government body on an earlier date, then the information required hereunder shall be furnished to the Lenders at such earlier date.

6.2 Use of Proceeds. The Borrowers will, and will cause each Subsidiary to, use the proceeds of the Credit Extensions to pay existing indebtedness, for the Banker Steel Acquisition and for working capital. The Borrowers will not, nor will they permit any Subsidiary to, use any of the proceeds of the Advances to purchase or carry any "margin stock" (as defined in Regulation U). The Borrowers will not request any Loan or Facility Letter of Credit, and will not use, and the Borrowers will ensure that their Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Loan or Facility Letter of Credit (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws or (ii) in any manner that would result in the violation of any applicable Sanctions.

6.3 Notice of Material Events. The Borrowers will, and will cause each Subsidiary to, give notice in writing to the Administrative Agent and each Lender, promptly and in any event within 10 days after an officer of any Borrower obtains knowledge thereof, of the occurrence of any of the following:

- (a) any Default or Event of Default;
- (b) (i) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting any Borrower or any Affiliate thereof that, if adversely determined, would reasonably be expected to result in a Material Adverse Effect and (ii) any material adverse development which occurs in any litigation, arbitration or governmental investigation or proceeding previously disclosed by any Borrower or any Subsidiary pursuant to clause 6.3(b)(i);
- (c) with respect to a Plan, (i) any failure to pay all required minimum contributions and installments on or before the due dates provided under Section 430(j) of the Code or (ii) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA, of an application for a waiver of the minimum funding standard;
- (d) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, would reasonably be expected to result in a Material Adverse Effect;
- (e) any material change in accounting policies of, or financial reporting practices by, any Borrower or any Subsidiary, the receipt by Borrowers or any Subsidiary of any comment letter or management report submitted by its auditor (together with a copy thereof) as to any material accounting matters, or any discharge, resignation or withdrawal by or of Borrower's present auditor;
- (f) any change in the information provided in any Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in such certification;
- (g) any Material Adverse Effect upon a material portion of the Collateral or the commencement of any action or proceeding for the taking of any interest in a material portion of the Collateral;
- (h) the creation or acquisition of any Subsidiary;
- (i) any change in Holdings' senior executive officers; and
- (j) any other development, financial or otherwise, which would reasonably be expected to have a Material Adverse Effect.

Each notice delivered under this Section 6.3 shall be accompanied by a statement of an officer of the relevant Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

6.4 Conduct of Business. Each Borrower will, and will cause each Subsidiary to, carry on and conduct its business in substantially the same manner and in substantially the same fields of enterprise as it is presently conducted and do all things necessary to remain duly incorporated or organized, validly existing and (to the extent such concept applies to such entity) in good standing as a domestic corporation, partnership or limited liability company in its jurisdiction of incorporation or organization, as the case may be, and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted.

6.5 Taxes. Each Borrower will, and will cause each Subsidiary to, timely file complete and correct United States federal and applicable foreign, state and local tax returns required by law and pay when due all taxes, assessments and governmental charges and levies upon it or its income, profits or Property, except those which are being contested in good faith by appropriate proceedings, with respect to which adequate reserves have been set aside in accordance with GAAP and which could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

6.6 Insurance. Each Borrower will, and will cause each Subsidiary to, maintain with financially sound and reputable insurance companies, insurance on all their Property, liability insurance and environmental insurance in such amounts, subject to such deductibles and self- insurance retentions and covering such Properties and risks as is consistent with sound business practice, customarily carried under similar circumstances by Persons engaged in the same or similar business and reasonably acceptable to Administrative Agent, and each Borrower will furnish to any Lender upon request full information as to the insurance carried. With respect to such insurance, the Administrative Agent shall be named as an additional insured and as mortgagee and lender loss payee pursuant to endorsements acceptable to the Administrative Agent, and each provider of any such insurance shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Administrative Agent, that it will give the Administrative Agent thirty (30) days prior written notices before any such policy or policies shall be cancelled. The Borrowers shall notify the Administrative Agent in writing if (i) any such policy or policies shall be materially altered in a manner adverse to the Administrative Agent and/or the Lenders or (ii) the amount of coverage thereunder shall be reduced. Without limiting the foregoing, (a) the Administrative Agent and each Lender shall be permitted to obtain a completed "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination with respect to all real property Collateral, prior to execution and recording of any mortgage instrument with respect to such real property Collateral, and (b) if any real property Collateral is located in an area designated by the Federal Emergency Management Agency as having special flood or mudslide hazards, the Borrowers shall (i) deliver to the Administrative Agent and any Lender upon request, prior to execution and recording of any mortgage instrument with respect to such real property Collateral, evidence of applicable flood insurance, if available, in such form, on such terms and in such amounts as required by applicable flood insurance laws or as otherwise required by the Lenders, and (ii) maintain with a financially sound and reputable insurer at all times flood insurance, if available, with respect to such real property Collateral in such form, on such terms and in such amounts as required by applicable flood insurance laws or as otherwise required by the Lenders.

6.7 Compliance with Laws and Material Contractual Obligations. The Borrowers will, and will cause each Subsidiary to, (i) comply in all material respects with all laws, rules,

regulations, orders, writs, judgments, injunctions, decrees or awards to which it may be subject including, without limitation, all Environmental Laws, Anti-Corruption Laws and applicable Sanctions and (ii) perform in all material respects its obligations under material agreements to which it is a party.

6.8 Maintenance of Properties. The Borrowers will, and will cause each Subsidiary to, (i) do all things necessary to maintain, preserve, protect and keep its Property in good repair, working order and condition, ordinary wear and tear excepted, and make all necessary and proper repairs, renewals and replacements so that its business carried on in connection therewith may be properly conducted at all times; and (ii) to the extent the Property has any structures associated with Land Use Controls, inspect, maintain, repair and replace such structures as necessary to realize the benefit of such Land Use Controls.

6.9 Books and Records; Inspection. The Borrowers will, and will cause each of their Subsidiaries to, keep appropriate books of record and account in which it shall maintain full, true and correct entries of all dealings and transactions in relation to its business and activities. The Borrowers will, and will cause each Subsidiary to, permit the Administrative Agent and the Lenders, by their respective representatives and agents, at the Borrowers' expense, to inspect any of the Property, books and financial records of the Borrowers and each Subsidiary, to examine and make copies of the books of accounts and other financial records of the Borrowers and each Subsidiary, and to discuss the affairs, finances and accounts of the Borrowers and each Subsidiary with, and to be advised as to the same by, their respective officers at such reasonable times and intervals as the Administrative Agent or any Lender may designate.

6.10 Indebtedness. The Borrowers will not, and will not permit any Subsidiary to, create, incur, assume or suffer to exist any Indebtedness, except:

- (a) Obligations under this Agreement and the other Loan Documents;
- (b) Indebtedness secured by Liens permitted by Section 6.14(h), and extensions, renewals and refinancings thereof; provided that the aggregate amount of all such Indebtedness at any time outstanding shall not exceed \$1,000,000.00;
- (c) Indebtedness of any Borrower or Guarantor to any other Borrower or Guarantor;
- (d) Subordinated Indebtedness incurred as part of the Banker Steel Acquisition;
- (e) Hedging Obligations approved by the Administrative Agent and incurred in favor of a Lender or an Affiliate thereof for bona fide hedging purposes and not for speculation;
- (f) Debt described on Schedule 6.10 and any extension, renewal or refinancing thereof so long as the principal amount thereof is not increased;

(g) Contingent Obligations arising with respect to customary indemnification obligations in favor of purchasers in connection with Dispositions permitted under Section 6.12;

(h) Indebtedness owing by a Foreign Subsidiary to a Borrower or Guarantor that constitutes a Permitted Foreign Subsidiary Investment;

(i) Indebtedness associated with trade payables incurred in the ordinary course of business;

(j) Indebtedness secured by Permitted Liens incurred under Section 6.14(g) or 6.14(h) or comprising Investments permitted by this Agreement, provided that with respect to Permitted Liens permitted under Section 6.14(g), this clause (j) shall be construed to permit only indebtedness existing on the date of such Permitted Acquisition and that was not created in contemplation of such Permitted Acquisition;

(k) Unsecured Indebtedness representing deferred compensation to employees or directors of a Borrower or any Subsidiary of any Borrower incurred in the ordinary course of business and in an aggregate outstanding amount not to exceed \$7,500,000.00;

(l) Indebtedness incurred in the ordinary course of business and owed in respect to any overdrafts and related liabilities arising from treasury, depository and cash management services or in connection with any automated clearing house transfers of funds;

(m) Indebtedness (other than for borrowed money) that may be deemed to exist pursuant to any warranty or contractual service obligations, performance, surety, statutory, appeal, bid, payment (other than the payment of Indebtedness) or completion of performance guarantees or similar obligations incurred in the ordinary course of business;

(n) Indebtedness in respect of workers' compensation claims, payment obligations incurred in connection with health, disability or other types of social security benefits, unemployment or other insurance obligations, reclamation and statutory obligations, in each case in the ordinary course of business;

(o) Contingent Obligations arising in connection with the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business;

(p) Guaranties incurred in the ordinary course of business with respect to surety and appeal bonds, performance bonds and similar obligations;

(q) Guaranties of any obligations of any other Borrower or Subsidiary to the extent that such obligations that are guaranteed are permitted to be incurred by this Agreement; and

(r) Other unsecured Indebtedness, in addition to the Indebtedness listed above, in an aggregate outstanding amount not at any time exceeding \$1,000,000.00.

6.11 Merger. The Borrowers will not, nor will they permit any of their Subsidiaries to, merge or consolidate with or into any other Person, or permit any other Person to merge into or consolidate with it, or liquidate or dissolve, except that (i) a Subsidiary may merge, consolidate, liquidate or dissolve into a Borrower or a Guarantor (with the applicable Borrower or a Guarantor being the survivor thereof, and with the applicable Borrower being the survivor of any merger with any Guarantor or Subsidiary), (ii) a non-Guarantor Subsidiary may merge, consolidate, liquidate or dissolve into another non-Guarantor Subsidiary, and (iii) a Borrower or any Subsidiary may merge or consolidate with or into any Person other than a Borrower or a Subsidiary in order to effect a Permitted Acquisition (with the applicable Borrower or such Subsidiary being the survivor thereof).

6.12 Sale of Assets. No Borrower will, nor will it permit any of its Subsidiaries to, engage in or permit to occur a Disposition (not including any such Disposition by any Borrower or Guarantor to any other Borrower or Guarantor), except:

(a) Sales of inventory, or used, worn-out or surplus equipment, all in the ordinary course of business;

(b) The sale of equipment to the extent that such equipment is exchanged for credit against the purchase price of similar replacement equipment, or the proceeds of such sale are applied with reasonable promptness to the purchase price of such replacement equipment; and

(c) Other Dispositions involving Property (other than equity interests in a Subsidiary) with a fair market value not in excess of \$5,000,000.00 in any fiscal year.

6.13 Acquisitions. No Borrower will, nor will it permit any of its Subsidiaries to, make any Acquisition other than the Banker Steel Acquisition and Permitted Acquisitions.

6.14 Liens. No Borrower will, nor will it permit any of its Subsidiaries to, create, incur, or suffer to exist any Lien in, of or on the Property of the applicable Borrower or any of its Subsidiaries ([including, without limitation, the GrayWolf Specified Properties](#)), except:

(a) Liens for taxes, assessments or governmental charges or levies on its Property if the same shall not at the time be delinquent or thereafter can be paid without penalty, or are being contested in good faith and by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;

(b) Liens imposed by law, such as carriers', warehousemen's and mechanics' liens and other similar liens arising in the ordinary course of business which secure payment of obligations not more than 60 days past due or which are being contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;

(c) Liens arising out of pledges or deposits under worker's compensation laws, unemployment insurance, old age pensions, or other social security or retirement benefits, or similar legislation;

(d) Utility easements, building restrictions and such other encumbrances or charges against real property as are of a nature, generally existing with respect to Properties of a similar character and which do not in any material way affect the marketability of the same or interfere with the use thereof in the business of the applicable Borrower or its Subsidiaries; and in the case of any Liens on Property which is or will be subject to a deed of trust or mortgage in favor of Administrative Agent, which Liens are approved by Administrative Agent at the time such deed of trust or mortgage is granted to Administrative Agent;

(e) Liens arising solely by virtue of any statutory or common law provision relating to bankers' liens, rights of set-off or similar rights and remedies as to deposit accounts, securities accounts or other funds maintained with a creditor depository institution; provided that (i) such account is not a dedicated cash collateral account and is not subject to restriction against access by a Borrower or a Subsidiary in excess of those set forth by regulations promulgated by the Board of Governors of the Federal Reserve, and (ii) such account is not intended by the applicable Borrower or any Subsidiary to provide collateral to the depository institution.

(f) Liens existing on the date hereof and described in Schedule 6.14;

(g) Liens on Property acquired in a Permitted Acquisition, provided that such Liens extend only to the Property so acquired and were not created in contemplation of such Permitted Acquisition;

(h) Subject to the limitation set forth in Section 6.10(b), (i) Liens arising in connection with Finance Leases (and attaching only to the property being leased), and (ii) Liens that constitute purchase money security interests on any property securing debt incurred for the purpose of financing all or any part of the cost of acquiring such property, provided that any such Lien attaches to such property within 60 days of the acquisition thereof and attaches solely to the property so acquired;

(i) Attachments, appeal bonds, judgments and other similar Liens, for sums not exceeding \$1,000,000.00 in the aggregate arising in connection with court proceedings, provided the execution or enforcement of such Liens is effectively stayed and claims secured thereby are being contested in good faith and by appropriate proceedings;

(j) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(k) Liens not otherwise permitted by this Section so long as neither (i) the aggregate outstanding principal amount of the obligations secured thereby nor (ii) the aggregate fair market value of the assets subject thereto exceeds \$250,000.00 in the aggregate for the foregoing clauses (i) and (ii) at any one time; and

(l) Liens in favor of the Administrative Agent, for the benefit of the Lenders, granted pursuant to any Collateral Document.

6.15 Affiliates. No Borrower will, nor will not permit any of its Subsidiaries to, enter into any transaction (including, without limitation, the purchase or sale of any Property or service) with, or make any payment or transfer to, any Affiliate (other than transfers in favor of Borrowers and Guarantors) except (a) in the ordinary course of business and pursuant to the reasonable requirements of the applicable Borrower's or such Subsidiary's business and upon fair and reasonable terms no less favorable to the applicable Borrower or Guarantor than the applicable Borrower or Guarantor would obtain in a comparable arms-length transaction, and (b) Permitted Foreign Subsidiary Investments. Notwithstanding the foregoing, and without limitation, no Borrower or Subsidiary shall transfer any assets to Schuff Steel Management Company – Colorado L.L.C. or Schuff Steel Management Company – Southeast L.L.C.

6.16 Subordinated Indebtedness. No Borrower will, nor will it permit any of its Subsidiaries to, make any amendment or modification to the indenture, note or other agreement evidencing or governing any Subordinated Indebtedness, or directly or indirectly voluntarily prepay, defease or in substance defease, purchase, redeem, retire or otherwise acquire, or grant any security for, any Subordinated Indebtedness other than as expressly permitted under the applicable Subordination Agreement.

6.17 Sale of Accounts. No Borrower will, nor will it permit any of its Subsidiaries to, sell or otherwise dispose of any notes receivable or accounts receivable, with or without recourse other than in the ordinary course of business.

6.18 Restricted Payments. No Borrower will, nor will any Borrower permit any of its Subsidiaries to, make any Restricted Payment, except that (i) any Borrower or Subsidiary may declare and pay dividends or make distributions to a Borrower or to a Subsidiary of a Borrower, and (ii) Holdings may declare and pay dividends on its capital stock provided that (x) no Default or Event of Default shall exist before or after giving effect to such dividends or be created as a result thereof, ~~and~~ (y) the amount of such dividends paid in any fiscal year of Holdings shall not exceed the sum of (a) ~~70~~60% of Net Income for such fiscal year, and (b) the difference between ~~70~~60% of Net Income for the prior fiscal year and the amount of Restricted Payments actually made in the prior fiscal year, and (z) at least five Business Days prior to making any Restricted Payment permitted by this clause (ii), Borrowers shall deliver to Administrative Agent pro forma calculations showing that after giving effect to such Restricted Payment, (a) Borrowers will be in compliance with the foregoing clause (y), and (b) Borrowers will be, and will remain, in compliance with Section 6.19.

6.19 Financial Covenants.

6.19.1 Fixed Charge Coverage Ratio. Holdings shall not permit the Fixed Charge Coverage Ratio as of the last day of any fiscal quarter of Holdings ~~to be less than 1.20 to 1.00~~ for the period ~~for~~of four fiscal quarters ending on such day to be less than (a) for the fiscal quarter ending on June 30, 2022, 1.20 to 1.00, (b) thereafter, 1.30 to 1.00.

6.19.2 Senior Funded Indebtedness to EBITDA Ratio. Holdings shall not permit the Senior Funded Indebtedness to EBITDA Ratio as of the last day of any fiscal quarter of Holdings to be greater than 2.50 to 1.0.

6.20 Collateral Audits/Inspections. The Borrowers and their Subsidiaries shall permit the Administrative Agent, along with any Lender accompanying Administrative Agent, and each of their respective representatives or agents, to inspect their Property, and to inspect, audit, check and make copies of, and extracts from, their books, records, computer data, computer programs, journals, orders, receipts, correspondence and other data, the results of which must be satisfactory in the discretion of the Administrative Agent. Any Lender and each of its duly authorized representatives or agents may accompany Administrative Agent on any such visits or inspections, at the expense of such Lender. Each Borrower and Subsidiary shall also permit and facilitate, where appropriate, the opportunity of Administrative Agent, any Lender, or any of their respective representatives or agents to discuss such audit/inspection with relevant officers, employees and accountants. All such inspections or audits by the Administrative Agent shall be at the Borrowers' sole expense for expenses based on \$1,100 per examiner per day (plus out-of-pocket expenses (including reasonable and documented costs of travel, meals, and lodging)). Notwithstanding the foregoing, so long as no Event of Default has occurred, the Borrowers shall not be required to pay the expenses of more than one such audit or inspection during any calendar year.

6.21 Anti-Money Laundering Compliance. Each Borrower shall, and shall cause each of its Subsidiaries to, provide such information and take such actions as are reasonably requested by the Administrative Agent or any Lender in order to assist the Administrative Agent and the Lenders in maintaining compliance with anti-money laundering laws and regulations.

6.22 Deposit Accounts. Each Borrower and its Subsidiaries will move all of their deposit accounts (other than accounts maintained with a Lender) to the Administrative Agent within 180 days after the Effective Date and will thereafter maintain all of such deposit accounts (other than deposit accounts maintained with a Lender) with the Administrative Agent. Within 180 days after the Effective Date, all such deposit accounts (other than (i) deposit accounts used solely for payroll, payroll taxes and other employee wage and benefit programs, and (ii) to the extent Administrative Agent has approved the maintenance of such deposit accounts at another institution, zero balance accounts) of the Borrowers and their Subsidiaries shall at all times thereafter be subject to a Control Agreement. Notwithstanding the foregoing, (i) in no event shall any deposit account of any Foreign Subsidiary be required to be moved to the Administrative Agent or be subject to a Control Agreement if such actions would create a negative tax consequence for any Borrower, Guarantor or Subsidiary, and (ii) at all times during the term of this Agreement, Holdings and its domestic Subsidiaries may have operating accounts at financial institutions that are other than the Administrative Agent or a Lender and such deposit accounts shall not be required to be subject to a Control Agreement provided that the aggregate amount of deposits in such deposit accounts do not at any time exceed \$250,000 in the aggregate.

6.23 Investments. No Borrower will, nor will any Borrower permit any of its Subsidiaries to, make or permit to exist any Investment in any other Person, except the following:

(a) At any time that no Default or Event of Default exists, contributions by any Borrower to the capital of any other Borrower or any Guarantor, or by any Subsidiary to the capital of any Borrower or Guarantor, so long as the recipient of any such capital contribution has guaranteed the Obligations and such guaranty is secured by a pledge of all of its Equity Interests and substantially all of its real and personal property;

(b) Travel advances or loans to officers and employees of any Borrower or any of its Subsidiaries not exceeding at any one time \$100,000.00 in the aggregate;

(c) Advances in the form of (i) progress payments, (ii) prepaid rent not exceeding two (2) months, or (iii) security deposits;

(d) Extensions of trade credit in the ordinary course of business;

(e) Promissory notes or other non-cash consideration received in connection with any dispositions permitted by this Agreement;

(f) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in the ordinary course of business;

(g) Investments constituting Permitted Investments;

(h) Deposits of cash made in the ordinary course of business to secure the performance of operating leases;

(i) Investments existing as of the Effective Date and listed on Schedule 6.23; and

(j) Permitted Foreign Subsidiary Investments; and

(k) Other Investments in an aggregate amount not to exceed \$250,000.00 during the term of this Agreement.

