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AG, LLC

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF FRESNO, B. F. SISK COURTHOUSE

11 AGRI CAPITAL, INC. and CA AG, LLC,

Case No. **23CECG02240**

12 Plaintiffs,

13 v.

14 JAKE SOBERAL; IMRA L. OLGUIN, JR;  
15 BETHANY E. MILY; MITCHELL KAPOR;  
JOSEPH T. PROIETTI; PAULA PRETLOW;  
16 OLLEN DOUGLASS; BW INDUSTRIES,  
INC., a Delaware Corporation; BITWISE  
17 INDUSTRIES INC., a California Corporation.  
BRUCE'S BAGELS, BEVERAGES, AND  
18 BITES, LLC, a California Limited Liability  
Company; and DOES 1 through 100,  
19 inclusive,

20 Defendants.

**COMPLAINT FOR:**

- (1) Fraud – Intentional Misrepresentation**
- (2) Negligent Misrepresentation**
- (3) Violation Penal Code §496**
- (4) Fraud – Concealment**
- (5) Breach of Contract**
- (6) Breach of Covenant of Good Faith and Fair Dealing**
- (7) Breach of Contract**
- (8) Breach of Covenant of Good Faith and Fair Dealing**
- (9) Negligent Supervision**
- (10) Breach of Duty of Care**
- (11) Negligence;**

**PUNITIVE DAMAGES**

**JURY TRIAL DEMANDED**

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**BACKGROUND FACTS**

1. This action arises from the catastrophic demise of what was supposed to be one of Fresno’s great new start-up companies. As it turns out, its “business plan” was nothing more than a classic ponzi scheme rooted in the fraud and deceit by which its top officers, with Board of Director endorsements, solicited money by crafting a false narrative of financial fortune and stability to lure in unsuspecting investors who believed in the company’s mission.

2. Defendants BW Industries, Inc. (“BW”), Bitwise Industries, Inc. (“BI”), and their wholly owned subsidiary, Bruce’s Bagels, Beverages, and Bites, LLC (“Bruce’s”), collectively referred to herein as “Bitwise”, is marketed as a transformative technology company in the business of building scalable digital solutions based in Fresno, California. Bitwise prides itself on pioneering a movement in the technology industry regarding diversity, equality, and inclusion. Founded in 2013 by defendants Irma Olguin Jr. (“Olguin”) and Jake Soberal (“Soberal”) the company grew from its modest roots in downtown Fresno to multiple office locations across the country, including Bakersfield, California, Merced, California, Oakland, California, El Paso, Texas, and Toledo, Ohio.

3. Jim Maxwell is the CFO and majority shareholder of Plaintiff Agri Capital, Inc. (“Agri”). His son, Brian Maxwell, is the manager of Plaintiff CA AG, LLC (“CAAG”) (Agri and CAAG collectively, “Plaintiffs”). Jim Maxwell and Brian Maxwell, through entities they have an interest in, have been investors in Bitwise related companies since approximately 2019. Through that investment, Plaintiffs became acquainted with Bitwise, Soberal, and others within and affiliated with Bitwise.

4. On April 25, 2023, Soberal contacted Jim Maxwell via email and stated, “I am working on an urgent challenge and was wondering if you have time to visit today?”

5. That same day Mr. Maxwell and Soberal spoke on the phone. During the telephone call, Soberal represented, among other things, that Bitwise urgently needed to raise \$5 million dollars by Friday April 28, 2023. Soberal explained that Bitwise had applied for federal Employee Retention Credits (“ERC”) for the 2022 year. Before receiving the funds from the Department of Treasury/IRS, Bitwise sold the credits to another company. According to Soberal, Bitwise signed

1 documents with the IRS to have the ERC funds go directly to the purchaser of the ERC credits  
2 instead of Bitwise. However, Soberal represented that “The IRS errantly deposited the credits into  
3 Bitwise’s bank account in 2023. Bitwise does not contest that the monies should go to the fund that  
4 purchased the tax credits.”

5 6. During the same conversation, Soberal represented to Jim Maxwell that although  
6 Bitwise had approximately \$65 million cash in its bank account, it wasn’t able to use those funds to  
7 repay the ERC purchaser because of a liquidity covenant with Goldman Sachs. Soberal told Jim  
8 Maxwell, and later confirmed by email, that “Goldman Sachs is both an existing investor in Bitwise  
9 and in active diligence as the lead of a syndicate that plans to fund \$80M to Bitwise on or before  
10 May 31, 2023. However, related to its earlier investment in Bitwise, Bitwise has a covenant stating  
11 that it will keep \$65M or more in cash on hand (minimum liquidity covenant).”

12 7. Soberal assured Jim Maxwell that Bitwise was financially well. During the call,  
13 Soberal boasted that Bitwise had 1,000 employees, offices in six cities, and was about to open  
14 another in Chicago, Illinois. He represented that Bitwise’s business had recently been appraised at  
15 \$257 million, but that Soberal believed the value was much higher. Soberal stated that he and other  
16 officers and Board members at Bitwise believed, that due to the company’s recent performance, its  
17 current value was \$500 million. He represented that the company’s revenue in the year 2022  
18 exceeded \$200 million.

19 8. Soberal promised Mr. Maxwell that the requested loan would be repaid within 90  
20 days and secured by Soberal’s and Olguin’s personal stock shares in the company, which Soberal  
21 represented were valued at approximately \$28 million. Prior to executing any loan documents, on  
22 April 25, 2023, Soberal wrote to Mr. Maxwell and stated there were three possible outcomes from  
23 the proposed transaction:

24 1. Bitwise pays the purchaser of it’s (sic) ERC Credits, closes the deal  
25 with Goldman, and repays the loan from the ~\$140M in cash it  
projects to have in July 2023.

26 2. Bitwise pays the purchasers of its ERC Credits, but does not close  
27 the deal with Goldman, and repays the loan from the ~\$65M in cash  
28 it has on hand today.

1           3. Bitwise fails in some unforeseen (sic) way to perform in its  
2           repayment obligation under the loan, and you foreclose on our shares  
3           which have a third party valuation of \$28M.

4           A true and correct copy of Soberal's April 25, 2023, email is attached hereto as Exhibit 1  
5           and incorporated herein by reference. With his email, Soberal also provided Jim Maxwell with a  
6           stock valuation report for BW Industries Inc., as well as documents purporting to be the BW's  
7           balance sheet as of December 31, 2022, profit and loss statement, 2023 forecast, and its  
8           capitalization table.

9           9. In response to Soberal's email of April 25, 2023, Jim Maxwell asked, "Are you  
10           apportioning some or all of the security to amounts lent? Is this to be pro rata?" Soberal responded:  
11           "This collateral would be unique to your portion. Those participating at smaller amounts are entirely  
12           unsecured. And we are offering pledges of shares held by other founding team members to others  
13           who are considering large amounts." A true and correct copy of Soberal's email is attached hereto  
14           as Exhibit 2.

15           10. Based on Soberal's representations regarding the reason for the loan, the nature of  
16           the dispute with the purchaser of the ERC tax credit, the documents Soberal provided to Jim  
17           Maxwell demonstrating Bitwise's financial condition, the represented value of Soberal's and  
18           Olguin's shares in Bitwise, the represented pending investment by Goldman Sachs, and Bitwise's  
19           represented cash liquidity, Plaintiff Agri Capital, Inc. agreed to lend Bitwise a total of \$1,000,000.

20           11. In the evening of April 25, 2023, Soberal wrote to Jim Maxwell thanking him for  
21           "helping us solve this challenge, we are deeply grateful", and provided him with the wiring  
22           instructions for BW's bank account at First Republic Bank. Jim Maxwell responded by stating "The  
23           stock in First Republic lost 50% of it (sic) greatly reduced remaining value today. Some of the  
24           employees are reported to have stated that they expect the Feds to take over the Bank this week.  
25           Wiring funds to them seems risky." Soberal responded: "Thanks for flagging this. I am just getting  
26           up to speed on today's events at FRB. I will send you wire instructions to our Chase Bank Account  
27           shortly."

28           12. Later that evening, Soberal wrote:

                  I just learned that our CFO is ahead of me on this and has moved our

1 cash to a subsidiary account at Chase Bank because of the issues at  
2 FRB. Accordingly, can you direct your wire to the Chase Bank  
3 Account in the name of Bruce's Bagel's, Beverages, and Bites, LLC?  
Instructions are attached here.

