

REFINITIV

# DELTA REPORT

## 10-Q

SHIMMICK CORP

10-Q - JUNE 28, 2024 COMPARED TO 10-Q - MARCH 29, 2024

The following comparison report has been automatically generated

TOTAL DELTAS	2145
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 CHANGES	163
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 DELETIONS	251
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 ADDITIONS	1731
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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended March 29, June 28, 2024

OR

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

Commission File Number: 001-41867

Shimmick Corporation  
(Exact Name of Registrant as Specified in its Charter)

Delaware

( State or other jurisdiction of  
incorporation or organization)

84-3749368

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

530 Technology Drive

Suite 300

Irvine, CA

(Address of principal executive offices)

92618

(Zip Code)

Registrant's telephone number, including area code: (833) 723-2021

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

Trading

Title of each class	Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	SHIM	NASDAQ

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, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
Emerging growth company	<input checked="" type="checkbox"/>		

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

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

As of May 16, 2024 August 14, 2024, the registrant had 25,723,242 33,589,035 shares of Common Stock, par value \$0.01 per share, outstanding.

## FORWARD-LOOKING STATEMENTS

We make forward-looking statements in this Quarterly Report on Form 10-Q ("Form 10-Q") within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act") that are subject to risks and uncertainties. For these statements, we claim the protections of the safe harbor for forward-looking statements contained in such Sections. These forward-looking statements include information about possible or assumed future results of our business, financial condition, liquidity, results of operations, plans and objectives.

When we use the words “believe,” “expect,” “anticipate,” “estimate,” “plan,” “continue,” “intend,” “project,” “will,” “should,” “may” or similar expressions, we intend to identify forward-looking statements. However, the absence of these words or similar expressions does not mean that a statement is not forward-looking. All statements that address operating performance, events or developments that we expect or anticipate will occur in the future are forward-looking statements.

Forward-looking statements are subject to significant risks and uncertainties. Investors are cautioned against placing undue reliance on such statements. Actual results may differ materially from those set forth in the forward-looking statements. Accordingly, any such statements are qualified in their entirety by reference to, and are accompanied by, important factors included in the sections entitled “Forward Looking Statements” and “Risk Factors” in our Annual Report on Form 10-K for the fiscal year ended December 29, 2023 (“Form 10-K”) and those described from time to time in our future reports with the SEC (in addition to any assumptions and other factors referred to specifically in connection with such forward-looking statements) that could have a significant impact on our operations and financial results, and could cause our actual results to differ materially from those contained or implied in forward-looking statements made by us or on our behalf in this Form 10-Q, in presentations, on our websites, in response to questions or otherwise. We believe these factors include, but are not limited to, the following:

- our ability to accurately estimate risks, requirements or costs when we bid on or negotiate a contract,
- the impact of our fixed-price contracts,
- qualifying as an eligible bidder for contracts
- the availability of qualified personnel, joint venture partners and subcontractors,
- inability to attract and retain qualified managers and skilled employees and the impact of loss of key management,
- higher costs to lease, acquire and maintain equipment necessary for our operations or a decline in the market value of owned equipment,
- subcontractors failing to satisfy their obligations to us or other parties or any inability to maintain subcontractor relationships
- marketplace competition,
- our inability to obtain bonding
- our limited operating history as an independent company following our separation from AECOM,
- our relationship and transactions with our prior owner, AECOM,
- AECOM defaulting on its contractual obligations to us or under agreements in which we are beneficiary,
- our limited number of customers,
- dependence on subcontractors and suppliers of materials,
- any inability to secure sufficient aggregates,
- an inability to complete a merger or acquisition or to integrate an acquired company’s business,
- adjustments in our contract backlog,
- accounting for our revenue and costs involves significant estimates, as does our use of the input method of revenue recognition based on costs incurred relative to total expected costs,
- material impairments,
- any failure to comply with covenants under any current indebtedness, and future indebtedness we may incur,

- the adequacy of sources of liquidity,
- cybersecurity attacks against, disruptions, failures or security breaches of, our information technology systems,

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- seasonality of our business,

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- pandemics and health emergencies,
  - commodity products price fluctuations and rising inflation and/or interest rates,
  - liabilities under environmental laws, compliance with immigration laws, and other regulatory matters, including changes in regulations and laws,
  - climate change
  - deterioration of the U.S. economy, and
  - geopolitical risks, including those related to the war between Russia and Ukraine, the conflict in the Gaza strip and the conflict within the Red Sea Region.

Any forward-looking statement speaks only as of the date on which such statement is made, and we undertake no obligation to update any forward-looking statement to reflect events or circumstances, including, but not limited to, unanticipated events, after the date on which such statement is made, unless otherwise required by law. New factors emerge from time to time and it is not possible for management to predict all of such factors, nor can it assess the impact of each such factor on the business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained or implied in any forward-looking statement.

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

Shimmick Corporation  
Condensed Consolidated Balance Sheets  
(In thousands, except share data)  
(unaudited)

March	December	December
29,	29,	June 28, 29,

	2024	2023	2024	2023
<b>ASSETS</b>				
<b>CURRENT ASSETS</b>				
Cash and cash equivalents	\$ 27,327	\$ 62,939	\$ 22,381	\$ 62,939
Restricted cash	912	971	497	971
Accounts receivable, net	49,700	54,178	48,519	54,178
Contract assets, current	136,031	125,943	119,694	125,943
Prepays and other current assets	11,695	13,427	17,734	13,427
<b>TOTAL CURRENT ASSETS</b>	<b>225,665</b>	<b>257,458</b>	<b>208,825</b>	<b>257,458</b>
Property, plant and equipment, net	47,094	46,373	36,153	46,373
Intangible assets, net	8,600	9,244	7,956	9,244
Contract assets, non-current	46,703	48,316	46,569	48,316
Lease right-of-use assets	23,351	23,855	21,328	23,855
Investment in unconsolidated joint ventures	23,731	21,283	22,202	21,283
Deferred tax assets	-	17,252	-	17,252
Other assets	2,849	2,871	1,481	2,871
<b>TOTAL ASSETS</b>	<b>\$ 377,993</b>	<b>\$ 426,652</b>	<b>\$ 344,514</b>	<b>\$ 426,652</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>				
<b>CURRENT LIABILITIES</b>				
Accounts payable	\$ 77,683	\$ 81,589	\$ 57,081	\$ 81,589
Contract liabilities, current	110,204	115,785	111,821	115,785
Accrued salaries, wages and benefits	30,287	26,911	28,610	26,911
Accrued expenses	33,405	33,897	39,073	33,897
Short-term debt	14,773	-		
Other current liabilities	18,173	13,071	14,621	13,071
<b>TOTAL CURRENT LIABILITIES</b>	<b>269,752</b>	<b>271,253</b>	<b>265,979</b>	<b>271,253</b>
Long-term debt, net	31,489	29,627	52,789	29,627
Lease liabilities, non-current	14,855	15,045	13,154	15,045

Contract liabilities, non-current	2,704	3,215	2,689	3,215
Contingent consideration	15,725	15,488	4,304	15,488
Deferred tax liabilities	-	17,252	-	17,252
Other liabilities	5,350	4,282	5,163	4,282
<b>TOTAL LIABILITIES</b>	<b>339,875</b>	<b>356,162</b>	<b>344,078</b>	<b>356,162</b>
Commitments and Contingencies (Note 11)				
<b>STOCKHOLDERS' EQUITY</b>				
Common stock, \$0.01 par value, 100,000,000 shares authorized as of March 29, 2024 and December 29, 2023; 25,738,857 and 25,493,877 shares issued and outstanding as of March 29, 2024 and December 29, 2023, respectively	257	255		
Common stock, \$0.01 par value, 100,000,000 shares authorized as of June 28, 2024 and December 29, 2023; 33,709,919 and 25,493,877 shares issued and outstanding as of June 28, 2024 and December 29, 2023, respectively	337	255		
Additional paid-in-capital	25,578	24,445	39,205	24,445
Retained earnings	13,204	46,537		
Retained (deficit) earnings	(38,185)	46,537		
Non-controlling interests	(921)	(747)	(921)	(747)
<b>TOTAL STOCKHOLDERS' EQUITY</b>	<b>38,118</b>	<b>70,490</b>	<b>436</b>	<b>70,490</b>
<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>	<b>\$ 377,993</b>	<b>\$ 426,652</b>	<b>\$ 344,514</b>	<b>\$ 426,652</b>

See accompanying notes to the condensed consolidated financial statements.

**Shimmick Corporation**  
**Condensed Consolidated Statements of Operations**  
(In thousands, except per share data)  
(unaudited)

<b>Three Months Ended</b>	<b>Three Months Ended</b>	<b>Six Months Ended</b>
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	March 29, 2024	March 31, 2023	June 28, 2024	June 30, 2023	June 28, 2024	June 30, 2023
Revenue	\$ 120,043	\$ 164,108	\$ 90,605	\$ 155,189	\$ 210,648	\$ 319,297
Cost of revenue	135,903	157,886	121,736	155,646	257,639	313,532
<b>Gross margin</b>	(15,860)	6,222	(31,131)	(457)	(46,991)	5,765
Selling, general and administrative expenses	15,524	15,558	18,079	16,943	33,603	32,502
Amortization of intangibles	644	658	644	658	1,288	1,316
Total operating expenses	16,168	16,216	18,723	17,601	34,891	33,818
Equity in earnings (loss) of unconsolidated joint ventures	263	(541)				
(Loss) gain on sale of assets	(26)	1,540				
Equity in (loss) earnings of unconsolidated joint ventures	(1,854)	7,534	(1,591)	6,993		
Gain on sale of assets	3,714	140	3,688	1,680		
<b>Loss from operations</b>	(31,791)	(8,995)	(47,994)	(10,384)	(79,785)	(19,380)
Other expense, net	1,543	338				
Interest expense	1,496	576	2,393	607		
Other expense (income), net	1,899	(649)	2,545	(343)		
<b>Net loss before income tax</b>	(33,334)	(9,333)	(51,389)	(10,311)	(84,723)	(19,644)
Income tax expense	—	—	—	—	—	—
<b>Net loss</b>	(33,334)	(9,333)	(51,389)	(10,311)	(84,723)	(19,644)
<b>Net (loss) income attributable to non-controlling interests</b>	(1)	4				
<b>Net loss attributable to non-controlling interests</b>	-	(11)	(1)	(7)		
<b>Net loss attributable to Shimmick Corporation</b>	<u>\$ (33,333)</u>	<u>\$ (9,337)</u>	<u>\$ (51,389)</u>	<u>\$ (10,300)</u>	<u>\$ (84,722)</u>	<u>\$ (19,637)</u>
<b>Net loss attributable to Shimmick Corporation per common share</b>						
Basic	<u>\$ (1.30)</u>	<u>\$ (0.43)</u>	<u>\$ (1.83)</u>	<u>\$ (0.47)</u>	<u>\$ (3.16)</u>	<u>\$ (0.90)</u>
Diluted	<u>\$ (1.30)</u>	<u>\$ (0.43)</u>	<u>\$ (1.83)</u>	<u>\$ (0.47)</u>	<u>\$ (3.16)</u>	<u>\$ (0.90)</u>

See accompanying notes to the condensed consolidated financial statements.

**Shimmick Corporation**  
**Condensed Consolidated Statements of Stockholders' Equity**  
(In thousands, except share data)  
(unaudited)

	Common Stock		Additional	Retained	Non-	Total
	Shares	Amount	Paid-in-Capital	Earnings	Controlling Interests	Stockholders' Equity
Balance as of December 29, 2023	25,493,877	\$ 255	\$ 24,445	\$ 46,537	\$ (747)	\$ 70,490
Net loss	—	—	—	(33,333)	(1)	(33,334)
Issuance of common stock related to share-based awards	244,980	2	135	—	—	137
Stock-based compensation	—	—	998	—	—	998
Distributions to non-controlling interests	—	—	—	—	(173)	(173)
Balance as of March 29, 2024	25,738,857	\$ 257	\$ 25,578	\$ 13,204	\$ (921)	\$ 38,118

	Common Stock		Additional	Retained	Non-	Total
	Shares	Amount	Paid-in-Capital	Earnings	Controlling Interests	Stockholders' Equity
Balance as of December 30, 2022	21,908,800	\$ 219	\$ 3,341	\$ 49,083	\$ (1,048)	\$ 51,595
Net (loss) income	—	—	—	(9,337)	4	(9,333)
Stock-based compensation	—	—	528	—	—	528
Balance as of March 31, 2023	21,908,800	\$ 219	\$ 3,869	\$ 39,746	\$ (1,044)	\$ 42,790

	Common Stock		Additional	Retained	Non-	Total
	Shares	Amount	Paid-in-Capital	(Deficit) Earnings	Controlling Interests	Stockholders' Equity
Balance as of March 29, 2024	25,738,857	\$ 257	\$ 25,578	\$ 13,204	\$ (921)	\$ 38,118
Net loss	—	—	—	(51,389)	—	(51,389)
Issuance of common stock	7,971,062	80	12,658	—	—	12,738
Stock-based compensation	—	—	969	—	—	969
Balance as of June 28, 2024	33,709,919	\$ 337	\$ 39,205	\$ (38,185)	\$ (921)	\$ 436

	Common Stock		Additional	Retained	Non-	Total
	Shares	Amount	Paid-in-Capital	(Deficit) Earnings	Controlling Interests	Stockholders' Equity

Balance as of March 31, 2023	21,908,800	\$ 219	\$ 3,869	\$ 39,746	\$ (1,044)	\$ 42,790
Net loss	—	—	—	(10,300)	(11)	(10,311)
Stock-based compensation	—	—	523	—	—	523
Contributions from non-controlling interests	—	—	—	—	301	301
Distributions to non-controlling interests	—	—	—	—	(260)	(260)
Balance as of June 30, 2023	21,908,800	\$ 219	\$ 4,392	\$ 29,446	\$ (1,014)	\$ 33,043
	<b>Common Stock</b>		<b>Additional Paid-in-Capital</b>	<b>Retained (Deficit) Earnings</b>	<b>Non-Controlling Interests</b>	<b>Total Stockholders' Equity</b>
	<b>Shares</b>	<b>Amount</b>	<b>Capital</b>	<b>Earnings</b>	<b>Interests</b>	<b>Equity</b>
Balance as of December 29, 2023	25,493,877	\$ 255	\$ 24,445	\$ 46,537	\$ (747)	\$ 70,490
Net loss	—	—	—	(84,722)	(1)	(84,723)
Issuance of common stock	8,216,042	82	12,793	—	—	12,875
Stock-based compensation	—	—	1,967	—	—	1,967
Distributions to non-controlling interests	—	—	—	—	(173)	(173)
Balance as of June 28, 2024	33,709,919	\$ 337	\$ 39,205	\$ (38,185)	\$ (921)	\$ 436
	<b>Common Stock</b>		<b>Additional Paid-in-Capital</b>	<b>Retained (Deficit) Earnings</b>	<b>Non-Controlling Interests</b>	<b>Total Stockholders' Equity</b>
	<b>Shares</b>	<b>Amount</b>	<b>Capital</b>	<b>Earnings</b>	<b>Interests</b>	<b>Equity</b>
Balance as of December 30, 2022	21,908,800	\$ 219	\$ 3,341	\$ 49,083	\$ (1,048)	\$ 51,595
Net loss	—	—	—	(19,367)	(7)	(19,644)
Stock-based compensation	—	—	1,051	—	—	1,051
Contributions from non-controlling interests	—	—	—	—	301	301
Distributions to non-controlling interests	—	—	—	—	(260)	(260)
Balance as of June 30, 2023	21,908,800	\$ 219	\$ 4,392	\$ 29,446	\$ (1,014)	\$ 33,043

See accompanying notes to the condensed consolidated financial statements.

**Shimmick Corporation**  
**Condensed Consolidated Statements of Cash Flows**  
(In thousands)

(unaudited)

	Three Months Ended		Six Months Ended	
	March 29,	March 31,	June 28,	June 30,
	2024	2023	2024	2023
<b>Cash Flows From Operating Activities</b>				
Net loss	\$ (33,334 )	\$ (9,333 )	\$ (84,723 )	\$ (19,644 )
Adjustments to reconcile net loss to net cash used in operating activities:				
Stock-based compensation	998	528	1,967	1,051
Depreciation and amortization	4,410	4,165	8,199	8,549
Equity in (earnings) loss of unconsolidated joint ventures	(263 )	541		
Equity in loss (earnings) of unconsolidated joint ventures	1,591	(6,993 )		
Return on investment in unconsolidated joint ventures	284	5,762	421	11,437
Loss (gain) on sale of assets	26	(1,877 )		
Gain on sale of assets	(3,714 )	(1,680 )		
Other	279	270	1,478	409
Changes in operating assets and liabilities:				
Accounts receivable, net	4,478	(8,511 )	5,659	(4,797 )
Contract assets	(8,475 )	(6,902 )	7,996	(9,823 )
Accounts payable	(8,901 )	9,919	(24,508 )	9,274
Contract liabilities	(5,579 )	(9,703 )	(3,963 )	(34,156 )
Accrued salaries, wages and benefits	1,699	(427 )		
Accrued expenses	(492 )	(21,070 )	5,176	(19,336 )
Accrued salaries, wages and benefits	3,376	5,264		
Other assets and liabilities	8,205	4,797	3,874	5,464
Net cash used in operating activities	(34,988 )	(26,150 )	(78,848 )	(60,672 )
<b>Cash Flows From Investing Activities</b>				
Purchases of property, plant and equipment	(4,620 )	(2,470 )	(7,595 )	(3,210 )
Proceeds from sale of assets	199	377	11,037	4,881
Proceeds from advance on sale of non-core business contracts	-	20,000		
Unconsolidated joint venture equity contributions	(2,980 )	(1,550 )	(3,460 )	(13,310 )
Return of investment in unconsolidated joint ventures	-	1,535	-	4,286
Net cash used in investing activities	(7,401 )	(2,108 )		
Net cash (used in) provided by investing activities	(18 )	12,647		
<b>Cash Flows From Financing Activities</b>				
Net borrowings on revolving credit facility	1,835	22,808		

Borrowings on Credit Facility	54,200	—		
Net (repayments of) borrowings on Revolving Credit Facility	(14,675)	30,000		
Other	4,883	(77)	(1,691)	(955)
Net cash provided by financing activities	6,718	22,731	37,834	29,045
Net decrease in cash, cash equivalents and restricted cash	(35,671)	(5,527)	(41,032)	(18,980)
Cash, cash equivalents and restricted cash, beginning of period	63,910	82,085	63,910	82,085
Cash, cash equivalents and restricted cash, end of period	\$ 28,239	\$ 76,558	\$ 22,878	\$ 63,105
<b>Reconciliation of cash, cash equivalents and restricted cash to the</b>				
<b>Condensed Consolidated Balance Sheets</b>				
Cash and cash equivalents	27,327	72,145	\$ 22,381	\$ 61,295
Restricted cash	912	4,413	497	1,810
Total cash, cash equivalents and restricted cash	\$ 28,239	\$ 76,558	\$ 22,878	\$ 63,105

See accompanying notes to the condensed consolidated financial statements.

**Shimmick Corporation**  
**Notes to Condensed Consolidated Financial Statements**  
**(unaudited)**

**Note 1. Business and Organization**

Shimmick Corporation ("Shimmick", the "Company") was founded in 1990 in California and operated as a regional infrastructure construction contractor throughout California for nearly 30 years. In 2017, AECOM acquired Shimmick and consolidated it with its existing construction services, which included former legacy construction operations from Morrison Knudsen, Washington Group International, and others. In January 2021, we consummated the AECOM Sale Transactions and began operating as an independent company under new private ownership (the "AECOM Sale Transactions").

The accompanying condensed consolidated financial statements include the accounts of Shimmick Corporation and its subsidiaries ("Shimmick", "we", "our", "us", "its" or the "Company"), unless otherwise indicated. On September 12, 2023, the Company changed its name from SCCI National Holdings, Inc. to Shimmick Corporation.

On November 16, 2023, Shimmick completed its initial public offering of 3,575,000 shares of common stock at a price to the public of \$7.00 per share (the "IPO"). The net proceeds to Shimmick from the IPO were approximately \$19 million after deducting

underwriting discounts and commissions of \$2 million and other offering expenses of \$4 million. Shimmick's common stock began trading on the NASDAQ Global Market on November 14, 2023.

## **Note 2. Basis of Presentation and Summary of Significant Accounting Policies**

### **Basis of Presentation**

The accompanying condensed consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States ("GAAP"), and in conformity with the rules and regulations of the Securities and Exchange Commission. The information furnished reflects all adjustments, consisting of normal recurring adjustments, that are, in the opinion of management, necessary for a fair presentation of the results of operations, cash flows and financial position for the interim periods presented. A statement of comprehensive income is not presented as the Company's results of operations do not contain any items classified as comprehensive income. All intercompany accounts and transactions have been eliminated. Certain information and footnote disclosures normally included in financial statements prepared in accordance with GAAP have been condensed or omitted in accordance with such rules and regulations, although management believes the disclosures are adequate to prevent the information presented from being misleading. The accompanying condensed consolidated interim financial statements are unaudited and should be read in conjunction with the audited consolidated financial statements and notes in our Annual Report on Form 10-K for the fiscal year ended December 29, 2023 ("Form 10-K"). Because of the seasonal nature of some of the Company's operations, the results of operations for the three and six months ended March 29, 2024 June 28, 2024 are not necessarily indicative of the results of operations to be expected for the full fiscal year.

### **Change in Presentation**

Certain prior period balances in the condensed consolidated balance sheets and statements of cash flows and accompanying notes have been combined, reclassified or rounded to conform to current period presentation. These changes had no impact on net loss, cash flows, assets and liabilities, or equity previously reported.

### **Stock Split**

On October 23, 2023, the Board of Directors (the "Board") approved an amendment to the Company's Certificate of Incorporation in order to effect a stock split of the Company's Common Stock. Further, the Board authorized 100,000,000 shares of Common Stock, with a par value of \$0.01 par value per share and 25,000,000 shares of Preferred Stock, with a par value of \$0.01 per share. Upon the effectiveness of the filing of the amendment, each share of common stock, par value \$0.01 per share (the "Old Common Stock"), issued and outstanding automatically, without further action on the part of the Company or any holder of such Old Common Stock, was reclassified as and became 2.7386 validly issued, fully paid and non-assessable shares of Common Stock. There were no fractional shares issued with respect to the reclassification of shares of Old Common Stock. In lieu of fractional shares, the Company rounded up to the nearest whole number of shares of Common Stock. The Company has retroactively applied the stock split made effective on October 23, 2023, to share and per share amounts in the condensed consolidated financial statements. Accordingly, any information related to or dependent upon the share amounts in the condensed consolidated financial statements and Note 8 - Stock-Based Compensation and Note 9 - Earnings Per Share have been updated to reflect the effect of the stock split.

### **Summary of Significant Accounting Policies**

Our significant accounting policies are described in more detail in “Note 2 - Basis of Presentation and Summary of Significant Accounting Policies” of our Form 10-K.

### Use of Estimates

The preparation of our condensed consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts included in the condensed consolidated financial statements and accompanying notes thereto. Actual results could differ from those estimates.

### Recently Issued Accounting Pronouncements

Accounting pronouncements not listed below were assessed and determined to be not applicable or are expected to have minimal impact on the condensed consolidated financial statements.

In November 2023, the FASB issued ASU 2023-07 to enhance disclosures of significant expense and segment profitability categories and amounts for reportable business segments. The amendment is effective in interim periods in the fiscal year beginning after December 15, 2024, with early adoption permitted. The Company is currently evaluating the provisions of the amendments and the impact on its future condensed consolidated financial statements.

In December 2023, the FASB issued ASU 2023-09 to improve disclosures and presentation requirements to the transparency of the income tax disclosures by requiring consistent categories and greater disaggregation of information in the rate reconciliation and income taxes paid disaggregated by jurisdiction. The amendment is effective in interim periods in the fiscal year beginning after December 15, 2024, with early adoption permitted. The Company is currently evaluating the provisions of the amendments and the impact on its future condensed consolidated financial statements.

### Note 3. Revenue, Receivables and Contract Assets and Liabilities

The following table presents the Company's revenue disaggregated by contract types:

(In thousands)	Three Months Ended		Three Months Ended		Six Months Ended	
	March 29,	March 31,	June 28,	June 30,	June 28,	June 30,
	2024	2023	2024	2023	2024	2023
Fixed-price	\$ 113,065	\$ 151,528	\$ 82,313	\$ 135,310	\$ 195,379	\$ 286,838
Cost reimbursable	6,505	10,843	7,876	18,050	14,381	28,893
Equipment and labor revenue	473	1,737	416	1,829	888	3,566

Total revenue	\$ 120,043	\$ 164,108	\$ 90,605	\$ 155,189	\$ 210,648	\$ 319,297
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Projects started after the AECOM Sale Transactions ("Shimmick Projects") have focused on water infrastructure and other critical infrastructure. Projects that focus on foundation drilling are referred to as "Foundations Projects". Projects that started prior to consummation of the AECOM Sale Transactions are referred to as "Legacy Projects".

The following table presents the Company's revenue disaggregated by Shimmick Projects, Foundations Projects and Legacy Projects:

(In thousands)	Three Months Ended			
	March 29,		March 31,	
	2024		2023	
Shimmick Projects	\$	90,292	\$	88,099
Foundations Projects		6,640		20,104
Legacy Projects		23,111		55,905
Total revenue	\$	120,043	\$	164,108

  

(In thousands)	Three Months Ended		Six Months Ended	
	June 28,	June 30,	June 28,	June 30,
	2024	2023	2024	2023
Shimmick Projects	\$ 83,689	\$ 103,493	\$ 173,981	\$ 191,592
Foundations Projects	8,454	8,988	15,094	29,092
Legacy Projects <sup>(1)</sup>	(1,538)	42,708	21,573	98,613
Total revenue	\$ 90,605	\$ 155,189	\$ 210,648	\$ 319,297

(1) Legacy Projects revenue for the three and six months ended June 28, 2024 reflect a non-cash adjustment to revenue of \$23 million to write off previously recorded contract assets as a result of a settlement of a claim on a large Legacy Project in which the Company will receive \$33 million in cash. See Note 12 - Subsequent Events for additional details.



The Company had \$1.0 860 billion million of remaining performance obligations yet to be satisfied as of March 29, 2024 June 28, 2024. Our remaining performance obligations have a weighted average life of 2.1 2.3 years as of March 29, 2024 June 28, 2024.

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## Contract Balances

The following table provides information about contract assets (also referred to as costs and estimated earnings in excess of billings on uncompleted contracts and retainage receivable) and contract liabilities (also referred to as billings on uncompleted contracts in excess of costs and estimated earnings and forward loss reserve), which include assets and liabilities that are dependent upon future activity:

	December			December		
	March 29,	29,		June 28,	29,	
	2024	2023	Change	2024	2023	Change
<b>(In thousands)</b>						
Contract assets, current and non-current:						
Costs and estimated earnings in excess of billings on uncompleted contracts	\$ 136,031	\$ 125,943	\$ 10,088	\$ 119,694	\$ 125,943	\$ (6,249)
Retainage receivable	46,703	48,316	(1,613)	46,569	48,316	(1,747)
Total contract assets	182,734	174,259	8,475	166,263	174,259	(7,996)
Contract liabilities, current and non-current:						
Billings on uncompleted contracts in excess of costs and estimated earnings	(43,548)	(48,841)	5,293	(44,732)	(48,841)	4,109
Forward loss reserve	(69,360)	(70,159)	799	(69,778)	(70,159)	381
Total contract liabilities	(112,908)	(119,000)	6,092	(114,510)	(119,000)	4,490
Net	\$ 69,826	\$ 55,259	\$ 14,567	\$ 51,753	\$ 55,259	\$ (3,506)

Contract terms with customers include the timing of billing and payment, which usually differs from the timing of revenue recognition. As a result, the Company carries contract assets and liabilities within the condensed consolidated balance sheets. These contract assets and liabilities are calculated on a contract-by-contract basis and reported on a net basis at the end of each period and are classified as current or non-current. Many of the contracts under which the Company performs work also contain retainage provisions. Retainage refers to that portion of our billings held for payment by the customer pending satisfactory completion of the project. Unless reserved, the Company assumes that all amounts retained by customers under such provisions

are fully collectible. These assets and liabilities are reported in the condensed consolidated balance sheets within “Contract assets, current,” “Contract assets, non-current,” “Contract liabilities, current” and “Contract liabilities, non-current.” Costs and estimated earnings in excess of billings on uncompleted contracts consists of revenue recognized in excess of billings. Billings on uncompleted contracts in excess of costs and estimated earnings consists of billings in excess of revenue recognized. The Company recognized revenue of \$18.924 million during the three six months ended March 29, 2024 June 28, 2024 that was included in contract liabilities as of December 29, 2023.

The Company’s timing of revenue recognition may not be consistent with its rights to bill and collect cash from its clients. Those rights are generally dependent upon advance billing terms, milestone billings based on the completion of certain phases of work or when services are performed. The Company’s accounts receivable represents amounts billed to clients that have yet to be collected and represent an unconditional right to cash from its clients as presented below.

	March 29, 2024	December 29, 2023	June 28, 2024	December 29, 2023
(In thousands)				
Total accounts receivable, gross	\$ 50,630	\$ 55,202	\$ 49,473	\$ 55,202
Allowance for credit losses	(930)	(1,024)	(954)	(1,024)
Accounts receivable, net	\$ 49,700	\$ 54,178	\$ 48,519	\$ 54,178

Substantially all contract assets as of March 29, 2024 June 28, 2024 and December 29, 2023 are expected to be collected within the Company’s estimated operating cycle, except for retainage and claims pertaining to certain contracts. The Company’s operating cycle may extend beyond one year.

The Company is in the process of negotiating or awaiting approval of unapproved change orders and claims with its customers. The Company is proceeding with its contractual rights to recoup additional costs incurred from its customers based on completing work associated with change orders, including change orders with pending change order pricing, or claims related to significant changes in scope which resulted in substantial delays and additional costs in completing the work. The Company may take legal action if it and

the customer cannot reach a mutually acceptable resolution. See Note 12 - Subsequent Events for the settlement of a claim on a large Legacy Project.

Information about significant customers

**Significant Customers as a Percentage of Accounts**

**Receivable, Net**

<b>As of March 29, 2024 June 28, 2024</b>	
Customer one	29.6% 35.7%
Customer two	17.2% 17.7%

**As of December 29, 2023**

Customer one	32.5%
Customer two	21.7%

**Significant Customers as a Percentage of Revenue**

<b>Three Months Ended March 29, 2024 June 28, 2024</b>	
Customer one	21.2% 21.9%
Customer two	14.8% 19.2%
Customer three	11.9%

**Three Months Ended March 31, 2023 June 30, 2023**

Customer one	19.1% 16.7%
Customer two	18.4% 13.7%
Customer three	16.5% 11.5%

**Significant Customers as a Percentage of Revenue**

<b>Six Months Ended June 28, 2024</b>	
Customer one	21.6%
Customer two	16.8%
<b>Six Months Ended June 30, 2023</b>	
Customer one	15.6%
Customer two	14.3%
Customer three	12.2%

Revisions in Estimates

Changes in contract estimates resulted in net decreases in gross margin of \$18.33 million for the three months ended March 29, 2024 June 28, 2024, primarily due to the settlement further described in Note 12 - Subsequent Events and increased forecasted cost to complete loss jobs. Changes in contract estimates resulted in net decreases in gross margin of \$51 million for the six months ended June 28, 2024, primarily due to the settlement and increased forecasted cost to complete loss jobs.

There were no material changes Changes in contract estimates resulted in net decreases in gross margin of \$15 million for the three and six months ended March 31, 2023 June 30, 2023, primarily due to increased forecasted costs to complete and an agreed upon contract settlement lower than previously estimated.

Note 4. Joint Ventures and Variable Interest Entities

A summary of financial information of the consolidated joint ventures is as follows:

	March 29, 2024	December 29, 2023	June 28, 2024	December 29, 2023
(In thousands)				
Current assets	\$ 45,774	\$ 34,071	\$ 46,977	\$ 34,071
Non-current assets	-	8,971	-	8,971
Total assets	45,774	43,042	46,977	43,042
Current liabilities	61,543	59,602	55,984	59,602
Non-current liabilities	2,029	2,013	2,082	2,013
Total liabilities	\$ 63,572	\$ 61,615	\$ 58,066	\$ 61,615

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	Three Months Ended		Three Months Ended		Six Months Ended	
	March 29, 2024	March 31, 2023	June 28, 2024	June 30, 2023	June 28, 2024	June 30, 2023
(In thousands)						
Revenue	\$ 4,004	\$ 4,614	\$ 3,354	\$ 8,859	\$ 7,358	\$ 13,473

The assets of the Company's consolidated joint ventures are restricted for use only by the particular joint venture and are not available for the general operations of the Company.