6.24 Further Assurances.

(a) Each Borrower shall take, and cause each Subsidiary (other than Foreign Subsidiaries) to take, such actions as are necessary (including the execution and delivery of such guaranties, security agreements, mortgages, deeds of trust, assignments, estoppel certificates, financing statements and continuations thereof, termination statements, notices of assignment, certificates, assurances and other instruments as the Administrative Agent or the Required Lenders may reasonably request from time to time) or that the Administrative Agent or the Required Lenders may reasonably request from time to time in order (i) to ensure that (x) all of the Obligations are secured by substantially all of the assets of the Borrowers and Guarantors and guaranteed by all Domestic Subsidiaries (including, promptly upon the acquisition or creation thereof, any Domestic Subsidiary created or acquired after the date hereof) pursuant to guaranties,

security agreements and other Collateral Documents in form and substance satisfactory to the Administrative Agent and (y) the Obligations of each Guarantor under such party's Guaranty are secured by substantially all of the assets of such Guarantor, (ii) to perfect and maintain the validity, perfection and priority of the Liens intended to be created by the Collateral Documents and (iii) to better assure, convey, grant, assign, transfer, preserve, protect and confirm to the Administrative Agent and the Lenders the rights granted or now or hereafter intended to be granted to the Administrative Agent and the Lenders under any Loan Document or under any other document executed in connection therewith. Notwithstanding the foregoing, (A) no Foreign Subsidiary shall be required to issue any guaranty or grant any collateral (and no Foreign Subsidiary shall become a Borrower or Guarantor hereunder without the consent of each Lender), (B) no Borrower or Guarantor shall be required to pledge more than 65% of the stock of any Foreign Subsidiary if such action would result in adverse tax consequences to the Borrowers or any other Subsidiaries ~~and~~, (C) unless otherwise requested by Lenders at any time, GrayWolf Integrated Construction Company – Southeast, Inc., a Georgia corporation, shall not be required to grant Liens on the property located at (a) 3550 Francis Circle, Alpharetta, GA 3003; (b) 37 Artley Road, Savannah, GA 31408; and (c) 3033 County Road 49, Loxley, AL 36551 (collectively, the "GrayWolf Specified Properties") and (D) the Administrative Agent shall have the right (but not the obligation unless requested by the Required Lenders) to perfect its security interest in shares or other Equity Interests of any foreign Person pledged to the Administrative Agent in accordance with the laws of the applicable foreign jurisdiction. Notwithstanding any agreement by Administrative Agent not to require compliance with this Section 6.24 in any respect as of the Effective Date or any other date (including but not limited to Administrative Agent not requiring Liens on the GrayWolf Specified Properties as permitted by the foregoing clause (C) as of the First Amendment Date and not requiring compliance with the laws of any applicable foreign jurisdiction as permitted by the foregoing clause (E) as of the Effective Date) shall not be deemed a waiver of Administrative Agent's right thereafter to require full compliance with all or any portion of this Section 6.24.

(b) Without limitation of Section 6.24(a), on or before October 31, 2022, Borrowers shall, at Borrowers' expense, deliver to Administrative Agent such amendments to mortgages, amendments to deeds of trust, title policy endorsements and other documents and deliveries as Administrative Agent or the Title Insurer, as applicable, may request to confirm to Administrative Agent's satisfaction that all of the Collateral secures all of the Obligations, including but not limited to the First Amendment Increase, and that all of the title insurance policies insuring liens in favor Administrative Agent remain in full force and effect insuring the applicable Collateral Documents, as amended.

ARTICLE VII DEFAULTS

The occurrence of any one or more of the following events shall constitute an Event of Default (each, an "Event of Default"):

7.1 Any representation or warranty made or deemed made by or on behalf of a Borrower or any of its respective Subsidiaries to the Lenders or the Administrative Agent under or in connection with this Agreement, any other Loan Document, any Credit Extension, or any certificate or information delivered in connection with this Agreement or any other Loan Document shall be materially false on the date made or confirmed.

7.2 Nonpayment of (i) principal of, or interest on, any Loan (ii) any Reimbursement Obligation, any commitment fee or Letter of Credit Fee, or any other obligation under any of the Loan Documents (other than principal of, or interest on, any Loan), and in case of clause (ii), continuation of any nonpayment for five (5) Business Days after the same becomes due.

7.3 The breach by a Borrower of any of the terms or provisions of Article VI.

7.4 (i) Failure of a Borrower or any of its Subsidiaries to pay when due any payment (whether of principal, interest or any other amount) in respect of any Material Indebtedness that is not subject to a good faith dispute, (ii) the default by a Borrower or any of its Subsidiaries in the performance (beyond the applicable grace period with respect thereto, if any) of any term, provision or condition contained in any Material Indebtedness Agreement, or any other event shall occur or condition exist, the effect of which default, event or condition, provided such default, event or condition is not subject to a good faith dispute, under this clause (ii) is to cause, or to permit the holder(s) of such Material Indebtedness or the lender(s) under any Material Indebtedness Agreement to cause, any portion of such Material Indebtedness to become due prior to its stated maturity or any commitment to lend under any Material Indebtedness Agreement to be terminated prior to its stated expiration date, (iii) any portion of Material Indebtedness of a Borrower or any of its Subsidiaries shall be declared to be due and payable or required to be prepaid or repurchased (other than by a regularly scheduled payment) prior to the stated maturity thereof and such requirement is not subject to a good faith dispute, or (iv) a Borrower or any of its Subsidiaries shall not pay, or admit in writing its inability to pay, its debts generally as they become due.

7.5 A Borrower or any of its Subsidiaries shall (i) have an order for relief entered with respect to it under the Federal bankruptcy laws as now or hereafter in effect, (ii) make an assignment for the benefit of creditors, (iii) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any portion of its Property, (iv) institute any proceeding seeking an order for relief under the Federal bankruptcy laws as now or hereafter in effect or seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (v) take any corporate, limited liability company or partnership action to authorize or effect any of the foregoing actions set forth in this Section 7.5, (vi) fail to contest in good faith any appointment or proceeding described in Section 7.6, or (vii) a Borrower or any of its Subsidiaries shall not pay, or admit in writing its inability to pay, its debts generally as they become due.

7.6 Without the application, approval or consent of a Borrower or any of its Subsidiaries, a receiver, trustee, examiner, liquidator or similar official shall be appointed for

such Borrower or any of its Subsidiaries or any portion of its Property, or a proceeding described in Section 7.5(iv) shall be instituted against a Borrower or any of its Subsidiaries and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of sixty (60) consecutive days.

7.7 Any court, government or governmental agency shall condemn, seize or otherwise appropriate, or take custody or control of, all or any portion of the Property of a Borrower and its Subsidiaries.

7.8 A Borrower or any of its Subsidiaries shall fail within sixty (60) days to pay, obtain a stay with respect to, or otherwise discharge one or more (i) non-appealable judgments or orders for the payment of money in excess of \$1,000,000.00 (or the equivalent thereof in currencies other than Dollars) in the aggregate to the extent not covered by insurance, or (ii) nonmonetary judgments or orders which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, which judgment(s), in any such case, is/are not stayed on appeal or otherwise being appropriately contested in good faith, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of a Borrower or any of its Subsidiaries to enforce any such judgment.

7.9 (i) With respect to a Plan, a Borrower or an ERISA Affiliate is subject to a lien pursuant to Section 430(k) of the Code or Section 302(c) of ERISA or Title IV of ERISA, or (ii) an ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect.

7.10 Any Change in Control shall occur.

7.11 The occurrence of any “default” or an “event of default”, each as defined in any Loan Document (other than this Agreement) or the breach of any of the terms or provisions of any Loan Document (other than this Agreement), which default, event of default, or breach continues beyond any period of grace therein provided.

7.12 Any Loan Document shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of any Guaranty, or any Guarantor shall challenge the terms or provisions of any Guaranty to which it is a party, any Guarantor repudiates or purports to revoke its Guaranty or any Guarantor shall otherwise deny that it has any further liability under any Guaranty to which it is a party, or shall give notice to such effect.

7.13 Any Collateral Document shall for any reason fail to create a valid and perfected first priority security interest in any Collateral purported to be covered thereby, except as permitted by the terms of any Collateral Document or the terms hereof, or any Collateral Document shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of any Collateral Document, or any Borrower or Guarantor shall fail to comply with any of the terms or provisions of any Collateral Document to which it is a party.

ARTICLE VIII

ACCELERATION, WAIVERS, AMENDMENTS AND REMEDIES

8.1 Acceleration; Remedies.

(a) If any Event of Default described in Section 7.5 or 7.6 occurs with respect to any Borrower, the obligations of the Lenders to make Loans hereunder shall automatically terminate and the Obligations under this Agreement and the other Loan Documents shall immediately become due and payable without any election or action on the part of the Administrative Agent. If any other Event of Default occurs, the Administrative Agent may, and at the request of the Required Lenders shall, terminate the obligations of the Lenders to make Loans hereunder and the obligation and power of the Letter of Credit Issuer to issue Facility Letters of Credit, or declare the Obligations under this Agreement and the other Loan Documents to be due and payable, or both, whereupon the Obligations under this Agreement and the other Loan Documents shall become immediately due and payable, without presentment, demand, protest or notice of any kind, all of which each Borrower hereby expressly waives, and (b) upon notice to the Borrowers and in addition to the continuing right to demand payment of all amounts payable under this Agreement, make demand on the Borrowers to pay, and the Borrowers will, forthwith upon such demand and without any further notice or act, pay to the Administrative Agent the difference between 105% of the aggregate face amount of the Facility Letters of Credit and the balance of cash in the Facility Letter of Credit Collateral Account (“Collateral Shortfall Amount”), which funds shall be deposited in the Facility Letter of Credit Collateral Account.

(b) If at any time while any Event of Default is continuing, the Administrative Agent determines that the Collateral Shortfall Amount at such time is greater than zero, the Administrative Agent may make demand on the Borrowers to pay, and the Borrowers will, forthwith upon such demand and without any further notice or act, pay to the Administrative Agent the Collateral Shortfall Amount, which funds shall be deposited in the Facility Letter of Credit Collateral Account.

(c) The Administrative Agent may at any time or from time to time after funds are deposited in the Facility Letter of Credit Collateral Account, apply such funds to the payment of the Obligations under this Agreement and the other Loan Documents and any other amounts as shall from time to time have become due and payable by the Borrowers to the Lenders or the Letter of Credit Issuer under the Loan Documents, as provided in Section 8.2.

(d) At any time while any Event of Default is continuing, neither the Borrowers nor any Person claiming on behalf of or through the Borrowers shall have any right to withdraw any of the funds held in the Facility Letter of Credit Collateral Account. After all of the Obligations under this Agreement and the other Loan Documents have been indefeasibly paid in full and the Revolving Commitment has been terminated, any funds remaining in the Facility Letter of Credit Collateral Account shall

be returned by the Administrative Agent to the applicable Borrowers or paid to whomever may be legally entitled thereto at such time.

(e) If, within thirty (30) days after acceleration of the maturity of the Obligations under this Agreement and the other Loan Documents or termination of the obligations of the Lenders to make Loans and the obligation and power of the Letter of Credit Issuer to issue Facility Letters of Credit hereunder as a result of any Event of Default (other than any Event of Default as described in Section 7.5 or 7.6 with respect to any Borrower or Guarantor) and before any judgment or decree for the payment of the Obligations due under this Agreement and the other Loan Documents shall have been obtained or entered, the Required Lenders (in their sole discretion) so direct, the Administrative Agent shall, by notice to the Borrowers, rescind and annul such acceleration and/or termination.

(f) Upon the occurrence and during the continuation of any Event of Default, the Administrative Agent may, and at the request of the Required Lenders shall, exercise all rights and remedies under the Loan Documents and enforce all other rights and remedies under applicable law.

8.2 Application of Funds. After the exercise of remedies provided for in Section 8.1 (or after the Obligations under this Agreement and the other Loan Documents have automatically become immediately due and payable as set forth in the first sentence of Section 8.1(a)), any amounts received by the Administrative Agent on account of the Obligations shall be applied by the Administrative Agent in the following order:

(a) first, to payment of fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

(b) second, to payment of fees, indemnities and other reimbursable expenses (other than principal, interest, Letter of Credit Fees and commitment fees) payable to the Lenders and the Letter of Credit Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the Letter of Credit Issuer as required by Section 9.6 and amounts payable under Article III), ratably among the Lenders and the Letter of Credit Issuer in respect of the respective amounts payable to them;

(c) third, to payment of accrued and unpaid Letter of Credit Fees, commitment fees and interest on the Loans and Reimbursement Obligations, ratably among the Lenders and the Letter of Credit Issuer in respect of the respective amounts payable to them;

(d) fourth, to payment of all Obligations ratably among the Lenders, the Letter of Credit Issuer and any Affiliate of any of the foregoing, including with respect to Cash Management Services;

(e) fifth, to the Administrative Agent for deposit to the Facility Letter of Credit Collateral Account in an amount equal to the Collateral Shortfall Amount, if any; and

(f) last, the balance, if any, to the Borrowers or as otherwise required by law.

8.1 Amendments. The Required Lenders (or the Administrative Agent with the consent in writing of the Required Lenders) and the Borrowers may enter into agreements supplemental hereto for the purpose of adding or modifying any provisions to this Agreement or any other Loan Document or changing in any manner the rights of the Lenders or the Borrowers hereunder or thereunder or waiving any Default or Event of Default hereunder; *provided, however*, that no such supplemental agreement shall:

(a) without the consent of each Lender directly affected thereby, extend the final maturity of any Loan, or extend the expiry date of any Facility Letter of Credit to a date after the Revolving Loan Maturity Date (except to the extent expressly permitted hereby for Facility Letters of Credit that have been cash collateralized) or postpone any regularly scheduled payment of principal of any Loan (excluding mandatory repayments, which shall require the consent of all Lenders) or forgive all or any portion of the principal amount thereof or any Reimbursement Obligation related thereto, or reduce the rate or extend the time of payment of interest or fees thereon or Reimbursement Obligations related thereto or increase the amount of any Commitment of such Lender hereunder (provided that only the consent of the Required Lenders shall be necessary (x) to amend Section 2.5.2 or to waive the obligation of Borrowers to pay default interest as set forth in Section 2.5.2 or (y) to amend any financial covenant (or any defined term directly or indirectly used therein), even if the effect of such amendment would be to reduce the rate of interest applicable to any (1) Loan or (2) other Obligation solely by virtue of abstaining from the application of the Default Rate thereon, or to reduce any fee payable hereunder);

(b) without the consent of all of the Lenders, amend the definition of “Required Lenders” or “Pro Rata Share,” or amend any of the provisions hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder;

(c) without the consent of all of the Lenders, amend Section 8.2, this Section or Section 11.2; provided, that the foregoing limitation in respect of Section 11.2 shall not prohibit each Lender directly affected thereby from consenting to the extension of the final maturity date of its Loans or expiry date of its Facility Letters of Credit beyond the Revolving Loan Maturity Date as contemplated by Section 8.3(a) above;

(d) without the consent of all of the Lenders, except as otherwise provided in Section 10.15, release all or substantially all of the Collateral;

(e) without the consent of all of the Lenders, contractually subordinate any Liens granted by any Borrower or any Guarantor to Administrative Agent pursuant to the Loan Documents and securing the Obligations;

(f) without the consent of all of the Lenders, amend Section 4.1 or Section 4.2 hereof.

(g) without the consent of all of the Lenders, other than in connection with a merger, liquidation, dissolution or sale of such Person expressly permitted by the terms hereof or the other Loan Documents, release any of the Borrowers or Guarantors from any obligation for the payment of money or consent to the assignment or transfer by any such Person of any of its rights or duties under this Agreement or the other Loan Documents;

(h) without the consent of all of the Lenders, amend Section 10.15; or

(i) No amendment of any provision of this Agreement relating to the Administrative Agent shall be effective without the written consent of the Administrative Agent, and no amendment of any provision relating to the Letter of Credit Issuer shall be effective without the written consent of the Letter of Credit Issuer. Notwithstanding anything to the contrary herein, the Administrative Agent may, with the consent of the Borrowers only, amend, modify or supplement this Agreement or any of the other Loan Documents to cure any ambiguity, omission, mistake, defect or inconsistency of a technical or immaterial nature, as determined in good faith by the Administrative Agent.

8.4 Preservation of Rights. No delay or omission of the Lenders, the Letter of Credit Issuer or the Administrative Agent to exercise any right under the Loan Documents shall impair such right or be construed to be a waiver of any Event of Default or an acquiescence therein, and the making of a Credit Extension notwithstanding the existence of an Event of Default or the inability of the Borrowers to satisfy the conditions precedent to such Credit Extension shall not constitute any waiver or acquiescence. Any single or partial exercise of any such right shall not preclude other or further exercise thereof or the exercise of any other right, and no waiver, amendment or other variation of the terms, conditions or provisions of the Loan Documents whatsoever shall be valid unless in writing signed by the Lenders required pursuant to Section 8.3, and then only to the extent in such writing specifically set forth. All remedies contained in the Loan Documents or by law afforded shall be cumulative and all shall be available to the Administrative Agent, the Letter of Credit Issuer and the Lenders until the Obligations have been paid in full.

ARTICLE IX

GENERAL PROVISIONS

9.1 Survival of Representations. All representations and warranties of the Borrowers contained in this Agreement shall survive the making of the Credit Extensions herein contemplated.

9.2 Governmental Regulation. Anything contained in this Agreement to the contrary notwithstanding, neither the Letter of Credit Issuer nor any Lender shall be obligated to extend credit to the Borrowers in violation of any limitation or prohibition provided by any applicable statute or regulation.

9.3 Headings. Section headings in the Loan Documents are for convenience of reference only, and shall not govern the interpretation of any of the provisions of the Loan Documents.

9.4 Entire Agreement. The Loan Documents embody the entire agreement and understanding among the Borrowers, the Administrative Agent, the Letter of Credit Issuer and the Lenders and supersede all prior agreements and understandings among the Borrowers, the Administrative Agent, the Letter of Credit Issuer and the Lenders relating to the subject matter thereof.

9.5 Several Obligations; Benefits of this Agreement. The respective obligations of the Lenders hereunder are several and not joint and no Lender shall be the partner or agent of any other (except to the extent to which the Administrative Agent is authorized to act as such). The failure of any Lender to perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder. This Agreement shall not be construed so as to confer any right or benefit upon any Person other than the parties to this Agreement and their respective successors and assigns, *provided, however*, that for avoidance of doubt the Administrative Agent shall enjoy the benefits of the provisions of Sections 9.6, 9.10, 10.11 and the other provisions of this Agreement to the extent specifically set forth therein.

9.6 Expenses; Indemnification.

(a) The Borrowers shall reimburse the Administrative Agent upon demand for all reasonable out-of-pocket expenses paid or incurred by the Administrative Agent, including, without limitation, filing and recording costs and fees, costs of any environmental review, and consultants' fees, travel expenses and reasonable fees, charges and disbursements of outside counsel to the Administrative Agent incurred from time to time, in connection with the due diligence, preparation, administration, negotiation, execution, delivery, syndication, distribution (including, without limitation, via DebtX and any other internet service selected by the Administrative Agent), review, amendment, modification, and administration of the Loan Documents, and expenses incurred in connection with assessing and responding to any subpoena, garnishment or similar process served on the Administrative Agent relating to the Borrowers, any Collateral, any Guarantor, any Loan Document or the extensions of credit evidenced thereby. The Borrowers also agree to reimburse the Administrative Agent, the Letter of Credit Issuer and the Lenders for any costs, internal charges and out-of-pocket expenses, including, without limitation, filing and recording costs and fees, costs of any environmental review, and consultants' fees, travel expenses and reasonable fees, charges and disbursements of outside counsel to the Administrative Agent, the Letter of Credit Issuer and the Lenders incurred from time to time, paid or incurred by the Administrative Agent, the Letter of Credit Issuer or any Lender in connection with the collection and enforcement of the Loan Documents. Expenses being reimbursed by the Borrowers under this Section 9.6(a) include, without limitation, costs and expenses incurred in connection with the Reports described in the following sentence. The Borrowers acknowledge that from time to time Administrative Agent may prepare and may distribute to the Lenders (but shall have no obligation or duty to prepare or to distribute to the Lenders) certain audit reports (the "Reports") pertaining to the Borrowers' assets for internal use by

Administrative Agent from information furnished to it by or on behalf of the Borrowers, after Administrative Agent has exercised its rights of inspection pursuant to this Agreement.

(b) The Borrowers hereby further agree to indemnify, defend and hold harmless the Administrative Agent, the Letter of Credit Issuer, each Lender, their respective affiliates, and each of their directors, officers and employees, agents and advisors (each, an "Indemnitee") against all losses, claims, damages, penalties, judgments, liabilities and expenses (including, without limitation, reasonable attorneys' fees, charges and disbursements and settlement costs (including, without limitation, all expenses of litigation or preparation therefor) whether or not the Administrative Agent, any Lender or any affiliate is a party thereto) which any such Indemnitee may pay or incur arising out of or relating to this Agreement, the other Loan Documents, the transactions contemplated hereby, any actual or alleged presence or release of Hazardous Materials on or from any Property owned or operated by the Borrowers or any of their Subsidiaries, any environmental liability related in any way to the Borrowers or any of their Subsidiaries, or any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrowers or any of their Subsidiaries, or the direct or indirect application or proposed application of the proceeds of any Credit Extension hereunder except to the extent that there has been a final determination, whether by mutual agreement or judicial finding, that any such losses, claims, damages, penalties, judgments, liabilities and expenses resulted from the gross negligence or willful misconduct of the applicable Indemnitee. The obligations of the Borrowers under this Section 9.6 shall survive the termination of this Agreement.