4 To demonstrate that this is a subsidiary of Bitwise, I am attaching a  
5 screenshot from the California Secretary of State's Website, the  
6 LLC's operating agreement, Articles of Incorporation, and Statement  
of Information.

7 We expect to have an operating account opened there shortly, but for  
8 the moment are just thankful to have the capital in a safe place.

9 13. Jim Maxwell, as a condition of the loan, required verification that Bitwise, through  
10 Bruce's, had \$65 million in the Chase Bank account. In response Soberal provided a document  
11 purporting to show a balance of \$65,803,465.36 at Chase in the account of Bruce's Bagels,  
12 Beverages, and Bites, LLC. A true and correct copy of this bank statement is attached hereto as  
13 Exhibit 3.

14 14. Because of the representations made by Soberal and Bitwise, on April 26, 2023, Agri  
15 and BW executed a term note agreement (the "Agri Capital Note"). In connection with the Agri  
16 Capital Note, Soberal and Olguin executed the security agreements pledging and assigning their  
17 shares in BW to Agri (the "Agri Pledge Agreement"). Thereafter, on April 26, 2023, Agri wired  
18 \$1,000,000 to BW care of the Chase bank account in the name of Bruce's Bagels, Beverages, and  
19 Bites, LLC. True and correct copies of the Agri Capital Note and Agri Pledge Agreement are  
20 attached hereto as Exhibit 4 and incorporated herein by reference.

21 15. On April 26, 2023, Soberal called Jim Maxwell and informed him that one of the  
22 lenders who was going to loan Bitwise \$500,000 had just backed out. Soberal inquired as to whether  
23 Agri was interested in lending another \$500,000 to BW. Although Agri was not interested in  
24 providing further funding at that time, Mr. Maxwell's son, Brian Maxwell (who has an ownership  
25 interest in Agri and was privy to and fully aware of Soberal's communications and representations  
26 to Jim Maxwell), would consider lending the \$500,000 through CAAG.

27 16. Based on the representations Bitwise and Soberal made to Agri and Jim Maxwell, as  
28 well as the representation that the \$500,000 was needed because another investor suddenly backed

1 out, on April 26, 2023 CAAG agreed to lend an additional \$500,000 to BW. As collateral for the  
2 loan, Soberal confirmed that Bethany Mily, then President of Bitwise, would also pledge her  
3 personal stock shares in the company as security for the loan.

4 17. Later that day, CAAG and BW executed the term note agreement (the “CAAG  
5 Note”). In connection with the CAAG Note, BW’s president Bethany Mily executed a security  
6 agreement pledging and assigning her personal stock shares in BW to CAAG (the “CAAG Pledge  
7 Agreement”). Thereafter, on April 26, 2023, CAAG wired the amount of \$500,000 for BW to the  
8 same Chase account in the name of the Bruce’s Bagels, Beverages, and Bites, LLC. True and correct  
9 copies of the CAAG Note and CAAG Pledge Agreement are attached hereto as Exhibit 5 and  
10 incorporated herein by reference.

11 18. On May 16, 2023, an associate of Jim Maxwell contacted him asking for his opinion  
12 on a potential \$2 million loan to Bitwise. The associate stated that he was in communication with  
13 Soberal and the monies loaned would be secured by Soberal’s and Olguin’s personal stock shares  
14 in Bitwise. The same shares which Soberal and Olguin represented and warranted to Plaintiffs  
15 would be pledged to them as collateral for their loan exclusively.

16 19. On Monday May 29, 2023, Soberal called Jim Maxwell and indicated Bitwise had  
17 fallen upon hard times and was going to furlough all of its employees. Mr. Maxwell, stunned to  
18 learn of the precipitous fall, asked what happened to \$65 million in cash Bitwise allegedly had in its  
19 accounts. Soberal claimed that although the company previously had \$65 million, it was now  
20 “mostly gone.” On that call Soberal claimed the \$65 million was used to “repay other investors,”  
21 and, in so doing, essentially admitted that Bitwise was nothing more than a ponzi scheme. Recall  
22 the reason for the loan was not to “repay investors,” but rather to satisfy a one-time outstanding debt  
23 for the ERC tax credit. At no point during the negotiation of the Agri Capital Note or CAAG Note  
24 did Soberal or Bitwise disclose the fact that the money in the business’ account could or would be  
25 needed to repay investors on some preferential basis. Indeed, Soberal and Bitwise represented that  
26 the reason the \$65 million could not be used was because of a liquidity covenant with Goldman  
27 Sachs. Bitwise and Soberal expressly represented that if Goldman Sachs did not fund the additional  
28 \$80 million to Bitwise on May 31, 2023, then Bitwise would be able to use the \$65 million to repay

1 the loans to Plaintiffs.

2 20. Shortly after this May 29, 2023 call<sup>1</sup> with Soberal, Plaintiffs began seeing news  
3 reports that Bitwise had in fact furloughed its entire workforce. Both the Agri Capital Note and the  
4 CAAG Note provide that BW becoming insolvent is an event of default. On information and belief,  
5 given Bitwise’s false representations made to secure the loans from Plaintiffs, and media reports  
6 stating Bitwise had furloughed all employees, is delinquent on its property taxes and is being sued  
7 by one of its joint venturers for, among other things, breach of contract and conversion, Plaintiffs  
8 are informed and believe that BW is insolvent. In addition to credible media reports regarding  
9 Bitwise’s apparent financial demise, Plaintiffs are also now aware of numerous pending complaints  
10 against the company, including:

- 11 - *Andre Nunn et al. v. Bitwise Industries Inc. et al.*, Case No. 23-CV-00867-ADA-SAB venued  
12 in the Eastern District of California filed in June 2023. The plaintiffs brought a class action  
13 complaint for, *inter alia*, the abrupt and wrongful termination of their employment.
- 14 - *Pedro Garza et al. v. BW Industries et al.*, Case No. 23CECG02098, venued in Superior  
15 Court, County of Fresno filed in June 2023. The plaintiffs brought a class action complaint  
16 for, *inter alia*, the abrupt and wrongful termination of their employment.
- 17 - *NICBYTE LLC v. BW Industries Inc., et al.*, Case No. 23CECG01990, venued in the Superior  
18 Court, County of Fresno filed in May 2023. The plaintiff, an alleged joint venture of BW,  
19 alleges the company “intentionally breached” the joint venture agreement and engaged in  
20 “self-dealing to the tune of tens of millions of dollars.”<sup>2</sup>
- 21 - *Catalyst Communications Inc. v. Jake Soberal, BW Industries Inc.*, venued in the Superior  
22 Court, County of Fresno. The *Catalyst* plaintiff brought suit to “rectify blatant fraudulent  
23 misrepresentations made by Defendants” and alleges Bitwise deceived the plaintiff investor

24 \_\_\_\_\_  
25 <sup>1</sup> Jim Maxwell also spoke with Soberal on May, 31, 2023, and when Mr. Maxwell noted Bitwise  
26 was apparently insolvent Soberal indignantly responded that Bitwise had \$77 million in  
27 receivables as well as “assets you don’t know about.”

28 <sup>2</sup> On May 31, 2023, the Hon. Jeffrey R. Hamilton Jr. issued a temporary restraining order in the  
matter which froze multiple bank accounts and restricted the transfer of certain real property  
Bitwise has an interest in.

1 by misrepresenting the financial condition of the company which caused the plaintiff to  
2 invest \$200,000.

3 - *Chase Carter et al. v. BW Industries Inc.*, Case No. 23CECG00649, venued in Superior  
4 Court, County of Fresno filed in February 2023. The plaintiff alleges BW failed to pay the  
5 monies owed from a joint venture.

6 21. Plaintiffs have also since discovered that Soberal's representation regarding the IRS'  
7 "errant deposit" of ERC funds into Bitwise's account was and is false. Rather, Plaintiffs are  
8 informed and believe and on this basis allege that in or around January, 2023 Soberal and Bitwise  
9 received physical checks from the IRS for the credit amount, approximately \$6,000,000. Rather  
10 than provide the money to the purchaser of the credit, as obligated to under their agreement, Soberal  
11 and Bitwise deposited the money into their own account. When the purchaser of the credits inquired  
12 as to its status in the months of January, February, and March, 2023, Bitwise and Soberal falsely  
13 represented to it that they had not received the monies and were awaiting action from the IRS. On  
14 information and belief, the funds were only provided to the purchaser after litigation was initiated  
15 in the Supreme Court, State of New York, New York County in the case styled *1861 Acquisition*  
16 *LLC v. Bitwise Industries, Inc., and Jake Soberal*, Index No. 651688/2023. In that litigation the  
17 plaintiff, *1861 Acquisition*, obtained a Temporary Restraining Order given the evidence it submitted  
18 of Bitwise and Soberal's fraud, including repeated false representations made by Bitwise and  
19 Soberal that they had not received the IRS funding when in fact they had.