A summary of financial information of the unconsolidated joint ventures, as derived from their financial statements, is as follows:

	March 29, 2024	December 29, 2023
<b>(In thousands)</b>		
Current assets	\$ 81,404	\$ 74,498
Non-current assets	12,862	14,333
Total assets	94,266	88,831
Current liabilities	40,928	42,817
Total liabilities	\$ 40,928	\$ 42,817

  

	June 28, 2024	December 29, 2023
<b>(In thousands)</b>		
Current assets	\$ 73,367	\$ 74,498
Non-current assets	10,398	14,333
Total assets	83,765	88,831
Current liabilities	36,351	42,817
Total liabilities	\$ 36,351	\$ 42,817

	Three Months Ended		Three Months Ended		Six Months Ended	
	March 29, 2024	March 31, 2023	June 28, 2024	June 30, 2023	June 28, 2024	June 30, 2023
<b>(In thousands)</b>						
Revenue	\$ 20,456	\$ 28,888	\$ 11,169	\$ 13,708	\$ 31,625	\$ 42,596
Cost of revenue	20,931	33,972	17,894	(1,861)	38,825	32,111
Gross margin	(475)	(5,084)	(6,725)	15,569	(7,200)	10,485
Net loss	\$ (475)	\$ (5,084)				
Net (loss) income	\$ (6,725)	\$ 15,569	\$ (7,200)	\$ 10,051		

As of **March 29, 2024** **June 28, 2024** and December 29, 2023, the Company's investment in unconsolidated joint ventures was **\$24.22** million and \$21 million, respectively.

The Company recognized equity in loss of unconsolidated joint ventures of \$2 million for each of the three and six months ended June 28, 2024 and equity in earnings of unconsolidated joint ventures of \$263.8 thousand million and \$7 million for the three and six months ended March 29, 2024 and equity in loss of unconsolidated joint ventures of \$541 thousand for the three months ended March 31, 2023. June 30, 2023, respectively.

Contractually required support provided to the Company's joint ventures is discussed in Note 11 - Commitments and Contingencies.

Related Party Transactions

We often provide construction management and other subcontractor services to the Company's joint ventures and revenue includes amounts related to these services which is eliminated to the extent of our ownership. Revenue included related to services provided to unconsolidated joint venture related parties is as follows:

(In thousands)	Three Months Ended		Three Months Ended		Six Months Ended	
	March 29,	March 31,	June 28,	June 30,	June 28,	June 30,
	2024	2023	2024	2023	2024	2023
Revenue	\$ 478	\$ 1,045	\$ 255	\$ 1,124	\$ 733	\$ 2,169

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Amounts included in the condensed consolidated balance sheets related to services provided to unconsolidated joint ventures as of March 29, 2024 June 28, 2024 and December 29, 2023 are as follows:

(In thousands)	March 29,	December 29,	June 28,	December 29,
	2024	2023	2024	2023
Accounts receivable, net	\$ 2,471	\$ 2,092	\$ 1,876	\$ 2,092

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## Note 5. Property, Plant and Equipment and Intangible Assets

The following table summarizes the components of property, plant and equipment as of **March 29, 2024**, **June 28, 2024** and December 29, 2023.

	March 29, 2024	December 29, 2023	June 28, 2024	December 29, 2023
<b>(In thousands)</b>				
Building and land	\$ 3,993	\$ 4,002	\$ 3,984	\$ 4,002
Machinery, equipment, and vehicles	70,406	70,250	50,596	70,250
Office equipment, software and construction in progress	13,402	9,324	16,210	9,324
Property, plant and equipment, gross	87,801	83,576	70,790	83,576
Accumulated depreciation	(40,707)	(37,203)	(34,637)	(37,203)
Property, plant and equipment, net	\$ 47,094	\$ 46,373	\$ 36,153	\$ 46,373

	Three Months Ended		Three Months Ended		Six Months Ended	
	March 29, 2024	March 31, 2023	June 28, 2024	June 30, 2023	June 28, 2024	June 30, 2023
<b>(In thousands)</b>						
Depreciation expense	\$ 3,700	\$ 3,507	\$ 3,079	\$ 3,576	\$ 6,778	\$ 7,083

Depreciation is recorded within cost of revenue and selling, general and administrative expenses and is calculated using the straight-line method over the estimated useful lives of the assets, or in the case of leasehold improvements and capitalized leases, the lesser of the remaining term of the lease or its estimated useful life.

The following table presents the Company's finite-lived intangible assets, including the **weighted-average** **weighted average** useful lives for each major intangible asset category and in total:

March 29, 2024				June 28, 2024
Weighted	Intangible Assets, Gross	Accumulated Amortization	Intangible Assets, Net	
Average				
Remaining				
Useful Life				

(In thousands)					Weighted Average Remaining Useful Life in Years	Intangible Assets, Gross	Accumulated Amortization	Intangible Assets, Net
Trademark	3.8	\$ 10,600	\$ (4,921)	\$ 5,679	3.5	\$ 10,600	\$ (5,300)	\$ 5,300
Customer contracts	2.8	6,373	(3,452)	2,921	2.5	6,373	(3,717)	2,656
Total		<u>\$ 16,973</u>	<u>\$ (8,373)</u>	<u>\$ 8,600</u>		<u>\$ 16,973</u>	<u>\$ (9,017)</u>	<u>\$ 7,956</u>

(In thousands)	December 29, 2023				December 29, 2023			
	Weighted Average Remaining Useful Life	Intangible Assets, Gross	Accumulated Amortization	Intangible Assets, Net	Weighted Average Remaining Useful Life in Years	Intangible Assets, Gross	Accumulated Amortization	Intangible Assets, Net
Trademark	4	\$ 10,600	\$ (4,543)	\$ 6,057	4	\$ 10,600	\$ (4,543)	\$ 6,057
Customer contracts	3	6,527	(3,340)	3,187	3	6,527	(3,340)	3,187
Total		<u>\$ 17,127</u>	<u>\$ (7,883)</u>	<u>\$ 9,244</u>		<u>\$ 17,127</u>	<u>\$ (7,883)</u>	<u>\$ 9,244</u>

The Company's estimated aggregate remaining amortization is as follows:

Amortization Expense	Amortization
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<i>(In thousands)</i>			Expense	
2024	\$	1,932	\$	1,288
2025		2,577		2,577
2026		2,577		2,577
2027		1,514		1,514
Total	\$	8,600	\$	7,956

## Note 6. Debt

Total debt outstanding is presented on the condensed consolidated balance sheets as follows:

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<i>(In thousands)</i>	March 29, 2024	December 29, 2023	June 28, 2024	December 29, 2023
Revolving Credit Facility	\$ 31,749	\$ 29,914	\$ 14,952	\$ 29,914
Total debt	31,749	29,914		
Unamortized debt issuance costs	(260)	(287)	(179)	(287)
Long-term debt, net	\$ 31,489	\$ 29,627		
Revolving Credit Facility, net	\$ 14,773	\$ 29,627		

<i>(In thousands)</i>	June 28, 2024	December 29, 2023
Credit Facility	\$ 54,200	\$ -
Unamortized debt issuance costs	(1,411)	-
Credit Facility, net	\$ 52,789	\$ -

### Revolving Credit Facility

On March 27, 2023, we entered into the Revolving Credit Facility with MidCap Financial Services, LLC, which originally provided a total commitment of \$30 million. The Revolving Credit Facility was subsequently amended on June 30, 2023, September 22, 2023, May 20, 2024 and May 20, 2024 August 14, 2024. As amended, the Revolving Credit Facility provides for a total commitment of \$33.2.8 million and bears interest at an annual rate of adjusted term SOFR, subject to a 1.0% floor, plus

5.50%. Further, the Revolving Credit Facility is subject to an annual collateral management fee of 0.50% and an annual unused line fee of 0.50%. The Revolving Credit Facility includes certain financial operating covenants, including a minimum liquidity requirement of \$5 million. As of March 29, 2024, we were not in compliance with the leverage covenant regarding investments in joint ventures set forth in the Revolving Credit Facility prior to the May 20, 2024 amendment. As a result of the May 20, 2024 amendments, the leverage covenant was replaced with the aforementioned minimum liquidity requirement. As amended, August 14, 2024 amendment, which redefined Permitted Investments, we are currently in compliance with all covenants under the Revolving Credit Facility. The Revolving Credit Facility matures on September 30, 2024.

#### *Project Financing Agreement*

On March 26, 2024, we entered into a Project Financing Agreement (the "Project Financing Agreement") with Berkshire Hathaway Specialty Insurance Company, National Liability & Fire Insurance Company and National Indemnity Company (collectively "Berkshire") which provides an advance of up to \$25 million in exchange for security interest in the assigned and secured collateral specified in the Project Financing Agreement. If drawn, the advance will be used to satisfy bond and bonded contract obligations and bears interest at an annual rate of adjusted term SOFR, subject to a 1.0% floor, plus 4.50%. All funds provided by Berkshire amount outstanding under the Project Financing Agreement as well as all accrued interest are due under the Revolving Credit Facility. As of June 28, 2024, and payable in full on March 28, 2028.

In connection with our entry into the Credit Agreement (as defined below) December 29, 2023, we terminated the Project Financing Agreement. As a result, all obligations of the Company \$15 million and its subsidiaries \$30 million was outstanding under the Project Financing Agreement were released and all security interests and liens granted by the Company and such subsidiaries to secure such obligations were terminated. Revolving Credit Facility, respectively.

#### *Credit Facility*

On May 20, 2024, the Company, as guarantor, and its wholly-owned subsidiaries as borrowers ("Borrowers"), Alter Domus (US) LLC, as agent, and AECOM and BHSI Berkshire Hathaway Specialty Insurance Company ("BHSI") as lenders, entered into a revolving credit facility (the "Credit Agreement"). The Credit Agreement provides borrowing capacity up to \$60 million. The obligations under the Credit Agreement bear interest at a per annum rate equal to one month Term SOFR (as defined in the Credit Agreement), subject to a 1.00% floor, plus 3.50%. Interest on any outstanding amounts drawn under the Credit Agreement will be payable, in kind or in cash at the election of the Company, on the last day of each month and upon prepayment.

The Credit Agreement replaced the Project Financing Agreement. The Company expects to use the proceeds from the Credit Agreement for general corporate purposes. The Credit Agreement matures on May 20, 2029 (the "Maturity Date"), and the Borrowers may borrow, repay and reborrow amounts under the Credit Agreement until the Maturity Date.

Obligations of the Borrowers under the Credit Agreement are guaranteed by the Company and secured by a lien on substantially all assets of the Company and the Borrowers.

The Credit Agreement contains customary affirmative and negative covenants for a transaction of this type, including covenants that limit liens, asset sales and investments, in each case subject to negotiated exceptions and baskets. In addition, the Credit Agreement contains a maximum leverage ratio covenant that will be as tested starting for quarterly commencing with the close of the third quarter of fiscal year 2025. The Credit Agreement also contains representations and warranties and event of default provisions customary for a transaction of this type. The

Company is not aware of any instances of noncompliance with financial covenants as of June 28, 2024. As of June 28, 2024, \$54 million was outstanding under the Credit Facility.

The transactions with AECOM also included a mutual release and settlement of certain claims with AECOM and a corresponding agreement to issue 7,745,000 shares of our common shares to AECOM. 5,144,622 of the common shares were issued on May 20, 2024 and issuance of the remaining 2,600,378 shares was completed following shareholder approval on June 26, 2024. Of the total common shares issued, 1,036,949 were held in escrow which resulted in an AECOM voting interest of 19.9% on the June 26, 2024 date of issuance. The Company recognized a loss of \$1 million in Other expense (income), net within the condensed consolidated statements of operations as a result of the share issuance which represented the excess of the \$13 million fair market value of the common shares at the time of issuance over the \$12 million carrying value of the contingent consideration liabilities settled with AECOM.

## Note 7. Income Taxes

We compute the year-to-date income tax provision by applying our estimated annual effective tax rate to our year-to-date pre-tax income and adjust for discrete tax items in the period in which they occur.

The effective tax rate was 0% for the three and six months ended March 29, 2024, June 28, 2024 and March 31, 2023, respectively, June 30, 2023.

For the three six months ended March 29, 2024 and March 31, 2023 June 28, 2024, the deferred tax provision resulting from the current year loss is completely offset by the change valuation allowance, resulting in zero tax expense.

For the six months ended June 30, 2023, the deferred tax provision resulting from the loss, was completely offset by the valuation allowance, resulting in zero tax expense.

The Company generally anticipates a zero effective tax rate due to a full valuation allowance. However, the Company may recognize a current tax expense in a specific period if its taxable income, net of available deferred tax assets in that period, exceeds the allowable utilization of tax attributes such as NOL carryforwards. The allowable limitation typically restricts the use of NOL carryforwards to 80% of taxable income.

## Deferred Tax Assets and Liabilities

We recognize deferred tax assets and liabilities for future tax consequences arising from differences between the carrying amounts of existing assets and liabilities under U.S. GAAP and their respective tax bases, and for net operating loss carryforwards and tax credit carryforwards. We evaluate the recoverability of our deferred tax assets, weighing all positive and negative evidence, and are required to establish or maintain a valuation allowance for these assets if we determine that it is more likely than not that some or all the deferred tax assets will not be realized.

As of each reporting date, we consider new evidence, both positive and negative, that could impact our view with regard to the future realization of deferred tax assets. We will maintain our positions with regard to future realization of deferred tax assets, including those with respect to which we continue maintaining valuation allowances, until there is sufficient new evidence to support a change in expectations. Such a change in expectations could arise due to many factors, including those impacting our forecasts of future earnings, as well as changes in the tax laws under which we operate and tax planning. It is not reasonably possible to forecast any such changes at the present time, but it is possible that, should they arise, our view of their effect on the future realization of deferred tax assets may impact materially our condensed consolidated financial statements.

After weighing all the evidence, giving more weight to the evidence that was objectively verifiable, a valuation allowance of \$133.147 million and \$124 million as of March 29, 2024, June 28, 2024 and December 29, 2023, respectively, has been recorded to recognize only the portion of the deferred tax asset that is more likely than not to be realized. The amount of the deferred tax asset considered realizable, however, could be adjusted if estimates of future taxable income during the carryforward period are reduced or increased or if the objective negative evidence in the form of cumulative losses is no longer present and additional weight is given to subjective evidence such as our projections for growth.

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## Note 8. Stock-Based Compensation

On April 12, 2021, the Company's Board approved the Company's 2021 Stock Plan (the "2021 Stock Plan"). The 2021 Stock Plan reserves 5,477,200 of the Company's shares for issuance of incentive instruments, including Incentive Stock Options ("ISOs"), Non-statutory Stock Options, Stock Appreciation Rights, Restricted Stock Awards, and Restricted Stock Unit Awards. ISOs granted under the Plan have a term of 10 years and vest over four years of service.

On November 13, 2023, the Company's Board approved the Shimmick Corporation 2023 Equity Incentive Plan (the "2023 Omnibus Incentive Plan"). 3,729,149 is the maximum aggregate number of shares of Common Stock available under the 2023 Omnibus Incentive Plan (equal to ten percent (10%) of the Company's Common Stock outstanding immediately following the completion of the Company's IPO on November 16, 2023 plus (ii) the reserved and authorized shares for awards under the Company's 2021 Stock Plan that were not granted as of November 13, 2023). The maximum aggregate number of shares of Common Stock that may be issued under the 2023 Omnibus Incentive Plan will automatically increase annually on the first day of each fiscal year, beginning with the 2024 fiscal year in an amount equal to five percent (5%) of Common Stock outstanding on the

last day of the immediately preceding fiscal year unless the plan administration determines that a lesser amount should instead be issued. The shares reserved under the 2023 Omnibus Incentive Plan are for issuance of incentive instruments, including stock options, restricted stock awards, restricted stock units, stock appreciation rights, performance units and other share-based awards.

Total compensation expense related to stock-based grants was \$2 million and \$1 million for each of the three six months ended March 29, 2024, June 28, 2024 and March 31, 2023, June 30, 2023, respectively. Unrecognized compensation expense related to stock-based grants to employees of Shimmick outstanding as of March 29, 2024, June 28, 2024 and March 31, 2023, June 30, 2023 was \$5 million and \$4 million, respectively, to be recognized on a straight-line basis over the awards' weighted average remaining vesting period of 1.1 0.8 years and 2.0 1.8 years, respectively.

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For the three six months ended March 29, 2024, June 28, 2024, stock option activity was as follows:

	Stock Options				Stock Options			
	Number of shares	Weighted average exercise price per share	Weighted average grant date fair value	Weighted average years of remaining contractual term	Number of shares	Weighted average exercise price per share	Weighted average grant date fair value	Weighted average years of remaining contractual term
Outstanding as of December 29, 2023	4,137,183	\$ 1.26	\$ —	7.6	4,137,183	\$ 1.26	\$ —	7.6
Exercised	(195,864)	1.26	0.66	—	(285,744)	1.26	0.66	—
Forfeited & expired	(200,415)	1.26	0.66	—	(314,213)	1.26	0.66	—
Outstanding as of March 29, 2024	<u>3,740,904</u>	<u>1.26</u>	<u>0.66</u>	<u>7.1</u>				
Exercisable as of March 29, 2024	<u>2,662,487</u>	<u>\$ 1.26</u>	<u>\$ 0.66</u>	<u>7.1</u>				

Outstanding				
as of June				
28, 2024	3,537,226	1.26	0.66	6.9
Exercisable				
as of June				
28, 2024	2,695,618	\$ 1.26	\$ 0.66	6.9

The following table summarizes the activities for unvested Shimmick restricted stock units for the three six months ended March 29, 2024 June 28, 2024:

	Restricted Stock Units		Restricted Stock Units	
	Number of shares	Weighted average grant date fair value	Number of shares	Weighted average grant date fair value
Unvested as of December 29, 2023	576,714	\$ 6.49	576,714	\$ 6.49
Awarded	12,097	6.20	483,442	1.86
Forfeited	(3,049)	6.56	(20,834)	6.56
Outstanding as of March 29, 2024	585,762	6.48		
Ended vested as of March 29, 2024	39,683	6.56		
Ended unvested as of March 29, 2024	546,079	\$ 6.47		
Outstanding as of June 28, 2024	1,039,322	3.93		
Ended vested as of June 28, 2024	175,865	6.56		
Ended unvested as of June 28, 2024	863,457	\$ 3.93		

## Note 9. Earnings Per Share

Basic earnings per share ("EPS") is calculated based on the weighted average shares outstanding during the period. Diluted earnings per share includes the dilutive effect of employee and director stock options and restricted stock units. Stock options are considered dilutive whenever the exercise price is less than the average market price of the stock during the period and antidilutive whenever the exercise price exceeds the average market price of the common stock during the period. All 3.7 3.5 million and 4.4 4.5 million employee stock options were excluded from the calculation of diluted earnings per share for the three and six months ended March 29, 2024 June 28, 2024 and March 31, 2023 June 30, 2023, respectively, as they are antidilutive to the EPS calculation.

The computation of basic and diluted EPS is as follows:

(In thousands, except per share data)	Three Months Ended		Three Months Ended				Six Months Ended	
	March 29, 2024	March 31, 2023	June 28, 2024	June 30, 2023			June 28, 2024	June 30, 2023
<b>Numerator:</b>								
Net loss attributable to Shimmick Corporation	\$ (33,333)	\$ (9,337)	\$ (51,389)	\$ (10,300)			\$ (84,722)	\$ (19,637)
Numerator for basic and diluted EPS	<u>\$ (33,333)</u>	<u>\$ (9,337)</u>	<u>\$ (51,389)</u>	<u>\$ (10,300)</u>			<u>\$ (84,722)</u>	<u>\$ (19,637)</u>
<b>Denominator:</b>								
Denominator for basic EPS - weighted average shares	25,560	21,909	28,086	21,909			26,817	21,909
Effect of dilutive securities:								
Employee stock options	—	—	—	—			—	—
Restricted stock units	—	—	—	—			—	—
Dilutive potential common shares	—	—	—	—			—	—
Denominator for diluted EPS - adjusted weighted average shares and assumed conversions	<u>25,560</u>	<u>21,909</u>	<u>28,086</u>	<u>21,909</u>			<u>26,817</u>	<u>21,909</u>
Basic earnings per common share	<u>\$ (1.30)</u>	<u>\$ (0.43)</u>	<u>\$ (1.83)</u>	<u>\$ (0.47)</u>			<u>\$ (3.16)</u>	<u>\$ (0.90)</u>
Diluted earnings per common share	<u>\$ (1.30)</u>	<u>\$ (0.43)</u>	<u>\$ (1.83)</u>	<u>\$ (0.47)</u>			<u>\$ (3.16)</u>	<u>\$ (0.90)</u>

## Note 10. Leases

Lease expenses recorded within the condensed consolidated statements of operations are comprised as follows:

(In thousands)	Three Months Ended		Three Months Ended		Six Months Ended	
	March 29, 2024	March 31, 2023	June 28, 2024	June 30, 2023	June 28, 2024	June 30, 2023
Operating lease cost						
Cost of revenue	\$ 2,353	\$ 3,235	\$ 2,397	\$ 3,543	\$ 4,749	\$ 6,778
Selling, general and administrative expenses	305	293	245	379	550	672
Finance lease cost (all in cost of revenue):						
Amortization of right-of-use assets	66	75	66	75	133	150
Interest on lease liabilities	8	7	6	6	14	13
Short-term lease cost	82	143	100	175	182	318
Total lease cost	\$ 2,814	\$ 3,753	\$ 2,814	\$ 4,178	\$ 5,628	\$ 7,931

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Additional condensed consolidated balance sheets information related to leases is as follows:

(In thousands)	Balance Sheet Classification	March 29, 2024	December 29, 2023	Balance Sheet Classification	June 28, 2024	December 29, 2023
<b>Assets:</b>						
Operating lease assets	Lease right-of-use assets	\$ 23,130	\$ 23,568	Lease right-of-use assets	\$ 21,173	\$ 23,568
Finance lease assets	Lease right-of-use assets	221	287	Lease right-of-use assets	155	287
Total lease assets		\$ 23,351	\$ 23,855		\$ 21,328	\$ 23,855
<b>Liabilities:</b>						
Current:						



Operating lease liabilities	Other current liabilities	\$ 7,955	\$ 8,247	Other current liabilities	\$ 7,842	\$ 8,247
Finance lease liabilities	Other current liabilities	269	317	Other current liabilities	190	317
Total current lease liabilities		\$ 8,224	\$ 8,564		\$ 8,032	\$ 8,564
Non-current:						
Operating lease liabilities	Lease liabilities, non-current	\$ 14,855	\$ 15,017	Lease liabilities, non-current	\$ 13,154	\$ 15,017
Finance lease liabilities	Lease liabilities, non-current	-	28	Lease liabilities, non-current	-	28
Total non-current lease liabilities		\$ 14,855	\$ 15,045		\$ 13,154	\$ 15,045

Weighted average remaining lease term information related to leases is as follows:

	March 29, 2024	December 29, 2023	June 28, 2024	December 29, 2023
Weighted average remaining lease term (in years):				
Operating leases	3.4	3.4	3.3	3.4
Finance leases	0.8	1.1	0.6	1.1
Weighted average discount rate:				
Operating leases	6.4%	6.3%	6.5%	6.3%
Finance leases	9.9%	9.9%	9.9%	9.9%

Supplemental cash flow information related to leases is as follows:

Three Months Ended
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(In thousands)	March 29, 2023		March 31, 2023	
Cash paid for amounts included in the measurement of lease liabilities:				
Operating cash flows from operating leases	\$	2,334	\$	2,792
Financing cash flows from finance leases		76		77
Right-of-use assets obtained in exchange for new operating leases	\$	1,879	\$	8,604

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(In thousands)	Three Months Ended		Six Months Ended	
	June 28, 2024	June 30, 2023	June 28, 2024	June 30, 2023
Cash paid for amounts included in the measurement of lease liabilities:				
Operating cash flows from operating leases	\$ 2,873	\$ 3,236	\$ 5,207	\$ 6,028
Financing cash flows from finance leases	78	78	155	155
Right-of-use assets obtained in exchange for new operating leases	\$ 165	\$ 2,440	\$ 2,045	\$ 11,044

Total remaining lease payments under both the Company's operating and finance leases are as follows:

(In thousands)	Operating Leases		Financing Leases	
<u>Year</u>				
2024	\$ 6,954	\$ 253	\$ 4,599	\$ 169
2025	8,848	28	8,883	28
2026	4,005	—	4,081	—
2027	2,352	—	2,424	—
2028	2,187	—	2,236	—
Thereafter	1,046	—	1,077	—
Total lease payments	25,392	281	23,300	197
Amounts representing interest	(2,582)	(12)	(2,304)	(7)
Total lease liabilities	\$ 22,810	\$ 269	\$ 20,996	\$ 190

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## Note 11. Commitments and Contingencies

In the Company's joint venture arrangements, the liability of each partner is usually joint and several. This means as each joint venture partner may become liable for the entire risk of performance guarantees provided by each partner to the customer. Typically, each joint venture partner indemnifies the other partners for any liabilities incurred in excess of the liabilities the other party is obligated to bear under the respective joint venture agreement. In addition, the Company may be required to guarantee performance directly to the customer. The Company is unable to estimate the maximum potential amount of future payments that the Company could be required to make under outstanding performance guarantees related to joint venture projects due to a number of factors, including but not limited to, the nature and extent of any contractual defaults by the other joint venture partners, resource availability, potential performance delays caused by the defaults, the location of the projects, and the terms of the related contracts.

In the ordinary course of business, the Company is subject to other claims, lawsuits, investigations and disputes arising out of the conduct of its business, including matters relating to commercial transactions, government contracts, and employment matters. The Company recognizes a liability for contingencies that are probable of occurrence and reasonably estimable. To date, no such matters are material to the condensed consolidated statements of operations.

In certain contracts, there are provisions that require the Company to pay liquidated damages if the Company is responsible for the failure to meet specified contractual milestone dates and the applicable customer asserts a conforming claim under these provisions. These contracts define the conditions under which customers may make claims against the Company for liquidated damages. Based upon the evaluation of performance and other commercial and legal analysis, management has recognized relevant probable liquidated damages as of March 29, 2024, June 28, 2024 and December 29, 2023, and believes that the ultimate resolution of such matters will not materially affect the Company's condensed consolidated financial position, results of operations, or cash flows.

The Company has recorded contingent consideration as of March 29, 2024, June 28, 2024 and December 29, 2023 at its estimated fair value. The Company is unable to reasonably determine an estimated range of amounts of the payments that could be made due to the uncertainty of future events.

### *Guarantees*

The Company obtains bonding on construction contracts through third-party bonding companies. As is customary in the construction industry, the Company indemnifies the third-party bonding companies for any losses incurred by it in connection with bonds that are issued. The Company has granted the third-party bonding companies a security interest in accounts receivable, contract assets and contract rights for that obligation.

The Company typically indemnifies contract owners for claims arising during the construction process and carries insurance coverage for such claims.

## Letters of Credit

In the ordinary course of business and under certain contracts, the Company is required to post standby letters of credit for its insurance carriers. The Company did not have any letters of credit outstanding as of March 29, 2024, June 28, 2024 or December 29, 2023.

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## Note 12. Subsequent Events

### *Sale of Assets of Foundations Projects Business* Legacy Project Settlement

On May 10, 2024, the Company entered into an agreement to sell the assets of its non-core Foundations Projects business for total consideration of \$17.5 million, consisting of \$15 million in cash and a \$2.5 million promissory note. The net proceeds will be used to repay borrowings under the existing Revolving Credit Facility.

### *Equipment Sale-Leaseback*

On May 10, 2024, August 8, 2024, the Company entered into a non-binding letter settlement agreement involving change orders and additional compensation sought for a federal lock and dam project. Pursuant to the settlement agreement, the United States Army Corps of Engineers agreed to pay the Company \$33 million, which is expected to be collected in fiscal year 2024. The settlement amount is recorded in contract assets within the condensed consolidated balance sheets. As a result of the settlement and previously estimated contract revenue, the Company recognized a net loss of \$30 million on the project during the three months ended June 28, 2024, which includes a \$23 million reduction to revenue and a \$7 million adjustment to forward loss reserve, within the condensed consolidated statements of operations for the three and six months ended June 28, 2024.

### *Sale-Leaseback Agreement*

On August 9, 2024, we completed the previously disclosed transaction for the sale-leaseback of its our equipment yard in Tracy, California. The transaction contemplates agreement consummated the sale of the equipment yard for approximately \$22.5 million along with a five-year lease for Shimmick and allows us to continue using the property. The property

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pursuant to a separately executed seven-year lease. We received net proceeds will be of \$17 million, after adjustments for prepaid rent through February 2026 and related closing costs, which were used to repay borrowings under the existing Revolving Credit Facility.

### Mutual Release

In connection with the entry into the Credit Agreement and related agreements, on May 20, 2024, we entered into a Settlement Agreement and Mutual Release with AECOM pursuant to which, among other things, we and our subsidiaries released AECOM from all claims that have or could have been asserted against us and our subsidiaries, including claims or defenses asserted or which could have been asserted under the Purchase and Sale Agreement, dated December 9, 2020, between AECOM, URS Holdings, Inc. and Shimmick Corporation (as successor in interest to SCC Group LLC (the "PSA"). In return, AECOM is releasing us and our subsidiaries from certain claims under the PSA, specifically those related to or arising in respect to: (a) the Golden Gate Bridge Project and the Gerald Desmond Bridge Project, under the claim sharing provisions contained in Sections 2.13(a)(i) and (a)(ii) of the PSA, respectively; (b) any Earn-Out Payment arising solely under Section 2.11 of the PSA and (c) the Chickamauga Lock Project arising under the claim sharing provisions of that certain Working Capital Settlement Agreement, dated as of January 31, 2022, by and among SCC Group LLC, AECOM and URS Holdings, Inc.

In connection with the releases, AECOM will jointly file, or caused to be filed, a request for dismissal of the AECOM v. SCCI National Holdings, Inc., et al., Delaware Chancery Court C.A. No. 2022-0727-MTZ, in its entirety, with prejudice.

### Share Issuance

In connection with the Mutual Release, we entered into a Share Issuance Agreement (the "Share Issuance Agreement") with AECOM, pursuant to which we agreed to issue an aggregate 7,745,000 shares of common stock (the "Shares"). 5,144,622 of the Shares (the "Initial Shares"), which represent approximately 19.99% of our outstanding common stock immediately prior to the issuance, were issued on May 20, 2024. Issuance of the remaining 2,600,378 Shares (the "Additional Shares") are subject to approval by the Company's stockholders, pursuant to NASDAQ listing requirements.

### Credit Agreements

See Note 6 - Debt for additional information regarding subsequent events. 21

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

*Management's Discussion and Analysis of Financial Condition and Results of Operations is intended to assist in understanding and assessing the trends and significant changes in our results of operations and financial condition. Historical results may not be indicative of future performance. The statements in this discussion regarding industry outlook, our expectations regarding our future performance, liquidity and capital resources and all other non-historical statements in this discussion are forward looking statements and are based on the beliefs of our management, as well as assumptions made by, and information currently available to, our management. Actual results could differ materially from those discussed in or implied by forward looking statements as a result of various factors, including those discussed below and elsewhere in the Form 10-K, particularly in "Risk Factors" or in other sections of this Form 10-Q, as well as the "Risk Factors" section in the Form 10-K and those described from time to time in our future reports with the SEC. This discussion should be read in conjunction with our unaudited condensed consolidated financial statements and the notes thereto included elsewhere in this Form 10-Q.*

*In this discussion, we use certain non-GAAP financial measures. Explanation of these non-GAAP financial measures and reconciliation to the most directly comparable GAAP financial measures are included in this Management's Discussion and Analysis of Financial Condition and Results of Operations. Investors should not consider non-GAAP financial measures in isolation or as substitutes for financial information presented in compliance with GAAP.*

### Overview

We are a leading provider of water and other critical infrastructure solutions nationwide. We have a long history of successfully completing complex water projects, ranging from the world's largest wastewater recycling and purification system in California to the iconic Hoover Dam. According to *Engineering News Record*, in 2023, Shimmick was nationally ranked as a top ten builder of water supply (#6), dams and reservoirs (#7), and water treatment and desalination plants (#7). Shimmick is led by industry veterans, many with over 20 years of experience, and works closely with its customers to deliver complete solutions, including long-term operations and maintenance.

We selectively focus on the following types of infrastructure projects:

- **Water Treatment:** We expand, rehabilitate, upgrade, build and rebuild water and wastewater treatment infrastructure, including desalination plants. We implement complex cleantech treatment technologies including ozonation, biological activated carbon, membrane filtration, reverse osmosis, chemical treatment, and oxidation. We also conduct facility commissioning. Our projects and solutions aim to ensure access to clean and safe drinking water, protect public health, reduce waterborne diseases. Our work contributes to protecting the environment by removing pollutants and contaminants from wastewater before it is released back into ecosystems. Additionally, water treatment infrastructure supports sustain water management, which conserves this precious resource for future generations.
- **Water Resources:** We build, expand, and improve water storage and conveyance, dams, levees, flood control systems, pump stations, and coastal protection. We also upgrade and expand dams, levees and locks along our nation's waterways to enable continued emissions-reducing movement of goods. Select projects of ours enable reliable water supply, generate hydroelectric power, and control flooding, ensuring water availability and energy security. Our work contributes to protect communities from flood damage to safeguard lives, property, and infrastructure.
- **Other Critical Infrastructure:** We build, retrofit, expand, rehabilitate, operate, and maintain our nation's critical infrastructure including mass transit, bridges, and military infrastructure. We work on projects that we believe are vital for economic

growth, social connectivity, and accessibility. We believe our projects enable smooth and efficient movement of people and goods, foster trade, address environmental sustainability, and improve quality of life for individuals and communities.