9.7 Numbers of Documents. All statements, notices, closing documents, and requests hereunder shall be furnished to the Administrative Agent with sufficient counterparts so that the Administrative Agent may furnish one to each of the Lenders.

9.8 Accounting. Except as provided to the contrary herein, all accounting terms used herein shall be interpreted and all accounting determinations hereunder shall be made in accordance with GAAP in a manner consistent with that used in preparing the financial statements referenced in Section 5.4; provided that if the Borrowers notify the Administrative Agent that the Borrowers wish to amend any covenant in this Agreement (or any related definition) to eliminate or to take into account the effect of any change in GAAP or the application thereof on the operation of such covenant (or if the Administrative Agent notifies the Borrowers that the Required Lenders wish to amend any such covenant (or any related definition) for such purpose), then the Borrowers' compliance with such covenant shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP or the application thereof became effective, until either such notice is withdrawn or such covenant (or related definition) is amended in a manner satisfactory to the Borrowers and the Required Lenders..

9.9 Severability of Provisions. Any provision in any Loan Document that is held to be inoperative, unenforceable, or invalid in any jurisdiction shall, as to that jurisdiction, be inoperative, unenforceable, or invalid without affecting the remaining provisions in that

jurisdiction or the operation, enforceability, or validity of that provision in any other jurisdiction, and to this end the provisions of all Loan Documents are declared to be severable.

9.10 Nonliability of Lenders. The relationship between the Borrowers on the one hand and the Lenders, the Letter of Credit Issuer and the Administrative Agent on the other hand shall be solely that of borrower and lender. Neither the Administrative Agent, the Letter of Credit Issuer nor any Lender shall have any fiduciary responsibilities to the Borrowers. Neither the Administrative Agent, the Letter of Credit Issuer nor any Lender undertakes any responsibility to the Borrowers to review or inform the Borrowers of any matter in connection with any phase of the Borrowers' business or operations. The Borrowers agree that neither the Administrative Agent, the Letter of Credit Issuer nor any Lender shall have liability to the Borrowers (whether sounding in tort, contract or otherwise) for losses suffered by the Borrowers in connection with, arising out of, or in any way related to, the transactions contemplated and the relationship established by the Loan Documents, or any act, omission or event occurring in connection therewith, unless it is determined in a final non-appealable judgment by a court of competent jurisdiction that such losses resulted from the gross negligence or willful misconduct of the party from which recovery is sought. Neither the Administrative Agent, the Letter of Credit Issuer nor any Lender shall have any liability with respect to, and the Borrowers hereby waive, release and agree not to sue for, any lost profits or special, indirect, consequential or punitive damages suffered by the Borrowers in connection with, arising out of, or in any way related to the Loan Documents or the transactions contemplated thereby; provided that nothing contained in this sentence shall limit or otherwise relieve the Borrowers' indemnity obligations.

9.11 Confidentiality. The Administrative Agent and each Lender agrees to hold any confidential information which it may receive from the Borrowers in connection with this Agreement in confidence, except for disclosure (i) to its Affiliates and to the Administrative Agent and any other Lender and their respective Affiliates, and, in each case, their respective employees, directors, and officers, (ii) to legal counsel, accountants, and other professional advisors to the Administrative Agent or such Lender provided such parties have been notified of the confidential nature of such information, (iii) as provided in Section 12.3(e), (iv) to regulatory officials, (v) to any Person as requested pursuant to or as required by law, regulation, or legal process, (vi) to any Person in connection with any legal proceeding to which it is a party, (vii) to its direct or indirect contractual counterparties in swap agreements or to legal counsel, accountants and other professional advisors to such counterparties provided such parties have been notified of the confidential nature of such information, (viii) to rating agencies if requested or required by such agencies in connection with a rating relating to the Advances hereunder, (ix) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, and (x) to the extent such information (1) becomes publicly available other than as a result of a breach of this Section 9.11 or (2) becomes available to the Administrative Agent, the Letter of Credit Issuer or any other Lender of a non-confidential basis from a source other than the Borrowers.

9.12 Nonreliance. Each Lender hereby represents that it is not relying on or looking to any margin stock (as defined in Regulation U) for the repayment of the Credit Extensions provided for herein.

9.13 Disclosure. The Borrowers and each Lender hereby acknowledge and agree that UMB Bank, N.A. and/or its Affiliates from time to time may hold investments in, make other loans to or have other relationships with the Borrowers and their Affiliates.

9.14 USA PATRIOT ACT NOTIFICATION. The following notification is provided to each Borrower pursuant to Section 326 of the PATRIOT Act:

Each Lender that is subject to the requirements of the PATRIOT Act hereby notifies the Borrowers that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies each Borrower, which information includes the name and address of such Borrower and other information that will allow such Lender to identify such Borrower in accordance with the PATRIOT Act.

9.15 Borrower Agent Designation; Nature of Relationship.

(a) Each Borrower hereby irrevocably designates DBM Global Inc., as “Borrower Agent” to be its attorney and agent and in such capacity, whether verbally, in writing or through electronic methods to (i) borrow, (ii) request Advances, (iii) request the issuance of Facility Letters of Credit, (iv) sign and endorse notes, (v) execute and deliver all instruments, documents, application, security agreements, reimburse agreements and letter of credit agreements for Facility Letters of Credit and all other certificates, notice, writings and further assurances now or hereafter required hereunder, (vi) make elections regarding interest rate, (vii) give instructions regarding Facility Letters of Credit and agree with Letter of Credit Issuer upon any amendment, extension or renewal of any Facility Letter of Credit and (viii) otherwise take action under and in connection with this Agreement and the Loan Documents, all on behalf of and in the name such Borrower or Borrowers, and hereby authorizes Administrative Agent to pay over or credit all loan proceeds hereunder in accordance with the request of Borrower Agent.

(b) The handling of this credit facility as a co-borrowing facility with a borrower agent in the manner set forth in this Agreement is solely as an accommodation to Borrowers and at their request. Neither Administrative Agent nor any Lender shall incur liability to Borrowers as a result thereof. To induce Administrative Agent and Lenders to do so and in consideration thereof, each Borrower hereby indemnifies Administrative Agent and each Lender and holds Administrative Agent and each Lender harmless from and against any and all liabilities, expenses, losses, damages, and claims of damage or injury asserted against Administrative Agent or any Lender by any Person arising from or incurred by reason of the handling of the financing arrangements of Borrowers as provided herein, reliance by Administrative Agent or any Lender on any request or instruction from Borrower Agent or any other action taken by Administrative Agent or any Lender with respect to this Section 9.15 except due to willful misconduct or gross (not mere) negligence by the indemnified party (as determined by a court of competent jurisdiction in a final and non-appealable judgment).

(c) All Obligations shall be joint and several, and each Borrower shall make payment upon the maturity of the Obligations by acceleration or otherwise, and such

obligation and liability on the part of each Borrower shall in no way be affected by any extension, renewals and forbearance granted by Administrative Agent or any Lender to any Borrower, failure of Administrative Agent or any Lender to give any Borrower notice of borrowing or any other notice, any failure of Administrative Agent or any Lender to pursue or preserve its rights against any Borrower, the release by Administrative Agent or any Lender of any Collateral now or thereafter acquired from any Borrower, and such agreement by each Borrower to pay upon any noticed issued pursuant thereto is unconditional and unaffected by prior recourse by the lack thereof. Each Borrower waives all suretyship defenses.

9.16 Waiver of Subrogation. Each Borrower expressly waives any and all rights of subrogation, reimbursement, indemnity, exoneration, contribution of any other claim which such Borrower may now or hereafter have against any other Borrower liable for the Obligations hereunder, or against or with respect to any other Borrowers' property (including, without limitation, any property which is Collateral for the Obligations), arising from the existence or performance of this Agreement, until termination of this agreement and repayment in full of the Obligations (other than contingent indemnification obligations in respect of which no assertion of liability has been made).

9.17 Common Enterprise. The successful operation and condition of each of the Borrowers is dependent on the continued successful performance of the functions of the group of Borrowers as a whole and the successful operation of each Borrower is dependent on the successful performance and operation of each other Borrower. Each of the Borrowers expects to derive benefit (and its board of directors or other governing body has determined that it may reasonably be expected to derive benefit), directly and indirectly, from successful operations of each of the other Borrowers. Each Borrower expects to derive benefit (and the boards of directors or other governing body has determined that it may reasonably be expected to derive benefit), directly and indirectly, from the credit extended by the Lenders to the Borrowers hereunder, both in their separate capacities and as members of the group of companies. Each Borrower has determined that execution, delivery, and performance of this Agreement and any Loan Documents to be executed by such Borrower is within its corporate purpose, will be of direct and indirect benefit to such Borrower, and is in its best interest.

9.18 Concerning Joint and Several Liability of Borrowers.

(a) Each of the Borrowers is accepting joint and several liability hereunder in consideration of the financial accommodations to be provided by the Lenders under this Agreement and the other Loan Documents, for the mutual benefit, directly and indirectly, of each of the Borrowers and in consideration of the undertakings of each of the Borrowers to accept joint and several liability for the obligations of each of them.

(b) Each Borrower shall be jointly and severally liable for all amounts due to the Lenders under this Agreement and the other Loan Documents, regardless of which Borrower actually receives Loans or Credit Extensions hereunder or the amount of such Loans or other Credit Extensions received or the manner in which the Lenders account for such Loans or other Credit Extensions on its books and records. Each Borrower's Obligations with respect to Loans or other Credit Extensions made to it, and each

Borrower's Obligations arising as a result of the joint and several liability of such Borrower hereunder, with respect to Loans or other Credit Extensions made to the other Borrower hereunder, shall be separate and distinct obligations, but all such Obligations shall be primary obligations of each Borrower.

(c) If and to the extent that any of the Borrowers shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then in each such event, the other Borrowers will make such payment with respect to, or perform, such Obligation.

(d) Each Borrower's Obligations arising as a result of the joint and several liability of such Borrower hereunder with respect to Loans or other Credit Extensions made to the other Borrowers hereunder shall, to the fullest extent permitted by law, be unconditional irrespective of (i) the validity or enforceability, avoidance or subordination of the Obligations of any other Borrower or of any promissory note or other document evidencing all or any part of the Obligations of any other Borrower, (ii) the absence of any attempt to collect the Obligations from any other Borrower, any other guarantor, or any other security therefor, or the absence of any other action to enforce the same, (iii) the waiver, consent, extension, forbearance or granting of any indulgence by the Administrative Agent or the Lenders with respect to any provision of any instrument evidencing the Obligations of any other Borrower, or any part thereof, or any other agreement now or hereafter executed by any other Borrower and delivered to the Administrative Agent or the Lenders, (iv) the failure by the Administrative Agent or the Lenders to take any steps to perfect and maintain their security interest in, or to preserve its rights to, any security or collateral for the Obligations of any other Borrower, (v) the Administrative Agent's or any Lender's election, in any proceeding instituted under the Bankruptcy Code of the United States, of the application of Section 1111(b)(2) of the Bankruptcy Code of the United States, (vi) any borrowing or grant of a security interest by any other Borrower, as Debtor In Possession under Section 364 of the Bankruptcy Code of the United States, (vii) the disallowance of all or any portion of the Administrative Agent's or any Lender's claim(s) for the repayment of the Obligations of any other Borrower under Section 502 of the Bankruptcy Code of the United States, or (viii) any other circumstances which might constitute a legal or equitable discharge or defense of a guarantor or of any other Borrower. With respect to each Borrower's Obligations arising as a result of the joint and several liability of such Borrower hereunder with respect to Loans or other Credit Extensions made to any other Borrower hereunder, such Borrower waives, until the Obligations shall have been paid in full and this Agreement and the other Loan Documents shall have been terminated, any right to enforce any right of subrogation or any remedy which the Administrative Agent or any Lender now has or may hereafter have against such other Borrower, any endorser or any guarantor of all or any part of the Obligations, and any benefit of, and any right to participate in, any security or collateral given to the Administrative Agent or any Lender to secure payment of the Obligations or any other liability of the Borrowers to the Administrative Agent or the Lenders.

(e) Upon the occurrence and during the continuation of any Event of Default, the Lenders may proceed directly and at once, without notice, against any Borrower to

collect and recover the full amount, or any portion of the Obligations, without first proceeding against the other Borrower or any other Person, or against any security or collateral for the Obligations. Each Borrower consents and agrees that the Lenders shall be under no obligation to marshal any assets in favor of any Borrower or against or in payment of any or all of the Obligations.

(f) Notwithstanding any provision to the contrary contained herein or in any other of the Loan Documents, the obligations of each Borrower hereunder shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of any applicable Debtor Relief Laws.

9.19 Conflicts. Notwithstanding anything in this Agreement to the contrary, in the event of any conflict with any other Loan Document or Collateral Document, the terms and provisions of this Agreement shall control.

9.13 Closing Date Joinder

9.14 . The Borrowers hereby represent, warrant and agree that the Banker Steel Acquisition will be consummated immediately upon the Lenders making the initial advance of the Loans and that there are no conditions to the Banker Steel Acquisition being effective other than the initial advance of the Loans. Immediately upon the consummation of the Banker Steel Acquisition, without further act or deed, each Banker Steel Borrower shall automatically be joined in this Agreement and the other Loan Documents as a Borrower and shall comply with and be bound by all of the terms, conditions, covenants and other provisions of this Agreement and the other Loan Documents. Without limiting the generality of the preceding sentence, the Banker Steel Borrowers are jointly and severally liable for the payment and performance of all Obligations and shall be bound by the provisions governing its joint and several obligations set forth in Section 9.18 and other applicable provisions of the Loan Documents. Each Banker Steel Borrower hereby (a) ratifies and affirms all of its obligations under this Agreement and the other Loan Documents; (b) affirms that this Agreement and each of the other Loan Documents is in full force and effect; and (c) ratifies and confirms all of its payment, performance and observance obligations and liabilities under this Agreement and the other Loan Documents, whether contingent or otherwise, as a borrower, debtor, grantor, mortgagor, pledgor, guarantor or assignor, or in any other similar capacities in which such Person grants Liens or security interests in its assets and other property, as the case may be, from and after the consummation of the Banker Steel Acquisition. Each Borrower, on behalf of itself and the other Borrowers, acknowledges, represents and warrants that (a) upon Lenders making the initial advance of the Loans, there will exist no Default or Event of Default under this Agreement or any other Loan Documents, (b) it has duly and properly performed, complied with and observed each of its covenants, agreements and obligations contained in this Agreement and the other Loan Documents to which it is a party, and (c) each of the representations and warranties contained in Article V of this Agreement or in any other Loan Document delivered on or before the date hereof is true and correct in all respects on the date hereof (or, to the extent stated to relate to a specific earlier date, on and as of such earlier date). Notwithstanding anything to the contrary contained herein or in any other Loan Document, the signature pages executed and delivered by

the Banker Steel Borrowers to this Agreement and the other Loan Documents shall be deemed executed and delivered immediately upon the making of the initial advance of the Loans and shall be given full force and effect at such time without any further act or deed required by any Person hereunder or thereunder.

ARTICLE X

THE ADMINISTRATIVE AGENT

10.1 Appointment; Nature of Relationship. UMB Bank, N.A. is hereby appointed by each of the Lenders as its contractual representative (herein referred to as the “Administrative Agent”) hereunder and under each other Loan Document, and each of the Lenders irrevocably authorizes the Administrative Agent to act as the contractual representative of such Lender with the rights and duties expressly set forth herein and in the other Loan Documents. The Administrative Agent agrees to act as such contractual representative upon the express conditions contained in this Article X. Notwithstanding the use of the defined term “Administrative Agent,” it is expressly understood and agreed that the Administrative Agent shall not have any fiduciary responsibilities to any Lender by reason of this Agreement or any other Loan Document and that the Administrative Agent is merely acting as the contractual representative of the Lenders with only those duties as are expressly set forth in this Agreement and the other Loan Documents. In its capacity as the Lenders’ contractual representative, the Administrative Agent (i) does not hereby assume any fiduciary duties to any of the Lenders, and (ii) is a “representative” of the Lenders within the meaning of the term “secured party” as defined in the Arizona Uniform Commercial Code and (iii) is acting as an independent contractor, the rights and duties of which are limited to those expressly set forth in this Agreement and the other Loan Documents. Each of the Lenders hereby agrees to assert no claim against the Administrative Agent on any agency theory or any other theory of liability for breach of fiduciary duty, all of which claims each Lender hereby waives.

10.2 Powers. The Administrative Agent shall have and may exercise such powers under the Loan Documents as are specifically delegated to the Administrative Agent by the terms of each thereof, together with such powers as are reasonably incidental thereto. The Administrative Agent shall have no implied duties to the Lenders, or any obligation to the Lenders to take any action thereunder except any action specifically provided by the Loan Documents to be taken by the Administrative Agent.

10.3 General Immunity. Neither the Administrative Agent nor any of its directors, officers, agents or employees shall be liable to the Borrowers, the Lenders or any Lender for any action taken or omitted to be taken by it or them in the role of, or on behalf of, the Administrative Agent hereunder or under any other Loan Document or in connection herewith or therewith except to the extent there has been a final determination, whether by mutual agreement or judicial finding, that such action or inaction was due to the gross negligence or willful misconduct of such Person.

10.4 No Responsibility for Loans, Recitals, etc. Neither the Administrative Agent nor any of its directors, officers, agents or employees shall be responsible for or have any duty to ascertain, inquire into, or verify (a) any statement, warranty or representation made in

connection with any Loan Document or any borrowing hereunder; (b) the performance or observance of any of the covenants or agreements of any obligor under any Loan Document, including, without limitation, any agreement by an obligor to furnish information directly to each Lender; (c) the satisfaction of any condition specified in Article IV, except receipt of items required to be delivered solely to the Administrative Agent; (d) the existence or possible existence of any Default or Event of Default; (e) the validity, enforceability, effectiveness, sufficiency or genuineness of any Loan Document or any other instrument or writing furnished in connection therewith; (f) the value, sufficiency, creation, perfection or priority of any Lien in any collateral security; or (g) the financial condition of the Borrowers or any Guarantor of any of the Obligations or of any of the Borrowers' or any such Guarantor's respective Subsidiaries.

10.5 Action on Instructions of Lenders. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder and under any other Loan Document in accordance with written instructions signed by the Required Lenders (which may include electronic mail), and such instructions and any action taken or failure to act pursuant thereto shall be binding on all of the Lenders. The Lenders hereby acknowledge that the Administrative Agent shall be under no duty to take any discretionary action permitted to be taken by it pursuant to the provisions of this Agreement or any other Loan Document unless it shall be requested in writing to do so by the Required Lenders. The Administrative Agent shall be fully justified in failing or refusing to take any action hereunder and under any other Loan Document unless it shall first be indemnified to its satisfaction by the Lenders pro rata against any and all liability, cost and expense that it may incur by reason of taking or continuing to take any such action. The Administrative Agent may, at any time, request instructions from the Required Lenders with respect to any actions or approvals which, by the terms of this Agreement or any of the Loan Documents, the Administrative Agent is permitted or required to take or to grant without consent or approval from the Required Lenders, and if such instructions are promptly requested, the Administrative Agent will be absolutely entitled to refrain from taking any action or to withhold any approval under any of the Loan Documents and will not have any liability for refraining from taking any action or withholding any approval under any of the Loan Documents until it has received such instructions from the Required Lenders.

10.6 Employment of Agents and Counsel. The Administrative Agent may execute any of its duties as Administrative Agent hereunder and under any other Loan Document by or through employees, agents, and attorneys-in-fact. The Administrative Agent will not be responsible for the negligence or misconduct of any agents or attorneys-in-fact except to the extent that there has been a final determination, whether by mutual agreement or judicial finding, that the Administrative Agent acted with gross negligence or willful misconduct in the selection of agents or attorneys-in-fact.

10.7 Reliance on Documents; Counsel. The Administrative Agent shall be entitled to rely upon any Note, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex, electronic mail message, statement, paper or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and, in respect to legal matters, upon the opinion of counsel selected by the Administrative Agent, which counsel may be employees of the Administrative Agent. For purposes of determining compliance with the conditions specified in Sections 4.1 and 4.2, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or

other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the applicable date specifying its objection thereto.