20 22. On June 2, 2023, Plaintiffs are informed and believe and thereon allege that the Board  
21 of Directors of Bitwise terminated Soberal's and Olguin's employment with Bitwise and dismissed  
22 them from further serving on the Board of Directors of Bitwise.

23 23. On June 1, 2023, Plaintiffs made demand of Defendants that all amounts owed to  
24 Plaintiffs under the Agri Capital Note and the CAAG Note be paid immediately, and not later than  
25 June 8, 2023. Defendant BW Industries Inc. failed to timely tender such monies to Plaintiffs, and  
26 as of the date of the filing of this Complaint has not responded to the demand or paid any of the  
27 amounts due to Plaintiffs under the Agri Capital Note and the CAAG Note.

28



**PARTIES, JURISDICTION, & VENUE**

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2           24.     Plaintiff AGRI CAPITAL, INC. is, and at all relevant times herein was, a California  
3 corporation authorized and existing by virtue of the laws of the State of California, whose principal  
4 place of business is in Fresno County, California.

5           25.     Plaintiff CA AG, LLC is, and at all relevant times herein was, a California Limited  
6 Liability Company authorized and existing by virtue of the laws of the State of California, whose  
7 principal place of business is in Fresno County, California.

8           26.     Plaintiffs are informed and believe, and thereon allege, that Defendant JAKE  
9 SOBERAL is a resident of Fresno County and was the Co-Chief Executive Officer of Defendant  
10 BW INDUSTRIES, INC and/or BITWISE INDUSTRIES, INC.

11           27.     Plaintiffs are informed and believe, and thereon allege, that Defendant IMRA L.  
12 OLGUIN, JR is a resident of Fresno County and was the Co-Chief Executive Officer of Defendant  
13 BW INDUSTRIES, INC and/or BITWISE INDUSTRIES, INC.

14           28.     Plaintiffs are informed and believe, and thereon allege, that Defendant BETHANY  
15 E. MILY was, and perhaps still is, the President of Defendant BW INDUSTRIES, INC and/or  
16 BITWISE INDUSTRIES, INC.

17           29.     Plaintiffs are informed and believe, and thereon allege, that Defendant MITCHELL  
18 KAPOR is a member of the Board of Directors of Defendant BW INDUSTRIES, INC and/or  
19 BITWISE INDUSTRIES, INC.

20           30.     Plaintiffs are informed and believe, and thereon allege, that Defendant JOSEPH T.  
21 PROIETTI is a member of the Board of Directors of Defendant BW INDUSTRIES, INC and/or  
22 BITWISE INDUSTRIES, INC.

23           31.     Plaintiffs are informed and believe, and thereon allege, that Defendant PAULA  
24 PRETLOW is a member of the Board of Directors of Defendant BW INDUSTRIES, INC and/or  
25 BITWISE INDUSTRIES, INC.

26           32.     Plaintiffs are informed and believe, and thereon allege, that Defendant OLLEN  
27 DOUGLASS is a member of the Board of Directors of Defendant BW INDUSTRIES, INC. and/or  
28 BITWISE INDUSTRIES, INC.

1           33. Plaintiffs are informed and believe, and thereon allege, that Defendant BW  
2 INDUSTRIES, INC. is a corporation authorized and existing by virtue of the laws of the State of  
3 Delaware, with its principal place of business is in Fresno, California.

4           34. Plaintiffs are informed and believe, and thereon allege, that Defendant BITWISE  
5 INDUSTRIES, INC. is a corporation authorized and existing by virtue of the laws of the State of  
6 California, with its principal place of business is in Fresno, California.

7           35. Plaintiffs are informed and believes, and thereon allege, that Defendant BRUCE'S  
8 BAGELS, BEVERAGES, AND BITS, LLC is a Limited Liability Company authorized and existing  
9 by virtue of the laws of the State of California, whose principal place of business is in Fresno,  
10 California.

11           36. Plaintiffs are unaware of the true names and capacities, whether individual,  
12 corporate, associate, governmental, or otherwise, of Defendants DOES 1 through 100, inclusive, are  
13 unknown to Plaintiffs at this time, who therefore sues said Defendants by such fictitious names  
14 pursuant to Code of Civil Procedure § 474 and prays leave of Court to amend its Complaint to set  
15 forth the true names and capacities of said Defendants when the same have been ascertained.

16           37. Plaintiffs are informed and believe, and on such information and belief allege, that  
17 at all times herein relevant, each of the Defendants were acting as the agent, servant, co-conspirator,  
18 employee, partner and/or joint venturer, director and/or officer, of each of the remaining Defendants,  
19 and was acting in concert with each of said remaining Defendants in doing the things herein alleged,  
20 while at all times acting within the course and scope of such agency, employment, partnership and/or  
21 concert of action.

22           38. Plaintiffs are informed and believe, and on this basis allege, that there exists a unity  
23 of interest between BW, BI, Bruce's, and their affiliated companies as evidence by, *inter alia*, the  
24 lack of corporate formalities as between them, the free transfer of funds between the entities, and  
25 the lack of capitalization upon inception, such that they are the alter-egos of the other. Plaintiffs are  
26 informed and believe that each of the Defendants, at all relevant times alleged herein, were acting  
27 as agents of the other Defendants such that any liability arising herein should apply jointly and  
28 severally to each of them.



1 into loaning money to BW Industries.

2 43. Olguin and Mily are also liable to Plaintiffs because they conspired with and assisted  
3 Bitwise and Soberal in obtaining the property in a manner constituting fraud. Specifically, Olguin  
4 and Mily pledged their shares for the Agri Capital Pledge Agreement and CAAG Pledge Agreement  
5 so that BW could obtain monies from Plaintiffs. On information and belief, at the time Olguin and  
6 Mily pledged their shares they knew of the representations Soberal and Bitwise made to Plaintiffs  
7 to obtain the loan. Olguin, as co-CEO, on information and belief, also had actual knowledge of  
8 Bitwise's unlawful retention of the ERC and other financial difficulties, but at no point disclosed  
9 this information to Plaintiffs. In so doing, she assisted Bitwise and Soberal in obtaining the \$1.5  
10 million through false pretense. Mily, as President of the company, on information and belief, had  
11 similar knowledge of Bitwise's financial positions and representations being made to Plaintiffs to  
12 secure the loan, but failed to disclose the true state of facts. In so doing, she assisted Bitwise and  
13 Soberal in obtaining the \$1.5 million through false pretense.

14 44. Plaintiffs were unaware of the falsity of Defendants' representations to them. Had  
15 Plaintiffs known that any single one of the aforementioned representations were false, they would  
16 not have entered into the Agri Capital Note, the Agri Pledge Agreement, the CAAG Note, or the  
17 CAAG Pledge Agreement. As a direct and proximate result of the misrepresentations, Plaintiffs  
18 have been damaged.

19 45. Defendants' conduct was intentional, willful, and malicious and done with full  
20 knowledge that it would result in substantial damage to Plaintiffs. Plaintiffs are therefore entitled to  
21 recover punitive damage under Civil Code section 3294.

22 **SECOND CAUSE OF ACTION**

23 **(Negligent Misrepresentation)**

24 **Plaintiffs Against Defendants Bitwise and Soberal**

25 46. Plaintiffs re-allege and by this reference incorporate herein each and every allegation  
26 contained in Paragraphs 1 through 45 above.

27 47. On information and belief Soberal, as CEO of Bitwise, knew that each of the  
28 representations identified in paragraph 41 were false at the time of making them. In the alternative,

1 if it is proven that Soberal, in his capacity as CEO did not know that some or all of the statements  
2 were false when making them then, on information and belief, he had no reasonable basis to believe  
3 the representations he was making to Plaintiffs were true. In making the aforementioned  
4 representations Soberal, as CEO of Bitwise, intended Plaintiffs rely upon them. Plaintiffs in fact  
5 did reasonably rely on the representations and, as a direct and proximate result, proceeded to invest  
6 a total of \$1.5 million into Bitwise's business. As a direct and proximate result of the false and  
7 negligent representations, Plaintiffs have been harmed.