As of March 29, 2024 June 28, 2024, we had a backlog of projects in excess of \$1 billion \$923 million, with over half of that amount comprised of water projects. We believe we have the ability to self-perform many of these projects, enabling us to compete for complex projects and differentiating us from many of our competitors. Self-performance also enables us to better control the critical aspects of our projects, reducing the risk of cost and schedule overruns.

## Recent Developments

On May 20, 2024 (the "Closing Date"), Shimmick Corporation, (the "Company"), entered into a series of transactions (the "Transactions") with AECOM, a Delaware corporation ("AECOM") and Berkshire Hathaway Specialty Insurance Company ("BHSI"). A summary of the Transactions is included below.

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The transactions included, among other things, entry into the new \$60 million Credit Agreement, a mutual release and settlement of certain claims with AECOM and a corresponding agreement to issue 7,745,000 shares of our common stock to AECOM, termination of the existing Project Financing Agreement with BHSI and amendments to the existing Revolving Credit Facility with MidCap. For a description of these transactions, see Note 6 - Debt and Note 12 - Subsequent Events to our condensed consolidated financial statements and the notes thereto included elsewhere in this Form 10-Q.

The transactions with AECOM also included a mutual release and settlement of certain claims with AECOM and a corresponding agreement to issue 7,745,000 shares of our common shares to AECOM. 5,144,622 of the common shares were issued on May 20, 2024 and issuance of the remaining 2,600,378 shares was completed following shareholder approval on June 26, 2024. Of the total common shares issued, 1,036,949 were held in escrow which resulted in an AECOM voting interest of 19.9% on the June 26, 2024 date of issuance. The Company recognized a loss of \$1 million in Other expense (income), net within the condensed consolidated statements of operations as a result of the share issuance which represented the excess of the \$13 million fair market value of the common shares at the time of issuance over the \$12 million carrying value of the contingent consideration liabilities settled with AECOM.

In addition, we entered into an agreement for the sale of the assets of our foundation drilling business for total consideration of \$17.5 million, consisting of \$15 million in cash and a \$2.5 million promissory note. The sale is expected to close in May 2024. The closed on May 23, 2024 and the net proceeds will be were used to repay borrowings under the Revolving Credit Facility. We will continue working on certain existing foundation projects, Foundations Projects, which are largely expected to be completed by the end of the year.

In addition, we On August 8, 2024, the Company entered into a non-binding letter settlement agreement involving change orders and additional compensation sought for a federal lock and dam project. Pursuant to the settlement agreement, the United States Army Corps of intent Engineers agreed to pay the Company \$33 million, which is expected to be collected in fiscal year 2024. The settlement amount is recorded in contract assets within the condensed consolidated balance sheets. As a result of the settlement and previously estimated contract revenue, the Company recognized a net loss on the project of \$30 million during the three months ended June 28, 2024, which includes a \$23 million reduction to revenue and a \$7 million adjustment to forward loss reserve, within the condensed consolidated statements of operations for the three and six months ended June 28, 2024. On August 9, 2024, we completed the previously disclosed transaction for the sale-leaseback of our equipment yard in Tracy, California. The transaction contemplates agreement consummated the sale of the equipment yard for approximately \$22 million, along with a five-year lease for \$20.5 million and allows us to continue using the property. property pursuant to a separately executed seven-year lease. We expect the sale-leaseback to close in the second quarter of fiscal 2024. The received net proceeds will be of \$17 million after adjustments for prepaid rent through February 2026 and related closing costs. The equipment yard had a net book value of approximately \$3 million and the \$17 million of net proceeds received from the transaction were used to repay borrowings under the Revolving Credit Facility.

## Our History and Initial Public Offering

Shimmick was founded in 1990 in California and operated as a regional infrastructure construction contractor throughout California for nearly 30 years. In 2017, AECOM acquired Shimmick and consolidated it with its existing construction services, which included former construction operations from Morrison Knudsen, Washington Group International, and others.

In January 2021, we were sold by AECOM and began operating as an independent company under new private ownership. After the transaction, we began a transformation to shift our strategy to meet the nation's growing need for water and other critical infrastructure and grow our business. We are also focusing more on smaller complex projects that we can largely self perform and which we believe will have lower risk and higher margin.

On November 16, 2023, the Company completed its initial public offering of 3,575,000 shares of common stock at a price to the public of \$7.00 per share (the "IPO"). The net proceeds to the Company from the IPO were approximately \$19 million, after deducting underwriting discounts and commissions and before estimated offering expenses payable by the Company. The Company's common stock began trading on the NASDAQ Global Market on November 14, 2023.

## Key Factors Affecting Our Performance and Results of Operations

We expect that our results of operations will be affected by a number of factors which have discussed below.

*Weather, natural disasters and emergencies.* The results of our business in a given period can be impacted by adverse weather conditions, severe weather events, natural disasters or other emergencies, which include, among other things, heavy or prolonged snowfall or rainfall, hurricanes, tropical storms, tornadoes, floods, blizzards, extreme temperatures, wildfires, post-wildfire floods and debris flows, pandemics and earthquakes. These conditions and events can negatively impact our financial results due to, among other things, the termination, deferral or delay of projects, reduced productivity and exposure to significant liabilities.



*Seasonality.* Typically, our revenue is lowest in the first quarter of the year because cold, snowy or wet conditions can create challenging working environments that are more costly for our customers or cause delays on projects. Second quarter revenue is typically higher than those in the first quarter, as some projects begin, but continued cold and wet weather can often impact productivity. Third quarter revenue is typically the highest of the year, as a greater number of projects are underway and operating conditions, including weather, are normally more accommodating. Project geographic location will also dictate how seasonality affects productivity and timing. Also, the holiday season and inclement weather can sometimes cause delays during the fourth quarter, reducing revenue and increasing costs.

*Our Ability to Fulfill Backlog Orders.* Our backlog consists of the estimated amount of services to be completed from future work on uncompleted contracts or work that has been awarded with contracts still being negotiated. It also includes revenue from change orders and renewal options. Most of our contracts are cancelable on short or no advance notice. Reductions in backlog due to cancellation by a customer, or for other reasons, could significantly reduce the revenue that we actually receive from contracts in backlog. In the event of a project cancellation, we may be reimbursed for certain costs, but we typically have no contractual right to the total revenues reflected in our backlog. Backlog amounts are determined based on target price estimates that incorporate historical trends, anticipated seasonal impacts, experience from similar projects and from communications with our customers. These estimates may prove inaccurate, which could cause estimated revenue to be realized in periods later than originally expected, or not at all. As a result, our backlog as of any particular date is an uncertain indicator of future revenue and earnings. In addition, contracts included in

our backlog may not be profitable. If our backlog fails to materialize, our business, financial condition, results of operations and cash flows could be materially and adversely affected.

*Our Ability to Obtain New Projects.* We selectively bid on projects that we believe offer an opportunity to meet our profitability objectives or that offer the opportunity to enter promising new markets. The potential customers conduct rigorous competitive processes for awarding many contracts. We will potentially face strong competition and pricing pressures for any additional contract awards from other government agencies, and we may be required to qualify or continue to qualify under various multiple award task order contract criteria.

*Our Ability to Successfully Expand our Footprint.* We review our bidding opportunities to attempt to minimize concentration of work with any one customer, in any one industry, or in tight labor markets. We believe that by carefully positioning ourselves in markets that have meaningful barriers to entry, like those with highly technical or specialized scopes of work, we can continue to be

competitive. For example, we target projects with significant, highly-technical work that we can self-perform. We believe this provides us with a distinct pricing advantage, as well as better risk management. In addition, as a result of federal and state-level infrastructure initiatives, we believe that funding for technical construction projects may exceed capacity, enabling us to opportunistically target smaller specialized projects with less risk at higher margins. We may be limited in our ability to expand our footprint by barriers to entry to new markets, competition, and availability of capital and skilled labor.

We primarily compete for new contracts independently, seeking to win and complete new projects directly for our customers. Our customers primarily award contracts using one of two methods: the traditional public “competitive bid” method, in which price is the major determining factor, or through a “best value” proposal, where contracts are awarded based on a combination of technical qualifications, proposed project team, schedule, the ability to obtain surety bonds, past performance on similar projects and price, which we believe creates a barrier to entry. Contracts are principally awarded on a fixed-price basis, and we earn and recognize revenue using an input measure of total costs incurred divided by total costs expected to be incurred.

*Our Ability to Obtain Approval of Change Orders and Successfully Pursue Claims.* We are subject to variation in scope and cost of projects from our original projections. In certain circumstances, we seek to collect or assert claims against customers, engineers, consultants, subcontractors or others involved in a project for additional costs exceeding the contract price or for amounts not included in the original contract price. Our experience has often been that public customers have been willing to negotiate equitable adjustments in the contract compensation or completion time provisions if unexpected circumstances arise. However, this process may result in disputes over whether the work performed is beyond the scope of the work included in the original project plans and specifications or, if the customer agrees that the work performed qualifies as extra work, the price that the customer is willing to pay for the extra work. Public customers may seek to impose contractual risk-shifting provisions more aggressively or there could be statutory and other legal prohibitions that prevent or limit contract changes or equitable adjustments.

*Our Ability to Control Project Costs.* Our costs primarily consist of payroll, equipment, materials, and other project related expenses. With a consistent focus on profitability by our management team, we leverage information technology and utilize financial systems to improve project execution and control costs. However, if we are unable to accurately estimate the overall risks, requirements or costs when we bid on or negotiate a contract that is ultimately awarded to us, we may achieve a lower than anticipated profit or incur a loss on the contract. Also, our labor and training expenses may increase as a result of a shortage in the supply of skilled personnel. We may not be able to pass these expenses on to our customers, which could adversely affect our profitability. To the extent that we are unable

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to buy construction equipment necessary for our needs, either due to a lack of available funding or equipment shortages in the marketplace, we may be forced to rent equipment on a short-term basis, which could increase the costs of performing our contracts. If we are unable to continue to maintain the equipment in our fleet, we may be forced to obtain third-party repair

services, which could increase our costs. In addition, the market value of our equipment may unexpectedly decline at a faster rate than anticipated.

In addition, as is customary in the construction business, we are required to provide surety bonds to our customers to secure our performance under construction contracts. Our ability to obtain surety bonds primarily depends upon our capitalization, working capital, past performance, management expertise and reputation, as well as certain external factors, including the overall capacity of the surety market. Surety companies consider such factors in relationship to the amount of our backlog and their underwriting standards, which may change from time to time. Events that adversely affect the insurance and bonding markets generally may result in bonding becoming more difficult to obtain in the future, or being available only at a significantly greater cost. If we are unable to obtain adequate bonding or if the cost of bonding materially increased, it would limit the amount that we can bid on new contracts, limit the competitiveness of our bids, and could have a material adverse effect on our future revenue and business prospects.

*Our Ability to Control Selling General and Administrative Costs.* Because we now exist as a public company, we will incur significant expenses on an ongoing basis that we did not incur as a private company. Those costs include additional director and officer liability insurance expenses, stock exchange listing expenses, as well as third-party and internal resources related to accounting, auditing,

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Sarbanes-Oxley Act compliance, legal and investor and public relations expenses. These costs will generally be selling, general and administrative expenses. We have also implemented the 2023 Omnibus Incentive Plan to align our equity compensation program with public company plans and practices, which we expect will increase our stock-based compensation expense.

*Joint Ventures.* We participate in various construction joint ventures in order to share expertise, risk and resources for certain highly complex, large, and/or unique projects. Generally, each construction joint venture is formed to accomplish a specific project and is jointly controlled by the joint venture partners. We select our joint venture partners based on our analysis of their construction and financial capabilities, expertise in the type of work to be performed and past working relationships, among other criteria. The joint venture agreements typically provide that our interests in any profits and assets, and our respective share in any losses and liabilities, that may result from the performance of the contract are limited to our stated percentage interest in the project. Under each joint venture agreement, one partner is designated as the sponsor. The sponsoring partner typically provides administrative, accounting and much of the project management support for the project and generally receives a fee from the joint venture for these services. We have been designated as the sponsoring partner in some venture projects and are a non-sponsoring partner in others. We incur transaction and integration costs prior to fully realizing the benefits of acquisition synergies. Joint ventures often require significant investments before they begin operations and we incur many of these costs prior to realizing any gain on the investment in the joint venture. If we are unable to recoup these costs, it could have a significant impact on our business.

How We Assess Performance of Our Business

Revenue

We currently derive our revenue predominantly by providing infrastructure, operations and management services around the United States. We generally recognize revenue over-time as performance obligations are satisfied and control over promised goods or services are transferred to our customers.

Gross Margin

Gross margin represents revenue less contract costs. Contract costs consist of all direct and indirect costs on contracts, including raw materials, labor, equipment costs, and subcontractor costs. If the estimates of costs to complete fixed-price contracts indicate a further loss, the entire amount of the additional loss expected over the life of the project is recognized in the current period in the cost of revenue.

Selling, General, and Administrative Expenses

Selling, general and administrative expenses consist primarily of salaries and personnel costs for our administrative, finance and accounting, legal, information systems, human resources and certain managerial employees. Additional expenses include audit, consulting and professional fees, travel, insurance, office space rental costs, property taxes and other corporate and overhead expenses.

Equity in (Loss) Earnings (Loss) of Unconsolidated Joint Ventures

Equity in (loss) earnings (loss) of unconsolidated joint ventures includes our return on investment in unconsolidated joint ventures.

Results of Operations

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Three Months Ended June 28, 2024 compared to the Three Months Ended June 30, 2023

The following table sets forth selected financial data for the three months ended March 29, 2024 June 28, 2024 compared to the three months ended March 31, 2023 June 30, 2023:

(In thousands, except percentage data)	Three Months Ended				% of Revenue		Three Months Ended				% of Revenue	
	March		March		March		March				June	
	29,		31,		29,		31,		June 28,		June 30,	
	2024		2023		2024		2023		2024		2023	

Revenue	\$ 120,043	\$ 164,108	\$ (44,065)	(27)%	100%	100%	\$ 90,605	\$ 155,189	\$ (64,584)	(42)%	100%	100%
Cost of revenue	135,903	157,886	(21,983)	(14)	113	96	121,736	155,646	(33,910)	(22)	134	100
<b>Gross margin</b>	(15,860)	6,222	(22,082)	(355)	(13)	4	(31,131)	(457)	(30,674)	6,712	(34)	-
Selling, general and administrative expenses	15,524	15,558	(34)	-	13	9	18,079	16,943	1,136	7	20	11
Amortization of intangibles	644	658	(14)	(2)	-	-	644	658	(14)	(2)	-	-
Total operating expenses	16,168	16,216	(48)	-	13	9	18,723	17,601	1,122	6	20	11
Equity in earnings (loss) of unconsolidated joint ventures	263	(541)	804	(149)	-	-						
(Loss) gain on sale of assets	(26)	1,540	(1,566)	(102)	-	1						
Equity in (loss) earnings of unconsolidated joint ventures	(1,854)	7,534	(9,388)	(125)	(2)	5						
Gain on sale of assets	3,714	140	3,574	2,553	4	-						
<b>Loss from operations</b>	(31,791)	(8,995)	(22,796)	253	(26)	(4)	(47,994)	(10,384)	(37,610)	362	(52)	(7)
Other expense, net	1,543	338	1,205	357	2	1						
Interest expense	1,496	576	920	160	2	-						
Other expense (income), net	1,899	(649)	2,548	(393)	2	-						
<b>Net loss before income tax</b>	(33,334)	(9,333)	(24,001)	257	(28)	(5)	(51,389)	(10,311)	(41,078)	398	(56)	(7)
Income tax expense	-	-	-	-	-	-	-	-	-	-	-	-
<b>Net loss</b>	<u>\$ (33,334)</u>	<u>\$ (9,333)</u>	<u>\$ (24,001)</u>	<u>257 %</u>	<u>(28)%</u>	<u>(5)%</u>	<u>\$ (51,389)</u>	<u>\$ (10,311)</u>	<u>\$ (41,078)</u>	<u>398 %</u>	<u>(56)%</u>	<u>(7)%</u>

## Revenue and gross margin

The following table sets forth selected revenue and gross margin data for the three months ended **March 29, 2024** **June 28, 2024** compared to the three months ended **March 31, 2023** **June 30, 2023**:

(In thousands, except percentage data)	Foundations			
	Shimmick Projects	Projects	Legacy Projects	Consolidated Total
<b>First Quarter 2024</b>				
Revenue	\$ 90,292	\$ 6,640	\$ 23,111	\$ 120,043
Gross margin	(436)	(4,365)	(11,059)	(15,860)
Gross margin (%)	(0)%	(66)%	(48)%	(13)%
<b>First Quarter 2023</b>				
Revenue	\$ 88,099	\$ 20,104	\$ 55,905	\$ 164,108
Gross margin	4,779	1,860	(417)	6,222
Gross margin (%)	5%	9%	(1)%	4%
<b>Variances First Quarter 2024 to First Quarter 2023 Increase (Decrease)</b>				
Revenue	\$ 2,193	\$ (13,464)	\$ (32,794)	\$ (44,065)
Revenue (%)	2%	(67)%	(59)%	(27)%
Gross margin	(5,215)	(6,225)	(10,642)	(22,082)

(In thousands, except percentage data)	Three Months Ended			
	June 28, 2024	June 30, 2023	\$ Change	% Change
<b>Shimmick Projects</b>				
Revenue	\$ 83,689	\$ 103,493	\$ (19,804)	(19)%
Gross Margin	4,570	8,787	(4,217)	(48)%
Gross Margin (%)	5%	8%		
<b>Foundations Projects</b>				
Revenue	\$ 8,454	\$ 8,988	\$ (534)	(6)%
Gross Margin	(1,943)	(7,469)	5,526	(74)%
Gross Margin (%)	(23)%	(83)%		
<b>Legacy Projects</b>				
Revenue	\$ (1,538)	\$ 42,708	\$ (44,246)	(104)%
Gross Margin	(33,758)	(1,775)	(31,983)	1802%
Gross Margin (%)	2195%	(4)%		

Consolidated Total					
Revenue	\$	90,605	\$	155,189	\$ (64,584) (42)%
Gross Margin		(31,131)		(457)	(30,674) 6712%
Gross Margin (%)		(34)%		4%	

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### Shimmick Projects

Projects started after the AECOM Sale Transactions ("Shimmick Projects") have focused on water infrastructure and other critical infrastructure. Revenue recognized on Shimmick Projects was \$90 million \$84 million and \$88 million \$104 million for the three months ended March 29, 2024 June 28, 2024 and March 31, 2023 June 30, 2023, respectively. The \$2 million increase \$20 million decrease in revenue was primarily the result of new a \$29 million decrease from lower activity on existing jobs and jobs ramping up. winding down partially offset by a \$10 million increase in revenue driven by a new water infrastructure job.

Gross margin recognized on Shimmick Projects was \$(1) million \$5 million and \$5 million \$9 million for the three months ended March 29, 2024 June 28, 2024 and March 31, 2023 June 30, 2023, respectively. The decline in the gross margin was primarily the result of a \$7 million decrease driven by increased cost, schedule extensions and jobs winding down and costs tied to pending change orders. completing partially offset by a \$2 million increase in margin from a new water infrastructure job.

### Foundations Projects

As described in Note 12 - Subsequent Events, the The Company has entered into an agreement to sell the assets of our non-core foundation projects Foundations Projects in the second quarter of 2024 and will be winding down any remaining work during the remainder of the 2024 fiscal year. As the a result, revenue from Foundations Projects will decline during the year, remainder of the Company will be reporting revenue related to these projects separately for 2024 ("Foundations Projects"). fiscal year. Revenue recognized on Foundations Projects was \$7 million \$8 million and \$20 million \$9 million for the three months ended March 29, 2024 June 28, 2024 and March 31, 2023 June 30, 2023, respectively. The \$13 million \$1 million decline in revenue was the result of timing of multiple jobs winding down.

Gross margin recognized on Foundations Projects was \$(4) \$(2) million and \$2 million \$(7) million for the three months ended March 29, 2024 June 28, 2024 and March 31, 2023 June 30, 2023, respectively. The decline increase in the gross margin was the result of cost overruns incurred on subcontract two jobs and timing of jobs winding down. during the three months ended June 30, 2023 which were substantially completed during the 2023 fiscal year.

## Legacy Projects

As part of the AECOM Sale Transactions, we assumed the Legacy Projects and backlog that were started under AECOM. Legacy Projects revenue was \$23 million, \$(2) million, a decline of \$33 million \$44 million as the Company works to complete these projects. As part of a settlement of a claim on a large Legacy Loss Project, we made a non-cash adjustment to revenue of \$23 million to reflect the settlement amount. See *Recent Developments* for additional details. Gross margin was \$(11) \$(34) million, a decrease of \$11 million \$32 million as compared to the three months ended March 31, 2023 June 30, 2023, primarily as a result of the \$30 million impact of the settlement, projects winding down and additional cost overruns on a subset of these projects ("Legacy Loss Projects") that have experienced significant cost overruns due to the COVID pandemic, design issues, legal costs and other factors.

In the Legacy Loss Projects, we have recognized the estimated costs to complete and the loss expected from these projects. If the estimates of costs to complete fixed-price contracts indicate a further loss, the entire amount of the additional loss expected over the life of the project is recognized as a period cost in the cost of revenue. As these Legacy Loss Projects continue to wind down to completion, no further gross margin will be recognized and in some cases, there may be additional costs associated with these projects. Revenue recognized on these Legacy Loss Projects was \$15 million \$(7) million and \$27 million for the three months ended March 29, 2024 June 28, 2024 and March 31, 2023 June 30, 2023, respectively. respectively, as a result of the settlement discussed above. Gross margin recognized on these Legacy Loss Projects was \$(11) \$(32) million and \$(1) million for the three months ended March 29, 2024 June 28, 2024 and March 31, 2023 June 30, 2023, respectively, as a result of the settlement of the claim discussed above.

### *Selling, general and administrative expenses*

Selling, general and administrative expenses remained approximately flat period over period.

### *Equity in (loss) earnings of unconsolidated joint ventures*

Equity in (loss) earnings of unconsolidated joint ventures was \$(2) million, compared to earnings of \$8 million in the prior year period, primarily due to a favorable subcontractor settlement during the three months ended June 30, 2023 that did not reoccur during the three months ended June 28, 2024. Equity in (loss) earnings of unconsolidated joint ventures of \$(2) million in the three months ended June 28, 2024 was primarily driven by increased costs due to schedule extensions.

### *Gain on sale of assets*

Gain on sale of assets increased by \$4 million primarily due to the gain recognized on the sale of the assets of our non-core Foundations Projects during the second quarter of 2024.

## Interest expense



Interest expense increased by \$1 million primarily due to interest charges on the Credit Facility which was not entered into until May 20, 2024.

#### *Other expense (income), net*

Other expense (income), net increased by \$3 million for the three months ended June 28, 2024 primarily due to a \$1 million loss recognized on the settlement of certain claims with AECOM as well as other expenses recognized associated with the change in fair value of contingent consideration and other costs incurred during the three months ended June 28, 2024.

#### *Income tax expense*

Income tax expense was flat period over period. Due to an additional expected tax loss for fiscal year ending 2024, no taxable income or tax expense is anticipated for 2024, and no taxable income was recorded for the prior year three months ended June 30, 2023.

#### *Net loss*

Net loss increased by \$41 million to a net loss of \$51 million for the three months ended June 28, 2024, primarily due to the settlement of the claim on a large Legacy Loss Project, equity in loss of unconsolidated joint ventures of \$9 million, as well as an increase in other expense of \$4 million, partially offset by increases in the gain on the sale of assets of \$4 million all as described above.

#### *Six Months Ended June 28, 2024 compared to the Six Months Ended June 30, 2023*

The following table sets forth selected financial data for the six months ended June 28, 2024 compared to the six months ended June 30, 2023:

	Six Months Ended				% of Revenue	
	June 28,		June 30,		June 28,	June 30,
<i>(In thousands, except percentage data)</i>						
	2024	2023	\$ Change	% Change	2024	2023
Revenue			(108,64			
	\$ 210,648	\$ 319,297	\$ 9 )	(34)%	100 %	100 %
Cost of revenue	257,639	313,532	(55,893 )	(18 )	122	98
<b>Gross margin</b>	(46,991 )	5,765	(52,756 )	(915 )	(22 )	2
Selling, general and administrative expenses	33,603	32,502	1,101	3	16	10
Amortization of intangibles	1,288	1,316	(28 )	(2 )	1	-
Total operating expenses	34,891	33,818	1,073	3	17	10
Equity in (loss) earnings of unconsolidated joint ventures	(1,591 )	6,993	(8,584 )	(123 )	(1 )	2
Gain on sale of assets	3,688	1,680	2,008	120	2	1
<b>Loss from operations</b>	(79,785 )	(19,380 )	(60,405 )	312	(38 )	(6 )
Interest expense	2,393	607	1,786	294	1	-
Other expense (income), net	2,545	(343 )	2,888	(842 )	1	-

<b>Net loss before income tax</b>	(84,723)	(19,644)	(65,079)	331	(40)	(6)
Income tax expense	-	-	-	-	-	-
<b>Net loss</b>	<u>\$ (84,723)</u>	<u>\$ (19,644)</u>	<u>\$ (65,079)</u>	<u>331 %</u>	<u>(40)%</u>	<u>(6)%</u>

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### Revenue and gross margin

The following table sets forth selected revenue and gross margin data for the six months ended June 28, 2024 compared to the six months ended June 30, 2023:

(In thousands, except percentage data)	Six Months Ended		\$ Change	% Change
	June 28, 2024	June 30, 2023		
Shimmick Projects				
Revenue	\$ 173,981	\$ 191,592	\$ (17,611)	(9)%
Gross Margin	4,134	13,566	(9,432)	(70)%
Gross Margin (%)	2 %	7 %		
Foundations Projects				
Revenue	\$ 15,094	\$ 29,092	\$ (13,998)	(48)%
Gross Margin	(6,308)	(5,609)	(699)	12 %
Gross Margin (%)	(42)%	(19)%		
Legacy Projects				
Revenue	\$ 21,573	\$ 98,613	\$ (77,040)	(78)%
Gross Margin	(44,817)	(2,192)	(42,625)	1945 %
Gross Margin (%)	(208)%	(2)%		
Consolidated Total				
Revenue	\$ 210,648	\$ 319,297	\$ (108,649)	(34)%
Gross Margin	(46,991)	5,765	(52,756)	(915)%
Gross Margin (%)	(22)%	2 %		

### Shimmick Projects

Shimmick Projects have focused on water infrastructure and other critical infrastructure. Revenue recognized on Shimmick Projects was \$174 million and \$192 million for the six months ended June 28, 2024 and June 30, 2023, respectively. The \$18 million decrease in revenue was primarily the result of a \$36 million decrease from lower activity on existing jobs and jobs winding down partially offset by a \$21 million increase in revenue driven by a new water infrastructure job and ramp up of a dam project. Gross margin recognized on Shimmick Projects was \$4 million and \$14 million for the six months ended June 28, 2024 and June 30, 2023, respectively. The decline in the gross margin was primarily the result of a \$13 million decrease driven by increased cost and schedule extensions partially offset by a \$3 million increase in margin from a new water infrastructure job.

### Foundations Projects

The Company entered into an agreement to sell the assets of our non-core Foundations Projects in the second quarter of 2024 and will be winding down any remaining work during the remainder of the 2024 fiscal year. As a result, revenue will decline during the remainder of the 2024 fiscal year. Revenue recognized on Foundations Projects was \$15 million and \$29 million for the six months ended June 28, 2024 and June 30, 2023, respectively. The \$14 million decline in revenue was the result of timing of multiple jobs winding down.

Gross margin recognized on Foundations Projects was flat at \$(6) million for each of the six months ended June 28, 2024 and June 30, 2023.

#### *Legacy Projects*

As part of the AECOM Sale Transactions, we assumed the Legacy Projects and backlog that were started under AECOM. Legacy Projects revenue was \$22 million, a decline of \$77 million as the Company works to complete these projects. As part of a settlement of a claim on a large Legacy Loss Project, we made a non-cash adjustment to revenue of \$23 million to reflect the settlement amount. Gross margin was \$(45) million, a decrease of \$43 million as well compared to the six months ended June 30, 2023, primarily as a result of the settlement, projects winding down and additional legal fees cost overruns on Legacy Loss Projects that have experienced significant cost overruns due to pursue contract modifications the COVID pandemic, design issues and recoveries, other factors.

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In the Legacy Loss Projects, we have recognized the estimated costs to complete and the loss expected from these projects. If the estimates of costs to complete fixed-price contracts indicate a further loss, the entire amount of the additional loss expected over the life of the project is recognized as a period cost in the cost of revenue. As these Legacy Loss Projects continue to wind down to completion, no further gross margin will be recognized and in some cases, there may be additional costs associated with these projects. Revenue recognized on these Legacy Loss Projects was \$8 million and \$54 million for the six months ended June 28, 2024 and June 30, 2023, respectively, as a result of the settlement. Gross margin recognized on these Legacy Loss Projects was \$(44) million and \$(2) million for the six months ended June 28, 2024 and June 30, 2023, respectively. The decrease in gross margin was primarily the result of the settlement of the claim discussed above.

#### *Selling, general and administrative expenses*

Selling, general and administrative expenses remained approximately flat period over period.

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#### *Equity in (loss) earnings (loss) of unconsolidated joint ventures*

Equity in (loss) earnings (loss) of unconsolidated joint ventures increased \$1 million was \$(2) million, compared to \$7 million in the prior year period, primarily due a favorable subcontractor settlement during the six months ended June 30, 2023 that did not

reoccur during the six months ended June 28, 2024. Equity in (loss) earnings of unconsolidated joint ventures of \$(2) million in the six months ended June 28, 2024 was primarily driven by increased costs due to improved equity in earnings pickup on projects winding down and nearing completion. schedule extensions.

#### *(Loss) gain Gain on sale of assets*

(Loss) gain Gain on sale of assets decreased increased by \$2 million primarily due to a one-time the gain recognized on the sale of the assets of our non-core Foundations Projects during the second quarter of 2024 partially offset by the gain on sale of an office building for property of \$2 million during in the three months ended March 31, 2023 that did prior year.

#### *Interest expense*

Interest expense increased by \$2 million primarily due to interest charges on the Credit Facility which was entered into on May 20, 2024 as well as interest charges on the Revolving Credit Facility which was not reoccur during the three months ended March 29, 2024 entered into until March 27, 2023.

#### *Other expense (income), net*

Other expense (income), net increased by \$1 million \$3 million for the six months ended June 28, 2024 primarily due to interest expense a \$1 million loss recognized on the Revolving Credit Facility settlement of certain claims with AECOM as well as expenses recognized associated with the change in fair value of contingent consideration and other costs incurred during the three six months ended March 29, 2024 which was not entered into until March 27, 2023 June 28, 2024.

#### *Income tax expense*

Income tax expense was flat period over period. Due to an expected tax loss for fiscal year ending 2024, no taxable income or tax expense is anticipated for 2024, and no taxable income was recorded for the prior year three six months ended March 31, 2023 June 30, 2023.

#### *Net loss*

Net loss increased by \$24 million \$65 million to a net loss of \$33 million \$85 million for the three six months ended March 29, 2024 June 28, 2024, primarily due to the decrease settlement, the equity in gross margin loss of \$22 million unconsolidated joint ventures of \$9 million, as described above and a \$2 million decrease well as an increase in other expense of \$4 million, partially offset by increases in the gain on the sale of assets of \$2 million, all as described above.

#### *Non-GAAP Financial Measures*

We report our financial results in accordance with GAAP. However, management believes that certain non-GAAP financial measures provide investors with additional useful information in evaluating our performance. Therefore, to supplement our condensed consolidated financial statements, we provide investors with certain non-GAAP financial measures, including Adjusted net loss and Adjusted EBITDA.

#### *Adjusted Net Loss*

Adjusted net loss represents Net loss attributable to Shimmick Corporation adjusted to eliminate changes in fair value of contingent consideration, transaction-related costs, stock-based compensation, and legal fees and other costs for Legacy Projects and other costs. We have also made an adjustment for transformation costs we have and expect to

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incur including advisory costs as we settle outstanding claims, exit the Legacy Projects and transform the Company into a Legacy Loss Project. water-focused business.

We have included Adjusted net loss in this Form 10-Q because it is a key measure used by our management and board of directors to understand and evaluate our core operating performance and trends, to prepare and approve our annual budget and to develop short and long-term operational plans. In particular, we believe that the exclusion of the income and expenses eliminated in calculating Adjusted net loss can provide a useful measure for period-to-period comparisons of our core business. Accordingly, we believe that Adjusted net loss provides useful information to investors and others in understanding and evaluating our results of operations.

Our use of Adjusted net loss as an analytical tool has limitations, and you should not consider it in isolation or as a substitute for analysis of our financial results as reported under GAAP. Some of these limitations are:

- Adjusted net loss does not reflect changes in, or cash requirements for, our working capital needs,
- Adjusted net loss does not reflect the potentially dilutive impact of stock-based compensation, and
- other companies, including companies in our industry, might calculate Adjusted net loss or similarly titled measures differently, which reduces their usefulness as comparative measures.