10.8 Administrative Agent's Reimbursement and Indemnification. The Lenders agree to reimburse and indemnify the Administrative Agent ratably in proportion to their respective Pro Rata Shares (i) for any amounts not reimbursed by the Borrowers for which the Administrative Agent is entitled to reimbursement by the Borrowers under the Loan Documents, (ii) for any other expenses incurred by the Administrative Agent on behalf of the Lenders, in connection with the preparation, execution, delivery, administration and enforcement of the Loan Documents (including, without limitation, for any expenses incurred by the Administrative Agent in connection with any dispute between the Administrative Agent and any Lender or between two or more of the Lenders) and (iii) for any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against the Administrative Agent in any way relating to or arising out of the Loan Documents or any other document delivered in connection therewith or the transactions contemplated thereby (including, without limitation, for any such amounts incurred by or asserted against the Administrative Agent in connection with any dispute between the Administrative Agent and any Lender or between two or more of the Lenders), or the enforcement of any of the terms of the Loan Documents or of any such other documents, *provided* that (i) no Lender shall be liable for any of the foregoing to the extent any of the foregoing is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the Administrative Agent and (ii) any indemnification required pursuant to Section 3.3(d) shall, notwithstanding the provisions of this Section 10.8, be paid by the relevant Lender in accordance with the provisions thereof. The obligations of the Lenders under this Section 10.8 shall survive payment of the Obligations and termination of this Agreement.

10.9 Notice of Event of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder unless the Administrative Agent has received written notice from a Lender or the Borrowers referring to this Agreement describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give prompt notice thereof to the Lenders; *provided* that, except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrowers or any of their Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity.

10.10 Rights as a Lender. In the event the Administrative Agent is a Lender, the Administrative Agent shall have the same rights and powers hereunder and under any other Loan Document with respect to its Revolving Commitment and its Loans as any Lender and may exercise the same as though it were not the Administrative Agent, and the term "Lender" or "Lenders" shall, at any time when the Administrative Agent is a Lender, unless the context otherwise indicates, include the Administrative Agent in its individual capacity. The Administrative Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of trust, debt, equity or other transaction, in addition to those contemplated

by this Agreement or any other Loan Document, with the Borrowers or any of their Subsidiaries in which the Borrowers or Subsidiaries is not restricted hereby from engaging with any other Person.

10.11 Lender Credit Decision, Legal Representation.

(a) Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender and based on the financial statements prepared by the Borrowers and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and the other Loan Documents. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Loan Documents. Except for any notice, report, document or other information expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall not have any duty or responsibility (either initially or on a continuing basis) to provide any Lender with any notice, report, document, credit information or other information concerning the affairs, financial condition or business of the Borrowers or any of their Affiliates that may come into the possession of the Administrative Agent (whether or not in their capacity as Administrative Agent) or any of their Affiliates; provided, that Administrative Agent shall promptly provide to each Lender such information as may be specifically requested by such Lender.

(b) Each Lender further acknowledges that it has had the opportunity to be represented by legal counsel in connection with its execution of this Agreement and the other Loan Documents, that it has made its own evaluation of all applicable laws and regulations relating to the transactions contemplated hereby, and that the counsel to the Administrative Agent represents only the Administrative Agent and not the Lenders in connection with this Agreement and the transactions contemplated hereby.

10.12 Successor Administrative Agent. The Administrative Agent may resign at any time by giving written notice thereof to the Lenders and Holdings, such resignation to be effective upon the appointment of a successor Administrative Agent or, if no successor Administrative Agent has been appointed, thirty (30) days after the resigning Administrative Agent gives notice of its intention to resign. Upon any such resignation, the Required Lenders shall have the right to appoint, on behalf of the Borrowers and the Lenders, a successor Administrative Agent. So long as no Event of Default has occurred, Holdings shall have the right to approve any such successor Administrative Agent and such approval shall not be unreasonably withheld. If no successor Administrative Agent shall have been so appointed by the Required Lenders within fifteen (15) days after the resigning Administrative Agent's giving notice of its intention to resign, then the resigning Administrative Agent may appoint, on behalf of the Borrowers and the Lenders, a successor Administrative Agent. Notwithstanding the previous sentence, the Administrative Agent may at any time without the consent of the Borrowers or any Lender, appoint any of its Affiliates which is a commercial bank as a successor Administrative Agent hereunder. If the Administrative Agent has resigned and no successor Administrative Agent has been appointed, the Lenders may perform all the duties of the

Administrative Agent hereunder and the Borrowers shall make all payments in respect of the Obligations to the applicable Lender and for all other purposes shall deal directly with the Lenders. No successor Administrative Agent shall be deemed to be appointed hereunder until such successor Administrative Agent has accepted the appointment. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the resigning Administrative Agent. Upon the effectiveness of the resignation of the Administrative Agent, the resigning Administrative Agent shall be discharged from its duties and obligations hereunder and under the Loan Documents. After the effectiveness of the resignation of an Administrative Agent, the provisions of this Article X shall continue in effect for the benefit of such Administrative Agent in respect of any actions taken or omitted to be taken by it while it was acting as the Administrative Agent hereunder and under the other Loan Documents. In the event that there is a successor to the Administrative Agent by merger, or the Administrative Agent assigns its duties and obligations to an Affiliate pursuant to this Section 10.12, then the term "Prime Rate" as used in this Agreement shall mean the prime rate or other analogous rate of the new Administrative Agent.

10.13 Delegation to Affiliates. The Borrowers and the Lenders agree that the Administrative Agent may delegate any of its duties under this Agreement to any of its Affiliates. Any such Affiliate (and such Affiliate's directors, officers, agents and employees) which performs duties in connection with this Agreement shall be entitled to the same benefits of the indemnification, waiver and other protective provisions to which the Administrative Agent is entitled under Articles IX and X.

10.14 Execution of Collateral Documents. The Lenders hereby empower and authorize the Administrative Agent to execute and deliver to the Borrowers on their behalf the Collateral Documents and all related financing statements and any financing statements, agreements, documents or instruments as shall be necessary or appropriate to effect the purposes of the Collateral Documents.

10.15 Collateral and Guarantor Releases. The Lenders hereby empower and authorize the Administrative Agent to execute and deliver to the Borrowers on their behalf any agreements, documents or instruments as shall be necessary or appropriate to effect any releases of Collateral which shall be permitted by the terms hereof or of any other Loan Document (including, without limitation, in connection with any asset sale permitted hereunder or in connection with any release of a Guarantor made in accordance with the Loan Documents) or which shall otherwise have been approved by the Required Lenders (or, if required by the terms of Section 8.3, all of the Lenders) in writing. In addition, the Lenders authorize the Administrative Agent to release any Guarantor from its obligations under the Loan Documents if such Person is no longer required to be a Guarantor hereunder or if such Person is sold, transferred or assigned in accordance with and to the extent permitted by the terms of this Agreement. Upon the request of the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of Collateral, or to release any Guarantor from its obligations under the Loan Documents pursuant to the foregoing. In each case as specified herein, the Administrative Agent may (and each Lender hereby authorizes the Administrative Agent to), at the Borrowers' expense, execute and deliver to the applicable Borrower such documents as such Borrower may

reasonably request to evidence the release of such item of Collateral from the security interest granted under the Loan Documents or to subordinate its interest therein, or to release a Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents.

10.16 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Borrower acknowledges and agrees that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the Lenders are arm's-length commercial transactions between the applicable Borrower and its Affiliates, on the one hand, and the Administrative Agent and the Lenders, on the other hand, (B) each Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each of the Administrative Agent and the Lenders is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the applicable Borrower or any of its Affiliates, or any other Person and (B) neither the Administrative Agent nor any Lender has any obligation to each Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent and each of the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrowers and their Affiliates, and neither the Administrative Agent nor any Lender has any obligation to disclose any of such interests to the Borrowers or its Affiliates. To the fullest extent permitted by law, the Borrowers hereby waive and release any claims that they may have against the Administrative Agent and each of the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby. Nothing contained in this Section 10.16 shall serve to release, eliminate, or otherwise reduce any duty or obligation of any party to perform its obligations under this Agreement.

10.17 Acknowledgements Regarding Erroneous Payments.

(a) Each Lender and Letter of Credit Issuer hereby agrees that (i) if the Administrative Agent notifies such Lender or such Letter of Credit Issuer that the Administrative Agent has determined in its sole discretion that any funds received by such Lender or such Letter of Credit Issuer from the Administrative Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a "Payment") were erroneously transmitted to such Lender or such Letter of Credit Issuer (whether or not known to such Lender or such Letter of Credit Issuer), and demands the return of such Payment (or a portion thereof), such Lender or such Letter of Credit Issuer shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender or such Letter of Credit Issuer to the date such amount is repaid to the Administrative Agent at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in

accordance with banking industry rules on interbank compensation from time to time in effect, and (ii) to the extent permitted by applicable law, such Lender or such Letter of Credit Issuer shall not assert, and hereby waives, as to the Administrative Agent, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Payments received, including without limitation any defense based on “discharge for value” or any similar doctrine. A notice of the Administrative Agent to any Lender or such Letter of Credit Issuer under this Section 10.17 shall be conclusive, absent manifest error.

(b) Each Lender and Letter of Credit Issuer hereby further agrees that if it receives a Payment from the Administrative Agent or any of its Affiliates (i) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Payment (a “Payment Notice”) or (ii) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such case, that an error has been made with respect to such Payment. Each Lender and Letter of Credit Issuer agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender or Letter of Credit Issuer shall promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, it shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender or Letter of Credit Issuer to the date such amount is repaid to the Administrative Agent at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(c) Borrowers and Guarantors hereby agree that (i) in the event an erroneous Payment (or portion thereof) is not recovered from any Lender or such Letter of Credit Issuer that has received such Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender or such Letter of Credit Issuer with respect to such amount and (ii) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by any Borrower or Guarantor.

(d) Each party’s obligations under this Section 10.17 shall survive the resignation or replacement of the Administrative Agent or any transfer of rights or obligations by, or the replacement of, a Lender or a Letter of Credit Issuer, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations under any Loan Document.

10.18 Other Agents; Arrangers and Managers. None of the Lenders or other Persons identified on the facing page or signature pages of this Agreement as a “syndication agent,” “documentation agent,” “co-agent,” “book manager,” “bookrunner,” “lead manager,” “arranger,” “lead arranger” or “co-arranger,” if any, shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than, in the case of such Lenders, those applicable to all Lenders as such. Without limiting the foregoing, none of the Lenders or other

Persons so identified shall have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on any of the Lenders or other Persons so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

ARTICLE XI

SETOFF; RATABLE PAYMENTS

11.1 Setoff. Each Borrower hereby grants each Lender a security interest in all deposits, credits and deposit accounts (including all account balances, whether provisional or final and whether or not collected or available) of the applicable Borrower with such Lender or any Affiliate of such Lender (the "Deposits") to secure the Obligations. In addition to, and without limitation of, any rights of the Lenders under applicable law, if the applicable Borrower becomes insolvent, however evidenced, or any Event of Default occurs, such Borrower authorizes each Lender, with the prior written consent of the Administrative Agent, to offset and apply all such Deposits toward the payment of the Obligations owing to such Lender, whether or not the Obligations, or any part thereof, shall then be due and regardless of the existence or adequacy of any collateral, guaranty or any other security, right or remedy available to such Lender or the Lenders; *provided*, that in the event that any Defaulting Lender shall exercise such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.17 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Letter of Credit Issuer, and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff.

11.2 Ratable Payments. If any Lender, whether by setoff or otherwise, has payment made to it upon its Term Loan or its Revolving Exposure (other than payments received pursuant to Section 3.1, 3.2, or 3.3) in a greater proportion than that received by any other Lender, such Lender agrees, promptly upon demand, to purchase a portion of the Term Loan or Revolving Exposure, as applicable, held by the other Lenders so that after such purchase each Lender will hold its Pro Rata Share of the Term Loan and Revolving Exposure. If any Lender, whether in connection with setoff or amounts which might be subject to setoff or otherwise, receives collateral or other protection for its Obligations or such amounts which may be subject to setoff, such Lender agrees, promptly upon demand, to take such action necessary such that all Lenders share in the benefits of such collateral or other protection ratably in proportion to their respective Pro Rata Shares of the Term Loan and Revolving Exposure. In case any such payment is disturbed by legal process, or otherwise, appropriate further adjustments shall be made.

ARTICLE XII

BENEFIT OF AGREEMENT; ASSIGNMENTS; PARTICIPATIONS

12.1 Successors and Assigns. The terms and provisions of the Loan Documents shall be binding upon and inure to the benefit of the Borrowers and the Lenders and their respective successors and assigns permitted hereby, except that (i) none of the Borrowers shall have the right to assign its rights or obligations under the Loan Documents without the prior written consent of each Lender, (ii) any assignment by any Lender must be made in compliance with Section 12.3, and (iii) any transfer by participation must be made in compliance with Section 12.2. Any attempted assignment or transfer by any party not made in compliance with this Section 12.1 shall be null and void, unless such attempted assignment or transfer is treated as a participation in accordance with the terms of this Agreement. The parties to this Agreement acknowledge that clause (ii) of this Section 12.1 relates only to absolute assignments and this Section 12.1 does not prohibit assignments creating security interests, including, without limitation, (x) any pledge or assignment by any Lender of all or any portion of its rights under this Agreement and any Note to a Federal Reserve Bank or (y) in the case of a Lender which is a Fund, any pledge or assignment of all or any portion of its rights under this Agreement and any Note to its trustee in support of its obligations to its trustee; *provided, however*, that no such pledge or assignment creating a security interest shall release the transferor Lender from its obligations hereunder unless and until the parties thereto have complied with the provisions of Section 12.3. The Administrative Agent may treat the Person which made any Loan or which holds any Note as the owner thereof for all purposes hereof unless and until such Person complies with Section 12.3; *provided, however*, that the Administrative Agent may in its discretion (but shall not be required to) follow instructions from the Person which made any Loan or which holds any Note to direct payments relating to such Loan or Note to another Person. Any assignee of the rights to any Loan or any Note agrees by acceptance of such assignment to be bound by all the terms and provisions of the Loan Documents. Any request, authority or consent of any Person, who at the time of making such request or giving such authority or consent is the owner of the rights to any Loan (whether or not a Note has been issued in evidence thereof), shall be conclusive and binding on any subsequent holder or assignee of the rights to such Loan.

12.2 Participations.

(a) Permitted Participants; Effect. Any Lender may at any time sell to one or more entities (“Participants”) participating interests in any Term Loan or Revolving Exposure owing to such Lender, any Note held by such Lender, any Revolving Commitment of such Lender or any other interest of such Lender under the Loan Documents. So long as no Event of Default has occurred, Holdings shall have the right to approve any such successor Participants and such approval shall not be unreasonably withheld. In the event of any such sale by a Lender of participating interests to a Participant, such Lender’s obligations under the Loan Documents shall remain unchanged, such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, such Lender shall remain the owner of its Term Loan and Revolving Exposure and the holder of any Note issued to it in evidence thereof for all purposes under the Loan Documents, all amounts payable by the Borrowers under this Agreement shall be determined as if such Lender had not sold such participating interests, and the Borrowers and the Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under the Loan Documents.

(b) Voting Rights. Each Lender shall retain the sole right to approve, without the consent of any Participant, any amendment, modification or waiver of any provision of the Loan Documents *provided* that each such Lender may agree in its participation agreement with its Participant that such Lender will not vote to approve any amendment, modification or waiver with respect to any Term Loan, Revolving Exposure or Revolving Commitment in which such Participant has an interest which would require consent of all of the Lenders pursuant to the terms of Section 8.3 or of any other Loan Document.

(c) Benefit of Certain Provisions. The Borrowers agree that each Participant shall be deemed to have the right of setoff provided in Section 11.1 in respect of its participating interest in amounts owing under the Loan Documents to the same extent as if the amount of its participating interest were owing directly to it as a Lender under the Loan Documents, *provided* that each Lender shall retain the right of setoff provided in Section 11.1 with respect to the amount of participating interests sold to each Participant. The Lenders agree to share with each Participant, and each Participant, by exercising the right of setoff provided in Section 11.1, agrees to share with each Lender, any amount received pursuant to the exercise of its right of setoff, such amounts to be shared in accordance with Section 11.2 as if each Participant were a Lender. The Borrowers further agree that each Participant shall be entitled to the benefits of Sections 3.1, 3.2, 3.3, 9.6 and 9.10 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 12.3, *provided* that (i) a Participant shall not be entitled to receive any greater payment under Section 3.1 or 3.2 than the Lender who sold the participating interest to such Participant would have received had it retained such interest for its own account, unless the sale of such interest to such Participant is made with the prior written consent of the Borrowers, and (ii) a Participant shall not be entitled to receive any greater payment under Section 3.3 than the Lender who sold the participating interest to such Participant would have received had it retained such interest for its own account (A) except to the extent such entitlement to receive a greater payment results from a change in treaty, law or regulation (or any change in the interpretation or administration thereof by any Governmental Authority) that occurs after the Participant acquired the applicable participation and (B), in the case of any Participant that would be a Non-U.S. Lender if it were a Lender, such Participant agrees to comply with the provisions of Section 3.3 to the same extent as if it were a Lender (it being understood that the documentation required under Section 3.3(f) shall be delivered to the participating Lender). Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in any Term Loan, any Revolving Exposure, any Note, any Revolving Commitment or any other obligations under the Loan Documents (the "Participant Register"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Term Loan, any Revolving Exposure, any Note, any Revolving Commitment or any other obligations under the Loan Documents) to any Person except to the extent that such disclosure is necessary to establish that such Term Loan, Revolving Exposure, any Note, any Revolving Commitment or any other obligations under the Loan Documents is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the

Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

12.3 Assignments.

(a) Permitted Assignments. Any Lender may at any time assign to one or more Eligible Assignees (“Purchasers”) all or any part of its rights and obligations under the Loan Documents subject to Holdings’ consent rights provided in Section 12.3(b), which shall not be unreasonably withheld. Such assignment shall be substantially in the form of Exhibit C or in such other form reasonably acceptable to the Administrative Agent as may be agreed to by the parties thereto. Each such assignment with respect to a Purchaser which is not a Lender or an Affiliate of a Lender shall either be in an amount equal to the entire applicable Term Loan, Revolving Commitment and Revolving Exposure of the assigning Lender or (unless each of the Borrowers and the Administrative Agent otherwise consents) be in an aggregate amount not less than \$5,000,000 (except such minimum amount shall not apply to (i) an assignment or delegation by any Lender to any other Lender, an Affiliate of any Lender, or a Related Fund of such Lender or (ii) a group of new Lenders, each of which is an Affiliate of each other or a Related Fund of such new Lender to the extent that the aggregate amount to be assigned to all such new Lenders is at least \$5,000,000). The amount of the assignment shall be based on the Term Loan and the Revolving Commitment or Revolving Exposure (if the Revolving Commitment has been terminated) subject to the assignment, determined as of the date of such assignment or as of the “Trade Date,” if the “Trade Date” is specified in the assignment.

(b) Consents. The consent of Holdings shall be required prior to an assignment becoming effective unless the Purchaser is a Lender or an Affiliate of a Lender, *provided* that the consent of Holdings shall not be required if (i) an Event of Default has occurred and is continuing, (ii) in connection with an assignment or a delegation to a Person that is a Lender or an Affiliate (other than natural persons) of a Lender, (iii) if such assignment or delegation is in connection with a sale or other disposition of all or substantially all of any Lender’s loan portfolio, or (iv) such assignment or delegation is required or deemed advisable by any Governmental Authority to which Administrative Agent or any Lender is subject; *provided further* that Holdings shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within three (3) Business Days after having received notice thereof. The consent of the Administrative Agent shall be required prior to an assignment becoming effective. The consent of the Letter of Credit Issuer shall be required prior to an assignment of a Revolving Commitment becoming effective. Any consent required under this Section 12.3(b) other than with respect to the Letter of Credit Issuer shall not be unreasonably withheld or delayed.

(c) Effect; Assignment Effective Date. Upon (i) delivery to the Administrative Agent of an assignment, together with any consents required by Sections

12.3(a) and 12.3(b), and (ii) payment of a \$5,000 fee to the Administrative Agent for processing such assignment (unless such fee is waived by the Administrative Agent), such assignment shall become effective on the effective date specified in such assignment. The assignment shall contain a representation by the Purchaser to the effect that none of the consideration used to make the purchase of the Term Loan, Revolving Commitment and Revolving Exposure, as applicable, under the applicable assignment agreement constitutes “plan assets” as defined under ERISA and that the rights and interests of the Purchaser in and under the Loan Documents will not be “plan assets” under ERISA. On and after the effective date of such assignment, such Purchaser shall for all purposes be a Lender party to this Agreement and any other Loan Document executed by or on behalf of the Lenders and shall have all the rights and obligations of a Lender under the Loan Documents, to the same extent as if it were an original party thereto, and the transferor Lender shall be released with respect to the Term Loan, Revolving Commitment and Revolving Exposure assigned to such Purchaser without any further consent or action by the Borrowers, the Lenders or the Administrative Agent. In the case of an assignment covering all of the assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a Lender hereunder but shall continue to be entitled to the benefits of, and subject to, those provisions of this Agreement and the other Loan Documents which survive payment of the Obligations and termination of the applicable agreement. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 12.3 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 12.2. Upon the consummation of any assignment to a Purchaser pursuant to this Section 12.3(c), the transferor Lender, the Administrative Agent and the Borrowers shall, if the transferor Lender or the Purchaser desires that its Loans be evidenced by Notes, make appropriate arrangements so that new Notes or, as appropriate, replacement Notes are issued to such transferor Lender and new Notes or, as appropriate, replacement Notes, are issued to such Purchaser, in each case in principal amounts reflecting their respective Term Loans and Revolving Commitments, as adjusted pursuant to such assignment.