8 **THIRD CAUSE OF ACTION**

9 **(Penal Code § 496)**

10 **Plaintiffs Against Defendants Bitwise, Soberal, Olguin, and Mily**

11 48. Plaintiffs re-allege and by this reference incorporate herein each and every allegation  
12 contained in Paragraphs 1 through 47 above.

13 49. Penal Code section 496(a) makes it illegal for any person to buy or receive any  
14 property knowing that it has been "stolen or that has been obtained in any manner constituting theft  
15 or extortion." Section 496(a) also makes it illegal for a person to aid in "concealing, selling, or  
16 withholding any property from the owner, knowing the property to be so stolen or obtained" via  
17 theft. Under Penal Code section 484(a) theft is defined to include obtaining money through "any  
18 false or fraudulent representation or pretense." Under Penal Code section 496(c), any party who is  
19 guilty of obtaining or receiving property in a manner constituting theft, or assists in so obtaining, is  
20 liable for treble damages, cost of suit, and attorney's fees.

21 50. Soberal and Bitwise obtained property from Plaintiffs in a manner constituting theft.  
22 By making the false and fraudulent representations more specifically identified in paragraph 41 of  
23 this complaint, Soberal and Bitwise obtained from Plaintiffs \$1.5 million.

24 51. Olguin and Mily are also liable to Plaintiffs because they conspired with and assisted  
25 Bitwise and Soberal in obtaining the property in a matter constituting theft. Specifically, Olguin  
26 and Mily pledged their shares for the Agri Capital Pledge Agreement and CAAG Pledge Agreement  
27 so that BW could obtain monies from Plaintiffs. On information and belief, at the time Olguin and  
28 Mily pledged their shares they knew or should have known of the representations Soberal and

1 Bitwise made to Plaintiffs to obtain the loan. Olguin, as Co-CEO, on information and belief, also  
2 had actual knowledge of Bitwise's unlawful retention of the ERC and other financial difficulties,  
3 but at no point disclosed this information to Plaintiffs. In so doing, she assisted Bitwise and Soberal  
4 in obtaining the \$1.5 million through false pretense. Mily, as President of the company, on  
5 information and belief, had similar knowledge of Bitwise's financial positions and representations  
6 being made to Plaintiffs to secure the loan, but failed to disclose the true state of facts. In so doing,  
7 she assisted Bitwise and Soberal in obtaining the \$1.5 million through false pretense.

8 52. The false representations and false pretense which defendants Bitwise, Soberal,  
9 Olguin, and Mily made and allowed to go uncorrected are the direct and proximate cause of  
10 Plaintiffs' damage. Had any of the aforementioned Defendants disclosed to Plaintiffs the falsity of  
11 the above representations, Plaintiffs would not have invested \$1.5 million. Under Penal Code  
12 section 496(c), because these defendants violated Penal Code section 496(a), Plaintiffs are entitled  
13 to treble damages in an amount of no less than \$4,500,000.00, the cost of suit herein, and attorney's  
14 fees.

#### 15 **FOURTH CAUSE OF ACTION**

##### 16 **(Fraud - Concealment)**

##### 17 **Plaintiffs Against Defendants Bitwise, Soberal, Olguin, and Mily**

18 53. Plaintiffs re-allege and by this reference incorporate herein each and every allegation  
19 contained in Paragraphs 1 through 52 above.

20 54. Soberal, in his capacity as Co-CEO of Bitwise, represented to Plaintiffs that the  
21 company needed a \$5 million loan to pay off the purchaser of Bitwise's ERC tax credit from the  
22 IRS. In making this representation, Soberal, as Co-CEO of Bitwise, stated the monies were "errantly  
23 deposited" into Bitwise's bank accounts and that the attorney for the purchaser of the credits  
24 obtained a temporary restraining order "without notice." At no point during the parties' negotiation  
25 did Bitwise, Soberal, Olguin, or Mily disclose to Plaintiffs the following facts: (i) the ERC funds  
26 were provided from the IRS to Bitwise via checks and Bitwise proceeded to cash them; (ii) that  
27 Bitwise cashed the checks knowing the money was owed to the purchaser of the credits; (iii) that  
28 the purchaser of the credits was repeatedly and actively inquiring as to the status of it and that

1 Bitwise was falsely telling them that the funds had not been received (they had been); and (iv) that  
2 Bitwise had been sued for fraud in the state of New York arising from their wrongful retention of  
3 funds.

4 55. The aforementioned Defendants had a duty to disclose each of the aforementioned  
5 facts because: (i) they made a partial disclosure of the issue relating to the ERC without providing  
6 all of the facts surrounding it as part of an intentional effort to mislead Plaintiffs; (ii) Bitwise's  
7 deposit of the physical checks while simultaneously representing to the purchaser of the ERC that  
8 the funds had not been received was information only known and accessible to Defendants (i.e.  
9 nobody else knew of Defendants' fraudulent scheme); (iii) Defendants actively concealed the true  
10 state of facts regarding the ERC issue by not disclosing such facts. As a direct and proximate result  
11 of the concealment, Plaintiffs have been damaged.

12 56. Defendants' conduct was intentional, willful, and malicious and done with full  
13 knowledge that it would result in substantial damage to Plaintiffs. Plaintiffs are therefore entitled to  
14 recover punitive damage under Civil Code section 3294.

15 **FIFTH CAUSE OF ACTION**

16 **(Breach of Contract)**

17 **Agri Capital Inc. Against BW Industries, Inc.**

18 57. Plaintiffs re-allege and by this reference incorporate herein each and every allegation  
19 contained in Paragraphs 1 through 56 above.

20 58. Plaintiff Agri has performed each and every obligation required of it under the terms  
21 of the Agri Capital Note.

22 59. On information and belief, BW is in default of Paragraph 6(b) of the Agri Capital  
23 Note because BW is insolvent. In light of BW's default of the Agri Capital Note, Agri made demand  
24 on BW that the full amounts owed to Plaintiff be repaid by June 8, 2023. As of the date of this  
25 Complaint, BW Industries has failed to repay the amounts owed.

26 60. Based on BW's default of the Agri Capital Note, Agri seeks monetary damages in  
27 an amount according to proof, along with all attorneys' fees and costs incurred in bringing this  
28 action.

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**SIXTH CAUSE OF ACTION**

**(Breach Of The Covenant Of Good Faith & Fair Dealing)  
Agri Capital Inc. Against BW Industries, Inc.**

61. Plaintiffs re-allege and by this reference incorporate herein each and every allegation contained in Paragraphs 1 through 60 above.

62. California law imposes a duty of good faith and fair dealing in every contract. It exists to ensure each side receives the full benefit of their bargain.

63. On information and belief, BW intentionally deprived Agri of the benefit of the Agri Capital Note and Agri Pledge Agreement in that it may have pledged the shares identified in the agreements to other investors (and, at a minimum, attempted to). The shares pledged pursuant to the Agri Pledge Agreement were to be “unique” security for the sole benefit of Plaintiffs and not pledged to any others. On information and belief, BW, Soberal, Olguin, and Mily pledged their shares to other investors. In so doing, they substantially frustrated the purpose of the Agri Capital Note and Agri Pledge Agreement and breached the covenant of good faith and fair dealing.

64. As a result of BW Industries’ breach, Plaintiff Agri Capital was damaged in an amount according to proof.

**SEVENTH CAUSE OF ACTION**

**(Breach of Contract)  
CAAG Against BW Industries Inc.**

65. Plaintiffs re-allege and by this reference incorporate herein each and every allegation contained in Paragraphs 1 through 64 above.

66. Plaintiff CAAG has performed each and every obligation required of it under the terms of the CAAG Note.

67. On information and belief, BW is in default of Paragraph 6(b) of the CAAG Note because BW is insolvent. In light of BW’s default of the CAAG Note, CAAG made demand on BW that the full amounts owed to CAAG be repaid by June 8, 2023. As of the date of this Complaint, BW Industries has failed to repay the amounts owed.

68. Based on BW’s default of the CAAG Note, CAAG seeks monetary damages in an



1 amount according to proof, along with all attorneys' fees and costs incurred in bringing this action

2 69. Based on BW Industries' default of the CAAG Note, CAAG seeks monetary  
3 damages in an amount according to proof, along with all attorneys' fees and costs incurred in  
4 bringing this action.

5  
6 **EIGHTH CAUSE OF ACTION**

7 **(Breach Of The Covenant Of Good Faith & Fair Dealing)**  
8 **CA AG, LLC Against BW Industries, Inc.**

9 70. Plaintiffs re-allege and by this reference incorporate herein each and every allegation  
10 contained in Paragraphs 1 through 69 above.