Because of these and other limitations, you should consider Adjusted net loss alongside Net loss attributable to Shimmick Corporation, which is the most directly comparable GAAP measure.

#### *Adjusted EBITDA*

Adjusted EBITDA represents our Net loss attributable to Shimmick Corporation before interest expense, income tax expense and depreciation and amortization, adjusted to eliminate changes in fair value of contingent consideration, transaction-related costs, stock-based compensation, and legal fees and other costs for Legacy Projects and other costs. We have also made an adjustment for transformation costs we have and expect to incur including advisory costs as we settle outstanding claims, exit the Legacy Projects and transform the Company into a Legacy Loss Project. water-focused business.

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We have included Adjusted EBITDA in this Form 10-Q because it is a key measure used by our management and board of directors to understand and evaluate our core operating performance and trends, to prepare and approve our annual budget and to develop short and long-term operational plans. In particular, we believe that the exclusion of the income and expenses eliminated in calculating Adjusted EBITDA can provide a useful measure for period-to-period comparisons of our core business. Accordingly, we believe that Adjusted EBITDA provides useful information to investors and others in understanding and evaluating our results of operations.

Our use of Adjusted EBITDA as an analytical tool has limitations, and you should not consider it in isolation or as a substitute for analysis of our financial results as reported under GAAP. Some of these limitations are:

- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized might have to be replaced in the future, and Adjusted EBITDA does not reflect cash capital expenditure requirements for such replacements or for new capital expenditure requirements,
- Adjusted EBITDA does not reflect changes in, or cash requirements for, our working capital needs,
- Adjusted EBITDA does not reflect the potentially dilutive impact of stock-based compensation,
- Adjusted EBITDA does not reflect interest or tax payments that would reduce the cash available to us, and
- other companies, including companies in our industry, might calculate Adjusted EBITDA or similarly titled measures differently, which reduces their usefulness as comparative measures.

Because of these and other limitations, you should consider Adjusted EBITDA alongside Net loss attributable to Shimmick Corporation, which is the most directly comparable GAAP measure.

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See reconciliations below:

	Three Months Ended		Three Months Ended		Six Months Ended	
	March	March				
	29, 2024	31, 2023	June 28, 2024	June 30, 2023	June 28, 2024	June 30, 2023
(In thousands)						
Net loss attributable to Shimmick Corporation	\$ (33,333)	\$ (9,337)	\$ (51,389)	\$ (10,300)	\$ (84,722)	\$ (19,637)
Changes in fair value of contingent consideration	237	220				

Transaction-related costs	-	809				
Transformation costs <sup>(1)</sup>	2,608	-	2,608	-		
Stock-based compensation	998	528	969	523	1,967	1,051
Legal fees and other costs for a Legacy Loss Project <sup>(1)</sup>	2,731	2,510				
Legal fees and other costs for Legacy Projects <sup>(2)</sup>	2,629	2,128	5,360	4,638		
Other <sup>(3)</sup>	209	889	446	1,917		
Adjusted net loss	<u>\$ (29,367)</u>	<u>\$ (5,270)</u>	<u>\$ (44,974)</u>	<u>\$ (6,760)</u>	<u>\$ (74,341)</u>	<u>\$ (12,030)</u>

	Three Months Ended		Three Months Ended		Six Months Ended	
	March 29, 2024	March 31, 2023	June 28, 2024	June 30, 2023	June 28, 2024	June 30, 2023
<i>(In thousands)</i>						
Net loss attributable to Shimmick Corporation	\$ (33,333)	\$ (9,337)	\$ (51,389)	\$ (10,300)	\$ (84,722)	\$ (19,637)
Depreciation and amortization	4,410	4,165	3,789	4,384	8,199	8,549
Interest expense	897	32	1,496	575	2,393	607
Income tax expense	-	-	-	-	-	-
Changes in fair value of contingent consideration	237	220				
Transaction-related costs	-	809				
Transformation costs <sup>(1)</sup>	2,608	-	2,608	-		
Stock-based compensation	998	528	969	523	1,967	1,051
Legal fees and other costs for a Legacy Loss Project <sup>(1)</sup>	2,731	2,510				
Legal fees and other costs for Legacy Projects <sup>(2)</sup>	2,629	2,128	5,360	4,638		
Other <sup>(3)</sup>	209	889	446	1,917		
Adjusted EBITDA	<u>\$ (24,060)</u>	<u>\$ (1,073)</u>	<u>\$ (39,689)</u>	<u>\$ (1,801)</u>	<u>\$ (63,749)</u>	<u>\$ (2,875)</u>

(1) Consists of transformation-related costs we have and expect to incur including advisory costs as we settle outstanding claims, exit the Legacy Projects and transform the Company into a water-focused business.

(2) Consists of legal fees and other costs incurred in connection with claims relating to a Legacy Loss Project. Projects.

27 (3) Consists of transaction-related costs and changes in fair value of contingent consideration remaining after the impact of transactions with AECOM.

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## Liquidity and Capital Resources

### *Capital Requirements and Sources of Liquidity*

During the **three six** months ended **March 29, 2024** **June 28, 2024** our capital expenditures were approximately **\$5 million** **\$8 million** compared to **\$2 million** **\$3 million** for the **three six** months ended **March 31, 2023** **June 30, 2023**. Historically, we have had significant cash requirements in order to organically expand our business to undertake new projects. Our cash requirements include costs related to increased expenditures for equipment, facilities and information systems, purchase of materials and production of materials and cash to fund our organic expansion into new markets, including through joint ventures. Our working capital needs are driven by the seasonality and growth of our business, with our cash requirements greater in periods of growth. Additional cash requirements resulting from our growth include the costs of additional personnel, enhancing our information systems, our compliance with laws and rules applicable to being a public company and, in the future, our integration of any acquisitions. **Unrestricted cash and cash equivalents at June 28, 2024 totaled \$22 million and availability under the Revolving Credit Facility and Credit Facility totaled \$7 million and \$6 million, respectively, resulting in total liquidity of \$35 million. In addition, we expect to receive approximately \$33 million in the 2024 fiscal year as a result of the settlement of the claim on a large Legacy Loss Project discussed in Recent Developments.**

We have historically relied upon cash available through operating activities, in addition to credit facilities and existing cash balances, to finance our working capital requirements and to support our growth. On November 16, 2023, we completed our IPO pursuant to which we issued and sold an aggregate of 3,575,000 shares of common stock at a price to the public of \$7.00 per share. We received aggregate net proceeds of approximately \$19 million after deducting underwriting discounts and commissions of \$2 million and other offering expenses of \$4 million. We will continue to monitor the capital markets and may continue raising additional capital through the issuance of our common shares, authorized preferred shares or other securities.

We regularly monitor potential capital sources, including equity and debt financing, in an effort to meet our planned expenditures and liquidity requirements. Our future success will be highly dependent on our ability to access outside sources of capital.

As is customary in our business, we are required to provide surety bonds to secure our performance under our contracts. Our ability to obtain surety bonds primarily depends upon our capitalization, working capital, past performance, management expertise and

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reputation and certain external factors, including the overall capacity of the surety market. Surety companies consider such factors in relationship to the amount of our backlog and their underwriting standards, which may change from time to time. We have



pledged proceeds and other rights under our contracts to our bond surety company. Events that affect the insurance and bonding markets may result in bonding becoming more difficult to obtain in the future, or being available only at a significantly greater cost.

We believe that our operating, investing and financing cash flows are sufficient to fund our operations for at least the next twelve months. However, future cash flows are subject to a number of variables, and significant additional expenditures will be required to conduct our operations. Furthermore, as a result of the completion of our IPO on November 16, 2023, we have incurred and expect to continue to incur additional costs associated with being a public company. There can be no assurance that operations and other capital resources will provide cash in sufficient amounts to maintain planned or future levels of expenditures. In the event we make one or more acquisitions and the amount of capital required is greater than the amount we have available for acquisitions at that time, we could be required to reduce the expected level of expenditures and/or seek additional capital. If we seek additional capital, we may do so through joint ventures, asset sales and sale-leaseback transactions, offerings of debt or equity securities or other means. We cannot guarantee that this additional capital will be available on acceptable terms or at all. If we are unable to obtain the funds we need, we may not be able to complete acquisitions that may be favorable to us or finance the expenditures necessary to conduct our operations.

Total debt outstanding is presented on the condensed consolidated balance sheets as follows:

<i>(In thousands)</i>	March 29, 2024	December 29, 2023	June 28, 2024	December 29, 2023
Revolving Credit Facility	\$ 31,749	\$ 29,914	\$ 14,952	\$ 29,914
Total debt	31,749	29,914		
Unamortized debt issuance costs	(260)	(287)	(179)	(287)
Long-term debt, net	\$ 31,489	\$ 29,627		
Revolving Credit Facility, net	\$ 14,773	\$ 29,627		

<i>(In thousands)</i>	June 28, 2024	December 29, 2023
Credit Facility	\$ 54,200	\$ -
Unamortized debt issuance costs	(1,411)	-
Credit Facility, net	\$ 52,789	\$ -

#### *Revolving Credit Facility*

On March 27, 2023, we entered into the Revolving Credit Facility with MidCap Financial Services, LLC, which originally provided a total commitment of \$30 million. The Revolving Credit Facility was subsequently amended on June 30, 2023, September 22, 2023, May 20, 2024 and May 20, 2024 August 14, 2024. As amended, the Revolving Credit Facility provides for a total commitment of \$33 million \$2.8 million and bears interest at an annual rate of adjusted term SOFR, subject to a 1.0% floor, plus 5.50%. Further, the Revolving Credit Facility is subject to an annual collateral management fee of 0.50% and an annual unused

line fee of 0.50%. The Revolving Credit Facility includes certain financial operating covenants, including a minimum liquidity requirement of \$5 million \$7.5 million. As of March 29, 2024 June 28, 2024, we were not in compliance with the leverage Permitted Investments covenant regarding investments in joint ventures set forth in the Revolving Credit Facility prior to the May 20, 2024 amendment. Facility. As a result of the May 20, 2024

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amendments, the leverage covenant was replaced with the aforementioned minimum liquidity requirement. As amended, August 14, 2024 amendment, which redefined Permitted Investments, we are currently in compliance not aware of any instances of noncompliance with all covenants financial covenants. The Revolving Credit Facility matures on August 31, 2024. In the three months ended June 28, 2024, we repaid \$17 million of the amount outstanding under the Revolving Credit Facility. The As of June 28, 2024 and December 29, 2023, \$15 million and \$30 million was outstanding under the Revolving Credit matures on September 30, 2024.

#### *Project Financing Agreement*

On March 26, 2024, we entered into a Project Financing Agreement with Berkshire Hathaway Specialty Insurance Company, National Liability & Fire Insurance Company and National Indemnity Company (collectively "Berkshire") which provides an advance of up to \$25 million in exchange for security interest in the assigned and secured collateral specified in the Project Financing Agreement. If drawn, the advance will be used to satisfy bond and bonded contract obligations and bears interest at an annual rate of adjusted term SOFR, subject to a 1.0% floor, plus 4.50%. All funds provided by Berkshire under the Project Financing Agreement as well as all accrued interest are due and payable in full on March 28, 2028.

In connection with our entry into the Credit Agreement, we terminated the Project Financing Agreement. As a result, all obligations of the Company and its subsidiaries under the Project Financing Agreement were released and all security interests and liens granted by the Company and such subsidiaries to secure such obligations were terminated. Facility, respectively.

#### *Credit Facility*

On May 20, 2024, the Company, as guarantor, and its wholly-owned subsidiaries as borrowers ("Borrowers"), Alter Domus (US) LLC, as agent, and AECOM and BHSI as lenders, entered into a revolving credit facility (the "Credit Agreement"). The Credit Agreement provides borrowing capacity up to \$60 million. The obligations under the Credit Agreement bear interest at a per annum rate equal to one month Term SOFR (as defined in the Credit Agreement), subject to a 1.00% floor, plus 3.50%. Interest on any outstanding amounts drawn under the Credit Agreement will be payable, in kind or in cash at the election of the Company, on the last day of each month and upon prepayment.

The Credit Agreement replaced the Project Financing Agreement. We expect to use the proceeds from the Credit Agreement for general corporate purposes. The Credit Agreement matures on May 20, 2029 (the "Maturity Date"), and the Borrowers may borrow, repay and reborrow amounts under the Credit Agreement until the Maturity Date.

Obligations of the Borrowers under the Credit Agreement are guaranteed by the Company and secured by a lien on substantially all assets of the Company and the Borrowers.

The Credit Agreement contains customary affirmative and negative covenants for a transaction of this type, including covenants that limit liens, asset sales and investments, in each case subject to negotiated exceptions and baskets. In addition, the Credit Agreement contains a maximum leverage ratio covenant that will be as tested starting for quarterly commencing with the close of the third quarter of fiscal year 2025. The Credit Agreement also contains representations and warranties and event of default provisions customary for a transaction of this type. The Company is not aware of any instances of noncompliance with financial covenants as of June 28, 2024. As of June 28, 2024, \$54 million was outstanding under the Credit Facility.

### Cash Flows Analysis

The following table sets forth our cash flows for the periods indicated:

	Three Months Ended		Six Months Ended	
	March 29, 2024	March 31, 2023	June 28, 2024	June 30, 2023
<b>(In thousands)</b>				
Net cash used in operating activities	\$ (34,988)	\$ (26,150)	\$ (78,848)	\$ (60,672)
Net cash used in investing activities	(7,401)	(2,108)		
Net cash (used in) provided by investing activities	(18)	12,647		
Net cash provided by financing activities	6,718	22,731	37,834	29,045
Net decrease in cash, cash equivalents and restricted cash	(35,671)	(5,527)	(41,032)	(18,980)
Cash, cash equivalents and restricted cash, beginning of period	63,910	82,085	63,910	82,085
Cash, cash equivalents and restricted cash, end of period	\$ 28,239	\$ 76,558	\$ 22,878	\$ 63,105

### Operating Activities

During the three six months ended March 29, 2024 June 28, 2024, net cash used in operating activities was \$35 million \$79 million, compared to net cash used in operating activities of \$26 million \$61 million for the three six months ended March 31, 2023 June 30, 2023. Cash flows used in operating activities were driven by increased net loss, adjusted for various non-cash items and changes in accounts receivable, due from unconsolidated joint ventures, contract assets, accounts payable, contract liabilities and accrued expenses balances (collectively, "Contract Capital"), as discussed below, accrued salaries and wages and other assets and liabilities. below.

Changes in Contract Capital—The change in operating assets and liabilities varies due to fluctuations and timing in operating activities and Contract Capital. The changes in the components of Contract Capital during the **three six** months ended **March 29, 2024** **June 28, 2024** and **March 31, 2023** **June 30, 2023** were as follows:

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(In thousands)	Three Months Ended		Six Months Ended	
	March 29, 2024	March 31, 2023	June 28, 2024	June 30, 2023
Accounts receivable, net	\$ 4,478	\$ (8,511)	\$ 5,659	\$ (4,797)
Contract assets	(8,475)	(6,902)	7,996	(9,823)
Accounts payable	(8,901)	9,919	(24,508)	9,274
Contract liabilities	(5,579)	(9,703)	(3,963)	(34,156)
Accrued expenses	(492)	(21,070)	5,176	(19,336)
Changes in Contract Capital, net	\$ (18,969)	\$ (36,267)	\$ (9,640)	\$ (58,838)

During the **three six** months ended **March 29, 2024** **June 28, 2024**, the decrease in Contract Capital was **\$19 million** **\$10 million**, which was primarily **driven by due to** decreases in **contract assets**, accounts payable and contract liabilities. The Company's Contract Capital fluctuations are impacted by the mix of projects in backlog, seasonality, the timing of new awards and related payments for work performed and the contract billings to the customer as projects are completed. Contract Capital is also impacted at period-end by the timing of accounts receivable collections and accounts payable payments for projects.

#### Investing Activities

For the **three six** months ended **March 29, 2024** **June 28, 2024**, net cash used in investing activities was **\$7 million**, **negligible**, which was primarily driven by purchases of property, plant and equipment of **\$5 million** **\$8 million** and contributions to unconsolidated joint ventures of **\$3 million** **\$4 million**, offset by proceeds from the sale of assets of **\$11 million**.

For the **three six** months ended **March 31, 2023** **June 30, 2023**, net cash **used in** **provided by** investing activities was **\$2 million** **\$13 million**, which **was** primarily **driven by purchases** consisted of cash proceeds from an advance on the sale of non-core business contracts of \$20 million, proceeds from sale of property, plant and equipment of **\$3 million** **\$5 million**, and **contributions to unconsolidated joint ventures of \$2 million, partially offset by** return of investment in unconsolidated joint ventures of **\$2 million** **\$4 million**, partially offset by unconsolidated joint venture equity contributions of \$13 million and purchases of property, plant and equipment of \$3 million.

#### Financing Activities

For the **three** **six** months ended **March 29, 2024** **June 28, 2024**, net cash provided by financing activities was **\$7 million** **\$38 million**, which primarily consisted of net borrowings from **credit facilities of \$40 million**, partially offset by debt issuance costs incurred for the **Revolving** Credit Facility **borrowings** entered into during the second quarter of **\$2 million** and other notes payable borrowings of **\$5 million**. **2024**.

For the **three** **six** months ended **March 31, 2023** **June 30, 2023**, net cash provided by financing activities was **\$23 million** **\$29 million**, which primarily consisted of **net borrowings** **proceeds** from the Revolving Credit Facility borrowings of **\$23 million** **\$30 million**.

#### *Letters of Credit*

We obtain standby letters of credit required by our insurance carriers. The Company did not have any letters of credit outstanding as of **March 29, 2024** **June 28, 2024** or December 29, 2023.

#### *Contractual Obligations*

Contractual obligations of the Company consisted of liabilities associated with remaining lease payments for the **nine** **six** months ending **December 27, 2024** **January 3, 2025** through the fiscal years ending through December 29, 2028 of approximately **\$7 million** **\$5 million**, \$9 million, \$4 million, \$2 million and \$2 million, respectively, and approximately \$1 million in the aggregate thereafter based on balances outstanding as of **March 29, 2024** **June 28, 2024**.

#### **Backlog**

Our backlog consists of the remaining unearned revenue on awarded contracts, including our pro-rata share of work to be performed by unconsolidated joint ventures, less the joint venture partners' pro-rata share of work to be performed by consolidated joint ventures. We include in backlog estimates of the amount of consideration to be received, including bonuses, awards, incentive fees, fixed-price awards, claims, unpriced change orders, penalties, minimum customer commitments on cost plus arrangements, liquidated damages and certain time and material arrangements in which the estimated value is firm or can be estimated with a reasonable amount of certainty in both timing and amounts. As construction on our contracts progresses, we increase or decrease backlog to take account of changes in estimated quantities under fixed-price contracts, as well as to reflect changed conditions, change orders and other variations from initially anticipated contract revenue and costs, including completion penalties and bonuses. Substantially all of the contracts in our backlog may be canceled or modified at the election of the customer.

As of **March 29, 2024** **June 28, 2024**, we had a backlog of projects **in excess of** **\$1.0 billion**, **\$923 million** with over half of that amount comprised of water projects. We believe we have the ability to self-perform many of these projects, enabling us to

compete for complex projects and differentiating us from many of our competitors. Self-performance also enables us to better control the critical aspects of our projects, reducing the risk of cost and schedule overruns.

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The following table presents the Company's percentage of backlog by customer type, contract type and backlog recognized:

	As of
	March 29, June
	28, 2024
Backlog by customer type:	
State and local agencies	73 %
Federal agencies	14 %
Private owners	13 %
Total backlog	100 %

	As of
	March 29, June
	28, 2024
Backlog by contract type:	
Fixed-price	86 %
Cost reimbursable	14 %
Total backlog	100 %

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As of
March 29, June
28, 2024

**Estimated backlog recognized:**

0 to 24 months	74.80 %
25 to 36 months	15.12 %
Beyond 36 months	11.8 %
Total backlog	100 %

**Off-Balance Sheet Arrangements**

In our joint ventures, the liability of each partner is usually joint and several. This means that each joint venture partner may become liable for the entire risk of performance guarantees provided by each partner to the customer. Typically each joint venture partner indemnifies the other partners for any liabilities incurred in excess of the liabilities the other party is obligated to bear under the respective joint venture agreement. We are unable to estimate the maximum potential amount of future payments that we could be required to make under outstanding performance guarantees related to joint venture projects due to a number of factors, including but not limited to, the nature and extent of any contractual defaults by our joint venture partners, resource availability, potential performance delays caused by the defaults, the location of the projects, and the terms of the related contracts.

**Critical Accounting Estimates**

The discussion of our financial condition and results of operations is based upon our condensed consolidated financial statements, which have been prepared in accordance with GAAP. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. We evaluate our estimates and assumptions on an ongoing basis. The results of our analysis form the basis for making assumptions about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions, and the impact of such differences may be material to our condensed consolidated financial statements.

Our critical accounting estimates are described in more detail in Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations, of our Form 10-K. There have been no other significant changes in our critical accounting estimates from those reported in our Form 10-K and we believe that the related judgments and assessments have been consistently applied and produce financial information that fairly depicts the financial condition, results of operations, and cash flows for all periods presented.

**Emerging Growth Company and Smaller Reporting Company**

We are an “emerging growth company,” as defined in the JOBS Act. For so long as we are an emerging growth company, we will, among other things:

- not be required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act,
- not be required to hold a nonbinding advisory stockholder vote on executive compensation pursuant to Section 14A(a) of the Exchange Act,
- not be required to seek stockholder approval of any golden parachute payments not previously approved pursuant to Section 14A(b) of the Exchange Act,
- be exempt from any rule adopted by the Public Company Accounting Oversight Board, requiring mandatory audit firm rotation and identification of critical audit matters,
- be subject to reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements and
- be subject to reduced obligations with respect to financial data, including presenting only two years of audited financial statements and only two years of selected financial data in the Form 10-K.

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In addition, Section 107 of the JOBS Act provides that an emerging growth company can use the extended transition period provided in Section 7(a)(2)(B) of the Securities Act, for complying with new or revised accounting standards. This permits an emerging growth company to delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. The Company has elected to use this extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date that it (i) is no longer an emerging growth company or (ii) affirmatively and irrevocably opts out of the extended transition period provided in the JOBS Act. As a result, these financial statements may not be comparable to companies that comply with the new or revised accounting pronouncements as of public company effective dates.

We will continue to qualify as an emerging growth company until the earliest of:

- the last day of our fiscal year following the fifth anniversary of the date of our initial public offering,
- the last day of our fiscal year in which we have annual gross revenue of \$1.235 billion or more,
- the date on which we have, during the previous three-year period, issued more than \$1.0 billion in non-convertible debt,
- the date on which we are deemed to be a “large accelerated filer,” which will occur at such time as we (1) have an aggregate worldwide market value of common equity securities held by non-affiliates of \$700.0 million or more as of the last business day of our most recently completed second fiscal quarter, (2) have been required to file annual and quarterly reports under the Exchange Act for a period of at least 12 months and (3) have filed at least one annual report pursuant to the Exchange Act.



We are also a smaller reporting company as defined in the Exchange Act. We may continue to be a smaller reporting company even after we are no longer an emerging growth company. We may take advantage of certain of the scaled disclosures available to smaller reporting companies and will be able to take advantage of these scaled disclosures for so long as our voting and non-voting common stock held by non-affiliates is less than \$250.0 million measured on the last business day of our second fiscal quarter, or our annual revenue is less than \$100 million during the most recently completed fiscal year and our voting and non-voting common stock held by non-affiliates is less than \$700 million measured on the last business day of our second fiscal quarter.

### Item 3. Quantitative and Qualitative Disclosures about Market Risk

Not applicable as we are a “smaller reporting company,” as defined in the Exchange Act.

### Item 4. Controls and Procedures

#### *Evaluation of Disclosure Controls and Procedures*

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act). Management, under the supervision and with the participation of the Chief Executive Officer and **Interim** Chief Financial Officer, has conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act). In conducting our

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evaluation, management used the updated framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”) in Internal Control–Integrated Framework (2013). Disclosure controls and procedures are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to our management, including our principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure.

Based on that evaluation, our Chief Executive Officer and **Interim** Chief Financial Officer concluded that as of **March 29, 2024** **June 28, 2024**, our disclosure controls and procedures were not effective due to the material weaknesses in internal control over

financial reporting described below. We have in place and are executing a remediation plan to address the material weaknesses described below.

As discussed in Item 9A of our Form 10-K, we identified material weaknesses in our internal control over financial reporting, which relate to the design and operation of internal control over financial reporting, including the lack of formal and effective controls over certain financial statement account balances, and lack of effective controls over the COSO principles including control environment, risk assessment, control activities, information and communications and monitoring as of December 29, 2023 and December 30, 2022.

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Management performed additional analyses and other procedures to ensure that our condensed consolidated financial statements were prepared in accordance with U.S. Generally Accepted Accounting Principles ("U.S. GAAP"). Accordingly, management believes that the condensed consolidated financial statements included in this Form 10-Q fairly present, in all material respects, our financial position, results of operations, and cash flows as of and for the periods presented in this Form 10-Q, in accordance with U.S. GAAP.

#### *Management's Plan to Remediate the Identified Material Weaknesses*

We believe our current staff, which has changed over the last **eighteen** **twenty-one** months, possess the appropriate skillsets and public company reporting experience to prepare and report on complete and accurate financial statements. We have designed and implemented new entity level controls, information system general controls and financial reporting and business process controls over estimate at completion (revenue), payroll, treasury, property, plant and equipment and leases.

However, given the limited number of quarters since implementing the remediation plan, such remediation has not been fully tested. Material weaknesses cannot be considered fully remediated until the existing controls have been in place and operating for a sufficient period of time to enable management to test and to conclude on the operating effectiveness of the controls. We continue to evaluate the controls that we have implemented and conduct such testing that is necessary to conclude on the operating effectiveness of the controls. Additional remediation may be necessary as we continue to monitor and evaluate the effectiveness of controls implemented to date.

#### *Changes in Internal Control over Financial Reporting*

With the exception of the implementation and enhancement of controls in connection with our remediation activities described above, there were no changes to our internal control over financial reporting during the quarter ended **March 29, 2024** **June 28, 2024** that have materially affected, or that are reasonably likely to materially affect, our internal control over financial reporting.

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## PART II. OTHER INFORMATION

### Item 1. Legal Proceedings

The information required with respect to this Part II, Item 1 can be found under Item 1, 1., Financial Statements, Note 11 - Commitments and Contingencies, to the unaudited condensed consolidated financial statements included in Part I, Item 1 of this Form 10-Q.

### Item 1A. Risk Factors

There have been no material changes to the risk factors disclosed in the Form 10-K.

### Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None Except as previously disclosed in Current Reports on Form 8-K, no unregistered sales of the Company's equity securities were made during the three months ended June 28, 2024.

### Item 3. Defaults Upon Senior Securities

None

### Item 4. Mine Safety Disclosures

None

### Item 5. Other Information

During the fiscal quarter ended **March 29, 2024** **June 28, 2024**, none of our directors or executive officers adopted, modified or terminated any contract, instruction or written plan for the purchase or sale of Company securities that was intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) or any “non-Rule 10b5-1 trading arrangement.”

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## Item 6. Exhibits

Exhibit Number	Description
10.1+ 10.1#	<u>Credit, Security and Guaranty Separation Agreement, dated May 20, 2024, by and among Shimmick Construction Company, Inc., Rust Constructors Inc., The Leasing Corporation, between Shimmick Corporation the other guarantors party thereto, the agent thereunder, and the lenders time to time party thereto Devin J. Nordhagen, dated June 20, 2024 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on May 20, 2024 June 21, 2024).</u>
10.2 10.2#	<u>Side Retention Letter, dated May 20, 2024, by and between Shimmick Corporation and AECOM Amanda Mobley, dated June 21, 2024 (incorporated by reference to Exhibit 10.2 10.1 to the Company's Current Report on Form 8-K filed on May 20, 2024 June 21, 2024).</u>
10.3 10.3*	<u>Share Issuance Settlement Agreement, dated May 20, 2024 August 8, 2024, between Shimmick Corporation and AECOM (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed on May 20, 2024). United States Army Corps of Engineers</u>
10.4 10.4*	<u>Amendment No. 3 1 to Standard Offer Agreement for Purchase of Real Estate, dated August 9, 2024, between Shimmick Corporation and Alterra IOS Acquisitions III, LLC</u>
10.5*	<u>Amendment No. 4 to Credit, Security and Guaranty Agreement, dated May 20, 2024 August 14, 2024, by and among Shimmick Construction Company, Inc., Rust Constructors Inc., The Leasing Corporation, SCCI National Holdings, Inc., MidCap Funding IV Trust and other parties thereto (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K filed on May 20, 2024).</u>
31.1*	<u>Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u>
31.2*	<u>Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u>
32.1*	<u>Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</u>
32.2*	<u>Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</u>

101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

\* Filed herewith.

+ Portions of this exhibit have been redacted in accordance with Item 601(a)(5) of Regulation S-K. # Indicates management contract or compensatory plan

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SIGNATURES

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

Shimmick Corporation

Date: May 20, 2024August 16, 2024

By: /s/ Devin J. NordhagenAmanda Mobley  
Devin J. NordhagenAmanda Mobley  
Executive Vice President,Interim Chief Financial Officer  
and Treasurer

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ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of -- )

)

Shimmick Construction Company, Inc. ) ASBCA Nos. 63114, 63662

)

Under Contract No. W912P5-17-C0007 )

SETTLEMENT AGREEMENT

For the purpose of disposing of the Parties' claims, without any further proceedings and without there being any further adjudication of any issue of law or fact, and without constituting an admission of liability on the part of any party, and for no other purpose, the appellant, Shimmick Construction Company, Inc. ("SCCI"), and the appellee, the United States Army Corps of Engineers ("the Government") (collectively, "the Parties") enter into this Settlement Agreement.

RECITALS

1. On September 28, 2017, the 8., awarded Contract Number W912P5-17-C0007 ("the Contract") to SCCI. The Contract required SCCI to construct the Chickamauga Lock Chamber Replacement, including construction of the main chamber concrete monoliths, the construction of an operations building, the construction of operating machinery and controls, the installation of government-furnished culvert valves, and miter gates, and dry commissioning of the new lock.
2. On November 17, 2017, the Government issued SCCI a notice to proceed with performance under the contract.
3. As of the date of this Agreement, performance under the contract is ongoing and the Contract Completion Date (CCD) is January 27, 2026.
4. On June 22, 2021, SCCI submitted a certified claim (hereinafter, the "Diffuser Port

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Certified Claim") seeking additional compensation in the amount of \$1,145,891.38 alleging defective specifications associated with the steel fabricated stay-in-place forms (hereinafter, the

“Diffuser Port Certified Claim”).

5. On October 1, 2021, the Contracting Officer issued a Contracting Officer’s Final Decision (“COFD”) denying the Diffuser Port Certified Claim.

6. On November 24, 2021, SCCI submitted a certified claim (hereinafter, the “Omnibus Claim”) seeking additional compensation in the amount of \$73,595,598.37 and a time extension of 590 calendar days concerning seven (7) distinct issues: COVID-19 impacts, Differing Site Conditions (Cofferdam), R12-F1 Monolith, High Water Evacuations (2019 and 2020), Culvert Intake Designs, Dowels and Couplers, and Floating Mooring Bitts.

7. On December 21, 2021, SCCI appealed the denial of the Diffuser Port Certified Claim to the Armed Services Board of Contract Appeals (the “ASBCA” or the “Board”), and the Board docketed the appeal as ASBCA No. 63114.

8. On October 31, 2022, stylized as a Request for Contracting Officer’s Final Decision, SCCI submitted an update to the Omnibus Claim (hereinafter, the “August 2022 Update”), increasing its request for additional compensation to \$199,670,747.59 and increasing its request for a time extension to 876 calendar days.

9. On July 11, 2023, on the basis of a deemed denial, SCCI appealed the Omnibus Claim, including the August 2022 Update, to the Board. At the request of the Parties, that appeal, docketed as 63662, was consolidated with Appeal No. 63114.

10. On May 22, 2024, via bilateral Modification P00022, Appellant reserved its right to

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pursue an equitable adjustment to the contract for alleged time impacts associated with “CL 141

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Miter Gate GFE,” which reservation of rights is referred to below as “the Miter Gates.”

11. On July 3, 2024, via Serial Letter S-0707 (Response to Letter C-0221 Request for Recovery Schedule), Appellant reserved its right to pursue an equitable adjustment to the contract for alleged time impacts associated with the procurement of certain long-lead electrical items, which reservation of rights is referred to below as “Long-Lead Electrical Items.”

In consideration of the above recitals, the mutual promises herein and other good and valuable consideration, the receipt and sufficient of which are hereby acknowledged, and intending to be legally bound, the Parties mutually agree as follows:

1. Payment. In full and complete satisfaction of the above-described Appeals, claims, and additional issues, the Government agrees to pay SCCI the total amount of \$33,016,732.30 (the “Settlement Amount”), inclusive of interest, with each party to bear its own costs, attorney fees, and expenses.