(d) Register. The Administrative Agent, acting solely for this purpose as a non- fiduciary agent of the Borrowers, shall maintain at one of its offices in the United States of America, a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Term Loans and Revolving Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender, and participations of each Lender in Facility Letters of Credit, pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive, and the Borrowers, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by each Borrower and each Lender at any reasonable time and from time to time upon reasonable prior notice.

(e) Dissemination of Information. The Borrowers authorize each Lender to disclose to any Participant or Purchaser or any other Person acquiring an interest in the

Loan Documents by operation of law (each a “Transferee”) and any prospective Transferee any and all information in such Lender’s possession; *provided* that each Transferee and prospective Transferee agrees to be bound by Section 9.11 of this Agreement.

ARTICLE XIII NOTICES

13.1 Notices; Effectiveness; Electronic Communication.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows:

If to the Borrowers:

DBM Global Inc.
3020 East Camelback Road Suite 310
Phoenix, Arizona 85016
Telephone: (602) 445-4480 Attn: Scott D.
Sherman, Esq.

If to Administrative Agent:

UMB Bank, N.A.
2777 E. Camelback Rd., Suite 350
Phoenix, AZ 85016 Attn: Kyle
McMillian

With a copy to: UMB Bank, N.A. 2777 E.
Camelback Rd., Suite 350
Phoenix, AZ 85016 Attn: Kyle
McMillian

UMB Bank, N.A.
1010 Grand Blvd. Kansas City, MO
64106 Attn: Derek E. Feagans

and

Quarles & Brady, LLP
~~2 North Central~~ 411 East Wisconsin Avenue

Phoenix, Arizona 85004 Milwaukee, Wisconsin
53202
Attention: ~~Andrea Palmer~~ Kim Wynn

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received, except that notices to the Administrative Agent, a Lender or the Letter of Credit Issuer under Article II shall not be effective unless and until actually received by the addressee thereof. Notices delivered through electronic communications to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the Letter of Credit Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and internet or intranet websites) pursuant to procedures approved by the Administrative Agent or as otherwise determined by the Administrative Agent, *provided* that the foregoing shall not apply to notices to any Lender or the Letter of Credit Issuer pursuant to Article II if such Lender or the Letter of Credit Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrowers may agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it or as it otherwise determines, *provided* that such determination or approval may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), *provided* that if such notice or other communication is not given during the normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Change of Address, Etc. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto given in the manner set forth in this Section 13.1.

ARTICLE XIV

COUNTERPARTS; INTEGRATION; EFFECTIVENESS; ELECTRONIC EXECUTION; ELECTRONIC RECORDS

14.1 Counterparts; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Except as

provided in Article IV, this Agreement shall become effective when it shall have been executed by the Administrative Agent, and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or PDF shall be effective as delivery of a manually executed counterpart of this Agreement.

14.2 Electronic Execution of Assignments. The words “execution,” “signed,” “signature,” and words of like import in any assignment and assumption agreement shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, or any other state laws based on the Uniform Electronic Transactions Act.

14.3 Electronic Records. The Borrowers hereby acknowledge the receipt of a copy of this Agreement and all other Loan Documents. The Administrative Agent and each Lender may, on behalf of the Borrowers, create a microfilm, optical disk or other electronic image of this Agreement and any or all of the Loan Documents. The Administrative Agent and each Lender may store the electronic image of this Agreement and Loan Documents in its electronic form and then destroy the paper original as part of the Administrative Agent’s and each Lender’s normal business practices, with the electronic image deemed to be an original and of the same legal effect, validity and enforceability as the paper originals. The Administrative Agent and each Lender are authorized, when appropriate, to convert any note into a “transferable record” under the Uniform Electronic Transactions Act.

ARTICLE XV

CHOICE OF LAW; CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL; STATUTORY STATEMENTS

15.1 **CHOICE OF LAW. THE LOAN DOCUMENTS (OTHER THAN THOSE CONTAINING A CONTRARY EXPRESS CHOICE OF LAW PROVISION) SHALL BE CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS (WITHOUT REGARD TO THE CONFLICT OF LAWS PROVISIONS) OF THE STATE OF ARIZONA, BUT GIVING EFFECT TO FEDERAL LAWS APPLICABLE TO NATIONAL BANKS.**

15.2 **CONSENT TO JURISDICTION. EACH OF THE BORROWERS HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR STATE COURT SITTING IN ARIZONA IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS AND THE BORROWERS HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVES ANY**

OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. NOTHING HEREIN SHALL LIMIT THE RIGHT OF THE ADMINISTRATIVE AGENT, THE LETTER OF CREDIT ISSUER OR ANY LENDER TO BRING PROCEEDINGS AGAINST THE BORROWERS OR TO ENFORCE RIGHTS AND REMEDIES IN RESPECT OF COLLATERAL IN THE COURTS OF ANY OTHER JURISDICTION. ANY JUDICIAL PROCEEDING BY ANY OF THE BORROWERS AGAINST THE ADMINISTRATIVE AGENT OR ANY LENDER OR ANY AFFILIATE OF THE ADMINISTRATIVE AGENT OR ANY LENDER INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH ANY LOAN DOCUMENT SHALL BE BROUGHT ONLY IN A COURT IN ARIZONA.

15.3 WAIVER OF JURY TRIAL. THE BORROWERS, THE ADMINISTRATIVE AGENT AND EACH LENDER HEREBY WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH ANY LOAN DOCUMENT OR THE RELATIONSHIP ESTABLISHED THEREUNDER.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

ADMINISTRATIVE AGENT AND LENDER:

UMB BANK, N.A., as a Lender and as Administrative Agent

By: _____
Name: Kyle McMillan
Title: Senior Vice President

Contact:
UMB Bank, N.A.
2777 E. Camelback Rd., Suite 350
Phoenix, AZ 85016
Attn: Kyle McMillan

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

SYNDICATION AGENT AND LENDER:

BMO HARRIS BANK N.A., as a Lender and as
Syndication Agent

By: _____
Name: _____
Title: _____

Contact:
BMO HARRIS BANK, N.A.

Attn: _____

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

LENDER:

ARIZONA BANK & TRUST, as a Lender

By: _____

Name: _____

Title: _____

Contact:

Arizona Bank & Trust

Attn: _____

Lender Signature Page – Credit Agreement

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

LENDER:

FIFTH THIRD BANK, NATIONAL ASSOCIATION, as a Lender

By: _____
Name: _____
Title: _____

Contact:
Fifth Third Bank, National Association

Attn: _____

Lender Signature Page – Credit Agreement

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

	<p><u>LENDER:</u></p> <p>ACADEMY BANK, as a Lender</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Contact:</p> <p>Academy Bank</p> <p>_____</p> <p>Attn: _____</p>
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Lender Signature Page – Credit Agreement

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

INITIAL BORROWERS:

AITKEN MANUFACTURING INC.

By: _____
Michael R. Hill, Vice President, Chief Financial Officer, Secretary, and Treasurer

DBM GLOBAL INC.

By: _____
Michael R. Hill, Vice President, Chief Financial Officer, [Assistant](#) Secretary, and Treasurer

DBM VIRCON SERVICES (USA) INC.

By: _____
Michael R. Hill, Chairman, President, Secretary, and Treasurer

GRAYWOLF INDUSTRIAL, INC.

By: _____
Michael R. Hill, Vice President

GRAYWOLF INTEGRATED CONSTRUCTION COMPANY

By: _____
Michael R. Hill, Vice President

SCHUFF STEEL MANAGEMENT COMPANY – SOUTHWEST, INC.

By: _____
Michael R. Hill, Vice President, Chief Financial Officer, Secretary, and Treasurer

SCHUFF STEEL COMPANY

By: _____
Michael R. Hill, Vice President, Chief Financial
Officer, Secretary, and Treasurer

MILCO NATIONAL CONSTRUCTORS, INC.

By: _____
Michael R. Hill, Vice President

**GRAYWOLF INTEGRATED CONSTRUCTION
COMPANY – SOUTHEAST, INC.**

By: _____
Michael R. Hill, Vice President

Initial Borrowers Signature Page – Credit Agreement

BANKER STEEL BORROWERS:

Each of the undersigned Banker Steel Borrowers hereby confirms that, immediately upon the consummation of the Banker Steel Acquisition, it hereby joins this Agreement and the other Loan Documents as more fully set forth in Section 9.20 above and is a Borrower under this Agreement.

BANKER STEEL CO., L.L.C.

By: _____
Michael R. Hill, Vice President and Treasurer

BANKER STEEL HOLDCO LLC

By: _____
Michael R. Hill, Chief Financial Officer and Treasurer

BANKER STEEL SOUTH, LLC

By: _____
Michael R. Hill, Vice President and Treasurer

DERR AND ISBELL CONSTRUCTION, LLC

By: _____
Michael R. Hill, Vice President and Treasurer

INNOVATIVE ENGINEERING SOLUTIONS LLC

By: _____
Michael R. Hill, Vice President and Treasurer

LYNCHBURG FREIGHT & SPECIALTY LLC

By: _____
Michael R. Hill, Vice President and Treasurer

MEMCO LLC

By: _____
Michael R. Hill, Vice President and Treasurer

NYC CONSTRUCTORS, LLC

By: _____
Michael R. Hill, Vice President and Treasurer

NYC EQUIPMENT COMPANY, LLC

By: _____
Michael R. Hill, Vice President and Treasurer

NYCC CONSTRUCTION SERVICES, LLC

By: _____
Michael R. Hill, Vice President and Treasurer

US CONSTRUCTION SERVICES INC.

By: _____
Michael R. Hill, Vice President and Treasurer

US ERECTORS LLC

By: _____
Michael R. Hill, Vice President and Treasurer

INDEX OF EXHIBITS AND SCHEDULES

Exhibit A – Required Opinions
Exhibit B – Form of Compliance Certificate
Exhibit C – Form of Assignment and Assumption Agreement Exhibit D – Form
of Borrowing Notice
Exhibit E-1 – Form of Revolving Loan Note Exhibit E-2 –
Form of Term Note
Exhibit H – Closing Documents

Schedule 1.1 – List of Borrowers Schedule 1.2 – List of
Guarantors
Schedule 2 – Lenders, Commitments, and Pro Rata Shares Schedule 4.4 –
Collateral Access Agreement Locations Schedule 5.8 – Subsidiaries
Schedule 5.23 – Mortgaged Property Schedule 5.23A –
Real Property Schedule 6.10 – Debt
Schedule 6.14 – Existing Liens Schedule 6.23 –
Investments

EXHIBIT A REQUIRED OPINIONS

1. Borrowers'/Guarantors' Counsel Existence, Due Authorization, Execution and Delivery, Enforceability, and Creation and Perfection of Liens and Security Interests (including Texas, Arizona, and California Deeds of Trust and Mortgages) Opinion
2. South Carolina Mortgage Opinion
3. Utah Mortgage Opinion
4. Kansas Mortgage Opinion

Exhibit A

QB\74791997.1\74791997.4

EXHIBIT B – FORM OF COMPLIANCE CERTIFICATE

To: The Lenders party to the
Credit Agreement described below

This Compliance Certificate is furnished pursuant to that certain Credit Agreement dated as of May 27, 2021 (as amended, modified, renewed or extended from time to time, the “Agreement”) among **DBM GLOBAL INC.**, a Delaware corporation, each of the other Borrowers party thereto (each a “Borrower” and collectively the “Borrowers”), the lenders party thereto, and **UMB BANK, N.A.**, a national banking association, as Administrative Agent for the Lenders. Unless otherwise defined herein, capitalized terms used in this Compliance Certificate have the meanings ascribed thereto in the Agreement.

THE UNDERSIGNED HEREBY CERTIFIES THAT:

1. The undersigned is duly authorized as _____ of Borrower Agent to complete the certification contained herein with respect to each Borrower;
2. The undersigned has reviewed the terms of the Agreement and has made, or has caused to be made under the undersigned's supervision, a detailed review of the transactions and conditions of the Borrowers and their Subsidiaries during the accounting period covered by the attached financial statements;
3. The examinations described in paragraph 2 did not disclose, and the undersigned have no knowledge of, the existence of any condition or event which constitutes a Default or Event of Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate, except as set forth below; and
4. Schedule I attached hereto sets forth financial data and computations evidencing compliance by each Borrower with certain covenants of the Agreement, all of which data and computations are true, complete and correct.

Described below are the exceptions, if any, to paragraph 3 by listing, in detail, the nature of the condition or event, the period during which it has existed and the action which the Borrowers have taken, are taking, or propose to take with respect to each such condition or event:

Exhibit B

Exhibit B

The foregoing certifications, together with the computations set forth in Schedule I hereto and the financial statements delivered with this Certificate in support hereof, are made and delivered this [____] day of [____], 20[____].

DBM GLOBAL INC., a Delaware corporation

By: _____
Name: _____
Title: Chief Financial Officer

Schedule I

QB\74791997.1\74791997.4

SCHEDULE I TO COMPLIANCE CERTIFICATE

Compliance as of [_____], 20[___] with Provisions of
Section 6.1 and 6.19 of the Agreement

[insert relevant calculations]

Schedule I

QB\74791997.1\74791997.4

EXHIBIT C – FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption (the “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between [*Insert name of Assignor*] (the “Assignor”) and [*Insert name of Assignee*] (the “Assignee”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the “Credit Agreement”), receipt of a copy of which is hereby acknowledged by the Assignee. The Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below, the interest in and to all of the Assignor’s rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto that represents the amount and percentage interest identified below of all of the Assignor’s outstanding rights and obligations under the respective facilities identified below (including without limitation any letters of credit, and guaranties included in such facilities and, to the extent permitted to be assigned under applicable law, all claims (including without limitation contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity), suits, causes of action and any other right of the Assignor against any Person whether known or unknown arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby) (the “Assigned Interest”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: [_____]
2. Assignee: [_____]
3. Borrower(s): DBM Global Inc., and the other Borrowers party thereto
4. Administrative Agent: UMB Bank, N.A., as the Administrative Agent under the Agent: Credit Agreement
5. Credit Agreement: The Credit Agreement dated as of May 27, 2021 among DBM Global Inc., and the other Borrowers party thereto, the Lenders party thereto, UMB Bank, N.A., as Administrative Agent, and the other parties thereto.

Exhibit C

6. Assigned Interest:

Facility Assigned	Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/Loans Assignment	Percentage Assigned of Commitment/Loans
Revolving Commitment	\$_[_____]	\$_[_____]	[_____]%
Term Loan	\$_[_____]	\$_[_____]	[_____]%

7. Date: [_____]

Effective Date: [_____], 20[____] [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER BY THE ADMINISTRATIVE AGENT.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR
[NAME OF ASSIGNOR]

By: _____
Title: _____

ASSIGNEE
[NAME OF ASSIGNEE]

By: _____
Title: _____

Consented to and Accepted:

UMB BANK, N.A., as
Administrative Agent

By: _____
Title: _____

DBM GLOBAL INC.,
a Delaware corporation, as Borrower Agent

By: _____
Title: _____

Exhibit C

ANNEX 1
TERMS AND CONDITIONS FOR ASSIGNMENT
AND ASSUMPTION

5. Representations and Warranties.

1.1 Assignor. The Assignor represents and warrants to the Assignee, Borrowers, and Lenders that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance, or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby. Neither the Assignor nor its officers, directors, employees, agents, or attorneys shall be responsible to the Assignee for

(i) any statements, warranties, or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency, perfection, priority, collectability, or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrowers, any of their Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document, (iv) the performance or observance by the Borrowers, any of their Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Documents, (v) inspecting any of the Property, books or records of the Borrowers, or any Guarantor, or (vi) any mistake, error of judgment, or action taken or omitted to be taken in connection with the Loans or the Loan Documents.

1.2 Assignee. The Assignee (a) represents and warrants to the Assignor, Borrowers, and Lenders that (i) it has the full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iii) agrees that its payment instructions and notice instructions are as set forth in Schedule 1 to this Assignment and Assumption, (iv) confirms that none of the funds, monies, assets or other consideration being used to make the purchase and assumption hereunder are “plan assets” as defined under ERISA and that its rights, benefits, and interests in and under the Loan Documents will not be “plan assets” under ERISA, (v) agrees to indemnify and hold the Assignor harmless against all losses, costs and expenses (including, without limitation, reasonable attorneys’ fees) and liabilities incurred by Assignor in connection with or arising in any manner from the Assignee’s non-performance of the obligations assumed under this Assignment and Assumption, (vi) it has received a copy of the Credit Agreement, together with copies of financial statements and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, and (vii) attached as Schedule 1 to this Assignment and Assumption is any documentation required to be delivered by the Assignee with respect to its tax status pursuant to the terms of the Credit Agreement, duly completed and executed by Assignee and (b) agrees that (i) it will, independently and without reliance on Administrative Agent, the Assignor or any

other Lender, and based on such documents and information as it shall deem appropriate at any time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. The Assignee shall pay the Assignor, on the Effective Date, the amount agreed to by the Assignor and the Assignee. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, Reimbursement Obligations, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy, PDF or electronic communication as contemplated by the Credit Agreement shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of Arizona.

Annex 1

EXHIBIT D
FORM OF BORROWING NOTICE

TO: UMB Bank, N.A., as administrative agent (the “Administrative Agent”) under that certain Credit Agreement (as amended, restated, supplemented, or otherwise modified from time to time, the “Credit Agreement”), dated as of May 27, 2021 among DBM Global Inc., a Delaware corporation, and the other Borrowers party thereto (each a “Borrower” and collectively the “Borrowers”), the financial institutions party thereto, as lenders (the “Lenders”), and the Administrative Agent.

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

DBM Global Inc., a Delaware corporation, as “Borrower Agent” under the Credit Agreement, hereby gives to Administrative Agent a request for borrowing pursuant to Section 2.4 of the Credit Agreement, and Borrower hereby requests to borrow on [_____], 20[___] (the “Borrowing Date”):

(a) from the Lenders, on a pro rata basis, an aggregate principal Dollar Amount of \$[_____] in Revolving Loans.

The undersigned hereby certifies to the Administrative Agent and the Lenders that (i) the representations and warranties contained in Article V of the Credit Agreement are (a) with respect to any representations or warranties that contain a materiality qualifier, true and correct in all respects as of the date hereof, except to the extent any such representation or warranty is stated to relate solely to an earlier date, in which case such representation or warranty shall have been true and correct in all respects on and as of such earlier date and (b) with respect to any representations or warranties that do not contain a materiality qualifier, true and correct in all material respects as of the date hereof, except to the extent any such representation or warranty is stated to relate solely to an earlier date, in which case such representation or warranty shall have been true and correct in all material respects on and as of such earlier date; (ii) at the time of and immediately after giving effect to such Advance, no Default or Event of Default shall have occurred and be continuing; and (iii) all other relevant conditions set forth in Section 4.2 of the Credit Agreement have been satisfied.

IN WITNESS WHEREOF, the undersigned has caused this Borrowing Notice to be executed by its authorized officer as of the date set forth below.

Dated: _____, 20

DBM GLOBAL INC., a Delaware Corporation, as Borrower Agent

By: _____
Name: _____
Title: _____

Exhibit D

EXHIBIT E-1

FORM OF REVOLVING LOAN NOTE

\$ _____ May 27, 2021

The undersigned (each a "Borrower" and collectively the "Borrowers") promise to pay to the order of _____ (the "Lender"), the aggregate unpaid principal amount of up to _____ and 00/100 Dollars (\$ _____) made available by the Lender to the Borrowers pursuant to Section 2.1 of the Agreement (as hereinafter defined), in immediately available funds at the applicable office of **UMB BANK, N.A.**, as Administrative Agent, together with interest on the unpaid principal amount hereof at the rates and on the dates set forth in the Agreement. The Borrowers shall pay the principal of and accrued and unpaid interest on this Revolving Note in full on the Revolving Loan Maturity Date.

The Administrative Agent shall, and is authorized to, record in accordance with its usual practice, the date and amount of each Revolving Loan and the date and amount of each principal payment hereunder.

This Revolving Note is one of the Notes issued pursuant to, and is entitled to the benefits of, the Credit Agreement dated as of May 27, 2021 (which, as it may be amended or modified and in effect from time to time, is herein called the "Agreement"), among the Borrowers, the lenders party thereto, including the Lender, and UMB Bank, N.A., as Administrative Agent, to which Agreement reference is hereby made for a statement of the terms and conditions governing this Revolving Note, including the terms and conditions under which this Revolving Note may be prepaid or its Revolving Loan Maturity Date accelerated. This Revolving Note is secured pursuant to the Collateral Documents, all as more specifically described in the Agreement, and reference is made thereto for a statement of the terms and provisions thereof. Capitalized terms used herein and not otherwise defined herein are used with the meanings attributed to them in the Agreement.

In the event of default hereunder, the undersigned agree to pay all costs and expenses of collection, including reasonable attorneys' fees. The undersigned waive demand, presentment, notice of nonpayment, protest, notice of protest and notice of dishonor.