11 71. California law imposes a duty of good faith and fair dealing in every contract. It  
12 exists to ensure each side receives the full benefit of their bargain.

13 72. On information and belief, BW intentionally deprived CAAG of the benefit of the  
14 CAAG Note and CAAG Pledge Agreement in that it may have pledged the shares identified in the  
15 agreements to other investors (and, at a minimum, attempted to). The shares pledged pursuant to  
16 the CAAG Pledge Agreement were to be "unique" security for the sole benefit of Plaintiffs and not  
17 pledged to any others. On information and belief, BW, Soberal, Olguin, and Mily pledged their  
18 shares to other investors. In so doing, they substantially frustrated the purpose of the CAAG Note  
19 and CAAG Pledge Agreement and breached the covenant of good faith and fair dealing.

20 73. As a result of BW Industries' breach, Plaintiff CAAG, LLC was damaged in an  
21 amount according to proof.

22 **NINTH CAUSE OF ACTION**

23 **(Negligent Supervision)**

24 **Plaintiffs against defendants Mitchell Kapor, Joseph T. Proietti, Paula Pretlow,**  
25 **and Ollen Douglass**

26 74. Plaintiffs re-allege and by this reference incorporate herein each and every allegation  
27 contained in Paragraphs 1 through 73 above.

28 75. Defendants, and each of them, owed a duty to take reasonable care in the  
management and supervision of Bitwise and its officers. On information and belief, Defendants

1 failed to supervise and oversee Soberal, Olguin, and Mily. Specifically, Plaintiffs are informed and  
2 believe, and on this basis allege, that for a period of years Bitwise's officers used false and fraudulent  
3 pretenses to raise money from unsuspecting investors and lenders. Further that the Defendant Board  
4 members knew, or should have known, of Bitwise's unlawful retention of the ERC which was sold  
5 to a third party. Bitwise's wrongful retention of these funds generated a lawsuit which included a  
6 claim for fraud. Had the Defendant Board members been diligent in their supervision of Bitwise's  
7 officers, they would and should have ensured the claim for fraud was appropriately handled and  
8 resolved. Rather than do so, it appears the Defendant Board members allowed the same executive  
9 who engaged in the conduct which caused Bitwise to be sued for fraud to resolve the issue.  
10 Unsurprisingly, on information and belief, the executives solved the ERC fraud claim by defrauding  
11 Plaintiffs.

12         76. Plaintiffs are informed and believe and thereon allege that the Board of Directors  
13 collectively, and through each of its individual members, created and perpetuated an image of  
14 legitimate business practices in the course of allowing the enterprise of its officers and affiliated  
15 companies to have a platform to conduct their corrupt and fraudulent activities. Plaintiffs are  
16 informed and believe and thereon allege that the loans fraudulently obtained from Plaintiffs, among  
17 others, were used with Board approval, to pay claims and other creditors, so as to protect individual  
18 Board members from personal liability from, among others, employee compensation claims of  
19 Bitwise employees. Plaintiffs are informed and believe and thereon allege that each Board member  
20 defendant knew for months that Bitwise was struggling with liquidity issues and knew that the  
21 company's officers were soliciting, based on the fraudulent representations outlined herein, loans  
22 from lenders that they also knew had no legitimate prospect for repayment. Plaintiffs are informed  
23 and believe and on that basis allege that each of the defendant Board member's knowledge of such  
24 facts evidences they were passive or active participants in the various fraudulent acts committed by  
25 Bitwise and its officers and directors.

26         77. Further, given the multiple pending lawsuits against Bitwise and allegations made  
27 thereon, it should have been apparent to the Board defendants that Bitwise's officers persistently  
28 engaged in a pattern of wrongful and fraudulent activity. As a result of the Board's negligence,

1 Plaintiffs were and are harmed in an amount according to proof. The failure of defendant Board  
2 members to adequately supervise the BW Industries Co-CEOs and President was the proximate  
3 cause of Plaintiffs' injuries. Had the defendant Board members adequately supervised Soberal,  
4 Olguin, and Mily, the above-described injuries would not have occurred.

5  
6 **TENTH CAUSE OF ACTION**

7 **(Breach of Duty of Care)**

8 **Plaintiffs Against Mitchell Kapor, Joseph T. Proietti, Paula Pretlow, and Ollen Douglass**

9 78. Plaintiffs re-allege and by this reference incorporate herein each and every allegation  
10 contained in Paragraphs 1 through 77 above.

11 79. Defendants owed Plaintiffs a duty of care given Plaintiffs' substantial investment in  
12 Bitwise. This duty requires they, *inter alia*, diligently supervise and monitor the affairs of the  
13 corporation to the business' viability and well-being. Defendants breached this duty by, on  
14 information and belief, failing to conduct the necessary oversight of Bitwise's CEO, Soberal, and  
15 the numerous false representations he, as aided by his co-conspirators Olguin and Mily, was making  
16 on behalf of Bitwise.

17 80. Specifically, Defendants knew or should have known that Soberal, Olguin, and Mily  
18 were actively, and falsely, marketing as collateral the "exclusive" right to their shares to secure loans  
19 for Bitwise. Defendants also knew or should have known that Bitwise had unlawfully taken the  
20 ERC tax credit that was sold to another company, denied receiving it, and caused a lawsuit with a  
21 claim for fraud to be filed against it. Had Defendants been diligent in their monitoring and  
22 supervision of Soberal, Olguin, Mily, and Bitwise's operation, they would have disclosed the  
23 apparent pattern of fraudulent conduct that they were apparently engaged in.

24 81. Plaintiffs are informed and believe and thereon allege that the Board of Directors  
25 collectively, and through each of its individual members, created and perpetuated an image of  
26 legitimate business practices in the course of allowing the enterprise of its officers and affiliated  
27 companies to have a platform to conduct their corrupt and fraudulent activities. Plaintiffs are  
28 informed and believe and thereon allege that the loans fraudulently obtained from Plaintiffs, among  
others, were used with Board approval, to pay claims and other creditors, so as to protect individual



1 **PRAYER**

2 WHEREFORE, Plaintiffs pray for Judgment against Defendants, and each of them, as  
3 follows:

4 **As to Agri Capital, Inc.:**

- 5 1. For contract damages in the principal amount of \$1,120,000;
- 6 2. For treble damages in the amount of \$3,360,000;

7 **As to CA AG LLC:**

- 8 3. For contract damages in the principal amount of \$560,000;
- 9 4. For treble damages in the amount of \$1,680,000;

10 **As to all Plaintiffs:**

- 11 5. For judgment on each and every cause of action in the complaint;
- 12 6. For direct and consequential damages as a result of Defendants' breaches of their  
13 contractual obligations, statutory obligations, and common law duties, and/or other unlawful  
14 conduct;
- 15 7. For punitive damages;
- 16 8. For a constructive trust compelling Defendants to transfer all wrongfully obtained  
17 property to Plaintiffs pursuant to Civil Code Sections 2223 and 2224;
- 18 9. For reasonable attorney's fees incurred herein;
- 19 10. For costs of suit;
- 20 11. For interest on the judgment at the maximum legal rate from the date of entry of  
21 judgment until paid in full; and
- 22 12. For such other and further relief as the Court may deem just and proper.

23 Dated: June 9, 2023

WHITNEY, THOMPSON & JEFFCOACH LLP

24  
25 By: 

26 Timothy L. Thompson  
27 Nikole E. Cunningham  
28 Jacob S. Sarabian

Attorneys for AGRI CAPITAL, INC. and CA AG, LLC

# **EXHIBIT “1”**

---

**From:** Jake Soberal <jsoberal@bitwiseindustries.com>  
**Sent:** Tuesday, April 25, 2023 3:36 PM  
**To:** Jim Maxwell <jim@AGRILANDFARMING.COM>  
**Subject:** Re: Bitwise Call

**RAPID TECHNOLOGIES**

**Warning:** Sender @jsoberal@bitwiseindustries.com is not yet trusted by your organization. Please be careful before replying or clicking/downloading the attachment and URLs.

[Report Phishing](#) [This Sender is Safe](#)

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Jim,

Thanks so much for your call. In case it's helpful in discussing with your sons, I wanted to share a written summary, below, and related documents, attached. As I mentioned in our call, we are happy to adjust the loan documents and/or deal structure if helpful to you. They key on our end is getting the funds in time to pay the settlement by Friday.