2. Within 30 days of the effective date of this settlement agreement, the Government will execute a bilateral modification to the Contract to increase the contract price by the Settlement Amount. To receive the Settlement Amount, SCCI will execute the bilateral modification increasing the contract price by the Settlement Amount and will submit an invoice requesting payment under the Contract. Within 30 days after receiving a properly submitted invoice from SCCI, the Government will pay the Settlement Amount to SCCI.

3. If necessary, the Government agrees to entry of a Decision and Final Judgment against it by the Armed Services Board of Contract Appeals consistent with this Agreement and setting forth an award in favor of SCCI in the amount of \$33,016,732.30 pursuant to the Contract Disputes Act. The Government further agrees that it will cooperate with SCCI and otherwise do what is necessary to secure payment of the Decision and Final Judgment to SCCI

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from the Judgment Fund established by 31 USC §1304. SCCI agrees to cooperate with the Government in executing any documents necessary to execute the modification discussed above and to seek payment from the Judgment Fund.

4. Dismissal of the Appeals. SCCI consents to dismissal with prejudice of ASBCA Nos. 63114 and 63662 and shall within three (3) days after receipt of payment in full of the Settlement Amount file with the ASBCA a request for dismissal of the Appeals with prejudice. If such request is not filed by SCCI within ten (10) days of receipt of payment in full of the Settlement Amount, the Government may move to dismiss the appeal with prejudice.



5. Release. Upon execution of this Agreement, SCCI releases, waives, and abandons all claims against the United States, its political subdivisions, its officers, agents, and employees, arising out of or related to the Contract and having accrued as of the date of this Agreement, whether known or unknown, regardless whether they were included in the claim or complaint, including but not limited to any claims for costs, interest, expenses, attorney fees under the Equal Access to Justice Act (EAJA) and damages of any sort. The only exceptions to this release are the alleged cost and schedule impacts associated with the Miter Gates and Long- Lead Electrical Items and the direct costs for the changes identified on Exhibit A to this Agreement. The Release extends to all reservations of rights by SCCI in any modification to the Contract prior to the date of this Agreement, including Modifications A00001 – A00073 and Modifications P00001 – P00023.

6. SCCI agrees that, as to the claims released herein, it will not authorize any of its subcontractors and/or suppliers on the Contract to file an appeal on its behalf for it or in its name and will object to the prosecution of any such appeal in SCCI'S name. If such objection is not filed by SCCI within 14 days after a subcontractor files any such appeal, the Government

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move to dismiss the appeal with prejudice, using this Settlement Agreement as evidence of the lack of the subcontractor's authority to file the subcontractor's appeal and SCCI's objection to the same.

7. SCCI warrants and represents that no other action or suit with respect to the claims advanced in these Appeals is pending or will be filed in or submitted to any court, administrative agency, or legislative body. SCCI further warrants and represents that it has

made no assignment or transfer of all or any part of its rights arising out of or relating to the Contract.

8. Notwithstanding any terms of this Settlement Agreement, specifically reserved and excluded from the scope and terms of this Settlement Agreement as to any entity or person (including SCCI) is any liability outside the scope of the Contracting Officer's authority to release including (a) any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code); (b) any criminal liability; (c) any civil liability for false or fraudulent claims, including civil liability arising under the False Claims Act, 31 U.S.C. §§ 3729-3733, and/or claims at common law; (d) any liability for personal injury, property, or liability to third parties; and (e) administrative remedies, including the suspension and debarment rights of any federal agency. This Settlement Agreement does not bind any other agency of the United States, including Department of Justice or U.S. Attorney's office, nor does it bind any other state, local, or federal prosecutor for claims that those entities have authority to pursue. It also does not bar or compromise any civil, tax, or administrative claim or action currently pending or that may be made against SCCI in the future. Further, the Parties reserve and exclude from this Settlement Agreement any liability based upon such obligations as are created by this Settlement Agreement. The Parties understand that any payment of monies by

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Government pursuant to this Settlement Agreement may be subject to off-set in accordance with 31 U.S.C. § 3701 (off-set for other Government debts) and that any off-set will not invalidate this Settlement Agreement. Finally, the Government shall retain all rights under the Inspection of Construction clause, FAR 52.246-12, and Warranty of Construction, FAR 52.246-21.

9. Each Party agrees to take any and all further action reasonably necessary or appropriate to fully effect the provisions of this Settlement Agreement, including but not limited to executing any additional documents necessary to effectuate the provisions of this Settlement Agreement.

10. If any provision of this Settlement Agreement or the application thereof is held invalid or unenforceable, that invalidity shall not affect other provisions of this Settlement Agreement that can be given effect without the invalid provisions or application, and to this end, the provisions of this Settlement Agreement are declared to be severable. This Settlement Agreement may be executed in separate counterparts all of which, when taken together, shall constitute the entire agreement.

11. This settlement agreement is for the purpose of settling this case, and for no other. Accordingly, this settlement agreement shall not bind the Parties, nor shall it be cited or otherwise referred to, in any proceedings, whether judicial or administrative in nature, in which the Parties or counsel for the Parties have or may acquire an interest, except as is necessary to effect the terms of this Settlement Agreement.

12. Each person signing this Settlement Agreement represents, warrants, and covenants that he or she has full and complete authority and authorization to execute and effect this Settlement Agreement and to take or cause to be taken all acts contemplated by this

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Settlement Agreement.

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13. This Agreement is binding upon the respective successors, trustees, heirs and assigns of the Parties.

14. This Agreement may be executed in counterparts. The Parties agree that electronic, scanned, or facsimile signatures shall have the full force and effect of original signatures.

15. This Agreement may not be modified or supplemented in any respect, except upon written agreement of the Parties. The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms of this Settlement Agreement.

16. If any portions of this Settlement Agreement are held invalid and unenforceable, all remaining portions shall nevertheless remain valid and enforceable, to the extent they can be given effect without the invalid portions.

17. The Parties agree that all provisions of this Agreement have been negotiated at arm's length and with full opportunity to consult with legal counsel. Each of the Parties has participated in the drafting and negotiation of this Settlement Agreement. Accordingly, for all purposes, this Settlement Agreement shall be deemed to have been drafted jointly by the Parties.

18. This document constitutes a complete integration of the settlement agreement between the Parties and supersedes any and all prior oral or written representations, understandings, or agreements among or between them.

19. This Agreement shall be governed by and construed in accordance with the laws of the United States of America.

20. The effective date of this settlement agreement is the latest date in time entered

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with respect to the signature blocks below.

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IN WITNESS WHEREOF, SCCI and the Government have executed this Agreement.

Shimmick Construction Company, Inc.

By:Print Name:Steven E. Richards Title:Chief Executive Officer

Date:August 8, 2024

U.S. Army Corps of Engineers

By:Stacy S. Wiggins

Contracting Officer Date: August 8, 2024

## ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of -- )

)

Shimmick Construction Company, Inc. ) ASBCA Nos. 63114, 63662

)

Under Contract No. W912P5-17-C-0007 )

## SETTLEMENT AGREEMENT

### Exhibit A

Change Request No.	Change Request Title
CL139	RFI 756/757 Ops Building Equipment Layout
CL148	RFI-798 Service Water Recess Lighting
CL154-2	RFI-768 Shear Wall Descope vs Electrical
CL169	Lightning System for Operations Building

CL176	RFI 851 DS Traffic Tower Change
CL177	RFI 874 M1 Elec. Update for RFI 272
CL178	RFI 866 Pump Motor Disconnects
CL184	RFI 785 Drawings Response
CL188	RFI 0887 – U3E Various Conduit Routing
CL192	RFI 433, 449, 799, and 890 Drawing Changes
CL196	RFI 850 And 920 Misc Drawings
CL199-2	RFI 869 Lock Control System
CL203	RFI 935 Warning Horn, Light, and Sign
CL210	CCTV Revisions
CL214-2	M1 Conduit Revisions
CL219-1	RFI 867 Compressor Room Electrical
CL220-1	RFI 854 U/S Crossover Gallery Conduit
CL095	Compressor Room Selective Demo
CL144	Culvert Valve Shaft Extension
CL160	Misc. Changes RFI 702, 808, 815 & 824
CL167-2	Ops Building Sump Pit_RFI 856, 820, 557
CL168-2	RFI 0794 Ops Exterior Panel Mounting
CL170	RFI 829, 882 Top of Lock Slope
CL175	RFI 858 Ops Bldg Fire Protection Testing
CL186-2	CL186-1 Ops Building IMP Design
CL198	RFI 924 GFE Downstream Bridge Plates
CL200	RFI 939 CV Cyl Recess Blockout
CL202-2	RFI 947 Ops Building Plumbing
CL204	RFI 950 Valve and Vent Recess Covers
CL208-2	RFI 700 Special Inspections
CL209	RFI 288 Removal of Stability Berm

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CL218	VEQ Maintain Testing Lab and COE Offices
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CL221	QBM Dental
CL204	RFI 950 Valve and Vent Recess Covers
CL144	Culvert Valve Shaft Extension
CL219-1	RFI 0867 Compressor Room Electrical
CL220-1	RFI 0854 U/S Crossover Gallery Conduit
CL141 (TIA)	Miter Gate GFE

### **Notice Letters Reserving Rights**

SCCI-LTR-S-0623	Notice of Potential Impact – 05 50 15-63 Caisson and Stop Log Embeds Shop Drawing
SCCI-LTR-S-0680	Notice of Potential Impact – RFI – 0990 Vertical Turbine Water Pumps
SCCI-LTR-S-0685	Notice of Potential Impact – Concrete Mix for Hard Trowel Finishes Follow Up
SCCI-LTR-S-0701	Notice of Potential Impact – Operations Building Slab Reinforcement Delays
SCCI-LTR-S-0708	Notice of Potential Impact – Precast Concrete Specifications
SCCI-LTR-S-0705	Notice of Potential Impact – GFE Culvert Valves Follow Up
SCCI-LTR-S-0676	Notice of Potential Impact – Outstanding Electrical Redesign Follow Up (RFP-0115_CL-15)

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## **FIRST AMENDMENT TO STANDARD OFFER, AGREEMENT AND ESCROW INSTRUCTIONS FOR PURCHASE OF REAL ESTATE**

**THIS FIRST AMENDMENT TO STANDARD OFFER, AGREEMENT AND ESCROW INSTRUCTIONS FOR PURCHASE OF REAL ESTATE** (the “**Amendment**”) is entered into August \_\_, 2024 (the “**Effective Date**”) by and between **SHIMMICK CONSTRUCTION COMPANY, INC.**, a California corporation (“**Seller**”) and **Alterra IOS Acquisitions III, LLC**, a Delaware limited liability company (“**Buyer**”).

### **WITNESSETH:**

**WHEREAS**, Seller and Buyer entered into that certain Agreement for Purchase and Sale of Real Property, dated June 25, 2024 (the “**Agreement**”), for the purchase and sale of that certain parcel of land located at 23623 Bird Road, Tracy, CA 95304 (the “**Property**”), as more specifically described therein.

**WHEREAS**, Seller and Buyer now desire to amend the Agreement as more specifically set forth herein. All capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Agreement.

**NOW, THEREFORE**, in consideration of the agreements set forth in this Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto hereby agree as follows.

## **AGREEMENT**

### **I. Amendment to the Agreement.**

- (a) **Purchase Price.** The Purchase Price shall be Twenty Million Five Hundred Thousand and No/100 Dollars (\$20,500,000.00).
- (b) **Closing.** The date of Closing shall be Friday, August 9, 2024, or such other date as mutually agreed upon by Buyer and Seller.
- (c) **Seller Leaseback.** Paragraph 44 of the Agreement is hereby deleted in its entirety and replaced with the following:
  - 44. Seller Leaseback.** As a condition of entering into this PSA, Seller and Buyer have agreed to allow the Seller to lease the Property for an initial term of seven (7) years following the Closing upon the following terms and conditions and pursuant to the form of seller leaseback agreement attached hereto as Exhibit "A" (the "**Seller Leaseback Agreement**").

### **II. Miscellaneous.**

- (a) **Ratification.** Seller and Buyer hereby ratify and confirm the Agreement, as modified hereby. Except as modified and amended by this Amendment, the original Agreement and the respective obligations of Seller and Buyer thereunder shall be and remain unmodified and in full force and effect.



- (b). No Waiver. The execution, delivery and effectiveness of this Amendment shall not, except to the extent expressly provided herein, operate as a waiver of any right, power or remedy of any of the parties hereto under the Agreement.
- (c). No Presumption Against Drafting Party. Should any provision of this Amendment require judicial interpretation, it is agreed that a court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared or drafted the same, it being agreed that all parties to this Amendment participated in the preparation hereof.
- (d). Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and/or assigns.
- (e). No Further Modification. No further modification, amendment, extension, discharge, termination or waiver hereof shall be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given.
- (f). Governing Law. This Amendment shall be construed and enforced in accordance with the laws of the State of California (without regard to conflicts of law principles). If any provision hereof is not enforceable, the remaining provisions of this Amendment shall be enforced in accordance with their terms.
- (g). Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single party of this Amendment to physically form one document. In order to expedite the transaction contemplated herein, telecopied or internet transmission of PDF file signatures may be used in place of original signatures on this Amendment. Seller and Buyer intend to be bound by the signatures on the transmitted document, are aware that the other party will rely on the

transmitted signatures, and hereby waive any defenses to the enforcement of the terms of this Amendment based on the form of signature.

(h) References. All references in the Agreement to the Agreement shall mean the Agreement as hereby modified.

(i) Incorporation of Recitals. The recitals hereto are hereby incorporated into this Amendment as if fully set forth herein.

[Remainder of page intentionally blank. Signature pages follows]

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**IN WITNESS WHEREOF**, the undersigned parties have caused this Amendment to be executed as of the date first above written:

**SELLER:**

**SHIMMICK CONSTRUCTION CO., INC.,**

a California corporation

By: \_\_\_\_\_

Name: Andy Sloane

Title: President

**BUYER:**

**ALTERRA IOS ACQUISITIONS III, LLC,**

a Delaware limited liability company

By: \_\_\_\_\_

Name: Jeffrey Pustizzi

Title: Authorized Signatory

## **EXHIBIT A**

### **Seller Leaseback Agreement**

#### **LEASE AGREEMENT**

**THIS LEASE AGREEMENT** (this “**Lease**”) is entered into to be effective as of \_\_\_\_\_, 2024 (the “**Effective Date**”), by and between **23623 Bird Partners, LLC**, a Delaware limited liability company (“**Landlord**”), and **Shimmick Construction Company, Inc.**, a California corporation (“**Tenant**”).

**1. LEASE TERMS.** This Article 1 is an integral part of this Lease and all of the terms hereof are incorporated into this Lease in all respects. In addition to the other provisions which are elsewhere defined in this Lease, the following terms, whenever used in this Lease, shall have the meanings set forth in this Article 1:

**1.1 Premises:** Collectively, the land located at 23623 Bird Road, Tracy, CA 95304 as legally described on Exhibit A attached hereto together with the improvements located thereon, including, without limitation, a commercial building (the “**Building**”) consisting of approximately 10,000 +/- square feet (the “**Improvements**”).

**1.2 Term:** Seven (7) full calendar years commencing on the Effective Date and ending on the last day of the calendar month in which seventh (7<sup>th</sup>) anniversary of the Effective Date occurs (the “**Expiration Date**”), as the same may be extended in accordance with Article 20. Upon the establishment of the Effective Date, the parties shall memorialize the Expiration Date in an Expiration Date memorandum or similar writing signed by both parties.

**1.3 Monthly Base Rent:** One Hundred Twenty-Seven Thousand Dollars (\$127,000.00) per month, which Monthly Base Rent shall be increased in accordance with the provisions of Section 3.2 below.

**1.4 Permitted Use:** General office, warehouse, indoor and outdoor storage, equipment repair and maintenance, and related administrative and support uses.

**1.5 Security Deposit:** \$127,000.00

**1.6 Tenant's Notice Address:** The Premises, Attention: Site Manager with copy to:

Shimmick Construction Company, Inc.

530 Technology Drive

Irvine, CA 92618

Attention: General Counsel

Tenant may change Tenant's Notice Address at any time by giving notice of such change in accordance with Article 27 hereof.

**1.7 Landlord's Notice Address:**

c/o Alterra Property Group

Two Town Place, Suite 220

Bryn Mawr, PA 19010  
Attention: Leasing Administration  
Email:  
With a copy to:  
c/o Alterra Property Group  
Two Town Place, Suite 220  
Bryn Mawr, PA 19010  
Attention: Jeff Pustizzi  
Email:

Landlord may change Landlord's Notice Address at any time by giving notice of such change in accordance with [Article 27](#) hereof.

**1.8 Extension Options:** Two (2) options to extend the Term for a period of five (5) years each in accordance with [Article 20](#) below.

**1.9 Prepaid Rent:** \$2,710,170.00.

**2. DEMISE AND POSSESSION.** Landlord leases to Tenant and Tenant leases from Landlord the Premises described in [Section 1.1](#) above for the Term set forth in [Section 1.2](#) above as the same may be extended in accordance with [Article 20](#) below or terminated earlier in accordance with the terms of this Lease, including but not limited to [Article 37](#) below. The Term shall include each "**Extension Term**" (as defined in [Section 20.1](#) below) that is properly exercised in accordance with said [Article 20](#). Subject to the terms of [Section 10](#), Tenant acknowledges that it is accepting the Premises in their present "as-is" condition, with all faults. Tenant acknowledges that Landlord has made no representations or warranties with regard to the condition of the Premises, the suitability thereof for any particular purpose, or any other matter, except as otherwise expressly set forth herein. Tenant acknowledges that it has been an owner and/or occupant of the Premises prior to the Effective Date hereof and is aware of all existing conditions. The effectiveness of this Lease shall be expressly contingent upon Landlord's acquisition of the Premises from Tenant pursuant to the terms of that certain AIR/CRE STANDARD OFFER, AGREEMENT AND ESCROW INSTRUCTIONS FOR PURCHASE OF REAL ESTATE (Non-Residential) dated as of June 24, 2024 made by and between Alterra IOS Acquisitions III, LLC, and Shimmick Construction Company, Inc.

**3. MONTHLY BASE RENT.**

**3.1 Payment of Monthly Base Rent.** On the first day of every calendar month of the Term, Tenant will pay, without deduction or offset, prior notice or demand, except as otherwise set forth herein, Monthly Base Rent at the place specified as Landlord's Notice Address in [Section 1.7](#) or any other place designated in writing by Landlord. In the event that the Term commences (and/or ends) on a day other than the first day of calendar month, the prorated amount of Monthly Base Rent shall be due on the Effective Date and shall be pro-rated based on the actual number of days in the applicable calendar month.

**3.2 Monthly Base Rent Adjustments.**

3.2.1 Annual Increases. Notwithstanding any contrary provision of this Lease, effective on the first day of the month following each anniversary of the Effective Date (each

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such date being an “**Adjustment Date**”) (unless the Effective Date is the first day of a month, in which case the Adjustment Date will be on each anniversary of the Effective Date), Monthly Base Rent shall be increased by an amount equal to three and one-half percent (3.50%) of the Monthly Base Rent in effect immediately preceding such Adjustment Date.

3.3 Prepaid Rent. Contemporaneously with Tenant’s execution of this Lease, and as a condition to the effectiveness of this Lease, Tenant shall pay to Landlord the Prepaid Rent which shall be held by Landlord to secure Tenant’s performance of its obligations under this Lease. Notwithstanding anything in this Lease to the contrary, provided no Event of Default has occurred hereunder, Landlord shall apply the Prepaid Rent towards the Monthly Base Rent, Real Estate Taxes and Insurance Costs due for the first eighteen (18) full calendar months of the Term (provided that Real Estate Taxes and Insurance Costs shall still be subject to reconciliation as provided in this Lease). Following an Event of Default, Landlord may, from time to time and without prejudice to any other remedy, use all or a part of the Prepaid Rent to perform any obligation Tenant fails to perform hereunder.

4. NET LEASE. This Lease is a net lease, and subject to the provisions of Section 10.1, Tenant is responsible for all costs associated with the Premises during the Term, including, without limitation, operating costs, insurance, property taxes, maintenance expenses, repairs, and other expenses associated with the operation of the Premises subject to Section 6.3 and Article 10 below. In addition, Tenant shall pay, before delinquency, all taxes and assessments, fees and charges that are levied or assessed against Tenant’s business or personal property located in or on the Premises. Except as provided in this Lease, Tenant shall directly pay to the applicable providers and/or governmental authorities all costs, expenses, and charges relating to the operation and maintenance of the Premises, including without limitation, “**Real Estate Taxes**” (unless Landlord elects to pay Real Estate Taxes directly to the taxing authorities and estimate and bill Tenant pursuant to the provisions below) and “**Utility Charges**” (each defined below) and “**Insurance Costs**” (defined in Section 8.5 below) incurred by Landlord in accordance with said Section 8.5. All sums, other than Monthly Base Rent, payable by Tenant to Landlord under this Lease shall be considered “**Additional Rent**” whether or not so stated herein. Monthly Base Rent and Additional Rent shall collectively be known as “**Rent**” or “**rent**”. As used herein, “**Utility Charges**” shall mean all charges, fees and costs of utilities furnished to the Premises, such as water, gas, heat, light, power, sewer, stormwater management, electricity, telephone, intranet, cable television, radio frequency or other services. The term “**Real Estate Taxes**” shall mean (i) any fee, license fee, license tax, business license fee, commercial rental tax, levy charge, assessment, penalty or tax imposed by any taxing authority against the real property and/or any improvements thereon; (ii) any tax on the Landlord’s right to receive, or the receipt of, rent or income from the Premises or against Landlord’s business of leasing

the real property (provided that in no event shall such taxes include Landlord's income taxes); (iii) any tax or charge for fire protection, streets, sidewalks, road maintenance, refuse or other services provided to the property by any governmental agency; and (iv) any charge or fee replacing any tax previously included within the definition of Real Estate Taxes; provided, however, Real Estate Taxes shall exclude: (a) any prorated portion of any Real Estate Taxes allocable to period outside the Term; (b) Landlord's federal state or local income taxes; (c) franchise, gift, transfer, excise, capital stock, estate, succession or inheritance taxes; (d) intentionally deleted; (e) penalties or interest on late payment of Real Estate Taxes unless caused by Tenant. For the purposes of calculating Taxes in any given calendar or taxable year, special assessments shall be paid over the maximum period allowed by law. Real Estate Taxes payable by Tenant shall be prorated to the Term hereof.

At Landlord's option, Landlord may make a good faith estimate of Real Property Taxes to be due by Tenant for any calendar year or part thereof during the Term and elect to pay the taxing

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authorities directly and bill Tenant based on such estimate. In such event, during each calendar year or partial calendar year of the Term, Tenant shall pay to Landlord, in advance on the first day of each calendar month, an amount equal to the estimated Real Property Taxes for such calendar year or part thereof divided by the number of months therein. In such case, from time to time, Landlord may re-estimate in good faith the Real Property Taxes to be due by Tenant, but no more than once per calendar year, and deliver a copy of the re-estimate to Tenant. Thereafter, the monthly installments of Real Property Taxes payable by Tenant shall be appropriately adjusted in accordance with such estimations so that, by the end of the calendar year in question, Tenant shall have paid all of the Real Property Taxes due with respect to the Property for the respective taxable years during the Term hereof. Any amounts paid by Tenant based on such an estimate shall be subject to adjustment and reconciliation as herein provided when actual Real Property Taxes are available for each calendar year and such reconciliation shall be delivered to Tenant in writing within ninety (90) days after Landlord has received the actual Real Property Taxes, whereby Tenant shall be credited for any overpayment of Real Estate Taxes installments against future Additional Rent charges payable hereunder, or Tenant shall reimburse Landlord for any underpayment of Real Estate Taxes installments hereunder within ten (10) days after receipt of the Real Estate Taxes reconciliation.

Notwithstanding the foregoing in this Section 4, Landlord will be solely responsible for any costs and expenses relating to any debt incurred by Landlord that is secured by lien on the Premises and any costs with respect to the Property to the extent they result from Landlord's gross negligence or willful misconduct or that of any **"Landlord Parties"** (defined in Section 6.2.4 below).

**5. SECURITY DEPOSIT.** Contemporaneously with the execution of this Lease, and as a condition to the effectiveness of this Lease, Tenant shall pay to Landlord the Security Deposit which shall be held by Landlord to secure Tenant's performance of its obligations under this Lease. The Security Deposit is not an advance payment of Rent or a measure or limit of Landlord's damages upon a default. Landlord may, from time to time following a default by Tenant and without prejudice to any other remedy, use all or a part of the Security Deposit to perform any obligation Tenant fails to perform hereunder. Following any such application of the Security Deposit, Tenant shall pay to Landlord within ten (10) days of written demand, which shall indicate the amount so applied in order to restore the Security Deposit to its original amount. Provided that Tenant has performed all of its obligations hereunder, Landlord shall, within sixty (60) days after the expiration of the Term and Tenant's surrender of the Leased Premises in compliance with the provisions of this Lease, return to Tenant the portion of the Security Deposit which was not applied to satisfy Tenant's obligations. Notwithstanding the preceding sentence and to the extent permitted by applicable Law, Landlord may retain the Security Deposit until such time after the expiration of the Term that Landlord is able to reconcile and confirm all amounts payable by Tenant under this Lease have been paid in full by Tenant (e.g., Landlord cannot reconcile and confirm Tenant has paid Real Property Taxes for the calendar year in which the Term expires if Landlord has not received a Tax bill from all applicable taxing authorities at the time of such expiration). The Security Deposit may be commingled with other funds, and no interest shall be paid thereon. If Landlord transfers its fee title interest in and to the Leased Premises and the transferee assumes Landlord's obligations under this Lease, then Landlord may assign the Security Deposit to the transferee and Landlord thereafter shall have no further liability for the return of the Security Deposit. The rights and obligations of Landlord and Tenant under this Section 5 are subject to any other requirements and conditions that may be imposed by applicable law during the Term hereof.

**6. USE OF PREMISES.**

6.1 Permitted Use. The Premises may be used and occupied only for the Permitted Use as set forth in Section 1.4 and for no other purpose, without obtaining Landlord's

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prior written consent, which consent may not be unreasonably conditioned, withheld or delayed. Landlord makes no representations concerning the suitability of the Premises for any of the Permitted Use or any other purpose. Tenant shall obtain and pay for all zoning approvals, permits and/or licenses required for Tenant's occupancy and use. Tenant shall not use or permit the use of the Premises in manner that is unlawful, creates damage, waste or nuisance, or causes damage, to neighboring properties. No use shall be made or permitted to be made of the Premises, or acts done, which will cause cancellation of any insurance carried by Landlord with respect to the Premises or which will in any way increase the rate of fire or liability insurance now in force or hereafter to be placed or avoid or suspend policies of fire or liability insurance now in force or hereafter to be



placed on the Building. Use of the Premises is subject to all easements and all covenants, conditions and restrictions of record affecting the Premises.

## **6.2 Hazardous Substances; Compliance with Laws.**

**6.2.1 Reportable Uses Require Consent.** The term "**Hazardous Substance**" as used in this Lease shall mean any substance, material, or waste that is toxic, ignitable, reactive, or corrosive and/or that is or becomes regulated by any governmental authority or agency or that is classified as a "hazardous substance", "hazardous material", "hazardous waste", "toxic substance" or "toxic waste" under any federal, state or local statute, ordinance, rule or regulation relating to industrial hygiene or to the environmental condition ("**Environmental Laws**") on, under or about the Premises, including the soil or groundwater conditions thereof. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil, flammable explosives, asbestos, urea formaldehyde, or any products, by-products or fractions thereof. Tenant shall not engage in any activity in or on the Premises which constitutes "**Reportable Use**" (defined below) of Hazardous Substances without the express prior written consent of Landlord and timely compliance (at Tenant's expense) with all applicable laws, statutes, rules, covenants or restrictions of record, zoning ordinances, building codes, regulations and ordinances, including without limitation Environment Laws (collectively, "**Applicable Requirements**"). "**Reportable Use**" shall mean (i) the installation or use of any above or below ground storage tank at the Premises, (ii) the generation, possession, storage, use, or disposal of Hazardous Substance at the Premises which requires a permit from, or with respect to which a report notice, registration or business plan is required to be filed with any governmental authority, and/or (iii) the presence at the Premises of Hazardous Substance with respect to which any Applicable Requirements requires that notice be given to persons entering or occupying the Premises. Notwithstanding any contrary provision of this Lease, Tenant may use any materials reasonably required to be used in the normal course of the Permitted Use so long as such use is in compliance with all Applicable Requirements.

**6.2.2 Duty to Inform Landlord.** If Tenant knows, or has reasonable cause to believe, that any Hazardous Substance has come to be located in, on, under or about the Premises, other than as permitted pursuant to this Section 6.2, Tenant shall promptly give written notice of such fact to Landlord, and provide Landlord with copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance. Tenant shall provide Landlord copies of all correspondence or other documents it receives from any governmental agency relating to the environmental condition of the Premises, if any, and shall furnish the Landlord copies of all correspondence and other documents it supplies to any governmental agency.

**6.2.3 Tenant Remediation.** Other than as permitted pursuant to the terms of this Lease, Tenant shall not cause or permit any Hazardous Substance to leech or be spilled, discharged or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Tenant's expense, take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the



cleanup of any contamination of, and for the maintenance, security and/or monitoring of, the Premises, that was caused, or pertaining to or involving any Hazardous Substance brought onto the Premises, during the Term. Tenant shall first obtain Landlord's reasonable approval of the proposed removal or remedial action. This provision does not limit the indemnification obligation of Tenant set forth in Section 6.2.4 below.

6.2.4 Tenant Indemnification. Tenant shall, at Tenants sole expense and with counsel reasonably acceptable to Landlord, indemnify, defend and hold harmless Landlord and Landlord's members, managers, employees, partners, affiliates, personal representatives, heirs, executors, licensees, invitees, beneficiaries, agents, trustees, independent contractors, lenders, successors and assigns ("**Landlord Parties**"), from and against any and all losses, claims, liabilities, damages, causes of action (including reasonable attorneys' fees), fines, penalties and out-of-pocket costs or expenses, ~~of whatever kind or nature~~, including reasonable attorneys' fees, fees of environmental consultants and laboratory fees, known or unknown, contingent or otherwise, arising out of or in any way resulting from (i) any presence, use, generation, manufacture, storage, disposal, transportation, discharge or release occurring prior to or during the Term hereof, any Hazardous Substance on or at the Premises, including the soils and groundwaters thereof, except to the extent caused by Landlord or Landlord Parties, and (ii) any activities at the Premises prior to or during the Term of this Lease and arising out of Tenant's failure to comply with any Environmental Laws or other governmental regulations. Tenant's obligations with respect to the matters described in the preceding sentence shall include, but not be limited to, the cost of any required or necessary investigation, removal, remediation or detoxification, clean-up, restoration and/or abatement and the preparation of any closure, remedial action or other required plans, and shall survive the expiration or termination of this Lease.

6.2.5 No Representations. Landlord makes no representations as to the existence or non-existence of any Hazardous Substances on, from or affecting the Premises in any manner which is not in compliance, in all material respects, with all applicable Environmental Laws.

6.2.6 Monitoring. Notwithstanding anything contained herein to the contrary, in the event of a release or expected release by Tenant of Hazardous Substances at the Premises, Tenant shall pay directly to (or reimburse Landlord on the first day of each month during the Term following written notice by Landlord to Tenant accompanied by an invoice therefor and reasonable supporting documentation together with a schedule for reimbursement) for the actual, out of pocket cost incurred by Landlord of any environmental consultants, third party testing companies, operations and maintenance programs related to asbestos containing materials, leak detection equipment, maintenance, contractors or licensed site professionals (or their equivalents) related to monitoring of such release. Notwithstanding the foregoing, it shall be Tenant's sole obligation to engage any contractors required for Tenant to maintain compliance with all applicable laws and regulations due to Tenant's underground or aboveground storage tank operation and ownership or as a result of Tenant's activities at the Premises.

6.2.7 Environmental Insurance. Tenant shall further keep all underground and aboveground storage tanks and systems, if any, insured under a Storage Tank Liability Insurance Policy with limits reasonably acceptable to Landlord and in compliance with all applicable Environmental Laws. Tenant shall carry Pollution Coverage for this Premises in a form and substance reasonably acceptable to Landlord. Landlord and its lender shall be named as additional insureds on Tenant's Storage Tank Liability Insurance Policy and Pollution Coverage Policy. All above referenced policies shall require notice to Landlord at least thirty (30) days prior to termination and Tenant shall provide evidence of all policies upon request by Landlord. Tenant's

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indemnification obligations under the terms of the Lease shall not be limited to coverage under the above referenced insurance policies.

**6.3 Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Tenant shall, at Tenant's sole expense, fully, diligently and in timely manner, comply with all Applicable Requirements and the requirements and guidelines of any applicable insurance underwriter or rating bureau, without regard to whether said requirements are now in effect or become effective after the Effective Date; provided that if the foregoing requires any capital improvement as reasonably determined by Tenant in accordance with generally accepted accounting principles, consistently applied ("GAAP") the need for which is not due to either Tenant's particular use of the Premises (as opposed to general office or warehouse uses) or "**Alterations**" (defined in Section 7 below) made to the Premises by or on behalf of Tenant, then Tenant shall be responsible for making such capital improvement so long as Landlord deposits with Tenant an amount equal to the amortized cost of such capital improvement attributable to the part of the useful life of the capital improvement which falls beyond the expiration of the Term. If any such capital improvement is solely due to Tenant's specific use or such Alterations, then Tenant shall be responsible for making such capital improvement at its sole cost and expense. Otherwise, the cost of such capital improvement shall be amortized with a then-reasonable interest rate or factor over the useful life of such improvement as reasonably determined by Tenant in accordance with GAAP, and Landlord shall deposit such amount with Tenant within fifteen (15) business days after written notice from Tenant that Tenant is prepared to commence (such capital improvement) within thirty (30) days of such notice (provided the notice contains the need for, cost of and amortization schedule for the cost of the capital improvement in accordance with the preceding sentence).