THE VALIDITY, CONSTRUCTION AND ENFORCEABILITY OF THIS NOTE SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF ARIZONA WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF, BUT GIVING EFFECT TO FEDERAL LAWS OF THE UNITED STATES APPLICABLE TO NATIONAL BANKS.

[Signatures on Following Pages]

Exhibit E-1

Each Borrower has executed this Revolving Loan Note as of the date set forth above.

[BORROWER NAME]

By: _____
Name: _____
Title: _____

Exhibit E-1

EXHIBIT E-2

FORM OF TERM NOTE

\$ _____ May 27, 2021

The undersigned (each a "Borrower" and collectively the "Borrowers") promise to pay to the order of _____ (the "Lender"), as defined in the Agreement (as hereinafter defined), the principal amount of _____ and 00/100 Dollars (\$ _____ .00) advanced by the Lender to the Borrowers pursuant to Section 2.2 of the Agreement (as hereinafter defined), in immediately available funds at the applicable office of **UMB BANK, N.A.**, as Administrative Agent, together with interest on the unpaid principal amount hereof at the rates and on the dates set forth in the Agreement. The Borrowers shall pay the principal of and accrued and unpaid interest on this Term Note in full on the Term Loan Maturity Date.

The Administrative Agent shall, and is authorized to, record in accordance with its usual practice, the date and amount of each Term Loan and the date and amount of each principal payment hereunder.

This Term Note is one of the Notes issued pursuant to, and is entitled to the benefits of, the Credit Agreement dated as of May 27, 2021 (which, as it may be amended or modified and in effect from time to time, is herein called the "Agreement"), among the Borrowers, the lenders party thereto, including the Lender, and UMB Bank, N.A., as Administrative Agent, to which Agreement reference is hereby made for a statement of the terms and conditions governing this Term Note, including the terms and conditions under which this Term Note may be prepaid or its Term Loan Maturity Date accelerated. This Term Note is secured pursuant to the Collateral Documents, all as more specifically described in the Agreement, and reference is made thereto for a statement of the terms and provisions thereof. Capitalized terms used herein and not otherwise defined herein are used with the meanings attributed to them in the Agreement.

In the event of default hereunder, the undersigned agree to pay all costs and expenses of collection, including reasonable attorneys' fees. The undersigned waive demand, presentment, notice of nonpayment, protest, notice of protest and notice of dishonor.

THE VALIDITY, CONSTRUCTION AND ENFORCEABILITY OF THIS NOTE SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF ARIZONA WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF, BUT GIVING EFFECT TO FEDERAL LAWS OF THE UNITED STATES APPLICABLE TO NATIONAL BANKS.

[Signatures on Following Pages]

Exhibit E-2

Each Borrower has executed this Term Note as of the date set forth above.

[BORROWER NAME]

By: _____
Name: _____
Title: _____

Exhibit E-2

EXHIBIT H

LIST OF CLOSING DOCUMENTS

A. LOAN DOCUMENTS

1. Credit Agreement dated as of May 27, 2021, among DBM Global Inc. and the other Borrowers listed on Schedule 1.1 thereof (each a “Borrower” and collectively the “Borrowers”), and Lenders party thereto and UMB Bank, N.A., as administrative agent (in such capacity, the “Administrative Agent”) evidencing (a) a revolving credit facility to Borrowers from Lenders in an initial aggregate principal amount of up to \$110,000,000.00, and (b) a term loan to Borrowers from Lenders in an initial principal amount of \$110,000,000.00

EXHIBITS

Exhibit A – Required Opinions
Exhibit B – Form of Compliance Certificate
Exhibit C – Form of Assignment and Assumption Agreement Exhibit D – Form of Borrowing Notice
Exhibit E-1 – Form of Revolving Loan Note Exhibit E-2 – Form of Term Note
Exhibit H – Closing Documents

SCHEDULES

Schedule 1.1 – List of Borrowers Schedule 1.2 – List of Guarantors
Schedule 2 – Lenders, Commitments, and Pro Rata Shares Schedule 4.4 – Collateral Access Agreement Locations Schedule 5.8 – Subsidiaries
Schedule 5.23 – Mortgaged Property Schedule 5.23A – Real Property Schedule 6.10 – Debt
Schedule 6.14 – Existing Liens Schedule 6.23 – Investments

2. Revolving Loan Note executed by Borrowers in favor of Administrative Agent for the benefit of Lenders
3. Term Note executed by Borrowers in favor of Administrative Agent for the benefit of Lenders
4. Pledge and Security Agreement executed by Borrowers and Guarantors (listed on Schedule 1.2 of the Agreement) in favor of the Administrative Agent
5. Guaranty executed by Guarantors in favor of Administrative Agent
6. Deed of Trust securing real property located at 420 S. 19th Avenue, Phoenix, AZ, executed by the relevant Borrower in favor of Administrative Agent
7. Deed of Trust securing real property located at 1705 W. Battaglia Drive, Eloy, AZ, executed by the relevant Borrower in favor of Administrative Agent

Exhibit H

8. Deed of Trust securing real property located at 5055 N. Ken Morey Drive, Bellemont, AZ, executed by the relevant Borrower in favor of Administrative Agent
9. Deed of Trust securing real property located at 1825-1841 W. Buchanan Street, Phoenix, AZ, executed by the relevant Borrower in favor of Administrative Agent
10. Mortgage securing real property located at 1345 Hall Spencer Road, Hill, SC, executed by the relevant Borrower in favor of Administrative Agent
11. Deed of Trust securing real property located at 325 S. Geneva Road, Lindon, UT, executed by the relevant Borrower in favor of Administrative Agent
12. Mortgage securing real property located at 2001 N. Davis Avenue, Ottawa, KS, executed by the relevant Borrower in favor of Administrative Agent
13. Deed of Trust securing real property located at 2324 Navy Drive, Stockton, CA, executed by the relevant Borrower in favor of Administrative Agent
14. Deed of Trust securing real property located at 4918, 4920 & 5000 Airline Drive, Houston, TX, executed by the relevant Borrower in favor of Administrative Agent
15. Deed of Trust securing real property located at 14500 Smith Road, Humble, TX, executed by the relevant Borrower in favor of Administrative Agent
16. Environmental Indemnity Agreement executed by Borrowers and Guarantors, in favor of Administrative Agent
17. Deposit Account Control Agreements among the relevant Borrowers, the Administrative Agent, and the relevant account bank or securities intermediary, as applicable
18. Collateral Assignment of Acquisition Documents executed by the relevant Borrowers, in favor of Administrative Agent
19. Intercreditor and Subordination Agreement executed by relevant Borrowers, Administrative Agent, and Atlas Holdings
20. Intercreditor and Subordination Agreement executed by relevant Borrowers, Administrative Agent, and Don Banker

B. UCC AND OTHER COLLATERAL-RELATED DELIVERIES

21. UCC, tax lien, bankruptcy, judgment, and name variation search reports naming each Borrower from the appropriate offices in relevant jurisdictions
22. UCC, tax, lien, bankruptcy, judgment, and name variation search reports naming each Guarantor from the appropriate offices in relevant jurisdictions
23. UCC-1 financing statements naming each relevant Borrower and Guarantor as debtor and the Administrative Agent as secured party filed with the appropriate offices in the applicable jurisdictions

Exhibit H

24. Stock Certificates for first-tier foreign subsidiaries of Borrowers
25. Stock Powers for Stock Certificates of first-tier foreign subsidiaries of Borrowers
26. Original Notes held by any Borrower or Guarantor

C. CORPORATE DOCUMENTS

27. Certificate of the Secretary of each Borrower certifying (i) that there have been no changes in the charter document of such Borrower, as attached thereto and as certified as of a recent date by the Secretary of State (or analogous governmental entity) of the jurisdiction of its organization, since the date of the certification thereof by such governmental entity, (ii) the Operating Agreement or other organizational document, as attached thereto, of such Borrower as in effect on the date of such certification, (iii) resolutions of the Board of Directors or other governing body of such Borrower authorizing the execution, delivery, and performance of each Loan Document to which it is a party, (iv) the Good Standing Certificate (or analogous documentation if applicable) for such Borrower from the Secretary of State (or analogous governmental entity) of the jurisdiction of its organization, to the extent generally available in such jurisdiction, and (v) the names and true signatures of the incumbent officers of each Borrower authorized to sign the Loan Documents to which it is a party, and (in the case of each Borrower) authorized to request a Credit Extension under the Credit Agreement.
28. Certificate of the Secretary of each Guarantor certifying (i) that there have been no changes in the charter document of such Guarantor, as attached thereto and as certified as of a recent date by the Secretary of State (or analogous governmental entity) of the jurisdiction of its organization, since the date of the certification thereof by such governmental entity, (ii) the Operating Agreement or other organizational document, as attached thereto, of such Guarantor as in effect on the date of such certification, (iii) resolutions of the Board of Directors or other governing body of such Guarantor authorizing the execution, delivery, and performance of each Loan Document to which it is a party, (iv) the Good Standing Certificate (or analogous documentation if applicable) for such Guarantor from the Secretary of State (or analogous governmental entity) of the jurisdiction of its organization, to the extent generally available in such jurisdiction, and (v) the names and true signatures of the incumbent officers of each Guarantor authorized to sign the Loan Documents to which it is a party.

D. DEBT REPAYMENT DOCUMENTS; UCC TERMINATION FILINGS

29. Payoff Letter executed and delivered in the name of Wells Fargo Bank, N.A.
30. Payoff Letter executed and delivered in the name of TCW Asset Management Company LLC.
31. UCC Termination Statement(s) by Wells Fargo Bank, N.A.
32. UCC Termination Statement(s) by TCW Asset Management Company LLC.

E. OPINIONS

33. Borrowers'/Guarantors' Counsel Existence, Due Authorization, Execution and Delivery, Enforceability, and Creation and Perfection of Liens and Security Interests (including Texas, Arizona, and California Deeds of Trust and Mortgages) Opinion

Exhibit H

34. South Carolina Mortgage Opinion
35. Utah Mortgage Opinion
36. Kansas Mortgage Opinion

F. CLOSING CERTIFICATES AND MISCELLANEOUS

37. Financial Statements of each Borrower
38. Beneficial Ownership Certificates by each Borrower and each Guarantor

G. POST-CLOSING

39. Post-filing UCC search reports reflecting the UCC-1 financing statements referred to in item 25 above to be of record

Exhibit H

SCHEDULE 1.1 BORROWERS

INITIAL BORROWERS	
ENTITY	JURISDICTION INCORPORATED/ORGANIZED
DBM Global Inc.	Delaware
GrayWolf Industrial, Inc.	Delaware
Schuff Steel Management Company – Southwest, Inc.	Delaware
Schuff Steel Company	Delaware
Aitken Manufacturing Inc.	Delaware
DBM Vircon Services (USA) Inc.	Arizona
GrayWolf Integrated Construction Company	Delaware
Milco National Constructors, Inc.	Delaware
GrayWolf Integrated Construction Company-Southeast, Inc.	Georgia
BANKER STEEL BORROWERS	
ENTITY	JURISDICTION INCORPORATED/ORGANIZED
Banker Steel Holdco LLC	Delaware
Banker Steel Co., L.L.C.	Delaware
Banker Steel South, LLC	Virginia
US Erectors LLC	Delaware
NYC Constructors, LLC	Delaware
Derr and Isbell Construction, LLC	Texas
Memco LLC	Delaware
Lynchburg Freight & Specialty LLC	Delaware
NYC Equipment Company, LLC	Virginia
Innovative Engineering Solutions LLC	Delaware
US Construction Services Inc.	Delaware
NYCC Construction Services, LLC	Delaware

Schedule 1.1

Error! Unknown document property name.

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SCHEDULE 1.2 GUARANTORS

ENTITY	JURISDICTION INCORPORATED/ORGANIZED
DBM Global – North America Inc.	Delaware
Addison Structural Services, Inc.	Florida
Quincy Joist Company	Delaware
Schuff Steel – Atlantic, LLC	Florida
On-Time Steel Management Holding, Inc.	Delaware
Schuff Steel Management Company – Southeast L.L.C.	Delaware
Schuff Steel Management Company – Colorado L.L.C.	Delaware
PDC Services (USA) Inc.	Delaware
Innovative Structural Systems Inc.	Delaware
DBM Global Holdings Inc.	Delaware
Schuff Premier Services LLC	Delaware
CB-Horn Holdings, Inc.	Delaware
Titan Fabricators, Inc.	Kentucky
Midwest Environmental, Inc.	Kentucky
M. Industrial Mechanical, Inc.	Delaware

Schedule 1.2

Error! Unknown document property name.

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SCHEDULE 2

LENDERS, COMMITMENTS AND PRO RATA SHARES

Lender	Revolving Commitment	Term Loan Commitment (as of May 27, 2021)	Pro Rata Share
UMB Bank, N.A.	\$40,000,000.00 <u>\$49,090,909.10</u>	\$40,000,000.00	36.363637%
BMO Harris Bank N.A.	\$30,000,000.00 <u>\$36,818,181.82</u>	\$30,000,000.00	27.272727%
Arizona Bank & Trust	\$20,000,000.00 <u>\$24,545,454.54</u>	\$20,000,000.00	18.181818%
Fifth Third Bank, National Association	\$12,500,000.00 <u>\$15,340,909.09</u>	\$12,500,000.00	11.363636%
Academy Bank	\$7,500,000.00 <u>\$9,204,545.45</u>	\$7,500,000.00	6.818182%
TOTALS	\$110,000,000.00 <u>\$135,000,000.00</u>	\$110,000,000.00	100%

Schedule 2

! *Error! Unknown document property name:*

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SCHEDULE 4.4

COLLATERAL ACCESS AGREEMENT LOCATIONS

BORROWERS

Company	Property location	Landlord
DBM Global Inc.	3020 E Camelback Rd, Ste 100 Phoenix, AZ 85016	WAM 3020 Limxfited Partnership
Schuff Steel Company	3003 N Central Ave, Ste 700 Phoenix, AZ 85012	A.G. Spanos Professional Office Center, LLC
	2905 Premiere Pkwy., Ste. 210 Duluth, GA 30097	Sugarloaf Commerce Center LLC
	915 118 th Ave. SE, Ste. 280 Bellevue, WA 98005	Spire Gateway LP
	1971 W. 700 N., Ste. 101 Lindon, UT 84042	Lindon Tech 3, LLC
	1401 Dove St., Ste. 530 Newport Beach, CA 92660	Palm Springs Village-309, LLC
	6701 W. 64 th St., Ste. 200 Overland Park, KS 66202	Cloverleaf 5 Building, LLC
	7901 Stoneridge Dr., Ste. 211 Pleasanton, CA 94588	ECI Four 7901 Stoneridge, LLC
	6500 SW Macadam Ave., Ste. 350 Portland, OR 97239	Weston Investment Co. LLC d/b/a American Property Management
	9174 Sky Park Court, Ste. 200 San Diego, CA 92123	Government Properties Income Trust, LLC
10100 Trinity Parkway, Ste. 400 Stockton, CA 95219	A.G. Spanos Professional Office Center, LLC	
Aitken Manufacturing Inc.	5008 Airline Dr. Houston, TX 77022	G.A. Repal
DBM Vircon Services (USA) Inc.	2151 E. Broadway Rd. #220, Tempe, AZ 85282	Broadway 101 LLC
	1230 W. Washington St., Suite 201 Tempe, AZ 85281	Papago Buttes Corporate, LLC
GrayWolf Integrated	3550 Francis Circle	Green River Investments,

Schedule 4.4

! *Error! Unknown document property name.*

! QB\74791997.1\74791997.4

Company	Property location	Landlord
Construction Company-Southeast, Inc. (f/k/a Inco Services, Inc.)	Alpharetta, GA 30004 4618 Highway #370 Cedar Springs, GA 39832 30333 County Road 49 Loxley, AL 36551 37 Artley Rd. Savannah, GA 31408	LLC Inman Industrial Electric, Inc. Green River Investments, LLC Green River Investments, LLC
Milco National Constructors, Inc.	3930 Cherry Avenue Long Beach, CA 90807	3930 Cherry LLC
GrayWolf Integrated Construction Company (f/k/a Titan Contracting & Leasing Co.)	11800 Fairmont Pkwy. LaPorte, TX 77571	Vigavi Realty, LLC
Banker Steel Co., LLC	2940 Fulks Street Lynchburg, VA 24501 1619 Wythe Road Lynchburg, VA 24501 351 Rangoon Street Lynchburg, VA 24502 6635 Edgewater Drive Orlando, FL 32810 7351 Overland Road (plant) Orlando, FL 32810 7351 Overland Road (yard) Orlando, FL 32810 1291 S. Orange Blossom Trail Apopka, FL 32703 8708 Wards Road Rustburg, VA 24588 1640 New Market Ave., Building 2 Plainfield, NJ 07080 1641 New Market Ave., Building 7 Plainfield, NJ 07080 1641 New Market Ave., Building 9 Plainfield, NJ 07080	2940 Fulks Street, LLC Store Capital Acquisitions, LLC Store Capital Acquisitions, LLC Store Capital Acquisitions, LLC Lockhart Center LLC Lockhart Center LLC H2O Properties LLC WK Land and Timber, LLC Harris Realty Company LLC Harris Realty Company LLC Harris Realty Company LLC
Derr and Isbell Construction,	10904 Crabapple Road	AT-PAC Properties US

Company	Property location	Landlord
LLC	Roswell, GA 30075 3900 Tarrant Main Street Euless, TX 76040 295 E Felton Road Cartersville, GA 30121	LLC Derr Construction Company; Derr Family Limited Partnership; Tank Builders, Inc. Cartersville Warehousing, LLC
Innovative Engineering Solutions LLC	107 Oak Park Drive, Suite C Irmo, SC 29063	TAD Ventures, LLC
Lynchburg Freight & Specialty LLC	2940 Fulks Street Lynchburg, VA 24501	2940 Fulks Street, LLC
NYC Constructors, LLC	110 East 42 nd St., Suite 610 New York, NY 10017 400 Madison Avenue New York, NY 10017	Gotham 42 nd St. LLC DS400 Owner LLC

GUARANTORS

None.

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SCHEDULE 5.8

SUBSIDIARIES

INITIAL BORROWERS (OTHER THAN HOLDINGS)

Subsidiary	Jurisdiction	Equity Owners
Schuff Steel Company	Delaware	DBM Global – North America Inc. owns 100% (100 shares) of the capital stock of Schuff Steel Company
Aitken Manufacturing Inc.	Delaware	DBM Global – North America Inc. owns 100% (800 shares) of the common stock of Aitken Manufacturing Inc.
Schuff Steel Management Company – Southwest, Inc.	Delaware	On-Time Steel Management Holding, Inc. owns 100% (100 shares) of the capital stock of Schuff Steel Management Company - Southwest, Inc.
DBM Vircon Services (USA) Inc.	Arizona	DBM Global – North America Inc. owns 100% (100 shares) of the common stock of DBM Vircon Services (USA), Inc.
Graywolf Industrial, Inc.	Delaware	CB-Horn Holdings, Inc. owns 94% (110 shares) of the capital stock of GrayWolf Industrial, Inc. Schuff Steel Company owns 5% (6 shares) of the capital stock of GrayWolf Industrial, Inc. Schuff Steel Management Company – Southwest, Inc. owns 1% (1 share) of the capital stock of GrayWolf Industrial, Inc.
GrayWolf Integrated Construction Company-Southeast, Inc.	Georgia	Graywolf Industrial, Inc. owns 100% (2,300 shares) of the capital stock of GrayWolf Integrated Construction Company-Southeast, Inc. (f/k/a Inco Services, Inc.)
Milco National Constructors, Inc.	Delaware	Graywolf Industrial, Inc. owns 100% (100 shares) of the capital stock of Milco National

Schedule 5.8

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Subsidiary	Jurisdiction	Equity Owners
		Constructors, Inc.
GrayWolf Integrated Construction Company	Delaware	<p>Graywolf Industrial, Inc. owns 69% (523 shares) of the capital stock of GrayWolf Integrated Construction Company (f/k/a Titan Contracting & Leasing Company, Inc.)</p> <p>Schuff Steel Company owns Owns 29% (219 shares) of the capital stock of GrayWolf Integrated Construction Company (f/k/a Titan Contracting & Leasing Company, Inc.)</p> <p>Schuff Steel Management Company – Southwest, Inc. owns 2% (19 shares) of the capital stock of GrayWolf Integrated Construction Company (f/k/a Titan Contracting & Leasing Company, Inc.)</p>

BANKER STEEL BORROWERS

Subsidiary	Jurisdiction	Equity Owners
Banker Steel Holdco LLC	Delaware	DBM Global Inc. owns 100% of Banker Steel Holdco LLC
Banker Steel Co., L.L.C.	Delaware	Banker Steel Holdco LLC owns 100% of Banker Steel Co., L.L.C.
Banker Steel South, LLC	Virginia	Banker Steel Co., L.L.C. owns 100% of Banker Steel South, LLC
US Erectors LLC	Delaware	Banker Steel Co., L.L.C. owns 100% of US Erectors LLC
Lynchburg Freight & Specialty LLC (f/k/a Lynchburg Steel Services LLC)	Delaware	Banker Steel Co., L.L.C. owns 100% of Lynchburg Freight & Specialty LLC (f/k/a Lynchburg Steel Services LLC)
Derr & Isbell Construction, LLC	Delaware	US Erectors LLC owns 100% of Derr & Isbell Construction, LLC
Innovative Engineering Solutions LLC	Delaware	US Erectors LLC owns 100% of Innovative Engineering Solutions LLC

Subsidiary	Jurisdiction	Equity Owners
NYC Constructors, LLC	Delaware	US Erectors LLC owns 100% of NYC Constructors, LLC
NYC Equipment, LLC	Virginia	NYC Constructors, LLC owns 100% of NYC Equipment, LLC
NYCC Construction Services, LLC	Delaware	NYC Constructors, LLC owns 100% of NYCC Construction Services, LLC
Memco LLC	Delaware	US Erectors LLC owns 100% of Memco LLC
U.S. Construction Services, Inc.	Delaware	NYC Constructors, LLC owns 100% of U.S. Construction Services, Inc.
Innovative Detailing Services, Ltd.	Ontario	U.S. Construction Services, Inc. owns 100% of Innovative Detailing Services, Ltd.
NYC Construction Services, Ltd.	Ontario	U.S. Construction Services, Inc. owns 100% of NYC Construction Services, Ltd.