Best,  
Jake

**The Ask:**

Bitwise is seeking up to a \$5 million loan.

- Term - 90 days
- Return on Investment - fixed loan fee TBD
- Collateral - ~12 million shares in Bitwise owned by Irma and I

**The Need:**

Bitwise needs to raise \$5M in debt by April 28, 2023, to use those same proceeds to make a \$5M settlement payment to the fund that purchased its ERC Credits.

Bitwise sold the ERC credits to the firm in 2022 and signed documents with the IRS to have the funds go straight to the purchaser. The IRS errantly deposited the credits into Bitwise's bank account in 2023. Bitwise does not contest that the monies should go to the fund that purchased the tax credits.

Last week Bitwise reached verbal agreement with the firm who purchased the ERC Credits to repay the entire amount on or before June 1 for an additional fee. However, without notice to Bitwise the firm sought and obtained a temporary restraining order against Bitwise. Since that time the firm's attorneys, Reed Smith, have undertaken to contact customers, lenders, investors, and anyone who will take their call to share their negative assessment of Bitwise. This aggressive tactic and the issuance of the temporary restraining order has made it urgent for Bitwise to repay and settle with the firm.

While Bitwise has ~\$65M in cash on hand, it cannot use those proceeds to pay the settlement because of a negative covenant with Goldman Sachs.

Goldman Sachs is both an existing investor in Bitwise and in active diligence as the lead of a syndicate that plans to fund \$80M to Bitwise on or before May 31, 2023. However, related to its earlier investment in Bitwise, Bitwise has a covenant stating that it will keep \$65M or more in cash on hand (minimum liquidity covenant). Compliance with this covenant is especially important because of the active diligence of Bitwise by Goldman Sachs. Bitwise has asked if Goldman would consider an exception to the covenant and it said that it would not. As such, Bitwise paying \$5M to the ERC firm would jeopardize the \$80M transaction being led by Goldman Sachs that is set to close on May 31, 2023.

### **The Deal Structure:**

I have attached proposed deal documents to this e-mail. We are proposing a Term Note accompanied by a Pledge Agreement. We have endeavored to be simple, but complete with the documentation.

In its proposed form, the loan would be secured by mine and Irma's shares in Bitwise. We collectively own ~12 million of the ~132 million shares. The company completed a third party 409A valuation last year, which returned a valuation of \$257M; at this valuation, our shares have a value of ~\$28M. Thereafter the company completed a financing led by Goldman that valued the company at \$380M. Based on performance since that time we believe the company has a present value of \$500M.

Attached in support of the prior paragraph are:

- The 2022 409A Valuation
- Bitwise's Capitalization Table showing ownership amounts, including mine and Irma's
- Bitwise Financials
- The Bitwise Financial Model

Here are what we see as the possible outcomes from this loan transaction:

1. Bitwise pays the purchaser of its ERC Credits, closes the deal with Goldman, and repays the loan from the ~\$140M in cash it projects to have in July 2023.
1. Bitwise pays the purchasers of its ERC Credits, but does not close the deal with Goldman, and repays the loan from the ~\$65M in cash it has on hand today.
2. Bitwise fails in some unforeseen way to perform in its repayment obligation under the loan, and you foreclose on our shares which have a third party valuation of \$28M.

### **Jake A. Soberal (he/him)**

Co-Founder & CEO | Bitwise Industries

559.618.1279 | [jsoberal@bitwiseindustries.com](mailto:jsoberal@bitwiseindustries.com) | [bitwiseindustries.com](http://bitwiseindustries.com)

[Stay up-to-date on everything Bitwise](#)



On Tue, Apr 25, 2023 at 2:03 PM, Jake Soberal <[jsoberal@bitwiseindustries.com](mailto:jsoberal@bitwiseindustries.com)> wrote:

Jim,

I am working on an urgent challenge and was wondering if you have time to visit today? My cell is 559-618-1279 and I can be available at your convenience.

Best,  
Jake

**Jake A. Soberal (he/him)**

Co-Founder & CEO | Bitwise Industries

559.618.1279 | [jsoberal@bitwiseindustries.com](mailto:jsoberal@bitwiseindustries.com) | [bitwiseindustries.com](http://bitwiseindustries.com)

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## TERM NOTE

This loan agreement (this "Term Note") dated April \_\_, 2023 ("Effective Date"), is made by BW Industries Inc., a Delaware corporation with offices at 700 Van Ness Ave, Fresno, CA 93721 (the "Borrower") in favor of \_\_\_\_\_ (the "Lender").

1. Promise to Pay. For value received, the Borrower promises to pay to the Lender the principal amount of \_\_\_\_\_ DOLLARS AND NO CENTS (\$ \_\_\_\_\_); "Principal"), at the times described below, together with Interest (as defined below).
2. Collateral. Any amounts owed by Borrower under this Term Note shall be secured by the shares in Borrower owned by Irma L. Olguin, Jr., and Jake A. Soberal (Together, "Holders") fully described in Exhibit "A" ("Collateral"), attached and incorporated herein by this reference.
3. Fixed Loan Fee. Borrower shall pay Lender the fixed loan fee of \_\_\_\_\_ DOLLARS AND NO CENTS (\$ \_\_\_\_\_), all due at the end of the Term.
4. Term. The term of this Note shall be ninety (90) days from the Effective Date. Borrower shall pay the Principal and Fixed Loan Fee owing under this Term Note in full on or before July \_\_, 2023.
5. Prepayments. Borrower may prepay all or part of the Principal and Fixed Loan Fee of this Term Note at any time, without discount or penalty.
6. Default. Each of the following shall be an event of default under this Term Note:
  - a. Borrower's failure to pay any amount due as Principal or Fixed Loan Fee on the date required hereunder.
  - b. Borrower dissolves, becomes insolvent, or makes an assignment for the benefit of creditors.
7. Applicable Law and Jurisdiction. This Term Note shall be governed by and interpreted according to the laws of California and that any action or proceeding arising under this Term Note may be commenced in any federal or state court of the State of California sitting in Fresno County.

IN WITNESS WHEREOF, the Borrower and Lender hereby execute this Term Note as of the Effective Date.

**BORROWER:**

BW Industries Inc.,  
a Delaware corporation

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

Jake A. Soberal,  
Chief Executive Officer

ATTN:  
Jake A. Soberal  
BW Industries, Inc.  
700 Van Ness Ave.  
Fresno, CA 93271

**LENDER:**

[INSERT]

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

[NAME],  
[TITLE]

ATTN:  
[CONTACT]

**HOLDERS:**

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

Irma L. Olguin, Jr.

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

Jake A. Soberal

## **EXHIBIT “A”**

“Collateral” shall mean the 6,691,480 shares owned by Irma L. Olguin, Jr., in Borrower; and the 6,378,238 shares owned by Jake A. Soberal in Borrower.

Borrower has a total of 132,173,198 shares outstanding as of the Effective Date.

Holder’s have pledged the Collateral through the Security Agreement to this Term Note.

**SECURITY AGREEMENT –  
PLEDGE AND ASSIGNMENT OF OWNERSHIP INTERESTS**

This SECURITY AGREEMENT – PLEDGE AND ASSIGNMENT OF OWNERSHIP INTERESTS (the “Agreement”) is made as of April \_\_, 2023, by and between Irma L. Olguin, Jr., (“Assignor”) and \_\_\_\_\_ (“Assignee”). Assignor and Assignee are sometimes referenced herein as the “Party(ies).”

**RECITALS**

A. Assignor is a shareholder in BW Industries, Inc., a Delaware Corporation dba Bitwise Industries (the “Company”), and Assignee has made a loan to the Company in the principal amount of \$1,500,000 (the “Loan”).

B. As a condition to making the Loan, Assignee has required that Assignor pledge its entire beneficial ownership interest in the Company to Assignee as security for the Loan.

C. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Loan.

NOW, THEREFORE, for and in consideration of the mutual promises set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties hereby agree as follows:

1. Secured Obligations. The security interest granted pursuant to this Agreement secures the payment and performance of the obligations of Assignor to Assignee under (i) the Loan; (ii) any other agreements, documents or instruments executed contemporaneously herewith or hereafter by Assignor in favor of Assignee; and (iii) all other indebtedness of any kind of Assignor to Assignee (the “Secured Obligations”).