**6.4 Inspection; Compliance.** Upon reasonable advanced written notice to Tenant (except in the case of emergency) and in accordance with Article 11, Landlord shall have the right to enter into the Premises for the purpose of ascertaining Tenant's compliance with the requirements of this Article 6 and Landlord agrees to use commercially reasonable efforts to minimize any disturbance to Tenant's business or occupancy of the Premises in the exercise of such rights.

## **7. ALTERATIONS MECHANICS LIENS.**

**7.1 Permitted Alterations.** Tenant shall not make any alterations, additions or improvements (collectively, "**Alterations**") to the Premises without first obtaining Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed; provided, however that Tenant shall be permitted to make Alterations that (i) do not affect the structural components of the Building and which can be reasonably removed without damage to the Premises, and (ii) cost less than \$25,000.00 in the aggregate in any twelve (12) month period ("**Permitted Alterations**") upon notice to Landlord, but without its consent. In the event Landlord's consent is required hereunder, Landlord shall respond to Tenant's written request to make any such proposed Alterations within fifteen (15) days following receipt of such request, which request must be accompanied with all applicable plans, drawings, specifications and other documentation reasonably required by Landlord to evaluate the same. Regardless of whether Landlord's consent is required, Tenant shall advise Landlord in

writing at least ten (10) days in advance of the date upon which any Alterations will commence in order to allow Landlord sufficient time to post notices of non-responsibility. Landlord may require Tenant to remove any Alterations requiring or made without Landlord's consent at the expiration or sooner termination of the Term; provided, however, that Landlord shall make its election in writing to require removal of Alteration(s) (a) at the time providing its consent to the subject Alteration(s) if Landlord's consent is required, or (b) at any time during the Term that is at least ninety (90) days prior to the Expiration Date for any Alterations made

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without Landlord's consent. If Tenant so requests in writing, Landlord shall respond in writing within fifteen (15) days of receipt such request whether it requires any Permitted Alterations to be removed by Tenant in accordance with this Section 7.1. In the event that Landlord so requires the removal of any Alteration(s) as set forth in this Section, Tenant shall be obligated to remove the same and shall promptly repair any damage to the Premises caused by such removal at its sole cost and expense on or before the Expiration Date or promptly following the earlier termination of this Lease. Title to any such Alterations for which Landlord does not require removal as set forth above shall vest in Landlord upon the Expiration Date or the earlier termination of this Lease. Tenant waives all claims against Landlord for any damage to Tenant resulting from Landlord's retention or disposition of any such Alterations and Tenant shall be liable to Landlord for Landlord's costs of removing and disposing of any Alterations for which Landlord properly required removal if Tenant does not so remove and repair any damage caused by such removal on or before the Expiration Date or promptly following the earlier termination of this Lease. Notwithstanding anything to the contrary contained in this Lease, in no event shall Tenant be required to remove any of the improvements in the Premises existing on the Effective Date. Tenant, at its expense, shall obtain all necessary governmental permits and certificates relative to Tenant's Alterations, and shall furnish copies thereof to Landlord upon request. Prior to commencing any Alterations, Tenant shall deliver to Landlord certificates evidencing that Tenant's contractors and subcontractors have adequate insurance coverage naming Landlord, its lender, and any designated Landlord affiliates supplied to Tenant in writing as additional insureds as their interest may appear. Tenant's Alterations shall be performed in accordance with all applicable laws and requirements of public authorities, and with all applicable requirements of insurance bodies, and in good and workmanlike manner, and only with materials that are new, high quality and free of material defect.

7.2 Installation of Trade, Fixtures Equipment and Machinery. Tenant may install trade fixtures, equipment, and machinery ("**Tenant Fixtures**") in conformance with the ordinances of the applicable city and county, and they may be removed upon termination of this Lease. In the event that Landlord requests the removal of any Tenant Fixture in writing at least ninety (90) days prior to the expiration of the Term, Tenant shall be obligated to remove such Tenant Fixture and shall repair any damage to the Premises caused by the removal of any Tenant Fixture at its sole cost and expense on or before the Expiration Date or promptly following the earlier termination of this Lease. Landlord can elect to retain or dispose of any Trade Fixtures that

Tenant does not remove from the Premises on such expiration or promptly following such earlier termination of the Term. Title to any such Trade Fixtures that Landlord so elects to retain or dispose of shall vest in Landlord. Tenant waives all claims against Landlord for any damage to Tenant resulting from Landlord's retention or disposition of any such Trade Fixtures. Tenant shall be liable to Landlord for Landlord's costs for removing and disposing of any Trade Fixtures for which Landlord properly required removal if Tenant does not so remove and repair any damage caused by such removal on or before the expiration of the Term.

**7.3Mechanics Liens and other Encumbrances.** Tenant will pay all costs for Alterations and shall otherwise keep the Premises free and clear of any liens arising out of any work performed materials furnished or obligations incurred by Tenant. Tenant will cure any mechanic's or other lien placed against the Premises as result of Tenant's (or any of its agents') actions within fifteen (15) days of receipt of notice of lien unless Tenant is in good faith challenging any such mechanic's lien, in which case Tenant shall, within twenty (20) days after receipt of notice of the lien cause such lien to be removed from title by bonding. If Tenant fails to do so, Landlord may pay the amount or take such other action as Landlord deems necessary to remove such claim, lien or encumbrance, without being responsible for investigating the validity thereof. The amount so paid and costs incurred by Landlord shall be deemed Additional Rent under this Lease payable within ten (10) days of written demand, without limitation as to other remedies available to Landlord, and shall

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bear interest at the Default Rate, from the date expended until fully paid. There shall be no construction, supervision or management fees associated with any Alterations or Trade Fixtures; provided, however that Tenant shall reimburse Landlord for any necessary and reasonable third-party, out-of-pocket costs associated with reviewing any plans and specifications for Alterations or Trade Fixtures. Nothing contained in this Lease shall authorize Tenant to do any act which shall subject Landlord's title to the Building or Premises to any such notices, liens or encumbrances whether claimed by operation of statute or other law or express or implied contract. Any claim to a lien or encumbrance upon the Building or Premises arising in connection with any Tenant's Alterations shall be null and void, or at Landlord's option shall attach only against Tenant's interest in the Premises and shall in all respects be subordinate to Landlord's title to the Building and Premises.

## **8. FIRE INSURANCE HAZARDS AND LIABILITY INSURANCE.**

**8.1Property Insurance.** Tenant, at all times during the Term and at Tenant's sole expense, shall maintain the following kinds and amounts of insurance:

a) Insurance against loss or damage by fire and other hazards as now are or subsequently may be covered by an "all risk" policy or policy covering "special" causes of loss, with respect to (i) all leasehold improvements in and to the Premises and (b) Tenant's trade fixtures, equipment, business records and other personal property from time to time situated in the Premises with such endorsements as Landlord or any holder of mortgage or security deed encumbering the Premises (a "**Mortgagee**") may from time to time reasonably require and which are customarily required by landlords or institutional lenders of similarly situated properties;

b) Intentionally deleted;

c) In addition to the insurance described above, Tenant shall maintain such additional insurance as may be reasonably required from time to time by Landlord or any Mortgagee and shall further at all times maintain, to the extent required by applicable law, worker's compensation insurance coverage (including self-insurance) for all persons employed by Tenant (or its agent, operator or affiliate) on the Premises, and Employer's Liability insurance with a limit not less than One Million Dollars (\$1,000,000.00) Bodily Injury Each Accident; One Million Dollars (\$1,000,000.00) Bodily Injury By Disease - Each Person; and One Million Dollars (\$1,000,000.00) Bodily Injury by Disease - Policy Limit.

**8.2 Commercial General Liability Insurance.** Tenant, at all times during the Term and at Tenant's sole expense, shall maintain policy of commercial general liability coverage under policy containing "Comprehensive General Liability Form" of coverage (or comparably worded form of coverage) and the "Broad Form CGL" endorsement (or policy which otherwise incorporates the language of such endorsement), which policy shall include, without limitation, coverage against claims for personal injury, bodily injury, death and property damage liability with respect to the Premises and the operations related thereto, whether on or off the Premises, with limits per location of combined single limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence and a general aggregate limit of at least Three Million Dollars (\$3,000,000.00), and an umbrella liability of at least Ten Million (\$10,000,000.00) per occurrence and Ten Million (\$10,000,000.00) in the aggregate, all insuring against all liability of Tenant and its authorized representatives arising out of or in connection with the Premises. All such policies shall be written to apply to all bodily injury, property damage, personal injury losses and shall be endorsed to include Landlord and its agents, beneficiaries, partners, employees, and any deed of trust holder or mortgagee of Landlord or any ground lessor as additional insureds as their interests may appear.

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Such liability insurance shall be written as primary policies, not excess or contributing with or secondary to any other insurance as may be available to the Landlord or additional insureds, provided that with regards to Tenants general liability policy of insurance including any applicable umbrella policies, any requested additional insured status, primary/non-contributory features or waivers ('special insurance features') shall not extend to any loss or claim resulting from the active negligence or intentional acts by Landlord and its agents and representatives.

**8.3 Automobile Liability Insurance.** At all times during the Term of this Lease, Tenant shall provide and maintain, at its sole expense, commercial automobile liability insurance including owned, non-owned and hired vehicles, applying to the use of any vehicles arising out of the operations of Tenant. Such insurance shall apply to bodily injury and property damage in a combined single limit of not less than One Million Dollars (\$1,000,000.00) per accident.

**8.4 Insurance Requirements.** All insurance required to be provided by Tenant will (1) name Landlord and any Mortgagee whose existence has been disclosed to Tenant in writing as additional insureds and (2) contain an endorsement requiring the insurer to provide at least thirty (30) days prior written notice of cancellation to Landlord and any such Mortgagee before cancellation or change in coverage, scope or limit of any policy with the exception of policy renewal which can be renewed within seven (7) days of expiration. The coverage afforded to Landlord and any such Mortgagee (as an additional insured) must be at least as broad as that afforded to Tenant and may not contain any terms, conditions, exclusions, or limitations applicable to Landlord or such Mortgagee that do not apply to Tenant. Tenant will deliver certificate of insurance to Landlord prior to the execution of this Lease and will provide evidence of renewed insurance coverage no later than seven (7) days prior to the expiration of any policies. All insurance provided for in this Section 8 shall be affected under valid and enforceable policies issued by insurers which are licensed to do business in the state where the Premises is located, and shall have a Best's financial insurance rating of class A-XII or better (or similar rating by such successor insurance rating system). Landlord shall have the right to discuss claims with Tenant's insurance carrier but only with Tenant's counsel and insurance staff present. If Tenant at any time during the term of this Lease shall fail to secure and maintain the foregoing insurance, Landlord shall be permitted to obtain such insurance in Tenant's name or as agent of Tenant, and the cost thereof and all of Landlord's reasonable expenses consequent thereto shall be borne and paid by Tenant, and upon Tenant's failure so to pay the same, Landlord, at its sole option, may pay the same and any payments so made by the Landlord shall be considered as Additional Rent to be added to the Monthly Base Rent next accruing, and shall entitle Landlord to enforce any of the terms, provisions, conditions and covenants herein contained that may be applicable to such Rent.

**8.5 Landlord's Insurance.** Throughout the Term of this Lease, Landlord shall maintain, as a minimum, the following insurance policies: (a) property insurance for the Building's full replacement value (excluding such improvements and personal property required to be insured by Tenant), less a commercially reasonable deductible if Landlord so chooses, and (b) commercial general liability insurance in an amount of not less than \$3,000,000.00. Landlord may, but is not obligated to, maintain such other insurance and additional coverages as it may deem necessary provided the same are consistent with such other insurance and additional coverages as are carried by prudent landlords and owners of "**Comparable Premises**" (as defined in Section 20.2 below) and/or are required by Landlord's lender. The cost of the insurance carried by Landlord with respect to the Premises (the "**Insurance Costs**") shall be payable by Tenant monthly as Additional Rent. The foregoing insurance policies and any other insurance carried by Landlord shall be for the sole benefit of Landlord and under Landlord's sole control, and Tenant shall have no right or claim to any proceeds thereof or any other rights thereunder. Any insurance required to be maintained by Landlord may be taken out under a blanket insurance policy or policies covering other buildings,



property or insureds in addition to the Premises and Landlord. In such event, the costs of any such blanket insurance policy or policies shall be reasonably and proportionately allocated to the Premises and the other properties covered by such policy or policies as reasonably determined by Landlord in good faith. Notwithstanding anything in this Lease to the contrary and to the extent permitted under applicable law, Landlord's indemnity obligations under this Lease shall be limited to the extent any such claim is insured against under the terms of any insurance policy maintained by Landlord (or is required to be maintained by Landlord under the terms of this Lease) except and to the extent of the gross negligence of or willful misconduct of Landlord or any Landlord Parties for which Landlord shall be liable. Tenant shall pay to Landlord the Insurance Costs. Landlord may make a good faith estimate of Insurance Costs to be due by Tenant for any calendar year during the Term. For each calendar year or partial calendar year of the Term, if applicable, Tenant shall pay to Landlord, in advance on the first day of each calendar month, an amount equal to Tenant's estimated Insurance Costs for such calendar year or part thereof divided by the number of months therein. From time to time, but no more than once per calendar year, Landlord may reasonably adjust its estimate of the annual Insurance Costs to be due by Tenant for the calendar year and deliver a copy of same to Tenant. Thereafter, the monthly installments of Insurance Costs payable by Tenant shall be appropriately adjusted in accordance with such estimate for the remainder of such calendar year. Any amounts paid by Tenant hereunder for Insurance Costs based on such an estimate shall be subject to reconciliation to be performed by Landlord no later than ninety (90) days following the end of the calendar year, and any overpayment by Tenant of Insurance Costs against actual Insurance Costs incurred for the Premises for such calendar year shall be credited against and applied to future Rent becoming due and any underpayments by Tenant shall be payable by Tenant within ten (10) days after receipt of the reconciliation statement showing such underpayment.

**8.6 Waiver.** Each party waives and releases any and all rights, whether arising in contract or tort, against the other party for the loss of or damage to such party or its property or property of others under its control, to the extent such loss or damage is insured against under an insurance policy at the time of such loss or damage or for loss or damage to property of type that would have been covered by any insurance policy required to be maintained hereunder. The waivers in this Section 8.6 shall be in addition to any other waivers or releases contained in this Lease, and each party shall have its applicable insurance policies issued in such form as to waive any right of subrogation that might otherwise exist.

## **9. INDEMNIFICATION.**

**9.1 Indemnification of Landlord.** To the fullest extent permitted by applicable law, Tenant shall, at Tenant's sole expense and with counsel reasonably acceptable to Landlord, indemnify to the extent of its negligence, defend, and hold harmless Landlord Parties from and against all claims, losses, costs, damage, expenses, liabilities, liens, actions, causes of action (whether in tort or contract, law or equity, or otherwise), charges, assessments, fines, and penalties of any kind (including consultant and expert expenses, court costs and attorney fees actually incurred) ("**Claims**") from any cause, arising out of or relating to (a) the act or omission of Tenant or its agents, employees, invitees, occupants or servants, or any person claiming by, through or under Tenant, in or about the Premises, or related to their use of the Premises, and (b) any breach, violation or non-performance by Tenant of any term, covenant or provision of this Lease or any law, ordinance or governmental requirement applicable to the Premises, except, in each case, to the extent caused by the gross negligence or willful misconduct of Landlord or any Landlord Parties; provided, however, Tenant shall not be responsible to Landlord for punitive damages, lost profits or revenues, diminution in value of Landlord's business, or loss of use of the Premises. The obligations of this Section 9.1 shall survive the expiration or earlier termination of this Lease.

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**9.2 Indemnification of Tenant.** To the fullest extent permitted by applicable law, Landlord shall, at Landlord's sole expense and with counsel reasonably acceptable to Tenant, indemnify defend, and hold harmless Tenant and Tenant's shareholders, directors, officers, members, employees, partners, affiliates, personal representatives, heirs, executors, licensees, invitees, beneficiaries, agents, trustees, independent contractors, lenders, successors and assigns ("**Tenant Parties**") from and against all Claims arising out of the gross negligence or willful misconduct of Landlord or any Landlord Parties; provided, however, Landlord shall not be responsible to Tenant for punitive damages, lost profits or revenues, diminution in value of Tenant's business, or loss of use of the Premises. The obligations of this Section 9.2 shall survive the expiration or earlier termination of this Lease.

**10. REPAIRS.**

**Repair and Maintenance of Premises.** Tenant shall maintain (including, without limitation, repairs and replacements) all portions of the Premises (including, without limitation, the Building, the parking lot, storage yard, landscaping and the surrounding grounds of the Premises) in condition that is at least as good as the condition of the Premises as of the Effective Date, reasonable wear and tear and damage by casualty (which is governed by Article 13 below) or condemnation (which is governed by Article 19 below) expressly excepted, and Tenant shall operate, maintain, inspect, service, repair or replace as necessary the Premises and each of the various portions and components thereof in good order and repair. Throughout the Term, the repair and maintenance of the Premises and any replacements thereto, including the payment of utilities and other expenses, shall be at the sole cost and expense of Tenant and shall be performed in compliance with Applicable Requirements in accordance with standards applicable to prudent operators in the industry. The standard for comparison and need of repair of items for which Tenant is responsible will be the condition of the Premises as of the Effective Date, reasonable wear and tear and damage by casualty (which is governed by Article 13 below) or condemnation (which is governed by Article 19 below) expressly excepted, and all repairs or replacements made by Tenant will be made by licensed contractors reasonably approved by Landlord. Tenant shall enter into annual, written maintenance contracts with competent, licensed contractors reasonably approved or designated by Landlord. Tenant shall require that such contractors provide: (i) inspection, cleaning and testing at least semi-annually for HVAC units and semi-annually for other systems and equipment (or more frequently if required by applicable law or if reasonably required by Landlord), (ii) any servicing, maintenance, repairs and replacements of filters, belts or other routine maintenance items determined to be necessary or appropriate by the manufacturers' warranty, service manual or technical bulletins, or otherwise required to ensure proper and efficient operation, (iii) a detailed record of all services performed, and (iv) an annual service report at the end of each calendar year (Tenant shall provide Landlord with a copy of such annual reports promptly upon Tenant's receipt thereof). Not later than thirty (30) days after the Lease Commencement Date and annually thereafter upon request, Tenant shall provide Landlord with a copy of all maintenance contracts



required hereunder, and written evidence reasonably satisfactory to Landlord that the annual fees therefor have been paid. Such maintenance contracts represent part of Tenant's obligations under this Section, and shall not be deemed to limit Tenant's general responsibility for routine maintenance in order to keep any HVAC equipment and other systems and equipment hereunder in good working order, repair and condition. To the extent that any part of the Building or the HVAC or any other systems serving the Building are beyond repair, Tenant shall be responsible for replacing such part of the Building and systems, at its sole cost and expense.

#### 10.1      Failure to Make Repairs.

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10.1.1 Tenant Failure. If Tenant fails to make any repairs that it is required to make pursuant to the terms of this Lease or any Applicable Requirement and such failure continues for thirty (30) days after receipt of written notice from Landlord (or if the nature of the default is such that it cannot be cured within the thirty (30) day period, Tenant fails to begin to cure the default within that period or having begun to cure fails to pursue it diligently within one hundred twenty (120) days total), then Tenant shall be in breach of this Lease. If Tenant fails to comply with the preceding sentence, in addition to any other rights it may have, Landlord may (but will not be required to) make the necessary repairs or replacements. If Landlord makes such repairs or replacements, all amounts paid by Landlord in doing so will be payable by Tenant to Landlord within ten (10) days of written invoice together with interest at an annual rate equal to the lesser of (a) the average prime rate of interest published in the Wall Street Journal plus three percent (3%) or (b) the maximum interest rate permitted under applicable laws (the "**Default Rate**"), computed from the date when such amounts were due and payable, compounded monthly, until paid.

10.2 Damage. Landlord shall not be liable for any damage done or occasioned by or from the electrical system, heating or air conditioning system, and plumbing and sewer systems in, upon or about the Premises or the building nor for damages occasioned by water being upon or coming through the roof, walls, windows, doors or otherwise, and Landlord shall not be liable for any damage to Tenant's improvements, fixtures, inventory or merchandise resulting from fire or other insurable hazards, regardless of the cause thereof, and Tenant hereby releases Landlord from all liability for such damage, except, in all cases, to the extent caused by the gross negligence or willful misconduct of Landlord or any Landlord Parties.

11. ENTRY BY LANDLORD. Tenant will permit Landlord and Landlord's agents to enter the Premises at all reasonable times with twenty-four (24) hours prior notice (except in an emergency, in which event no notice shall be necessary) for the purpose of (i) inspecting the same, or (ii) maintaining the Premises, or (iii) making repairs, alterations or additions to any portion of the Premises, including the erection and maintenance of such scaffolding, canopies, fences and props as may be required, or (iv) posting notices of non-responsibility for Alterations or repairs, or (v) placing any "for rent" signs and showing the Premises to prospective tenants and their agents (at times reasonably acceptable to Tenant) during the last twelve (12) months of the Term, or (vi) showing the Premises to prospective purchasers, lenders or their agents, or placing upon the Premises any

usual or ordinary “for sale” signs, all without any rebate of rents and without any liability to Tenant for any loss of occupation or quiet enjoyment of the Premises thereby occasioned. In exercising any of its rights under this Article 11, Landlord shall use commercially reasonable efforts to minimize any disruption to Tenant’s business operations at or occupancy of the Premises.

**12.ABANDONMENT.** Tenant shall not abandon the Premises. If Tenant abandons the Premises for more than ten (10) consecutive business days, it shall be an “**Event of Default**” (as defined in Section 15.1 below). If Landlord elects to terminate this Lease in accordance with Article 16 below as result of such Event of Default, any personal property belonging to Tenant left in or about the Premises will, at the option of Landlord be deemed abandoned, and may be disposed of by Landlord, at Tenant’s expense, in the manner provided for by the laws of the state in which the Premises are located. Notwithstanding the foregoing, Tenant’s vacating of the Premises shall not constitute an Event of Default if, (i) Tenant maintains a de minimis amount of Tenant’s equipment at the Premises, and (ii) prior to vacating the Premises, Tenant has made arrangements reasonably acceptable to Landlord to (a) ensure that Tenant’s insurance for the Premises will not be voided or cancelled with respect to the Premises as a result of such vacancy, (b) ensure that the Premises are secured and not subject to vandalism, (c) ensure that the Premises will be properly maintained after such vacation, including, but not limited to, keeping the HVAC systems maintenance contracts required by this Lease in full force and effect and maintaining the utility services. Additionally,

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Tenant shall inspect the Premises at least once each month and report monthly in writing to Landlord on the condition of the Premises.

**13. DAMAGE OR DESTRUCTION.**

**13.1 Obligation to Repair.** If any improvements, including the Building and any other structures, located on the Premises are damaged or destroyed during the Term or any renewal or extension thereof, Tenant shall promptly provide Landlord with written notice thereof and the damage shall be repaired as follows: Subject to subparagraphs 13.2 or 13.3 of this Section 13, if the Premises are damaged by fire or other casualty, the damages shall be promptly repaired by Landlord with reasonable diligence, subject to any delays caused by events beyond Landlord’s control by and at the expense of Landlord to the extent of available insurance proceeds to the condition existing on the date of casualty and, until such repairs shall be made, the Monthly Base Rent for the part of the Premises which is not useable by Tenant shall be abated in an equitable manner until the entirety of the Premises is useable by Tenant to the extent Landlord receives rent loss insurance proceeds. All such repairs shall be conducted in a manner as to minimize the disruption to Tenant’s use and enjoyment of the remainder of the Premises. Tenant acknowledges notice: (i) that Landlord shall not obtain insurance of any kind on Tenant’s furniture or furnishings, equipment, fixtures, and Alterations, and that it is Tenant’s obligation to obtain such insurance at Tenant’s sole cost and expense; and (ii) that Landlord shall not be obligated to repair any damage thereto or replace the same. Notwithstanding anything herein, Landlord’s

obligations for repairs and abatements of Monthly Base Rent shall not be applicable to the extent Tenant or any other occupant of the Premises, or any of their employees, agents, invitees or contractors cause the damage. Furthermore, in connection with any casualty claim for the Premises and Landlord's repairs performed under this [Section 13.1](#), Tenant shall promptly remit to Landlord the amount of any deductible, exclusion or coverage limit in connection with respect to Landlord's property insurance for the Premises procured under [Section 8.5](#) hereof.

[13.2 Termination of Lease for Certain Losses](#). Tenant or Landlord shall have the right to terminate this Lease under either of the following circumstances: (i) if fifty percent (50%) or more of the Premises are damaged or destroyed from any cause whatsoever, insured or uninsured, and the laws then in existence do not permit the repair or restoration of the Premises within the time period provided for in this Article; or (ii) if the Premises are destroyed from any cause whatsoever, insured or uninsured, during the last year of the Term (provided that Tenant has not elected before the date of damage or destruction to extend the Term in accordance with [Article 20](#)) or during the last year of an "**Extension Term**" (as defined in [Section 20](#)), if any, of this Lease, and the damage is such that it materially affects the ability of the Tenant to conduct its business in the ordinary course; or (iii) if such damage is reasonably estimated by Landlord to take longer than six (6) months to repair, in each case, by either party giving written notice of termination to the other party not later than thirty (30) days after occurrence of the event giving rise to the right to terminate under this [Section 13.2](#) or thirty (30) days following Landlord's delivery of its reasonable estimate of the repair period (which Landlord shall use commercially reasonable efforts to provide to Tenant in writing within thirty (30) days of the casualty) in the case of clause (iii) above, and termination shall be effective as of the date of the notice of termination. In the event of such termination, Tenant shall not be entitled to collect any insurance proceeds attributable to insurance policies covering the Premises or Improvements, except those proceeds attributable to Tenant's personal property and Tenant Fixtures, and Tenant shall pay to Landlord the amount of any deductible amount under the foregoing insurance policies, as well as assign any such insurance proceeds to Landlord. Monthly Base Rent, taxes, assessments and all other sums payable by Tenant to Landlord under this Lease (collectively, "**Rent**") shall be prorated to and cease as of the termination date. If any taxes,

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assessments, or rent has been paid in advance by Tenant, Landlord shall refund such amounts to Tenant for the unexpired period for which the payment has been made within thirty (30) days of the termination date.

[13.3 Termination of Lease by Landlord](#). Notwithstanding the provisions of this Section to the contrary, Landlord may elect to terminate this Lease, if the Premises is damaged by fire or other casualty or cause such that: (a) more than fifty percent (50%) of the Premises is affected by the damage, (b) the damage occurs less than one year prior to the end of the Term of this Lease, (c) any lender requires that the insurance proceeds or any portion thereof be applied to the mortgage debt or the damage is not fully covered by insurance policies inuring to the Landlord's benefit, or (d) in Landlord's reasonable opinion, the cost of the

repairs, alterations, restoration or improvement work would exceed twenty-five (25%) of the replacement value of the Premises or of the portion thereof owned by Landlord (whether or not the Premises are affected). In any such case, Landlord may terminate this Lease by notice to Tenant within one hundred twenty (120) days after the date of damage (such termination notice to include a termination date providing at least thirty (30) days for Tenant to vacate the Premises). Tenant agrees that Landlord's obligation to restore, and the abatement of Monthly Base Rent provided herein, shall be Tenant's sole recourse in the event of such damage, and waives any other rights Tenant may have under any applicable Law to terminate this Lease by reason of damage to the Premises or Building.

#### **14. ASSIGNMENT, SUBLETTING AND TRANSFERS OF OWNERSHIP.**

**14.1 Landlord's Consent Required.** Except for "**Permitted Transfers**" (defined below), Tenant will not assign, sell, mortgage, encumber, convey or otherwise transfer all or any part of Tenant's leasehold estate, or permit the Premises to be occupied by anyone other than Tenant and Tenant's employees or sublet the Premises or any portion thereof (each, a "**Transfer**") without Landlord's prior written consent, which consent may not be unreasonably withheld, conditioned, or delayed with respect to any assignment of this Lease or any subletting of the Premises or any portion thereof. Landlord's consent shall not be considered unreasonably withheld (by way of example and not limitation) if (i) the proposed subtenant's or assignee's creditworthiness does not meet the same criteria Landlord uses to select tenants for the Premises, (ii) the proposed subtenant or assignee does not have a net worth which is equal to or greater than Tenant's net worth as of the Effective Date, or (iii) the proposed subtenant's or assignee's business is not suitable for the Premises as determined by Landlord in its reasonable determination. Tenant must supply Landlord with any and all documents reasonably requested by Landlord to evaluate any proposed Transfer at least thirty (30) days in advance of Tenant's proposed Transfer date. In the case of an assignment of all of Tenant's rights and obligations under this Lease to other than a "**Permitted Transferee**" (defined below), Landlord's consent shall not be effective until Landlord has received written instrument in which the assignee has assumed and agreed to perform all of Tenant's obligations under this Lease. Notwithstanding anything to the contrary contained in this Lease, no Transfer of this Lease shall release Tenant from its obligations under the Lease. The transfer, assignment or hypothecation of any stock, partnership interest, membership interest or other equity interest in Tenant, in excess of fifty percent (50%) in the aggregate, shall be deemed a Transfer hereunder.

**14.2 No Waiver.** Any consent to any Transfer which may be given by Landlord or the acceptance of any rent, charges or other consideration by Landlord from Tenant or any third party, will not constitute waiver by Landlord of the provisions of this Lease or release of Tenant from the full performance by it of the covenants stated herein; and any consent given by Landlord to any Transfer will not relieve Tenant (or any transferee of Tenant) from the above requirements for obtaining the written consent of Landlord to any subsequent Transfer.

**14.3No Release.** If Event of Default by Tenant hereunder occurs while the Premises or any part of the Premises are assigned, sublet or otherwise Transferred, Landlord, in addition to any other remedies provided for within this Lease or by law, may at its option collect directly from the transferee all rent or other consideration becoming due to Tenant under the Transfer and apply these monies against any sums due to Landlord by Tenant; Tenant authorizes and directs any transferee to make payments of rent or other consideration directly to Landlord upon receipt of written notice from Landlord. No direct collection by Landlord from any transferee should be construed to constitute novation or release of Tenant or any guarantor of Tenant from the further performance of its obligations in connection with this Lease.

**14.4Permitted Transfers.** Notwithstanding the foregoing provisions of this Article 14, the originally named Tenant hereunder and any “**Permitted Transferee**” (defined below) of such originally named Tenant shall be entitled to assign its entire interest in the Lease or sublet all or portion of the Premises to a Permitted Transferee upon notice to and providing Landlord with reasonable evidence that such party is a Permitted Transferee, but without the prior written consent of Landlord. For purposes of this Lease, a “**Permitted Transferee**” means: (i) any subsidiary of Tenant that is controlled by Tenant, (ii) any individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, or other entity of whatever nature (“**Person**”) that controls Tenant (“**Parent**”), (iii) any subsidiary of Parent or affiliate of Parent, (iv) any Person with which Tenant may merge or be consolidated, or (v) any Person that acquires all or substantially all of the assets of Tenant wherever located (as opposed to any Person that acquires all or substantially all of the assets of Tenant at the Premises only); provided that such Permitted Transferee agrees in writing to assume all of Tenant’s obligations under the Lease. In the event of any Permitted Transfer, Tenant shall remain fully liable for all obligations and liabilities of the “**Tenant**” under this Lease; provided, however, if Tenant no longer exists because of a merger, consolidation or acquisition, the surviving or acquiring entity shall expressly assume in writing the obligations of Tenant hereunder. For purposes of this Lease, a “**Permitted Transfer**” means a transfer to a Permitted Transferee that complies with the provisions of this Section 14.4, the term “**control**” means the possession, directly or indirectly, of the power to (a) vote majority of the securities having ordinary voting power for the election of directors (or comparable positions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise, and the term “**affiliate**” means, with respect to any Person, any other Person, which directly or indirectly controls, is controlled by or is under common control with such Person, and, if such first Person is an individual, any member of the immediate family (including present or former spouse, ancestor or descendant (whether by blood or adoption)) of such individual and any trust whose principal beneficiary is such individual or one or more members of such individual’s immediate family, and any Person who is controlled by any such member or trust. No Permitted Transfer shall constitute an express or implied consent to any other Transfer of all or any part of Tenant’s leasehold estate, or the occupation of the Premises by anyone other than Tenant or Tenant’s employees.