GUARANTORS

Subsidiary	Jurisdiction	Equity Owners
DBM Global - North America Inc.	Delaware	DBM Global Inc. owns 100% (100 shares) of the common stock of DBM Global – North America, Inc.
Quincy Joist Company	Delaware	Addison Structural Services, Inc. owns 100% (1,000 shares) of the capital stock of Quincy Joist Company
On-Time Steel Management Holding, Inc.	Delaware	DBM Global – North America Inc. 100% (100 shares) of the capital stock of On-Time Steel Management Holding, Inc.
Addison Structural Services, Inc.	Florida	DBM Global – North America Inc. owns 100% (1 share) of the capital stock of Addison Structural Services, Inc.
DBM Global Holdings Inc.	Delaware	DBM Global Inc. owns 100% (300 shares) of the common stock of DBM Global Holdings Inc.
PDC Services (USA) Inc.	Delaware	DBM Global – North America Inc. owns 100% (100 shares) of the capital stock of PDC Services (USA) Inc.
Schuff Premier Services LLC	Delaware	DBM Global Inc. owns 100% membership interests in Schuff

Subsidiary	Jurisdiction	Equity Owners
		Premier Services LLC
Schuff Steel – Atlantic LLC	Florida	Schuff Steel Company owns 100% membership interests in Schuff Steel – Atlantic, LLC
Schuff Steel Management Company – Colorado LLC	Delaware	On-Time Steel Management Holding, Inc. owns 100% membership interests in Schuff Steel Management Company - Colorado, LLC
Schuff Steel Management Company – Southeast LLC	Delaware	On-Time Steel Management Holding, Inc. owns 100% membership interests in Schuff Steel Management Company - Southeast, LLC
Innovative Structural Systems Inc.	Delaware	DBM Global – North America Inc. owns 100% (1,000 shares) of the capital stock of Innovative Structural Systems Inc.
CB-Horn Holdings, Inc.	Delaware	DBM Global Inc. owns 100% (1,000 shares) of the capital stock of CB-Horn Holdings, Inc.
Midwest Environmental, Inc.	Kentucky	Graywolf Industrial, Inc. owns 100% (1,000 shares) of the capital stock of Midwest Environmental, Inc.
M. Industrial Mechanical, Inc.	Delaware	Graywolf Industrial, Inc. owns 100% (100 shares) of the capital stock of M. Industrial Mechanical, Inc.
Titan Fabricators, Inc.	Kentucky	GrayWolf Integrated Construction Company owns 100% (1,000 shares) of the capital stock of Titan Fabricators, Inc.

FOREIGN SUBSIDIARIES

Subsidiary	Jurisdiction	Equity Owners
Schuff Steel Company – Panama, S. de R.L.	Panama	DBM Global – North America Inc. owns 99% (99) of the Quotas of Schuff Steel Company – Panama, S. de R.L. Schuff Steel Company 1% (1) of the Quotas of Schuff Steel Company – Panama, S. de R.L.

Subsidiary	Jurisdiction	Equity Owners
DBM Vircon Services (Canada) Ltd.	British Columbia, Canada	DBM Global Holdings Inc. owns 100% (101 shares) of the common stock of DBM Vircon Services (Canada) Ltd (f/k/a DBM Vircon Services LTD)
DBMG International Pte Ltd	Singapore	DBM Global Holdings Inc. owns 100% (19,025,620 shares) of the ordinary stock of DBMG International PTE LTD
DBMG Singapore Pte Ltd	Singapore	DBMG International Pte Ltd owns 100% of DBMG Singapore Pte Ltd
DBM Vircon (Australia) Pty Ltd	Victoria, Australia	DBMG Singapore Pte Ltd owns 100% of DBM Vircon (Australia) Pty Ltd
PDC Operations (Australia) Pty Ltd	Victoria, Australia	DBM Vircon (Australia) Pty Ltd owns 100% of PDC Operations (Australia) Pty Ltd
DBM Vircon Services (Philippines) Inc.	Philippines	DBMG Singapore Pte Ltd owns 100% of DBM Vircon Services (Philippines) Inc.
DBM Vircon Services (Australia) Pty Ltd.	Victoria, Australia	DBM Vircon (Australia) Pty Ltd owns 100% of DBM Vircon Services (Australia) Pty Ltd.
BDS Steel Detailers (Australia) Pty Ltd	Victoria, Australia	DBM Vircon Services (Australia) Pty Ltd. owns 100% of BDS Steel Detailers (Australia) Pty Ltd
DBM Vircon Services (UK) Ltd	England & Wales, United Kingdom	DBM Global Holdings Inc. owns 100% of DBM Vircon Services (UK) Ltd
DBM Vircon Services (NZ) Limited	New Zealand	DBM Vircon Services (Australia) Pty Ltd. owns 100% of DBM Vircon Services (NZ) Limited
DBM Vircon Services (Thailand) Company Ltd	Bangkok, Thailand	DBMG Singapore Pte Ltd owns 87% (39,994 shares) of DBM Vircon Services (Thailand) Company Ltd Vinod Muthanna owns 6.5% (3 shares) of DBM Vircon Services (Thailand) Company Ltd Vaughn McClear owns 6.5% (3 shares) of DBM Vircon Services (Thailand) Company

Subsidiary	Jurisdiction	Equity Owners
		Ltd
DBM Vircon Services (India) Private Limited	Chennai, Tamil Nadu, India	<p>DBM Global Holdings Inc. owns 99.99% (9,999 equity shares) of DBM Vircon Services (India) Private Limited</p> <p>DBMG International Pte Ltd owns .01% (1 share) as nominee for DBMG Singapore Pte Ltd</p>

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SCHEDULE 5.23 MORTGAGED

PROPERTY

1. 420 S. 19th Avenue, Phoenix, AZ
2. 1705 W. Battaglia Drive, Eloy, AZ
3. 5055 N. Ken Morey Drive, Bellemont, AZ
4. | ~~1825-1841 W. Buchanan Street, Phoenix, AZ~~
4. | ~~5-~~1345 Hall Spencer Road, Hill, SC
5. | ~~6-~~325 S. Geneva Road, Lindon, UT
6. | ~~7-~~2001 N. Davis Avenue, Ottawa, KS
7. | ~~8-~~2324 Navy Drive, Stockton, CA
8. | ~~9-~~4918, 4920 & 5000 Airline Drive, Houston, TX
9. | ~~10-~~14500 Smith Road, Humble, TX

Schedule 5.23

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SCHEDULE 5.23A REAL

PROPERTY

OWNED PROPERTY

BORROWERS

Company	Location
Schuff Steel Company	1841 W Buchanan St Phoenix, AZ 85007 420 S 19 th Avenue Phoenix, AZ 85009 1705 W Battaglia Rd Eloy, AZ 85131 5055 Ken Morey Dr Bellemont, AZ 86015 2001 N Davis Rd Ottawa, KS 66067 1345 Hall Spencer Rd Rock Hill, SC 29730 2324 Navy Dr Stockton, CA 95206 325 S. Geneva Rd. Lindon, UT 84042
Aitken Manufacturing Inc.	4920 Airline Dr Houston, TX 77022
Schuff Steel Management Company – Southwest, Inc.	4320 E Presidio St, Ste 111 Mesa, AZ 85215
Graywolf Industrial, Inc.	2205 Ragu Dr. Owensboro KY 42303 1115 Industrial Drive Owensboro, KY 42301 280 Ellis Smeathers Rd. Owensboro, KY 42303 920 Wing Ave. Owensboro, KY 42303
GrayWolf Integrated Construction Company	14500 Smith Road Humble, TX 77396
Memco LLC	13324 Cedar Run Church Road Culpeper, VA 22701

LEASED PROPERTY

BORROWERS

Company	Property location	Landlord	Lease terms
DBM Global Inc.	3020 E Camelback Rd, Ste 100 Phoenix, AZ 85016	WAM 3020 Limited Partnership	144 months - Expires 10/31/2022
Schuff Steel Company	3003 N Central Ave, Ste 700 Phoenix, AZ 85012	A.G. Spanos Professional Office Center, LLC	64 months - Expires 7/31/2022
	2905 Premiere Pkwy., Ste. 210 Duluth, GA 30097	Sugarloaf Commerce Center LLC	65 months – Expires 7/31/2025
	915 118 th Ave. SE, Ste. 280 Bellevue, WA 98005	Spire Gateway LP	63 months – Expires 3/31/2025
	1971 W. 700 N., Ste. 101 Lindon, UT 84042	Lindon Tech 3, LLC	72 months - Expires 9/1/2025
	1401 Dove St., Ste. 530 Newport Beach, CA 92660	Palm Springs Village-309, LLC	63 months - Expires 9/30/2021
	6701 W. 64 th St., Ste. 200 Overland Park, KS 66202	Cloverleaf 5 Building, LLC	180 months - Expires 10/30/2021
	7901 Stoneridge Dr., Ste. 211 Pleasanton, CA 94588	ECI Four 7901 Stoneridge, LLC	60 months - Expires 8/31/2021
	6500 SW Macadam Ave., Ste. 350 Portland, OR 97239	Weston Investment Co. LLC d/b/a American Property Management	36 months -
	9174 Sky Park Court, Ste. 200 San Diego, CA 92123	Government Properties Income Trust, LLC	87 months - Expires 7/31/2024
	10100 Trinity Parkway, Ste. 400 Stockton, CA 95219	A.G. Spanos Professional Office Center, LLC	76 months - Expires 4/30/2025
Aitken Manufacturing Inc.	5008 Airline Dr. Houston, TX 77022	G.A. Repal	
DBM Vircon Services (USA) Inc.	2151 E. Broadway Rd. #220, Tempe, AZ 85282	Broadway 101 LLC	Initially 67 months, extended by 39 - Expires 9/30/2021
	1230 W. Washington St., Suite 201 Tempe, AZ 85281	Papago Buttes Corporate, LLC	Scheduled commencement 10/1/2021, 5 year term, will expire 9/30/2026
GrayWolf Integrated Construction Company- Southeast,	3550 Francis Circle Alpharetta, GA 30004	Green River Investments, LLC	Lease dated 6/30/2011, 5 year term, extended 5 years through 7/31/2021.

Company	Property location	Landlord	Lease terms
Inc. (f/k/a Inco Services, Inc.)	4618 Highway #370 Cedar Springs, GA 39832	Inman Industrial Electric, Inc.	Lease dated 8/15/20, 1 year, expires 8/15/2021.
	30333 County Road 49 Loxley, AL 36551	Green River Investments, LLC	Lease dated 6/30/2011, 5 year term, extended 5 years through 7/31/2021.
	37 Artley Rd. Savannah, GA 31408	Green River Investments, LLC	Lease dated 6/30/2011, 5 year term, extended 5 years through 7/31/2021.
Milco National Constructors, Inc.	3930 Cherry Avenue Long Beach, CA 90807	3930 Cherry LLC	Extension signed 7/27/16 – 5 years – expires 9/30/2021
GrayWolf Integrated Construction Company (f/k/a Titan Contracting & Leasing Co.)	11800 Fairmont Pkwy. LaPorte, TX 77571	Vigavi Realty, LLC	61 months, signed 11/2/2015 – expired 12/31/2020, now month-to-month.
Banker Steel Co., LLC	2940 Fulks Street Lynchburg, VA 24501	2940 Fulks Street, LLC	Three-year term 12/1/2020 to 11/20/2022. Tenant option to renew for 2 additional 3-year terms.
	1619 Wythe Road Lynchburg, VA 24501	Store Capital Acquisitions, LLC	Master Lease dated 12/26/2018 covering VA and Edgewater Dr. (FL) plants; 20-year term expiring 12/31/2038. Option for 4 additional renewal terms of 5 years each.
	351 Rangoon Street Lynchburg, VA 24502	Store Capital Acquisitions, LLC	
	6635 Edgewater Drive Orlando, FL 32810	Store Capital Acquisitions, LLC	
	7351 Overland Road (plant) Orlando, FL 32810	Lockhart Center LLC	Lease dated 1/14/2021. No set term, either party can terminate upon 30-day notice.
	7351 Overland Road (yard) Orlando, FL 32810	Lockhart Center LLC	Lease dated 12/1/2015. Presently month-to-month.
	1291 S. Orange Blossom Trail Apopka, FL 32703	H2O Properties LLC	Lease renewed 8/20/2019 for 3-year term ending 8/31/2022. Tenant option to cancel as of 8/31/2021 with 30-day notice.
	8708 Wards Road Rustburg, VA 24588	WK Land and Timber, LLC	Lease dated 1/8/2019, runs 2/1/2019 – 1/31/2024.
1640 New Market Ave., Building 2 Plainfield, NJ 07080	Harris Realty Company LLC	Lease dated 3/31/2016 for 15-year term expiring 3/31/31. Option for 2	

Company	Property location	Landlord	Lease terms
	1641 New Market Ave., Building 7 Plainfield, NJ 07080	Harris Realty Company LLC	additional renewal terms of 5 years/each. Same as above.
	1641 New Market Ave., Building 9 Plainfield, NJ 07080	Harris Realty Company LLC	Same as above.
Derr and Isbell Construction, LLC	10904 Crabapple Road Roswell, GA 30075	AT-PAC Properties US LLC	Lease dated 3/30/2017, term ends 4/30/2022.
	3900 Tarrant Main Street Eules, TX 76040	Derr Construction Company; Derr Family Limited Partnership; Tank Builders, Inc.	Lease dated 1/23/2012, amended 12/31/2019 and 3/11/2021. Term ends 12/31/2021.
	295 E Felton Road Cartersville, GA 30121	Cartersville Warehousing, LLC	Month-to-month (no formal lease agreement)
Innovative Engineering Solutions LLC	107 Oak Park Drive, Suite C Irmo, SC 29063	TAD Ventures, LLC	Lease dated 8/6/2019; term is 9/1/2019– 10/31/2022.
Lynchburg Freight & Specialty LLC	2940 Fulks Street Lynchburg, VA 24501	2940 Fulks Street, LLC	Lease dated 5/1/2014. Three-year term 12/1/2020 to 11/20/2022. Tenant option to renew for 2 additional 3-year terms.
NYC Constructors, LLC	110 East 42 nd St., Suite 610 New York, NY 10017	Gotham 42 nd St. LLC	Lease dated 4/19/2002 (& 9 amendments). Term ends 3/31/2026.
	400 Madison Avenue New York, NY 10017	DS400 Owner LLC	License agreement dated 12/14/2020 with two-year term ending 12/13/2022. Licensor can terminate upon 30-day notice. NYCC can terminate as of 2/14/2022 with 90-day notice.

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GUARANTORS

None.

FOREIGN SUBSIDIARIES

Company	Property location	Landlord	Lease terms
DBM Vircon Services (NZ) Limited	Level 1, 16 St. Marks Rd, Epsom, Auckland 1051 New Zealand	Berkshire Properties (NZ) Limited	2 years (11/30/2021)
BDS Vircon Co., Ltd.	24 Sukhumvit 21 Rd (Asoke) 14th Fl, Prime Building, Bangkok 10110 Thailand	Prime Holding Co., Ltd.	3 years (3/31/2020)
DBM Vircon Services (Australia) Pty Limited	32 Cordelia St Level1 A1, South Brisbane QLD 4101 Australia	Growthpoint Properties Australia Limited	3 years (10/31/2022)
DBM Vircon Services Ltd.	889 Carnarvon St., New Westminster, BC V3M1G2 Canada	450617 B.C. Ltd.	10 years with two 5-year options (July __, 2022)
BDS Vircon Private Limited	DLF IT SEZ, Block 8, 3rd Floor, 1/124, Shivaji Gardens, Manapakkam, Mount Poonamallee High Road, Chennai, Tamil Nadu – 600089, India	DLF Assets Limited	5 years (1/31/2025)
BDS Vircon Private Limited	4th Fl, Wing 2, Office #4, Jyothirmaya Infopark, Phase 2 SEZ, Brahmapuram PO, Kochi, Ernakulam 682303 India	Infoparks Kerala	6 years (5/31/2024)
BDS Vircon Private Limited	Cochin Special Economic Zone (CSEZ) 4 th Fl, Wing 2, Office #4, Jyothirmaya Infopark, Phase 2 SEZ, Brahmapuram PO, Cochin 682303 India	Infoparks Kerala	6 years (6/1/2024)
PDC Asia-Pacific, Inc.	30th Corporate Center 6th Floor, Meralco Ave, Ortigas Center, Pasig City, Manila, Philippines	North Eastern Commercial Corp.	5 years (6/30/2023)
DBM Vircon Error: Unknown document property name.	Suite M, 2nd Floor, The Error: Unknown document property name.	Schedule 5.23A Eames London Estates	6 years (2/3/2026)

Company	Property location	Landlord	Lease terms
Services (UK) Limited	Kidlington Centre, 4 High Street, Kidlington, Oxford OX5 2DL UK	Limited	
PDC Operations (Australia) Pty Ltd	21 Kintail Road, Level 2, Applecross (Perth) Western Australia	Kintail Developments Pty Ltd	5 years (10/10/2021)
DBM Vircon Services (Thailand) Company Ltd	24 Prime Building 14 th floor, Soi Sukhumvit 21 (A soke) Sukhumuid Rd., Klong Toei-Nua, Sub-District Wattana District, Bangkok, Thailand 10110	Prime Holding Co., Ltd.	3 years (3/31/2023)
Innovative Detailing Services, Ltd.	695 Markham Road, Suite #29 et al Scarborough, ON M1R 2A5	A. & T. Kiriakou	Lease dated 4/15/2019. Currently month-to-month.
NYC Construction Services, Ltd.	15 Belfield Road, Units 2,5,6, and 7 Toronto, ON M9W 1E8	Biomedex Inc.	Lease dated 3/25/2019. Currently month-to-month.

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SCHEDULE 6.10 DEBT

None.

Schedule 6.10

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SCHEDULE 6.14 LIENS

1. Lien in favor of Wells Fargo Bank National Association (“Wells Fargo”) on a cash collateral account of DBM Global Inc. or its affiliates held at Wells Fargo to secure reimbursement obligations of DBM Global Inc. or its affiliates with respect to one or more letters of credit issued by Wells Fargo.
2. Lien in favor of Fifth Third Bank National Association (“Fifth Third”) on a cash collateral account of Banker Steel Co., L.L.C. or its affiliates held at Fifth Third to secure reimbursement obligations of Banker Steel Co., L.L.C. or its affiliates, as evidenced by the Cash Collateral Agreement, dated May 24, 2021, by and between Banker Steel Co., L.L.C. and Fifth Third.

Schedule 6.14

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SCHEDULE 6.23

INVESTMENTS

Schedule 16.4

None

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Document comparison by Workshare Compare on Thursday, July 28, 2022 12:56:50 PM

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Document 2 ID	iManage://docs.quarles.com/active/74791997/4
Description	#74791997v4<docs.quarles.com> - DBM Global 22 Conformed Credit Agreement (First Amendment)
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	101
Deletions	87
Moved from	0
Moved to	0
Style changes	0
Format changes	0
Total changes	188

SENIOR SECURED PROMISSORY NOTE

\$5,000,000.00 July 13, 2022
San Ramon, California

For value received, R2 Technologies, Inc., a Delaware corporation (the “**Company**”), promises to pay to Lancer Capital LLC (the “**Holder**”), or its permitted assigns, in lawful money of the United States of America the principal sum of \$5,000,000.00. Interest shall accrue from the date of this Secured Promissory Note (this “**Note**”) on the unpaid principal amount at a rate equal to 12.00% simple interest per annum (or 18.00% simple interest per annum if provided by Section 4). Any capitalized terms not defined herein shall have the meaning as set forth in the Purchase Agreement (as defined below). This Note is subject to the following terms and conditions:

1. **Issuance of Notes.** This Note is one of a series of Notes (collectively, the “**Notes**”) being issued pursuant to that certain Senior Secured Promissory Note Purchase Agreement, dated as of July 13, 2022 by and among the Company and the Holder (as may be amended from time to time, the “**Purchase Agreement**”), and is subject to, and the Holder and Company shall be bound by, all the terms, conditions and provisions of the Purchase Agreement.