2. Security Interest. For the purposes hereof, “Collateral” shall collectively mean Assignor’s entire ownership interest (i.e., shares) in the Company. As security for the prompt and full payment and performance of the Secured Obligations, Assignor hereby pledges, assigns and grants to Assignee a security interest in all of Assignor’s right, title and interest in and to the Collateral, including without limitation, (i) all right, title and interest in and to any distributions, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Collateral, together in each case with all proceeds thereof, (ii) all rights to share in allocations of income and losses with respect to the Collateral, and (iii) all management rights with respect to the Collateral.

3. Perfection of Security Interest. Assignor agrees to execute such financing statements and to take whatever other actions are requested by Assignee to perfect and continue Assignee’s security interest in the Collateral.

4. Representations and Warranties. Assignor represents and warrants to Assignee as follows:

(a) Assignor is a shareholder the Company and the Collateral, and his/her shares are free and clear of any liens or adverse claims thereon or affecting the title thereto, except for the security interest created by this Agreement;

(b) Assignor owns 6,691,480 shares in the Company;

(c) The Company has issued a total of 132,173,198 shares;

(d) Assignor has the right and requisite authority to pledge, assign, transfer, deliver, deposit and set over the Collateral to Assignee as provided herein, and no provision of any organizational documents, agreements or instruments to which Assignor is a party conflicts with or limits the right and power of Assignor to do so, except to the extent that the application of any such provision has been properly and effectively waived;

(e) This Agreement has been duly authorized, executed and delivered by Assignor and constitutes the legal, valid and binding obligations of Assignor enforceable in accordance with its terms, except as enforceability against Assignor may be limited by bankruptcy, insolvency, or other similar laws affecting the rights of creditors generally or by the application of general equity principles; and

(f) The Collateral has not been certificated.

The representations and warranties set forth in this Section shall survive the execution and delivery of this Agreement.

5. Covenants. Assignor covenants to Assignee as follows:

(a) Without the prior written consent of Assignee, Assignor will not sell, assign, transfer, pledge, or otherwise encumber any rights in or to the Collateral or any distributions or payments with respect thereto or grant a lien, security interest or encumbrance thereon;

(b) Assignor, at its expense, will promptly execute, acknowledge and deliver all such instruments and take all such action as Assignee may reasonably request from time to time in order to ensure to Assignee the benefits of the liens and security interest in and to the Collateral intended to be created by this Agreement;

(c) Assignor will defend the title to the Collateral and the liens and security interest of Assignee therein against the claim of any person and will maintain and preserve such liens and security interest until such time as the Secured Obligations have been paid and performed in full;

(d) Assignor will comply with the provisions of its organizational documents, and will not take any action which would have the effect of impairing the position or interest of Assignee in respect of the Collateral or which would authorize or effect (a) the dissolution or

liquidation, in whole or in part, of Assignor, (b) the consolidation or merger of Assignor with any other person, or (c) the bankruptcy or reorganization of Assignor.

(e) Without the prior written consent of Assignee, Assignor will not (i) consent to or permit any amendment, modification, restatement, or termination of the organizational documents of Assignor, or (ii) otherwise consent to or permit any dissolution, termination, merger, consolidation or sale of Assignor.

(f) If Assignor shall, as a result of its ownership of the Collateral, become entitled to receive or shall receive any membership or other interests (including, without limitation, any other interests representing a distribution in connection with any reclassification, increase or reduction of capital and any certificate issued in connection with any reorganization), option or right, whether in addition to, in substitution of, as a conversion of, or in exchange for any Collateral, Assignor shall accept the same as Assignee's agent, hold the same in trust for Assignee and deliver the same forthwith to Assignee in the exact form received, duly endorsed by Assignor to Assignee to be held by Assignee hereunder as additional collateral security for the Secured Obligations. Any sums paid upon or in respect of the Collateral upon the liquidation or dissolution of Assignor or in redemption of the Collateral shall be forthwith paid over to Assignee to be held by it for use in its own discretion and in case any distribution of capital shall be made on or in respect of the Collateral or any property shall be distributed upon or with respect to the Collateral pursuant to the recapitalization or reclassification of the capital of Assignor or pursuant to the reorganization thereof, the property so distributed shall be forthwith delivered to Assignee to be held by it, for use in its own discretion.

6. Rights with Respect to Collateral. As long as no Event of Default shall have occurred and be continuing and until written notice shall be given to Assignor by Assignee, Assignor shall have the right to exercise all powers with respect to the Collateral or any part thereof for all purposes not inconsistent with the provisions of this Agreement.

7. Event of Default.

(a) Breach of Agreement. If Assignor breaches or fails to timely and fully perform any of Assignor's obligations under this Agreement or if any warranty, representation, or statement made or furnished to Assignee by or on behalf of Assignor under this Agreement or any of the Secured Obligations is false or misleading in any material respect, either now or at the time made or furnished;

(b) Default Under Loan. If there is any default by Assignor or the Company under the Loan;

(c) Insolvency. The appointment of a receiver for any part of Assignor's property, any assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Assignor; or

(d) Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession, or any other

method, by any creditor (other than Assignee) of Assignor or by any governmental agency against the Collateral.

8. Defaults and Remedies.

(a) If an Event of Default shall have occurred, Assignee may exercise, in addition to all other rights and remedies granted in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Secured Obligations. Without limiting the generality of the foregoing, Assignee may, at its election, cause the transfer and register in its name or in the name of its designee the whole or any part of the Collateral, exercise any rights or powers with respect thereto, collect and receive all distributions made thereon, sell in one or more sales after twenty (20) days' notice of the time and place of any public sale or of the time after which a private sale is to take place (which notice Assignor agrees is commercially reasonable), but without any previous notice or advertisement, the whole or any part of the Collateral and/or to otherwise act with respect to the Collateral as though Assignee was the outright owner thereof. Any sale shall be made at a public or private sale at Assignee's place of business, or elsewhere to be named in the notice of sale, either for cash or upon credit or for future delivery at such price as Assignee may deem fair, and Assignee may be the purchaser of the whole or any part of the Collateral so sold and hold the same thereafter in its own right free from any claim of Assignor. Each sale shall be made to the highest bidder, but Assignee reserves the right to reject any and all bids at such sale that, in its absolute discretion, it shall deem inadequate. Demands of performance (except as otherwise specifically provided herein) and for notices of sale, advertisements and the presence of property at sale are hereby waived and any sale hereunder may be conducted by an auctioneer or any officer or agent of Assignee.

(b) Assignee's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in the same manner as Assignee deals with similar securities and property for its own account. Assignee shall not have any duty to initiate any action to protect against the possibility of a decline in the market value of the Collateral. Neither Assignee nor any of its members, managers, employees or agents shall be liable for failure to demand, collect or realize upon the Collateral, or any part thereof, or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any of Assignor, or otherwise or to take any other action whatsoever with regard to the Collateral or any part thereof.

(c) Upon the occurrence of an Event of Default, Assignor hereby appoints Assignee or Assignee's designee as Assignor's attorney-in-fact and proxy, with full authority and power in Assignor's place and stead, and in Assignor's name, from time to time in Assignee's discretion from and after the occurrence of an Event of Default to take any action and to execute any instrument which Assignee may deem necessary or advisable to perfect, protect or enforce any right or security interest hereunder or otherwise accomplish the purposes of this Agreement, including, without limitation, to execute and file alone any financing statement under the UCC and any document or instrument under any other applicable laws, and to receive, endorse and collect all instruments made payable to Assignor representing any distribution in respect of any of the Collateral and to give full discharge for the same. Assignor ratifies and approves all such acts of such attorney and proxy. Neither Assignee nor such attorney and proxy will be liable for any acts or omissions, nor for any error of judgment or mistake of fact or law, other than Assignee's or such



attorney's and proxy's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. This power, being coupled with an interest, is irrevocable until all Secured Obligations have been fully satisfied.

(d) Assignor shall authorize and instruct the Company to comply with any instruction received by the Company from Assignee in writing that: (a) states that an Event of Default has occurred; and (b) is otherwise in accordance with the terms of this Agreement, without any other or further instructions from Assignor, and Assignor agrees that the Company shall be fully protected in so complying.

9. Termination. This Agreement shall terminate at such time as Assignor no longer has any current or future potential Secured Obligations. Until terminated, the security interest created hereby shall continue in full force and effect and shall secure and be applicable to the Secured Obligations. Upon termination, Assignee shall cooperate with Assignor to secure the release of the security interest, assignment and pledge created hereby, including the release and return of all pledged items of Collateral and the execution of any releases of financing statements reasonably requested by Assignor.

10. General Provisions.

(a) This Agreement constitutes the entire Agreement between the parties and cannot be changed or modified, other than by a written Agreement executed by both Parties.