**14.5Transfer Premium.** For any Transfer hereunder other than a Permitted Transfer, Tenant agrees to pay Landlord fifty percent (50%) of any “**net profit**” (as defined below) as and when received by Tenant from such Transfer. For the purposes hereof, “**net profit**” shall mean all rent, additional rent or other consideration payable by the transferee in connection with such Transfer in excess of the Rent payable by Tenant under this Lease during the term of the transfer (on a per square foot basis if less than all of the Premises is transferred), after deducting the reasonable and customary expenses incurred by Tenant in connection with such Transfer including, without limitation, any tenant improvements or tenant improvement allowances provided by Tenant (or free rent in lieu thereof), brokerage commissions and legal fees.

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14.6Transfers by Landlord. Subject to Articles 23, 24 and 31 herein, Landlord reserves the right to assign, sell, mortgage, encumber, convey or otherwise transfer (including by change of control, whether direct or indirect, of Landlord) all or any part of its interest in and to the Premises or the Lease without the prior consent of Tenant. Landlord shall provide Tenant with written notice of such transfer. If Landlord sells or transfers all or any portion of its interest in and to the Premises, Landlord, on consummation of the sale or transfer, shall be released from any liability thereafter accruing under this Lease so long as Landlord also transfers any sums held by Landlord for the benefit of Tenant to the new owner or credits same to new owner and such new owner expressly assumes liability to Tenant therefor.

**15. EVENT OF DEFAULT.**

15.1Event of Default. The term “**Event of Default**” shall mean the occurrence of any of the following occurrences:

15.1.1Tenant fails to make any monetary payment herein specified to be paid by Tenant when due, where such failure continues for period of five (5) business days following written notice to Tenant, provided that Landlord shall not be required to provided such notice to Tenant more than once in any twelve (12) month period for a such a monetary failure to constitute an Event of Default hereunder; the second nonpayment in any twelve (12) month period constituting an Event of Default without the requirement of notice; or

15.1.2Tenant fails to observe or perform any of its other material covenants, agreements or obligations hereunder and such failure is not cured within thirty (30) days after Landlord’s written notice to Tenant of such failure, subject to events of Force Majeure; *provided, however*, that if the nature of Tenant’s obligation is such that more than thirty (30) days are required for performance, then Tenant will not be in breach if Tenant commences performance within such 30-day period and thereafter diligently prosecutes the same to completion, not to exceed an additional ninety (90) days, subject to events Force Majeure; or

15.1.3Tenant, Tenant’s assignee, guarantor, or transferee under Permitted Transfer of the Premises becomes insolvent, makes transfer in fraud of its creditors makes transfer for the benefit of its creditors is the subject of bankruptcy petition is adjudged bankrupt or insolvent in proceedings filed against Tenant, or Tenant’s assignee, guarantor, or transferee under Permitted Transfer, receiver, trustee, or custodian is appointed for all or substantially all of Tenant’s or Tenant’s assignee’s, guarantor’s, or transferee’s under Permitted Transfer assets, or such entity or person fails to pay its debts as they become due, convenes meeting of all or portion of its creditors, or performs any acts of bankruptcy or insolvency, including the selling of its assets to pay creditors, and such case has not been dismissed within sixty (60) days of filing thereof; or

15.1.4Tenant abandons the Premises in violation in Article 12 above; or

15.1.5A Transfer occurs in violation of Article 14 above; or

15.1.6Failure of Tenant to maintain any insurance required to be maintained by Tenant hereunder, and such failure continues for ten (10) days after receipt of written notice from Landlord; or



15.1.7The assignment, mortgaging, pledging or encumbering of this Lease or the subletting of all or any portion of the Premises in violation of the terms herein, or failure

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to execute and deliver any estoppel certificate or subordination agreement within the time provided above.

**16. REMEDIES OF LANDLORD.**

16.1No Waiver. Nothing contained herein shall constitute waiver of Landlord's right to recover damages by reason of Landlord's efforts to mitigate the damage resulting from an Event of Default by Tenant; nor shall anything in this Article adversely affect Landlord's right, as in this Lease elsewhere provided, to indemnification against liability for injury or damages to persons or property occurring prior to termination of this Lease.

16.2Notice and Cure Periods. All notices and cure periods provided herein shall be in lieu of and run concurrently with any notices and cure periods required or provided by law.

16.3Rights of Landlord in the Event of Breach. In addition to any other rights or remedies provided for herein or at law or in equity, Landlord, at its sole option, shall have any one or more of the following rights following an Event of Default by Tenant:

16.3.1The right to declare the Term ended and reenter the Premises and take possession thereof, and to terminate all of the rights of Tenant in and to the Premises. In such event, the term hereof shall cease and expire and become absolutely void on the date specified in such notice, to be not less than five (5) days after the date of such notice; and thereupon, and at the expiration of the time limited in such notice, this Lease and the term of this Lease, as well as all of the right, title and interest of the Tenant hereunder, shall wholly cease and expire and become void in the same manner and with the same force and effect (except as to Tenant's liability) as if the date fixed in such notice were the date herein specified for expiration of the term of this Lease. Thereupon, Tenant shall immediately quit and surrender to Landlord the Premises, and Landlord may enter into and repossess the Premises by summary proceedings, detainer, ejectment or otherwise, and remove all occupants thereof and, at Landlord's option, any property thereon without being liable to indictment, prosecution or damage therefor. For the avoidance of doubt, Landlord's removal of any property thereon does not mean Landlord shall seize or take title to any personal property of the Tenant on the Premises; or

16.3.2The right, without declaring the Term ended, to reenter the Premises and to occupy the same, or any portion thereof, for and on account of the Tenant as hereinafter provided, and Tenant shall be liable for and pay to Landlord within ten (10) business days of a written invoice all such reasonable expenses as Landlord may have paid, assumed or incurred in recovering possession of the Premises, including costs, expenses, reasonable attorney's fees and expenditures placing the same in good order, or preparing or altering the same for reletting, and all other expenses, commissions and charges paid by the Landlord in connection with reletting the Premises. Any such reletting may be for the remainder of the Term or for longer or

shorter period. Such reletting shall be for such rent and on such other terms and conditions as Landlord, in its sole discretion, deems appropriate. Landlord may execute any lease made pursuant to the terms hereof in the Landlord's own name or assume Tenant's interest in any existing subleases to any tenant of the Premises, as Landlord may see fit, and Tenant shall have no right or authority whatsoever to collect any rent from such tenants, subtenants, of the Premises. In any case, and whether or not the Premises or any part thereof is relet, Tenant, until the end of the Term shall be liable to Landlord for an amount equal to the amount due as rent hereunder, less net proceeds, if any of any reletting effected for the account of Tenant. Landlord reserves the right to bring such actions for the recovery of any deficits remaining unpaid by the Tenant to the Landlord hereunder as Landlord may deem advisable from

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time to time without being obligated to await the end of the Term. Commencement of maintenance of one or more actions by the Landlord in this connection shall not bar the Landlord from bringing any subsequent actions for further accruals. In no event shall Tenant be entitled to any excess rent received by Landlord over and above that which Tenant is obligated to pay hereunder. Landlord shall not be excused from acting reasonably in seeking to mitigate its damages. Landlord's rejection of a prospective replacement tenant based on the tenant's proposed use of the Premises, an offer of rentals below the fair market rates for the Comparable Premises in metropolitan region in which the Premises is situated, or containing terms less favorable than those which are common in said region, shall not give rise to a claim by Tenant that Landlord failed to mitigate Landlord's damages. Landlord shall not be required to expend any material capital amount to secure a new tenant and may seek to relet the Premises in its then-current "as is" condition; or

16.3.3The right, even though it may have relet all or any portion of the Premises in accordance with the provisions of Section 16.3.2 above, to thereafter at any time elect to terminate this Lease for such previous Event of Default by Tenant, and to terminate all the rights of Tenant in and to the Premises; or

16.3.4The right to cause a receiver to be appointed to collect rent. Neither the filing of petition for the appointment of a receiver nor the appointment itself shall constitute an election by Landlord to terminate the Lease; or

16.3.5The right to declare that the whole Rent for the balance of the Term of this Lease or any part thereof shall become due and payable as if by the terms of this Lease the same were payable in advance on the date of such default with such amount discounted to present value; or

16.3.6The right to proceed to distrain, collect or bring action for the whole Rent or such part thereof as aforesaid, as being Rent in arrears; or may enter judgment thereof in an amicable action as herein elsewhere provided for in case of Rent in arrears; or may file a proof of claim in any bankruptcy or insolvency proceeding for such Rent; or Landlord may institute any other proceedings, whether similar to the foregoing or not, to enforce payment thereof.



16.3.7Any notice given by Landlord pursuant to Section 15 shall be in lieu of, and not in addition to, any notice required by Section 1161 of the California Code of Civil Procedure or superseding statute.

16.3.8Without limitation of or by the foregoing, Landlord shall have the right to exercise all or any of the rights and remedies afforded Landlord by California law including, but not limited to, the remedies provided under California Civil Code Sections 1951.2. Pursuant to California Civil Code Section 1951.2, the damages Landlord may recover against Tenant include, but are not limited to, the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award, exceeds the amount of such rental loss for the same period that the Tenant proves could be reasonably avoided.

The foregoing remedies are not exclusive; they are cumulative, in addition to any remedies now or later allowed by law, to any equitable remedies Landlord may have, and to any remedies Landlord may have under bankruptcy laws or laws affecting creditors' rights generally.

In the event of termination of this Lease, prior to the date of expiration herein originally fixed, whether by reason of service of a notice as provided herein terminating this Lease, or by reason of entry or re-entry, summary proceedings, ejectment or other operation of law, Tenant hereby waives all right to recover or regain possession of the Premises, to save forfeiture by payment of

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Rent due or by other performance of the conditions, terms or provisions hereof, if such termination occurred by reason of any failure in performance hereof. Without limitation of or by the foregoing, Tenant waives all right to reinstate or redeem this Lease, notwithstanding any provisions of any statute, law or decision now or hereafter in force or effect. Tenant further waives all right to any second or further trial in summary proceedings, ejectment or in any other action provided by any statute or decision now or hereafter in force of effect.

In the event of a breach or threatened breach by Tenant of any of the agreements, conditions, covenants or terms hereof, Landlord shall have the right of injunction to restrain the same, and the right to invoke any remedy allowed by law or in equity, whether or not other remedies, indemnity or reimbursements are herein provided. The rights and remedies given to Landlord in this Lease are distinct, separate and cumulative remedies, and no one of them, whether or not exercised by Landlord, shall be deemed to be the exclusion of any of the others.

16.4Removal of Persons and Property from the Premises. Pursuant to the rights of re-entry provided above, Landlord may remove all persons from the Premises and may, but shall not be obligated to, remove all property therefrom, and may but shall not be obligated to, enforce any rights Landlord may have against said property or store the same in any public or private warehouse or elsewhere at the cost and for the account of Tenant or the owner or owners thereof. Tenant agrees to hold Landlord free and harmless from any liability whatsoever for the removal and/or storage of any such property, whether of Tenant or any third party

whomsoever, unless such damage was caused by Landlord's gross negligence or willful misconduct or that of any Landlord Parties. Such action by the Landlord shall not be deemed to have terminated this Lease.

16.5 Termination of Lease; Recovery. If an Event of Default by Tenant occurs and Tenant abandons the Premises before the end of the Term, or if Tenant's right of possession is terminated by Landlord following an Event of Default by Tenant, then this Lease may be terminated by Landlord at its option. On such termination, Landlord may recover from Tenant, in addition to all of the remedies permitted at law or equity:

16.5.1 The "**value at the time of the award**" of the unpaid rent which had been earned at the time this Lease is terminated;

16.5.2 The value at the time of the award of the amount by which the unpaid rent which would have been earned after the date of termination for the balance of the Term exceeds the amount of lost rents that Tenant proves could have been reasonably avoided;

16.5.3 Any other amount, including all court costs reasonably necessary to fully compensate Landlord for all detriment proximately caused by Tenant's Breach of its obligations under this Lease, or which in the ordinary course of events would be likely to result therefrom (including, without limitation, the cost of recovering possession of the Premises, expenses of reletting including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and customary real estate commissions actually paid by Landlord and applicable to the balance of the Term); and

16.5.4 Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

As used in Sections 16.5.1 and 16.5.2 above, the "**value at the time of the award**" shall be computed by allowing interest at the Default Rate for unpaid and due amounts at the time this Lease is terminated in Section 16.5.1 above, and discounting to the present value using the average prime

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rate of interest published in the Wall Street Journal for future amounts that (a) become due and payable because of such termination and (b) the rental loss that Tenant proves could have been reasonably avoided, in each case, in Section 16.5.2 above.

16.6 No Waiver. Landlord shall not be deemed to have waived any term, covenant or condition unless Landlord gives Tenant written notice of such waiver. The waiver by Landlord of any breach or default of Tenant hereunder shall not be waiver of any preceding or subsequent breach of the same or any other term. Acceptance of any rent payment shall not be construed to be waiver of the Landlord of any preceding breach of the Tenant.

16.7 Interest on Past Due Amounts. All past due amounts owed by Tenant under the terms of this Lease shall bear interest at the Default Rate. Additionally, in the event that any payment of Rent or any other payment required to be made by Tenant hereunder shall not be paid within five (5) business days of when due, Landlord may assess a late payment charge of two and one-half percent (2-1/2 %) percent of the amount due.

Notwithstanding anything to the contrary contained in this Section 16.7, Landlord agrees that it shall not charge Tenant any late charge or interest on the first two (2) late payments of Rent during the Term of this Lease, provided that Landlord receives such overdue payment within five (5) business days after Landlord gives Tenant written notice that such payment is overdue (provided that after such first notice and cure period, Tenant shall be charged a late charge and interest will accrue on subsequent late payments without the requirement of notice).

16.8 Tenant's Remedies. Upon the occurrence of any default by Landlord hereunder which is not cured within thirty (30) days after written notice thereof from Tenant to Landlord; provided, however, that if the nature of the default is such that the same cannot reasonably be cured within such thirty (30) day period, no default by Landlord shall occur hereunder so long as Landlord commences such cure within said thirty (30) day period and thereafter diligently prosecute the same to completion. Upon Landlord's default beyond any applicable notice or cure period set forth herein, Tenant shall be entitled to any remedy provided by applicable law; provided, however, that notwithstanding the foregoing, Tenant shall have no right to offset or deduct from Rent payable to Landlord except to the extent authorized in a final, non-appealable judgment. Notwithstanding anything to the contrary contained in this Lease, Tenant shall not be excused from acting reasonably in seeking to mitigate its damages.

17. SURRENDER OF LEASE NOT MERGER. The voluntary or other surrender of this Lease by Tenant, or mutual cancellation thereof, will not work merger and will, at the option of Landlord, terminate all or any existing transfers, or may, at the option of Landlord, operate as an assignment to it of any or all of such transfers.

18. ATTORNEYS FEES/COLLECTION CHARGES. In the event of any legal action or proceeding between the parties hereto, reasonable attorneys' fees and expenses of the prevailing party in any such action or proceeding will be added to the judgment therein. Additionally, if Landlord shall be made party to any litigation commenced by or against Tenant (other than litigation commenced by Tenant against Landlord), Tenant shall pay all reasonable out-of-pocket costs, expenses and attorneys' fees actually incurred by Landlord in connection with such litigation except in the event that such litigation shall determine that Landlord is in default of this Lease and shall adjudicate that Landlord is liable therefor.

19. CONDEMNATION.

19.1 Substantial Taking. If (i) the whole of the Premises or substantially all of the Premises shall be taken by condemnation or other eminent domain proceedings pursuant to any law, general or special, then within thirty (30) days after receipt of notice of pending condemnation, either Landlord or Tenant shall have the right to terminate this Lease if such taking is effected by giving notice of such election to terminate to the other party, and, if such notice is given, this Lease shall terminate effective as of the date of such taking. All Rent to be paid by Tenant under this Lease shall be paid up to the date of such termination, and upon such termination

this Lease shall be of no further force and effect, except to the extent any obligations expressly survive termination and except that any obligation or liability of either party, actual or contingent, which has accrued on or prior to such termination date shall survive and any prepayment of Rent shall be prorated between the parties. For purposes of this Article 19, “**substantially all of the Premises**” shall mean such portion of the Premises as, when so taken, would leave the remaining balance of the Premises inadequate to reasonably accommodate Tenant’s business as existing prior to such taking in Tenant’s reasonable judgment.

19.2 Partial Taking. If only a portion of the Premises is taken and that portion does not amount to substantially all of the Premises, this Lease will not be affected by such taking, and Tenant shall continue to pay the Rent and comply with the terms of this Lease; provided that the Rent payable hereunder during the unexpired portion of this Lease will be proportionately reduced based on the amount of the Premises which has been taken.

19.3 Condemnation Award. Landlord shall be entitled to receive the entire award in any proceeding with respect to any taking provided for in this Article 19 without deduction therefrom for any estate vested in Tenant by this Lease, and Tenant shall receive no part of such award. Notwithstanding the foregoing, Landlord will have no interest in any award made separately to Tenant for its relocation costs, loss of business or goodwill or for the taking of Tenant’s fixtures and improvements (it being agreed that Tenant may pursue such award or any other award from the condemning authority so long as the same does not reduce the award to Landlord). Notwithstanding the foregoing, in the event that neither party terminates this Lease pursuant to Section 19.1 or Section 19.2 above, then Landlord shall pay over to Tenant the full amount of the award received by Landlord for any taking with respect to the Premises, which Tenant shall use solely for the purpose of repairing and restoring the Premises.

19.4 Temporary Taking. If the temporary use or occupancy of all or any part of the Premises shall be lawfully taken by condemnation or in any other manner for any public or quasi-public use or purpose during the Term, Tenant shall be entitled, except as hereinafter set forth, to receive that portion of any award for such taking which represents compensation for the use and occupancy of the Premises and, if so awarded, for the taking of Tenant’s inventory, movable trade fixtures, machinery and for moving expenses, and that portion that represents reimbursement for the cost of the repair and restoration of the Premises. This Lease shall be and remain unaffected by such taking and Tenant shall be responsible for all obligations hereunder not affected by such taking and shall continue to pay in full when due the Rent to be paid by Tenant pursuant to the provisions of this Lease. If the period of temporary use or occupancy shall extend beyond the expiration of the Term, that part of the award which represents compensation for the use or occupancy of the Premises (or part thereof) shall be divided between Landlord and Tenant so that Tenant shall receive so much thereof as represents the period to and including the last day of the Term and Landlord shall receive so much as represents the period subsequent to the last day of the Term and Landlord shall be entitled to receive that portion which represents reimbursement for the cost of the repair and restoration of the Premises. For the purpose of this Article 19, any taking in excess of ninety (90) days shall be deemed to be a substantial taking governed by Section 19.1 above and not a temporary taking governed by this Section 19.4.

## **20. EXTENSION OPTIONS.**

**20.1 Conditions of Options.** Tenant shall have two (2) options to extend the Term (each, an “**Extension Option**”) for period of five (5) years each (each, an “**Extension Term**”), subject to the conditions described in this Article 20, with each such Extension Term commencing on the day after the expiration of the previous Term. The second Extension Option shall not be exercisable unless Tenant exercises the first Extension Option. Tenant shall have no other right to extend the Term except as set forth in this Article 20. Each Extension Option may be exercised only by written notice delivered by Tenant to Landlord (the “**Extension Notice**”) not less than twelve (12) months prior to the expiration of the initial Term or the first Extension Term (as applicable). If Tenant fails to deliver timely notice, Tenant shall be considered to have elected not to exercise the subject Extension Option. If Tenant properly exercises an Extension Option and (i) there is no Event of Default under this Lease either at the time of exercising the Extension Option or at the end of the initial Term or the first Extension Term (as applicable), (ii) Tenant has not assigned the Lease or sublet the Premises other than pursuant to a Permitted Transfer, and (iii) Tenant or a Permitted Transferee occupies the Premises, the Term, as it applies to the entire Premises, shall be extended for such Extension Term upon the terms and conditions set forth herein.

**20.2 Extension Rent.** The Monthly Base Rent payable by Tenant during the first year of the first Extension Term shall be equal to One Hundred Sixty-One Thousand Five Hundred Seventy Nine and 47/100 Dollars (\$161,579.47) per month, and the Monthly Base Rent payable by Tenant during the first year of the second Extension Term shall be equal to the “**FMRV**” (as defined below) as of the commencement date of such Extension Term, which Monthly Base Rent shall in each case be increased by three and one-half percent (3.50%) on each anniversary of the commencement of the applicable Extension Term. For purposes of this Lease, “**FMRV**” shall mean the rental rate, determined in accordance with Article 21 below, that a willing tenant would pay, and a willing landlord of a comparable quality property located in the Tracy, California area (the “**Subject Market**”) would accept, in an arm's length transaction for space of comparable size and quality as the Premises with a building comparable to the Building taking into account the age, quality and layout of the existing improvements in the Building (“**Comparable Premises**”) as well as Tenant financial condition, length of term and other pertinent factors. No concessions or tenant improvement allowances shall be applicable for any Extension Term.

**21. DETERMINATION OF FAIR MARKET VALUE.** In the event Landlord and Tenant are unable to agree on the FMRV after reasonable, good faith deliberations by that date which is fifteen (15) days after Landlord receives the Extension Notice for the second Extension Term (the “**Specified Date**”), then the FMRV for such term shall be determined as follows:

**21.1.1** Landlord and Tenant will each appoint an appraiser or broker meeting the criteria below within ten (10) business days after the expiration of such fifteen (15) day period. Each broker or appraiser must have at least seven (7) years of commercial experience appraising rents for projects/assets comparable to the Premises within the general metro area as the Premises. No appraiser may have any material financial or business interest in common with either of the parties. The two appraisers thus appointed will, within ten (10) business days of their mutual appointment, together appoint a third appraiser meeting the foregoing criteria. Within ten (10) business days after the last appraiser is so appointed, Landlord and Tenant may submit to the appraisers their respective determinations of Fair Market Basic Rent and any supporting information or analysis. Within thirty (30) days after the last appraiser is appointed, each of the appraisers will review any such submittals, and any other information the appraiser deems necessary, and each will

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submit their respective determination of FMRV to both Landlord and Tenant in a sealed envelope. The FMRV for the Extension Term will then be established as follows:

- (i) If the determinations of at least two of the appraisers are identical, the identical determination shall be the FMRV for the first year of the Extension Term.
- (ii) If neither the highest nor the lowest determination of the appraisers differs from the middle determination by more than five percent (5%) of such middle determination, then the average of the three determinations shall be the FMRV for the first year of the Extension Term.
- (iii) If neither subsection (i) or (ii) applies, then the FMRV for the first year of any Extension Term shall be the average of the middle determination and the determination closest in amount to such middle determination.

Landlord and Tenant will each pay all costs, fees and expenses of the respective appraiser each appointed. Landlord and Tenant will also each pay, directly to the third appraiser, one-half of all costs, fees and expenses of the third appraiser.

21.1.2 Upon the determination of the FMRV for the second Extension Term in accordance with this Article 20, Landlord and Tenant shall execute an amendment to this Lease or letter agreement memorializing the same.

**22. ESTOPPEL CERTIFICATE.** Tenant and Landlord will each execute and deliver to the other within ten (10) business days of either party's written demand, a statement in writing certifying that this Lease is in full force and effect, and that the Monthly Base Rent payable hereunder is unmodified and in full force and effect (or, if modified, stating the nature of such modification) and the date to which Rent and other charges are paid, if any, and acknowledging that there are not, to the other party's knowledge, any uncured defaults on the part of the requesting party hereunder or specifying such defaults if they are claimed and such other matters as the requesting party may reasonably request. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises or any transferee allowed pursuant to Article 14 hereof. Either party's failure to deliver such statement within five (5) days of a second written demand shall be conclusive upon such party that (1) this Lease is in full force and effect, without modification except as may be represented by the party requesting the certificate; (2) there are no uncured defaults in the requesting party's performance; and not more than one (1) month's Monthly Base Rent has been paid in advance.

**23. REPRESENTATIONS AND WARRANTIES.**

23.1 Landlord's Representations. Landlord represents and warrants to Tenant that as of the Effective Date: (i) Landlord owns the Premises in fee simple; (ii) the execution and delivery by Landlord of this Lease are within Landlord's powers and have been duly authorized by all requisite actions; (iii) the parties executing this Lease on behalf of Landlord are sufficient to bind Landlord; and (iv) this Lease constitutes the legal, valid, binding and enforceable obligation of Landlord.



**23.2 Tenants Representations.** Tenant represents and warrants to Landlord that as of the Effective Date: (i) the execution and delivery by Tenant of this Lease are within Tenant's powers and have been duly authorized by all requisite action; (ii) the parties executing this Lease on behalf of Tenant are sufficient to bind Tenant; and (iii) this Lease constitutes the legal, valid, binding and enforceable obligation of Tenant.

**24. NOTICES.** All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, or designations under this Lease by either party to

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the other will be in writing and will be considered sufficiently given and served upon the other party (a) two (2) business days after such item is posted if sent by certified or registered mail, return receipt requested, postage prepaid, delivered personally, or (b) the date of delivery or refusal if by national overnight delivery service and addressed as indicated in Sections 1.6 and 1.7, or (c) the date received if delivered by email delivered (provided that emails received after 5:00 pm pacific time shall be deemed to be received on the following business day); provided that Landlord agrees that any notice of default that is delivered by email under clause (c) above shall be followed up the next day with written notice by certified or registered mail, return receipt requested, postage prepaid or delivered personally.

**25. WAIVER.** The failure of either party to insist in any one or more cases upon the strict performance of any term, covenant or condition of the Lease will not be construed as waiver of subsequent breach of the same or any other covenant, term or condition; nor shall any delay or omission by either party to seek remedy for any breach of this Lease be deemed waiver by such party of its remedies or rights with respect to such breach.

**26. HOLDOVER.** If Tenant remains in the Premises after the Term, such continuance of possession by Tenant will be deemed to be month-to-month tenancy at the sufferance of Landlord terminable on thirty (30) day notice at any time by either party. All other provisions of this Lease, except those pertaining to Term and Rent, will apply to the month-to-month tenancy. Upon expiration or earlier termination of this Lease, Tenant agrees to surrender possession of the Premises and leave the same in good and clean condition, reasonable wear and tear and damage by casualty (which is governed by Article 13 above) or condemnation (which is governed by Article 19 above) excepted. Nothing contained in this Section shall give Tenant the right or authority to remain in possession of the Premises after the Term terminates. If Tenant fails to surrender the Premises to Landlord on expiration of the Term (as may be extended) or the earlier termination of this Lease, Tenant shall indemnify, defend and hold Landlord harmless from all claims, damages and liabilities resulting from Tenant's failure to surrender the Premises, including, without limitation, Claims made by succeeding tenant resulting from Landlord's inability to deliver the Premises due to Tenant's holding over. In the event that Tenant holds over past the end date of this Lease, without the express written consent of Landlord, the Monthly Base Rent shall be paid at the rate of one hundred fifty percent (150%) of the Monthly Base Rent in effect at the end of the Lease Term.

**27. LIMITATION OF LIABILITY.** In the event of any actual or alleged failure, breach or default hereunder by Landlord, Tenant's sole and exclusive remedy for damages will be against Landlord's interest in the Premises, including without limitation, any condemnation or insurance proceeds. Under no circumstances shall Landlord or Tenant be responsible to each other for consequential damages, lost profits or revenues except in the event of a holdover by Tenant in accordance with Section 26 above and/or in the event of a default by Tenant of its environmental covenants or obligations under this Lease. Nothing in this Section 27 shall limit any of Landlord's rights expressly provided in this Lease.

**28. SUBORDINATION.** Without the necessity of an additional document being executed by Tenant for the purpose of effecting subordination, and at the election of Landlord or any Mortgagee with lien on the Premises, this Lease and any and all rights of Tenant hereunder (including, without limitation any options and rights of first refusal granted hereunder) will be subject and subordinate at all times to the lien of any mortgage or deed of trust which may now exist or hereafter be executed in any amount for which the Premises is specified as security and any and all rights of any Mortgagee or beneficiary thereunder; *provided, however*, that such subordination shall not be effective unless such Mortgagee or beneficiary shall agree that, so long as Tenant is not in default under any of the terms covenants or conditions of this Lease beyond any applicable notice

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and/or cure periods, this Lease shall not be terminated by Landlord and Tenant's possession of the Premises hereunder shall not be disturbed. In the event that any mortgage or deed of trust is foreclosed or conveyance in lieu of foreclosure is made for any reason, Tenant will, notwithstanding any subordination, attorn to and become the Tenant of the successor in interest to Landlord, so long as Tenant's possession of the Premises hereunder shall not be disturbed and this Lease shall continue in full force and effect so long as Tenant is not in default under any of the terms covenants or conditions of this Lease beyond any applicable notice and/or cure periods.

Simultaneously with the execution hereof, Landlord shall deliver to Tenant with regard to any and all mortgages or deeds of trust encumbering the Premises and placed thereon by Landlord as of the Effective Date, if any, a subordination, non-disturbance and attornment agreement (an "SNDA") employing the subject Mortgagee's commercially reasonable form SNDA with reasonable modifications as may be requested by Tenant as necessary. Tenant covenants and agrees to execute and deliver to Landlord any document or instrument reasonably requested by Landlord or its Mortgagee or beneficiary under deed of trust, evidencing such subordination of this Lease with respect to any such lien of any such mortgage or deed of trust provided that such document or instrument is consistent with Tenant's nondisturbance rights as set forth above, and is on the subject Mortgagee's commercially reasonable form SNDA as set forth above. Tenant agrees to give any holder of any mortgage and any ground lessor, by registered or certified mail, a copy of any notice of default served upon the Landlord by Tenant, provided that prior to such notice Tenant has been notified in writing (by



way of service on Tenant of a copy of Assignment of Rents and Leases, or otherwise) of the address of such mortgage holder or ground lessor (hereafter the “**Notified Party**”). Tenant further agrees that if Landlord shall have failed to cure such default within twenty (20) days after such notice to Landlord (or if such default cannot be cured or corrected within that time, then such additional time as may be necessary if Landlord has commenced within such twenty (20) days and is diligently pursuing the remedies or steps necessary to cure or correct such default), then the Notified Party shall have an additional thirty (30) days within which to cure or correct such default (or if such default cannot be cured or corrected within that time, then such additional time as may be necessary if the Notified Party has commenced within such thirty (30) days and is diligently pursuing the remedies or steps necessary to cure or correct such default). Until the time allowed, as aforesaid, for the Notified Party to cure such default has expired without cure, Tenant shall have no right to, and shall not, terminate this Lease on account of Landlord’s default.

**29. GOVERNING LAW.** This Lease is governed by and construed in accordance with the laws of the state where the Premises are located, and venue of any suit will be in the county where the Premises are located.

**30. NEGOTIATED TERMS.** This Lease is the result of the negotiations of the parties and has been agreed to by both Landlord and Tenant after prolonged discussion. The provisions of this Lease shall be construed in accordance with the fair meaning of the language used and shall not be strictly construed against either party.

**31. SEVERABILITY.** If any provision of this Lease is found to be unenforceable, all other provisions shall remain in full force and effect.

**32. BROKERS.** Each party warrants that it has had no dealings with any broker or agent in connection with this Lease other than Jones Lang LaSalle Brokerage, Inc. (“**JLL**”) who exclusively represents Tenant, and each party covenants to pay, hold harmless and indemnify the other party from and against any and all cost, expense or liability for any compensation, commissions and charges claimed by any other broker or agent with whom such party has or purportedly dealt with respect to this Lease or its negotiation (and, in the case of such indemnification of Landlord by

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Tenant, from and against any and all cost, expense or liability for any compensation, commissions and charges claimed by JLL with respect to this Lease). Tenant represents that there shall be no brokerage commission due to JLL in respect of this Lease. The obligations under this Article 32 shall survive the expiration or earlier termination of this Lease.

**33. QUIET POSSESSION.** Tenant, upon paying the Rent and other payments herein required from Tenant, and upon Tenant’s performance of all of the material terms, covenants and conditions of this Lease on its part to be kept and performed subject to any applicable notice and/or cure periods, may quietly have, hold

and enjoy the Premises during the Term without disturbance from Landlord or from any other person claiming through Landlord.

**34. JOINT AND SEVERAL OBLIGATIONS.** If Landlord or Tenant is comprised of more than one individual or entity, the obligations imposed on each individual or entity that comprises Landlord or Tenant under this Lease shall be joint and several.

**35. FINANCIAL.** Upon written request of Landlord if requested by any lender of Landlord or prospective lender of Landlord, or any bona fide prospective purchaser of all or any portion of the Premises, Tenant shall submit to Landlord promptly upon completion copies of Tenant's most recent annual financial statements. Landlord shall keep such statements in confidence and shall show the same only to its employees, attorneys and accountants to the extent it deems necessary and to the lender or prospective lender or purchaser or prospective purchaser of the real estate that includes the Premises, which lender or purchaser has requested the same from Landlord and also agrees to keep the same in confidence. Notwithstanding the foregoing, Landlord shall not (a) show such statements to any third party other than its agents, lenders or prospective lenders without Tenant's prior written consent which consent shall not be unreasonably withheld, and (b) request financial statements from Tenant more than once per calendar year unless in the context of a default of this Lease by Tenant or a potential sale or refinancing of the Premises or any portion thereof.