2. **Repayment.** The entire then-outstanding and unpaid principal amount of this Note, together with any accrued but unpaid interest under this Note (the “**Outstanding Amount**”), shall be due and payable on the earlier to occur of (i) December 31, 2022 or (ii) within five (5) business days after the date on which the Company receives an aggregate of \$10,000,000 from the consummation of one or more bona fide debt or equity financings, other capital investments, or capital contributions, whether from new or existing equity holders or debt holders (such applicable date, the “**Maturity Date**”). The Notes shall rank pari passu in right of payment with respect to each other Note, and all payments to each of the Holders under the Notes shall be made pro rata among the Holders based upon the aggregate unpaid principal amount of the Notes outstanding immediately prior to any such payment. All payments shall be made in lawful money of the United States of America at such place as the Holder hereof may from time to time designate in writing to the Company. Interest shall accrue on this Note but shall not be due and payable until the Holder’s written request for repayment after the Maturity Date.

3. **Security; Guarantee.** The payment obligations of the Company arising under this Note are secured pursuant to the terms of (i) that certain Security Agreement dated as of July [•], 2022 by and between the Company and Holder (as amended from time to time, the “**Security Agreement**”) and (ii) that certain Intellectual Property Security Agreement, dated as of July [•], 2022, by the Company in favor of the Holder (as amended from time to time, the “**IP Security Agreement**”). Reference hereby is made to the Security Agreement and the IP Security Agreement for a description of the nature and extent of the collateral serving as security for this Note and the rights of the Holder with respect to such security.

4. **Events of Default.** Interest shall accrue on the unpaid principal amount of this Note at a rate equal to 18.00% simple interest per annum, for the period beginning with the date of occurrence of an Event of Default (as defined below) and continuing for so long as such Event of Default is continuing. The Company shall immediately notify the Holder in writing upon becoming aware of the occurrence of any Event of Default; provided that the provision of such notice shall not effect or impair the Holder's rights hereunder. The occurrence of any of the following shall constitute an “**Event of Default**” under this Note:

- (a) the Company shall fail to pay Holder in full the principal amount and all accrued and unpaid interest on this Note on the Maturity Date;
- (b) the occurrence of an event of default pursuant to any Senior Indebtedness (as defined below), subject to applicable notice and cure periods;

(a) the Company shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) make a general assignment for the benefit of its or any of its creditors or (iv) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it;

(b) proceedings for the appointment of a receiver, trustee, liquidator or custodian of the Company or of all or a substantial part of the property thereof, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to the Company or the debts thereof under any bankruptcy, insolvency or other similar law now or hereafter in effect shall be commenced and an order for relief entered or such proceeding shall not be challenged, dismissed or discharged within ninety (90) days of commencement;

(c) the dissolution or winding up of the Company; or

(d) the appointment of a receiver or trustee to take possession of any property or assets of the Company.

5. **Subordination.** The indebtedness evidenced by this Note is hereby expressly subordinated, to the extent and in the manner hereinafter set forth, in right of payment to the prior payment in full of all of the Company's Senior Indebtedness (as defined below).

(e) **Insolvency Proceedings.** If there shall occur any receivership, insolvency, assignment for the benefit of creditors, bankruptcy, reorganization, or arrangements with creditors (whether or not pursuant to bankruptcy or other insolvency laws), sale of all or substantially all of the assets, dissolution, liquidation, or any other marshaling of the assets and liabilities of the Company, no amount shall be paid by the Company in respect of the principal of, interest on or other amounts due with respect to this Note at the time outstanding, unless and until the principal of and interest on the Senior Indebtedness then outstanding shall be paid in full.

(f) **Subrogation.** Subject to the payment in full of all Senior Indebtedness, the holder of this Note shall be subrogated to the rights of the holder(s) of such Senior Indebtedness (to the extent of the payments or distributions made to the holder(s) of such Senior Indebtedness pursuant to the provisions of this Section 5) to receive payments and distributions of assets of the Company applicable to the Senior Indebtedness. No such payments or distributions applicable to the Senior Indebtedness shall, as between the Company and its creditors, other than the holders of Senior Indebtedness and the Holder, be deemed to be a payment by the Company to or on account of this Note; and for purposes of such subrogation, no payments or distributions to the holders of Senior Indebtedness to which the Holder would be entitled except for the provisions of this Section 5 shall, as between the Company and its creditors, other than the holders of Senior Indebtedness and the Holder, be deemed to be a payment by the Company to or on account of the Senior Indebtedness. Notwithstanding the foregoing, the Company represents and warrants to the Holder that (a) the terms of the Senior Indebtedness allow for the transactions contemplated by this Note and the repayment in full by the Company of its obligations pursuant to this Note on the Maturity Date without any default thereunder, and (b) no consent is required from any third party, including any holder of the Senior Indebtedness, to enter into the transaction contemplated by this Note or to pay in full the obligations of the Company pursuant to this Note, which consent has not been obtained prior to the date hereof.

(g) **No Impairment.** Nothing contained in this Section 5 shall impair, as between the Company and the Holder, the obligation of the Company, subject to the terms and conditions hereof, to pay to the Holder the principal hereof and interest hereon as and when the same become due and

payable, or shall prevent the Holder of this Note, upon default hereunder, from exercising all rights, powers and remedies otherwise provided herein or by applicable law.

(a) **Reliance of the Holders of Senior Indebtedness.** The Holder, by its acceptance hereof, shall be deemed to acknowledge and agree that the foregoing subordination provisions are, and are intended to be, an inducement to and a consideration of each holder of Senior Indebtedness, whether such Senior Indebtedness was created or acquired before or after the creation of the indebtedness evidenced by this Note, and each such holder of Senior Indebtedness shall be deemed conclusively to have relied on such subordination provisions in acquiring and holding, or in continuing to hold, such Senior Indebtedness.

(b) **Senior Indebtedness.** For purposes of this Note, “**Senior Indebtedness**” shall mean, unless expressly subordinated to or made on a parity with the amounts due under this Note, the principal of (and premium, if any), unpaid interest on and amounts reimbursed, fees, expenses, costs of enforcement and other amounts due in connection with, (i) indebtedness of the Company, or with respect to which the Company is a guarantor, to banks, commercial finance lenders, insurance companies, leasing or equipment financing institutions or other lending institutions regularly engaged in the business of lending money (excluding venture capital, investment banking or similar institutions which from time to time engage in lending activities but which are primarily engaged in investments in equity securities), which is for money borrowed, or purchase or leasing of equipment in the case of lease or other equipment financing, by the Company, whether or not secured, and (ii) any debentures, notes or other evidence of indebtedness issued in exchange for such Senior Indebtedness, or any indebtedness arising from the satisfaction of such Senior Indebtedness by a guarantor, in each case, to the extent in existence and outstanding as of the date of the Initial Closing (as defined in the Purchase Agreement).

6. **Expenses.** The Company agrees to pay all costs, expenses and reasonable attorneys’ fees at any time paid or incurred by Holder to collect the indebtedness evidenced by this Note.

7. **Waiver.** No failure on the part of Holder to exercise, and no delay in exercising, any of the rights provided for herein shall operate as a waiver thereof, nor shall any single or partial exercise by Holder of any right preclude any other or future exercise thereof or the exercise of any other right. The Company waives presentment, protest or notice of dishonor and demand for payment and notice of default for non-payment.

8. **Transfer; Successors and Assigns.** The terms and conditions of this Note shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties. Notwithstanding the foregoing, the Holder may not assign, pledge, or otherwise transfer this Note without the prior written consent of the Company, except for transfers to an entity controlled by or under common control with the Holder. Subject to the preceding sentence, this Note may be transferred only upon surrender of the original Note for registration of transfer, duly endorsed, or accompanied by a duly executed written instrument of transfer in form satisfactory to the Company. Thereupon, a new note for the same principal amount and interest will be issued to, and registered in the name of, the transferee. Interest and principal are payable only to the registered holder of this Note.

9. **Governing Law.** This Note and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law.

10. **Notices.** All notices and other communications given or made pursuant to this Note shall be in writing and shall be deemed effectively given upon the earlier of actual receipt, or (a) personal delivery to the party to be notified, (b) when sent, if sent by electronic mail or facsimile during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient’s next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt

requested, postage prepaid, or (d) one (1) business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt. All communications shall be sent to (i) to the Company at its corporate headquarters, to the Holder at the address as set forth on the signature pages to the Purchase Agreement, or to such e-mail address, facsimile number or address as subsequently modified by written notice given in accordance with this subsection.

11. **Amendments and Waivers.** Any term of this Note may be amended or waived only with the written consent of the Company and the Holder.

12. **Stockholders, Officers and Directors Not Liable.** In no event shall any stockholder, officer or director of the Company be liable for any amounts due or payable pursuant to this Note.

13. **Usury.** If any interest is paid on this Note which is deemed to be in excess of the then legal maximum rate, then that portion of the interest payment representing an amount in excess of the then legal maximum rate shall be deemed a payment of principal and applied against the principal of this Note.

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The Company has caused this Secured Promissory Note to be issued as of the date first written above.

COMPANY

R2 TECHNOLOGIES, INC.

By: _____
Name: Timothy Holt
Title: Chief Executive Officer

AGREED AND ACCEPTED:

LANCER CAPITAL LLC

By: Avram Glazer Irrevocable Exempt Trust,
its Sole Member

By: /s/ Avram Glazer
Name: Avram Glazer
Title: Trustee

SENIOR SECURED PROMISSORY NOTE

\$5,000,000.00 August 8, 2022
San Ramon, California

For value received, R2 Technologies, Inc., a Delaware corporation (the “**Company**”), promises to pay to Lancer Capital LLC (the “**Holder**”), or its permitted assigns, in lawful money of the United States of America the principal sum of \$5,000,000.00. Interest shall accrue from the date of this Secured Promissory Note (this “**Note**”) on the unpaid principal amount at a rate equal to 12.00% simple interest per annum (or 18.00% simple interest per annum if provided by Section 4). Any capitalized terms not defined herein shall have the meaning as set forth in the Purchase Agreement (as defined below). This Note is subject to the following terms and conditions:

1. **Issuance of Notes.** This Note is one of a series of Notes (collectively, the “**Notes**”) being issued pursuant to that certain Senior Secured Promissory Note Purchase Agreement, dated as of July 13, 2022 by and among the Company and the Holder (as may be amended from time to time, the “**Purchase Agreement**”), and is subject to, and the Holder and Company shall be bound by, all the terms, conditions and provisions of the Purchase Agreement.

2. **Repayment.** The entire then-outstanding and unpaid principal amount of this Note, together with any accrued but unpaid interest under this Note (the “**Outstanding Amount**”), shall be due and payable on the earlier to occur of (i) December 31, 2022 or (ii) within five (5) business days after the date on which the Company receives an aggregate of \$10,000,000 from the consummation of one or more bona fide debt or equity financings, other capital investments, or capital contributions, whether from new or existing equity holders or debt holders (such applicable date, the “**Maturity Date**”). The Notes shall rank pari passu in right of payment with respect to each other Note, and all payments to each of the Holders under the Notes shall be made pro rata among the Holders based upon the aggregate unpaid principal amount of the Notes outstanding immediately prior to any such payment. All payments shall be made in lawful money of the United States of America at such place as the Holder hereof may from time to time designate in writing to the Company. Interest shall accrue on this Note but shall not be due and payable until the Holder’s written request for repayment after the Maturity Date.

3. **Security; Guarantee.** The payment obligations of the Company arising under this Note are secured pursuant to the terms of (i) that certain Security Agreement dated as of July 13, 2022 by and between the Company and Holder (as amended from time to time, the “**Security Agreement**”) and (ii) that certain Intellectual Property Security Agreement, dated as of July 13, 2022, by the Company in favor of the Holder (as amended from time to time, the “**IP Security Agreement**”). Reference hereby is made to the Security Agreement and the IP Security Agreement for a description of the nature and extent of the collateral serving as security for this Note and the rights of the Holder with respect to such security.

4. **Events of Default.** Interest shall accrue on the unpaid principal amount of this Note at a rate equal to 18.00% simple interest per annum, for the period beginning with the date of occurrence of an Event of Default (as defined below) and continuing for so long as such Event of Default is continuing. The Company shall immediately notify the Holder in writing upon becoming aware of the occurrence of any Event of Default; provided that the provision of such notice shall not effect or impair the Holder's rights hereunder. The occurrence of any of the following shall constitute an “**Event of Default**” under this Note:

- (a) the Company shall fail to pay Holder in full the principal amount and all accrued and unpaid interest on this Note on the Maturity Date;
- (b) the occurrence of an event of default pursuant to any Senior Indebtedness (as defined below), subject to applicable notice and cure periods;

(a) the Company shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) make a general assignment for the benefit of its or any of its creditors or (iv) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it;

(b) proceedings for the appointment of a receiver, trustee, liquidator or custodian of the Company or of all or a substantial part of the property thereof, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to the Company or the debts thereof under any bankruptcy, insolvency or other similar law now or hereafter in effect shall be commenced and an order for relief entered or such proceeding shall not be challenged, dismissed or discharged within ninety (90) days of commencement;

(c) the dissolution or winding up of the Company; or

(d) the appointment of a receiver or trustee to take possession of any property or assets of the Company.

5. **Subordination.** The indebtedness evidenced by this Note is hereby expressly subordinated, to the extent and in the manner hereinafter set forth, in right of payment to the prior payment in full of all of the Company's Senior Indebtedness (as defined below).

(e) **Insolvency Proceedings.** If there shall occur any receivership, insolvency, assignment for the benefit of creditors, bankruptcy, reorganization, or arrangements with creditors (whether or not pursuant to bankruptcy or other insolvency laws), sale of all or substantially all of the assets, dissolution, liquidation, or any other marshaling of the assets and liabilities of the Company, no amount shall be paid by the Company in respect of the principal of, interest on or other amounts due with respect to this Note at the time outstanding, unless and until the principal of and interest on the Senior Indebtedness then outstanding shall be paid in full.

(f) **Subrogation.** Subject to the payment in full of all Senior Indebtedness, the holder of this Note shall be subrogated to the rights of the holder(s) of such Senior Indebtedness (to the extent of the payments or distributions made to the holder(s) of such Senior Indebtedness pursuant to the provisions of this Section 5) to receive payments and distributions of assets of the Company applicable to the Senior Indebtedness. No such payments or distributions applicable to the Senior Indebtedness shall, as between the Company and its creditors, other than the holders of Senior Indebtedness and the Holder, be deemed to be a payment by the Company to or on account of this Note; and for purposes of such subrogation, no payments or distributions to the holders of Senior Indebtedness to which the Holder would be entitled except for the provisions of this Section 5 shall, as between the Company and its creditors, other than the holders of Senior Indebtedness and the Holder, be deemed to be a payment by the Company to or on account of the Senior Indebtedness. Notwithstanding the foregoing, the Company represents and warrants to the Holder that (a) the terms of the Senior Indebtedness allow for the transactions contemplated by this Note and the repayment in full by the Company of its obligations pursuant to this Note on the Maturity Date without any default thereunder, and (b) no consent is required from any third party, including any holder of the Senior Indebtedness, to enter into the transaction contemplated by this Note or to pay in full the obligations of the Company pursuant to this Note, which consent has not been obtained prior to the date hereof.

(g) **No Impairment.** Nothing contained in this Section 5 shall impair, as between the Company and the Holder, the obligation of the Company, subject to the terms and conditions hereof, to pay to the Holder the principal hereof and interest hereon as and when the same become due and

payable, or shall prevent the Holder of this Note, upon default hereunder, from exercising all rights, powers and remedies otherwise provided herein or by applicable law.

(a) **Reliance of the Holders of Senior Indebtedness.** The Holder, by its acceptance hereof, shall be deemed to acknowledge and agree that the foregoing subordination provisions are, and are intended to be, an inducement to and a consideration of each holder of Senior Indebtedness, whether such Senior Indebtedness was created or acquired before or after the creation of the indebtedness evidenced by this Note, and each such holder of Senior Indebtedness shall be deemed conclusively to have relied on such subordination provisions in acquiring and holding, or in continuing to hold, such Senior Indebtedness.

(b) **Senior Indebtedness.** For purposes of this Note, “Senior Indebtedness” shall mean, unless expressly subordinated to or made on a parity with the amounts due under this Note, the principal of (and premium, if any), unpaid interest on and amounts reimbursed, fees, expenses, costs of enforcement and other amounts due in connection with, (i) indebtedness of the Company, or with respect to which the Company is a guarantor, to banks, commercial finance lenders, insurance companies, leasing or equipment financing institutions or other lending institutions regularly engaged in the business of lending money (excluding venture capital, investment banking or similar institutions which from time to time engage in lending activities but which are primarily engaged in investments in equity securities), which is for money borrowed, or purchase or leasing of equipment in the case of lease or other equipment financing, by the Company, whether or not secured, and (ii) any debentures, notes or other evidence of indebtedness issued in exchange for such Senior Indebtedness, or any indebtedness arising from the satisfaction of such Senior Indebtedness by a guarantor, in each case, to the extent in existence and outstanding as of the date of the Initial Closing (as defined in the Purchase Agreement).

6. **Expenses.** The Company agrees to pay all costs, expenses and reasonable attorneys’ fees at any time paid or incurred by Holder to collect the indebtedness evidenced by this Note.

7. **Waiver.** No failure on the part of Holder to exercise, and no delay in exercising, any of the rights provided for herein shall operate as a waiver thereof, nor shall any single or partial exercise by Holder of any right preclude any other or future exercise thereof or the exercise of any other right. The Company waives presentment, protest or notice of dishonor and demand for payment and notice of default for non-payment.

8. **Transfer; Successors and Assigns.** The terms and conditions of this Note shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties. Notwithstanding the foregoing, the Holder may not assign, pledge, or otherwise transfer this Note without the prior written consent of the Company, except for transfers to an entity controlled by or under common control with the Holder. Subject to the preceding sentence, this Note may be transferred only upon surrender of the original Note for registration of transfer, duly endorsed, or accompanied by a duly executed written instrument of transfer in form satisfactory to the Company. Thereupon, a new note for the same principal amount and interest will be issued to, and registered in the name of, the transferee. Interest and principal are payable only to the registered holder of this Note.

9. **Governing Law.** This Note and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law.

10. **Notices.** All notices and other communications given or made pursuant to this Note shall be in writing and shall be deemed effectively given upon the earlier of actual receipt, or (a) personal delivery to the party to be notified, (b) when sent, if sent by electronic mail or facsimile during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient’s next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt

requested, postage prepaid, or (d) one (1) business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt. All communications shall be sent to (i) to the Company at its corporate headquarters, to the Holder at the address as set forth on the signature pages to the Purchase Agreement, or to such e-mail address, facsimile number or address as subsequently modified by written notice given in accordance with this subsection.

11. **Amendments and Waivers.** Any term of this Note may be amended or waived only with the written consent of the Company and the Holder.

12. **Stockholders, Officers and Directors Not Liable.** In no event shall any stockholder, officer or director of the Company be liable for any amounts due or payable pursuant to this Note.

13. **Usury.** If any interest is paid on this Note which is deemed to be in excess of the then legal maximum rate, then that portion of the interest payment representing an amount in excess of the then legal maximum rate shall be deemed a payment of principal and applied against the principal of this Note.

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CERTIFICATIONS

I, Wayne Barr, Jr, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of INNOVATE Corp.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: November 2, 2022

By: /s/ Wayne Barr, Jr.

Name: Wayne Barr, Jr.
Title: President and Chief Executive Officer
(Principal Executive Officer)

CERTIFICATIONS

I, Michael J. Sena, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of INNOVATE Corp.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: November 2, 2022

By: /s/ Michael J. Sena

Name:

Michael J. Sena

Title:

Chief Financial Officer

(Principal Financial and Accounting Officer)

CERTIFICATION

Pursuant to Section 906 of the Public Company Accounting Reform and Investor Protection Act of 2002 (18 U.S.C. §1350, as adopted), Wayne Barr, Jr, the President and Chief Executive Officer (Principal Executive Officer) of INNOVATE Corp. (the “Company”), and Michael J. Sena, the Chief Financial Officer (Principal Financial and Accounting Officer) of the Company, each hereby certifies that, to the best of his knowledge:

1. The Company’s Quarterly Report on Form 10-Q for the quarter ended September 30, 2022, to which this Certification is attached as Exhibit 32 (the “Periodic Report”), fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended; and

2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition of the Company at the end of the period covered by the Periodic Report and results of operations of the Company for the period covered by the Periodic Report.

Dated: November 2, 2022

/s/ Wayne Barr, Jr.

Wayne Barr, Jr.
President and Chief Executive Officer (Principal Executive Officer)

/s/ Michael J. Sena

Michael J. Sena
Chief Financial Officer (Principal Financial and Accounting Officer)