**36. MISCELLANEOUS PROVISIONS.**

**36.1 Singular Includes Plural; Masculine includes feminine; Person.** Whenever the singular number is used in this Lease and when required by the context, the same will include the plural, and the masculine gender will include the feminine and neuter genders, and the word "**person**" will include corporation, firm, partnership, or association.

**36.2 Headings.** The headings or titles to paragraphs of this Lease are not part of this Lease and will have no effect upon the construction or interpretation of any part of this Lease.

**36.3 Entire Agreement.** This instrument contains all of the agreements and conditions made between the parties to this Lease. Tenant acknowledges that neither Landlord nor Landlord's agents have made any representation or warranty as to the suitability of the Premises to the conduct of Tenant's business except as set forth in this Lease. Any agreements, warranties or representations not contained herein will in no way bind either Landlord or Tenant, and Landlord and Tenant expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Lease.

**36.4 Time of the Essence.** Time is of the essence of each term and provision of this Lease.

**36.5 Binding upon Successors and Assigns.** Subject to Article 14, the terms and provisions of this Lease are binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of Landlord and Tenant.

36.6 Confidentiality. In consideration of the covenants and agreements hereunder, each of Landlord and Tenant hereby covenants and agrees not to disclose any terms, covenants or conditions of this Lease to any other party without the prior written consent of the non-disclosing party, except as required by applicable law or court order or as is necessary to such party's employees and agents (including, without limitation, attorneys, accountants and real estate consultants) and, in Landlord's case, as is necessary in connection with any proposed sale or financing relating to the Premises; provided; however, Landlord shall not disclose any of Tenant's financial information to any third party (other than its agents, lenders or prospective lenders) without Tenant's prior written consent, which consent shall not be unreasonably withheld, except to the extent required by applicable law or court order.

36.7 Force Majeure. Whenever day is appointed herein on which, or period of time is appointed in which, either party is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by period of time equal to the number of days on or during which such party is prevented from, or is reasonably interfered with, the doing or completion of such act, matter or thing because of labor disputes, civil commotion, war, warlike operation, sabotage, governmental regulations or control, fire or other casualty, inability to obtain materials, or to obtain fuel or energy, weather or other acts of God, health pandemics or the like, or other causes beyond such party's reasonable control (financial inability excepted); *provided, however*, that nothing contained herein shall excuse Tenant from the prompt payment of any Rent, charge or other sum of money required of Tenant hereunder.

36.8 Survival of Obligations. Unless otherwise specifically provided in this Lease, the representations, warranties, covenants and obligations of the parties contained in this Lease shall survive the expiration or earlier termination of this Lease without limitation as to scope or duration.

36.9 Accord and Satisfaction Application of Payment. No payment by Tenant or receipt by Landlord of lesser amount than the rent payment herein stipulated shall be deemed to be other than on account of the rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease. No endorsement on any check nor any letter accompanying any check or payment of rent or partial payment thereof, shall prevent Landlord from treating such payment as on account of the earliest delinquent sum owed Landlord, and Tenant waives the benefit of any contrary court decision or statute.

36.10 Negation of Partnership. Landlord shall not become or be deemed partner or joint venturer with Tenant by reason of the provisions of this Lease.

36.11 Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The parties hereby acknowledge and agree that facsimile signatures or signatures transmitted by electronic mail in so-called "pdf" format or signatures transmitted through DocuSign shall be legal and binding and shall have the same full force and effect as if an original of this Lease had been delivered.

**37. SURRENDER.** At the end of the term of this Lease, Tenant shall surrender the Premises to Landlord, together with all additions and improvements thereto made during the Term and affixed to the Premises, in “broom clean” condition and in good order and repair, except for ordinary wear and tear and damage for which Tenant is not obligated to make repairs under this Lease. Prior to surrendering possession of the Premises to Landlord, Tenant must remove from the Premises its personal property and equipment, repair any damage caused by removal of such property and equipment. Any personal property not so removed shall be deemed abandoned and may be disposed of by Landlord, at Tenant's expense, and Tenant waives all claims against Landlord for any damages resulting from Landlord's retention and disposition of such personal property. All outstanding Tenant obligations hereunder shall survive the termination of the Lease Term, including without limitation, indemnity obligations, and all obligations concerning the condition and repair of the Premises.

**38. STATE-SPECIFIC PROVISIONS.**

**38.1 California Statutory Waivers by Tenant.** Except as expressly provided in the Lease and to the extent permitted by applicable laws, Tenant hereby waives the benefits of: (i) Sections 1932 and 1933(4) of the California Civil Code (pertaining to the termination of a hiring); (ii) Sections 1941 and 1942 of the California Civil Code (pertaining to the obligations of a landlord or sublessor to maintain premises and the rights of a tenant or sublessee to make certain repairs or terminate a lease or sublease); (iii) Section 1945 of the California Civil Code (pertaining to renewal of a lease or sublease by acceptance of rent); (iv) Section 1950.7 of the California Civil Code (pertaining to security for the performance of a rental agreement); (v) Section 1995.310 of the California Civil Code (pertaining to remedies for withholding of consent to transfer of a leasehold or subleasehold interest); (vi) Section 1263.260 of the California Code of Civil Procedure (pertaining to the removal of improvements upon condemnation); and, (vii) Section 1265.130 of the California Code of Civil Procedure (pertaining to the termination of a lease or sublease upon condemnation).

**38.2 Energy Performance Disclosure.** Tenant hereby acknowledges that Landlord may be required to disclose certain information concerning the energy performance of the Premises pursuant to California Public Resources Code Section 25402.10, the regulations adopted pursuant thereto and/or pursuant to other similar regulations (collectively as applicable, the “**Energy Disclosure Requirements**”). Tenant further acknowledges that pursuant to the Energy Disclosure Requirements, Landlord may be required in the future to disclose information concerning Tenant's energy usage to certain third parties, including, without limitation, prospective purchasers, lenders and tenants of the Complex (the “**Tenant Energy Use Disclosure**”). Tenant hereby (a) consents to all such Tenant Energy Use Disclosures, (b) acknowledges that Landlord shall not be required to notify Tenant of any Tenant Energy Use Disclosure, and (c) agrees that upon written request from Landlord, Tenant shall provide Landlord with any energy usage data for the Premises, including, without limitation, copies of utility bills for the Premises. Further, Tenant hereby releases Landlord from any and all losses, costs, damages, expenses and liabilities relating to, arising out of and/or resulting from any Tenant Energy Use Disclosure. The terms of this Section 38.2 shall survive the expiration or earlier termination of this Lease.

**38.2.1 CASp Compliance.** For purposes of Civil Code section 1938, Landlord hereby discloses to Tenant, and Tenant hereby acknowledges, that the Premises have not undergone inspection by a Certified Access Specialist (a “**CASp**”), and Landlord shall have no liability or responsibility to make any repairs or modifications to the Premises in order to comply with accessibility standards. As required by Civil Code section 1938(e), Landlord hereby states as follows:

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"A Certified Access Specialist (CASP) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

In furtherance of the foregoing, Landlord and Tenant hereby agree as follows: (a) any CASp inspection requested by Tenant shall be conducted, at Tenant's sole cost and expense, by a CASp designated by Landlord; and (b) pursuant to the terms hereof, Tenant, at its cost, is responsible for making any repairs to the Premises to correct violations of construction-related accessibility standards.

**39. EXHIBITS.** Exhibit A is attached hereto and made part hereof, and any capitalized terms used but not defined in such exhibit shall have the meanings ascribed to them in this Lease.

*[Signature Page Follows]*

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IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first indicated above.

**LANDLORD:**

23623 BIRD PARTNERS, LLC,  
a Delaware limited liability company

By:

Name:

Title:

Date: \_\_\_\_\_, 2024

**TENANT:**

SHIMMICK CONSTRUCTION COMPANY, INC.,

a California corporation

By:

Name:

Title:

Date: \_\_\_\_\_, 2024

**Execution Version**

#### **AMENDMENT NO. 4 TO CREDIT, SECURITY AND GUARANTY AGREEMENT**

This AMENDMENT NO. 4 TO CREDIT, SECURITY AND GUARANTY AGREEMENT (this “**Agreement**”) is made as of August 14, 2024 (the “**Fourth Amendment Effective Date**”), by and among SHIMMICK CONSTRUCTION COMPANY, INC., a California corporation (“**Shimmick**”), RUST CONSTRUCTORS INC., a Delaware corporation, THE LEASING CORPORATION, a Nevada corporation, (collectively, the “**Borrowers**” and each individually, a “**Borrower**”), SHIMMICK CORPORATION (f/k/a SCCI National Holdings, Inc.), a Delaware corporation (“**Holdings**”), MIDCAP FUNDING IV TRUST, a Delaware statutory trust, as Agent, and the financial institutions or other entities parties hereto, each as a Lender.

#### **RECITALS**

A. Agent, Lenders, Borrowers and Holdings have entered into that certain Credit, Security and Guaranty Agreement, dated as of March 27, 2023 (as amended by that certain Amendment No. 1 to Credit, Security and Guaranty Agreement, dated as of June 29, 2023, by that certain Amendment No. 2 to Credit, Security and Guaranty Agreement, dated as of September 22, 2023 and by that certain Amendment No. 3 to Credit, Security and Guaranty Agreement, dated as of May 20, 2024, the “**Existing Credit Agreement**” and as amended hereby and as it may be further amended, modified, supplemented and restated from time to time, the “**Credit Agreement**”), pursuant to which the Lenders have agreed to make certain advances of money and to extend certain financial accommodations to Borrowers in the amounts and manner set forth in the Credit Agreement.

B. As of the date hereof, the Events of Default identified on Exhibit A hereto (collectively, the “**Specified Events of Default**”) have occurred and are continuing.

C. Borrowers and Holdings have requested, and Agent and all Lenders have agreed, to amend certain provisions of the Existing Credit Agreement, in accordance with the terms and subject to the conditions set forth herein.

#### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing, the terms and conditions set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agent, Lenders, Borrowers and Holdings hereby agree as follows:

**1. Recitals.** This Agreement shall constitute a Financing Document and the Recitals and each reference to the Credit Agreement, unless otherwise expressly noted, will be deemed to reference the Credit Agreement as amended hereby. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement (including those capitalized terms used in the Recitals hereto).

**2. Limited Waiver.**

(a) Subject to the satisfaction of the conditions set forth in Section 5 below, and in reliance on the representations and warranties contained in Section 4 below, Agent and the Lenders hereby conditionally waive the Specified Events of Default. The limited conditional waiver set forth in this Section 2 is effective solely for the purposes set forth herein and shall be limited precisely as written and shall not, except as expressly provided herein, be deemed to (a) be a consent to any amendment, waiver or modification of any term or condition of the Credit Agreement or of any other Financing Document; (b) prejudice any right that Agent or Lenders have or may have in the future under or in

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connection with the Credit Agreement or any other Financing Document; (c) constitute a consent to or waiver of any past, present or future Default or Event of Default (other than the Specified Events of Default) or other violation of any provisions of the Credit Agreement or any other Financing Documents;

(d) constitute a waiver of any condition precedent under Section 7.2 of the Credit Agreement in respect of any advances of the Revolving Loans; (e) create any obligation to forbear from taking any enforcement action, or to make any further extensions of credit; or (f) establish a custom or course of dealing among any of the Credit Parties, on the one hand, or Agent or any Lender, on the other hand. Neither Agent nor any Lender has waived (regardless of any delay in exercising such rights and remedies), any Default or Event of Default that may be continuing on the date hereof or any Event of Default that may occur after the date hereof (whether the same or similar to the Specified Events of Default or otherwise), and, other than the Specified Events of Default solely to the extent expressly set forth herein, no Lender Party has agreed to waive any Events of Default forbear with respect to any of its rights or remedies concerning any Events of Default, that may have occurred or are continuing as of the date hereof, or that may occur after the date hereof

(b) Upon the occurrence of an Event of Default, Agent and Lenders may at any time thereafter proceed to exercise any and all of their respective rights and remedies under any or all of the Credit Agreement, any other Financing Document and/or applicable law, including, without limitation, their respective rights and remedies



with respect to the Specified Events of Default. Without limiting the generality of the foregoing, upon the occurrence of any Event of Default, the Agent and Lenders may, in their sole discretion and without the requirement of any demand, presentment, protest, or notice of any kind, (i) suspend or terminate any commitment to provide Revolving Loans or other extensions of credit under any or all of the Credit Agreement and other Financing Documents, (ii) charge interest on any or all of the Obligations at the Default Rate, effective from and after the date of the first Specified Event of Default to occur, (iii) commence any legal or other action to collect any or all of the Obligations from Borrowers, any other Credit Party and/or any Collateral, (iv) foreclose or otherwise realize on any or all of the Collateral, and/or setoff or apply to the payment of any or all of the Obligations, any or all of the Collateral, and (v) take any other enforcement action or otherwise exercise any or all rights and remedies provided for by any or all of the Credit Agreement, any other Financing Documents and/or applicable law, all of which rights and remedies are fully reserved by the Lender Parties.

(c) This Agreement shall not be deemed or construed to be a satisfaction, reinstatement, novation or release of the Credit Agreement or any other Financing Document.

**3. Amendments to Existing Credit Agreement.** Subject to the terms and conditions of this Agreement, including, without limitation, the conditions to effectiveness set forth in Section 5 below, the Existing Credit Agreement is hereby amended as follows:

(a) The following defined term is hereby added to Section 1.1 of the Existing Credit Agreement in appropriate alphabetical order:

“**Fourth Amendment Effective Date**” means August 14, 2024.”

(b) The definition of Permitted Investments in Section 1.1 of the Existing Credit Agreement is hereby amended by amending and restating clause (i) thereof in its entirety as follows:

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“(i) (x) Investments of cash and Cash Equivalents in the Shimmick / Danny’s Joint Venture and  
(y) Investments of cash and Cash Equivalents in any other Permitted Servicing Joint Ventures but, with respect to this clause (y) only, solely to the extent that (i) no Event of

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Default has occurred or would occur as a result of such Investments, (ii) the aggregate net amount of such Investments (after taking into account the amount of any dividends or distributions made in cash to Credit Parties from the Permitted Servicing Joint Ventures) made with respect to all Permitted Servicing Joint Ventures does not exceed \$10,000,000 in any fiscal year and (iii) such amount has been expressly set forth in and approved by the Agent pursuant to the Initial 13-Week Cash Flow Statement; “

(c) The definition of Revolving Loan Commitment in Section 1.1 of the Existing Credit Agreement is hereby amended and restated in its entirety as follows:

“**Revolving Loan Commitment**” means, as of any date of determination, the aggregate Revolving Loan Commitment Amounts of all Lenders as of such date. For the avoidance of doubt, the aggregate Revolving Loan Commitment on the Fourth Amendment Effective Date shall be \$2,750,000; *provided* that the Revolving Loan Commitment (x) shall never be in excess of the then-applicable Senior Debt Cap and (y) shall be immediately, automatically and permanently reduced on a dollar-for-dollar basis in the amount of any such excess referred to in clause (x) and any mandatory prepayment made pursuant to Section 2.1(b)(ii).”

(d) Section 2.1(b)(ii) of the Existing Credit Agreement is hereby amended by (i) re-numbering clause (M) thereof as new clause (N) and (ii) inserting a new clause (M) thereof, to read as follows:

“(M) On or prior to August 31, 2024, the Borrowers shall make a prepayment to Agent (for the benefit of the Revolving Lenders in accordance with their Pro Rata Shares) of advances in respect of the Revolving Loans in such amount as is necessary to reduce the Revolving Loan Commitment to \$0, after giving effect to the permanent commitment reduction described in clause (N) below with respect to such prepayment.”

#### 4. Representations and Warranties; Reaffirmation of Security Interest.

(a) Each Credit Party hereby confirms that all of the representations and warranties set forth in the Credit Agreement are true and correct in all material respects (without duplication of any materiality qualifier in the text of such representation or warranty) with respect to such Credit Party as of the date hereof except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct as of such earlier date. Nothing herein is intended to impair or limit the validity, priority or extent of Agent's security interests in and Liens on the Collateral.

(b) Each Credit Party acknowledges and agrees that the Credit Agreement, the other Financing Documents and this Agreement constitute the legal, valid and binding obligation of such Credit Party, and are enforceable against such Credit Party in accordance with its terms, except as the enforceability thereof may be

limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

**5. Conditions to Effectiveness.** This Agreement shall become effective as of the date on which each of the following conditions has been satisfied, as determined by Agent in its sole discretion:

- (a) Each Credit Party shall have delivered to Agent this Agreement, dated as of even

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date herewith, each executed by an authorized officer of such Credit Party;

- (b) prior to (except with respect to the Specified Events of Default) and after giving effect to the agreements set forth herein, no Default or Event of Default shall exist under any of the Financing Documents; and

- (c) Credit Parties shall have delivered such other documents, information, certificates, records, permits, and filings as the Agent may reasonably request.

**6. Release.**

- (a) In consideration of, among other things, Agent's and the Lenders' execution and delivery of this Agreement, each Borrower and each other Credit Party, on behalf of itself and its agents, representatives, officers, directors, advisors, employees, subsidiaries, affiliates, successors and assigns (collectively, "**Releasors**"), hereby forever agrees and covenants not to sue or prosecute against any Releasee (as hereinafter defined) and hereby forever waives, releases and discharges, to the fullest extent permitted by law, each Releasee from any and all claims, whether known or unknown, (including, without limitation, crossclaims, counterclaims, rights of set-off and recoupment), actions, causes of action, suits, debts, accounts, interests, liens, promises, warranties, damages and consequential damages, demands, agreements, bonds, bills, specialties, covenants, controversies, variances, trespasses, judgments, executions, costs, expenses or claims whatsoever, that such Releasor now has or hereafter may have, of whatsoever nature and kind, whether known or unknown, whether now existing or hereafter arising, whether arising at law or in equity (collectively, the "**Claims**"), against any or all of the Agent and lenders in any capacity and their respective affiliates, subsidiaries, shareholders and "controlling persons" (within the meaning of the federal securities laws), and their respective successors and assigns and each and all of the officers, directors, employees, agents, attorneys, advisors and other representatives of each of the foregoing (collectively, the "**Releasees**"), based in whole or in part on facts, whether or not now known that relate to, arise out of or otherwise are in connection with: (i) any or all of the Financing Documents, including this Agreement, or transactions contemplated thereby or any actions or omissions in connection therewith, and (ii) any aspect of the dealings or relationships between or among Borrowers and the other Credit Parties, on the one hand, and any or all of the Agent and Lenders, on the other hand, relating to any or all of the documents, transactions, actions or omissions

referenced in clause (i) hereof. The receipt by a Borrower or any other Credit Party of any Loans or financial accommodations made by Agent or any Lender after the date hereof shall constitute a ratification, adoption, and confirmation by such party of the foregoing general release of all Claims against the Releasees that are based in whole or in part on facts, whether or not now known or unknown, existing on or prior to the date of receipt of any Loans or other financial accommodations. In entering into this Agreement, Borrowers and each other Credit Party consulted with, and has been represented by, legal counsel and expressly disclaims any reliance on any representations, acts or omissions by any of the Releasees and hereby agrees and acknowledges that the validity and effectiveness of the releases set forth above do not depend in any way on any such representations, acts and/or omissions or the accuracy, completeness or validity thereof. The provisions of this Section shall survive the termination of this Agreement, the Credit Agreement, the other Financing Documents and payment in full of the Obligations.

(b) Each Borrower and each other Credit Party hereby agrees that it shall be, jointly and severally, obligated to indemnify and hold the Releasees harmless with respect to any and all liabilities, obligations, losses, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever incurred by the Releasees, or any of them, whether direct, indirect or consequential, as a result of or arising from or relating to any proceeding by or on behalf of any Person, including, without limitation, the respective officers, directors, agents, trustees, creditors, partners or shareholders of any Borrower, any other Credit Party, or any of their respective Subsidiaries, whether threatened or initiated, in respect of any claim for legal or equitable remedy under any statute, regulation or common law principle

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arising from or in connection with the negotiation, preparation, execution, delivery, performance, administration and enforcement of the Credit Agreement, the other Financing Documents,

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this Agreement or any other document executed and/or delivered in connection herewith or therewith. If and to the extent that the foregoing undertaking may be unenforceable for any reason, each Borrower and other Credit Party

agrees to make the maximum contribution to the payment and satisfaction thereof that is permissible under applicable law. The foregoing indemnity shall survive the termination of this Agreement, the Credit Agreement, the other Financing Documents and the payment in full of the Obligations.

(c) Each Borrower and each other Credit Party, on behalf of itself and its successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably, covenants and agrees with and in favor of each Releasee that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Releasee on the basis of any Claim released, remised and discharged by Borrower or any other Credit Party pursuant to Section 6(a) hereof. If a Borrower, any other Credit Party or any of their successors, assigns or other legal representatives violates the foregoing covenant, Borrowers and the other Credit Parties, each for itself and its successors, assigns and legal representatives, agrees to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all attorneys' fees and costs incurred by any Releasee as a result of such violation.

**7.No Waiver or Novation.** The execution, delivery and effectiveness of this Agreement shall not, except as expressly provided in this Agreement, operate as a waiver of any right, power or remedy of Agent, nor constitute a waiver of any provision of the Credit Agreement, the Financing Documents or any other documents, instruments and agreements executed or delivered in connection with any of the foregoing. Other than with respect to the Subject Event of Default, nothing herein is intended or shall be construed as a waiver of any existing Defaults or Events of Default under the Credit Agreement or the other Financing Documents or any of Agent's rights and remedies in respect of such Defaults or Events of Default. This Agreement (together with any other document executed in connection herewith) is not intended to be, nor shall it be construed as, a novation of the Credit Agreement.

**8.Affirmation.** Except as specifically amended pursuant to the terms hereof, each Credit Party hereby acknowledges and agrees that the Credit Agreement and all other Financing Documents (and all covenants, terms, conditions and agreements therein) shall remain in full force and effect, and are hereby ratified and confirmed in all respects by such Credit Party. Each Credit Party covenants and agrees to comply with all of the terms, covenants and conditions of the Credit Agreement and the Financing Documents, notwithstanding any prior course of conduct, waivers, releases or other actions or inactions on Agent's or any Lender's part which might otherwise constitute or be construed as a waiver of or amendment to such terms, covenants and conditions.

## **9. Miscellaneous.**

(a) **Reference to the Effect on the Credit Agreement.** Upon the effectiveness of this Agreement, each reference in the Credit Agreement to "this Agreement," "hereunder," "hereof," "herein," or words of similar import shall mean and be a reference to the Credit Agreement, as amended by this Agreement. Except as specifically amended above, the Credit Agreement, and all other Financing Documents (and all covenants, terms, conditions and agreements therein), shall remain in full force and effect, and are hereby ratified and confirmed in all respects by each Credit Party.

(b) **Construction.** This Agreement and all other agreements and documents executed and/or delivered in connection herewith have been prepared through the joint efforts of all of the parties hereto. Neither the provisions of this Agreement or any such other agreements and documents nor any alleged ambiguity therein shall be interpreted or resolved against any party on the ground that such party or its counsel drafted this Agreement or

such other agreements and documents, or based on any other rule of strict construction. Each of the parties hereto represents and declares that such party has carefully read

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this Agreement and all other agreements and documents executed in connection therewith, and that such party knows the contents thereof and signs the same freely and voluntarily. The parties hereto acknowledge that they have been represented by legal counsel of their own choosing in negotiations for and preparation of this Agreement and all other agreements and documents executed in connection herewith and that each of them has read the same and had their contents fully explained by such counsel and is fully aware of their contents and legal effect. If any matter is left to the decision, right, requirement, request, determination, judgment, opinion, approval, consent, waiver, satisfaction, acceptance, agreement, option or discretion of one or more Lender Parties or their respective employees, counsel, or agents in the Credit Agreement or any other Financing Documents, such action shall be deemed to be exercisable by such Lender Parties or such other Person in its sole and absolute discretion and according to standards established in its sole and absolute discretion. Without limiting the generality of the foregoing, “option” and “discretion” shall be implied by the use of the words “if” and “may.”

(c) Governing Law. THIS AGREEMENT AND ALL DISPUTES AND OTHER MATTERS RELATING HERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES (OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW).

(d) WAIVER OF JURY TRIAL.

(i) EACH CREDIT PARTY, AGENT AND THE LENDERS HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE FINANCING DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH CREDIT PARTY, AGENT AND EACH LENDER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH CREDIT PARTY, AGENT AND EACH LENDER WARRANTS AND REPRESENTS THAT IT HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

(ii) In the event any such action or proceeding is brought or filed in any United States federal court sitting in the State of California or in any state court of the State of California, and the waiver of jury trial set forth in Section 9(d)(i) hereof is determined or held to be ineffective or unenforceable, the parties agree that (i) actions or proceedings shall be resolved by reference to a private judge sitting without a jury, pursuant to California Code of Civil Procedure Section 638, before a mutually acceptable referee or, if the parties cannot agree, a referee selected by the Presiding Judge of Los Angeles County, California; (ii) such referee shall hear and determine all of the issues in any action or proceeding (whether of fact or of law), including issues pertaining to a “provisional remedy” as defined in California Code of Civil Procedure Section 1281.8, including without limitation, entering restraining orders, entering temporary restraining orders, issuing temporary and permanent injunctions and appointing receivers, and shall report a statement of decision, provided that, if during the course of any Dispute any party desires to seek such a “provisional remedy” but a referee has not been appointed, or is otherwise unavailable to hear the request for such provisional remedy, then such party may apply to the Los Angeles County Superior Court for such provisional relief; and (iii) pursuant to California Code of Civil Procedure Section 644,

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judgment may be entered upon the decision of such referee in the same

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manner as if such action or proceeding had been tried directly by a court. Such proceeding shall be conducted in Los Angeles County, California, with California rules of evidence and discovery applicable to such proceeding. In the event any actions or proceedings are to be resolved by judicial reference, any party may seek from any court having jurisdiction thereover any prejudgment order, writ or other relief and have such prejudgment order, writ or other relief enforced to the fullest extent permitted by Law notwithstanding that all actions or proceedings are otherwise subject to resolution by judicial reference. Each Borrower, Agent and the Lenders further represents and warrants and represents that it has reviewed this consent and agreement with legal counsel of its own choosing, or has had an opportunity to do so, and that it knowingly and voluntarily gives this consent and enters into this Agreement having had the opportunity to consult with legal counsel. This consent and agreement is irrevocable, meaning that it may

not be modified either orally or in writing, and this consent and agreement shall apply to any subsequent amendments, renewals, supplements, or modifications to this Agreement or any other agreement or document entered into between the parties in connection with this Agreement. In the event of litigation, this Agreement may be filed as evidence of either or both parties' consent and agreement to have any and all actions and proceedings heard and determined by a referee under California Code of Civil Procedure Section 638. Notwithstanding anything to the contrary contained herein, the parties acknowledge and agree that this provision shall have no application to any non-judicial foreclosure of all or any portion of the Collateral constituting real property (whether pursuant to the provisions of the Financing Documents or applicable law).

(iii) Notwithstanding anything to the contrary contained in this Agreement, each Borrower, Agent and the Lenders understand, acknowledge and agree that (i) the provisions of Section 9(d)(ii) of this Agreement above shall have no application to any non-judicial foreclosure and/or private (i.e., non-judicial) sale under the California Commercial Code as to all or any portion of Collateral constituting real property whether pursuant to the provisions of the Financing Documents or applicable law; provided, however, in the event Borrower contests the same, then the provisions of Section 9(d)(ii) above shall apply to any actions or proceedings arising therefrom (but not the non-judicial foreclosure proceeding, which may remain pending), and (ii) the provisions of Section 9(d)(ii) above shall not be deemed to be a waiver by, or a limitation upon, the rights of Agent or the Lenders to proceed with a non-judicial foreclosure or private sale under said Commercial Code as a permitted remedy hereunder or under applicable law.

(e) Incorporation of Credit Agreement Provisions. The provisions contained in Section 11.6 (Indemnification) and Section 13.8(b) (Submission to Jurisdiction) of the Credit Agreement are incorporated herein by reference to the same extent as if reproduced herein in their entirety.

(f) Headings. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

(g) Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument. Signatures by facsimile or by electronic mail delivery of an electronic version of any executed signature page shall bind the parties hereto. In furtherance of the foregoing, the words "execution", "signed", "signature", "delivery" and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby or thereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. As used herein, "**Electronic**



**Signature**” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or other record. This Agreement and the other Financing Documents constitute the entire agreement and understanding among the parties hereto and supersede any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

(h) **Final Agreement.** This Agreement, the Credit Agreement, the other Financing Documents, and the other written agreements, instruments, and documents entered into in connection therewith (collectively, the **“Borrower/Lender Documents”**) set forth in full the terms of agreement between the parties hereto and thereto with respect to the subject matter thereof and are intended as the full, complete, and exclusive contracts governing the relationship between such parties with respect to the subject matter thereof, superseding all other discussions, promises, representations, warranties, agreements, and understandings between the parties with respect thereto. Except as provided therein, no term of the Borrower/Lender Documents may be modified or amended, nor may any rights thereunder be waived, except in a writing signed by the party against whom enforcement of the modification, amendment, or waiver is sought. Any waiver of any condition in, or breach of, any of the foregoing in a particular instance shall not operate as a waiver of other or subsequent conditions or breaches of the same or a different kind. Agent’s or any Lender’s exercise or failure to exercise any rights or remedies under any of the foregoing in a particular instance shall not operate as a waiver of its right to exercise the same or different rights and remedies in any other instances. There are no oral agreements among the parties hereto.

(i) **Severability.** In case any provision of or obligation under this Agreement shall be invalid, illegal or unenforceable in any applicable jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(j) **Time of Essence.** Time is of the essence in the performance of each of the obligations of Borrowers and the other Credit Parties hereunder and with respect to all conditions to be satisfied by such parties.

(k) **Successors/Assigns.** This Agreement shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the parties hereto, subject to the provisions of the Credit Agreement and the other Financing Documents.

[SIGNATURES APPEAR ON FOLLOWING PAGES]



**IN WITNESS WHEREOF**, intending to be legally bound, each of the parties have caused this Agreement to be executed the day and year first above mentioned.

**AGENT: MIDCAP FUNDING IV TRUST,**

as Agent

By: Apollo Capital Management, L.P., its investment  
manager

By: Apollo Capital Management GP, LLC, its general  
partner

By: Name: Maurice Amsellem

Title: Authorized Signatory

**LENDER: MIDCAP FUNDING IV TRUST,**

as a Lender

By: Apollo Capital Management, L.P., its investment  
manager

By: Apollo Capital Management GP, LLC, its general  
partner

By: Name: Maurice Amsellem

Title: Authorized Signatory

[Signatures Continue on Following Page]

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**BORROWERS: SHIMMICK CONSTRUCTION COMPANY, INC.**

By:

Name: Title:

Steven Richards  
Chief Executive Officer

RUST CONSTRUCTORS INC.  
By:

Name: Title:

Steven Richards  
Authorized Signatory

THE LEASING CORPORATION  
By:

Name: Title:

Steven Richards  
Chief Executive Officer

**GUARANTORS: SHIMMICK CORPORATION**

By:

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Name: Title:

Steven Richards

Chief Executive Officer

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**EXHIBIT A**

**Specified Events of Default**

1. an Event of Default under Section 10.1(a)(ii) of the Credit Agreement as a result of the Credit Parties' Investments in the Shimmick / Danny's Joint Venture that did not constitute Permitted Investments and constituted a breach of Section 5.18(a) of the Credit Agreement.
2. an Event of Default under Section 10.1(a)(i) of the Credit Agreement as a result of the Credit Parties' failure to remit the full \$21,000,000 minimum mandatory prepayment amount in respect of the Sale Leaseback, as required by Section 2.1(b)(ii)(E) of the Credit Agreement.
3. the failure of any representation or warranty made following the date of the first Event of Default described above through but excluding the date hereof to be true and correct as a result of the occurrence of the foregoing.

**CERTIFICATION PURSUANT TO  
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,  
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Steven E. Richards, certify that:

1. I have reviewed this Form 10-Q of Shimmick Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer 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)) 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) [omitted]
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 20, 2024 August 16, 2024

By: /s/ Steven E. Richards

Steven E. Richards  
Chief Executive Officer

Exhibit 31.2

**CERTIFICATION PURSUANT TO  
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,  
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Devin J. Nordhagen, Amanda Mobley, certify that:

1. I have reviewed this Form 10-Q of Shimmick Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer 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)) 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) [omitted]
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
- (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 20, 2024 August 16, 2024

By: /s/ Devin J. Nordhagen Amanda Mobley  
Devin J. Nordhagen Amanda Mobley  
Executive Vice President, Interim Chief Financial Officer and  
Treasurer

Exhibit 32.1

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Shimmick Corporation (the "Company") on Form 10-Q for the three months period ended March 29, 2024 June 28, 2024 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Date: May 20, 2024 August 16, 2024

By: /s/ Steven E. Richards  
Steven E. Richards  
Chief Executive Officer

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Shimmick Corporation (the "Company") on Form 10-Q for the **three months period** ended **March 29, 2024** **June 28, 2024** as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Date: **May 20, 2024** **August 16, 2024**

By: /s/ **Devin J. Nordhagen** **Amanda Mobley**  
**Devin J. Nordhagen** **Amanda Mobley**  
**Executive Vice President, Interim Chief Financial Officer** and  
**Treasurer**

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