(b) The provisions of this Agreement shall extend to, bind and inure to the benefit of the Parties hereto and their respective personal representatives, heirs, successors and assigns.

(c) THIS AGREEMENT HAS BEEN NEGOTIATED, EXECUTED AND DELIVERED, AND SHALL BE DEEMED TO HAVE BEEN MADE IN THE STATE OF OREGON, AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OREGON. ASSIGNOR HEREBY CONSENTS AND AGREES THAT VENUE FOR ANY ACTION ARISING BY OR THROUGH THIS AGREEMENT SHALL BE IN THE SUPERIOR COURT IN MULTNOMAH COUNTY, OREGON, WHICH COURT SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN ASSIGNOR AND ASSIGNEE PERTAINING TO THIS AGREEMENT, OR ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO PRECLUDE THE ENFORCEMENT BY ASSIGNEE OF ANY JUDGMENT OR ORDER OBTAINED IN SUCH FORUM OR THE TAKING OF ANY ACTION UNDER THIS AGREEMENT TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE FORUM OR JURISDICTION.

(d) This Agreement is the entire, final and complete agreement of the Parties pertaining to the matters described herein, and supersedes and replaces all written and oral agreements heretofore made or existing by and between the Parties or their representatives insofar

as the matters described herein. The Parties shall not be bound by any promises, representations or agreements except as are herein expressly set forth.

(e) In case litigation is instituted arising directly or indirectly out of this Agreement, the losing party shall pay to the prevailing party its reasonable attorney's fees, together with all expenses, which may reasonably incur in taking such action. If an appeal is taken from any Judgment or Decree of the trial court, the losing party shall pay the prevailing party in the appeal its reasonable attorney's fees in such appeal. Said sums shall be in addition to all other sums provided by law.

(f) Failure by either party at any time to require performance by the other Party of any of the provisions hereof shall in no way affect the Party's rights hereunder to enforce the same nor shall any waiver by the Party of any breach hereof be held to be a waiver of any succeeding breach or a waiver of this non-waiver clause.

(g) Time is of the essence of this Agreement.

(h) ASSIGNOR ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES, AND THEREFORE, ASSIGNOR HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING (INCLUDING ACTIONS SOUNDING IN TORT) TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS PLEDGE AGREEMENT OR ARISING FROM THE TRANSACTION CONTEMPLATED HEREUNDER, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE AND NOT BY A JURY.

(i) All notices, requests, demands, and other communications required or permitted under this Agreement shall be given in accordance with the notice requirements set forth in the Loan.

[REMAINDER OF PAGE LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

ASSIGNEE:

[INSERT]

By: \_\_\_\_\_  
[INSERT]

ASSIGNOR:

Irma L. Olguin, Jr.  
an Individual

By: \_\_\_\_\_  
Irma L. Olguin, Jr.

**SECURITY AGREEMENT –  
PLEDGE AND ASSIGNMENT OF OWNERSHIP INTERESTS**

This SECURITY AGREEMENT – PLEDGE AND ASSIGNMENT OF OWNERSHIP INTERESTS (the “Agreement”) is made as of April \_\_, 2023, by and between Jake A. Soberal, (“Assignor”) and \_\_\_\_\_ (“Assignee”). Assignor and Assignee are sometimes referenced herein as the “Party(ies).”

**RECITALS**

D. Assignor is a shareholder in BW Industries, Inc., a Delaware Corporation dba Bitwise Industries (the “Company”), and Assignee has made a loan to the Company in the principal amount of \$1,500,000 (the “Loan”).

E. As a condition to making the Loan, Assignee has required that Assignor pledge its entire beneficial ownership interest in the Company to Assignee as security for the Loan.

F. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Loan.

NOW, THEREFORE, for and in consideration of the mutual promises set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties hereby agree as follows:

11. Secured Obligations. The security interest granted pursuant to this Agreement secures the payment and performance of the obligations of Assignor to Assignee under (i) the Loan; (ii) any other agreements, documents or instruments executed contemporaneously herewith or hereafter by Assignor in favor of Assignee; and (iii) all other indebtedness of any kind of Assignor to Assignee (the “Secured Obligations”).

12. Security Interest. For the purposes hereof, “Collateral” shall collectively mean Assignor’s entire ownership interest (i.e., shares) in the Company. As security for the prompt and full payment and performance of the Secured Obligations, Assignor hereby pledges, assigns and grants to Assignee a security interest in all of Assignor’s right, title and interest in and to the Collateral, including without limitation, (i) all right, title and interest in and to any distributions, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Collateral, together in each case with all proceeds thereof, (ii) all rights to share in allocations of income and losses with respect to the Collateral, and (iii) all management rights with respect to the Collateral.

13. Perfection of Security Interest. Assignor agrees to execute such financing statements and to take whatever other actions are requested by Assignee to perfect and continue Assignee’s security interest in the Collateral.

14. Representations and Warranties. Assignor represents and warrants to Assignee as follows:

(a) Assignor is a shareholder the Company and the Collateral, and his/her shares are free and clear of any liens or adverse claims thereon or affecting the title thereto, except for the security interest created by this Agreement;

(b) Assignor owns 6,378,238 shares in the Company;

(c) The Company has issued a total of 132,173,198 shares;

(d) Assignor has the right and requisite authority to pledge, assign, transfer, deliver, deposit and set over the Collateral to Assignee as provided herein, and no provision of any organizational documents, agreements or instruments to which Assignor is a party conflicts with or limits the right and power of Assignor to do so, except to the extent that the application of any such provision has been properly and effectively waived;

(e) This Agreement has been duly authorized, executed and delivered by Assignor and constitutes the legal, valid and binding obligations of Assignor enforceable in accordance with its terms, except as enforceability against Assignor may be limited by bankruptcy, insolvency, or other similar laws affecting the rights of creditors generally or by the application of general equity principles; and

(f) The Collateral has not been certificated.

The representations and warranties set forth in this Section shall survive the execution and delivery of this Agreement.

15. Covenants. Assignor covenants to Assignee as follows:

(a) Without the prior written consent of Assignee, Assignor will not sell, assign, transfer, pledge, or otherwise encumber any rights in or to the Collateral or any distributions or payments with respect thereto or grant a lien, security interest or encumbrance thereon;

(b) Assignor, at its expense, will promptly execute, acknowledge and deliver all such instruments and take all such action as Assignee may reasonably request from time to time in order to ensure to Assignee the benefits of the liens and security interest in and to the Collateral intended to be created by this Agreement;

(c) Assignor will defend the title to the Collateral and the liens and security interest of Assignee therein against the claim of any person and will maintain and preserve such liens and security interest until such time as the Secured Obligations have been paid and performed in full;

(d) Assignor will comply with the provisions of its organizational documents, and will not take any action which would have the effect of impairing the position or interest of Assignee in respect of the Collateral or which would authorize or effect (a) the dissolution or

liquidation, in whole or in part, of Assignor, (b) the consolidation or merger of Assignor with any other person, or (c) the bankruptcy or reorganization of Assignor.

(e) Without the prior written consent of Assignee, Assignor will not (i) consent to or permit any amendment, modification, restatement, or termination of the organizational documents of Assignor, or (ii) otherwise consent to or permit any dissolution, termination, merger, consolidation or sale of Assignor.

(f) If Assignor shall, as a result of its ownership of the Collateral, become entitled to receive or shall receive any membership or other interests (including, without limitation, any other interests representing a distribution in connection with any reclassification, increase or reduction of capital and any certificate issued in connection with any reorganization), option or right, whether in addition to, in substitution of, as a conversion of, or in exchange for any Collateral, Assignor shall accept the same as Assignee's agent, hold the same in trust for Assignee and deliver the same forthwith to Assignee in the exact form received, duly endorsed by Assignor to Assignee to be held by Assignee hereunder as additional collateral security for the Secured Obligations. Any sums paid upon or in respect of the Collateral upon the liquidation or dissolution of Assignor or in redemption of the Collateral shall be forthwith paid over to Assignee to be held by it for use in its own discretion and in case any distribution of capital shall be made on or in respect of the Collateral or any property shall be distributed upon or with respect to the Collateral pursuant to the recapitalization or reclassification of the capital of Assignor or pursuant to the reorganization thereof, the property so distributed shall be forthwith delivered to Assignee to be held by it, for use in its own discretion.

16. Rights with Respect to Collateral. As long as no Event of Default shall have occurred and be continuing and until written notice shall be given to Assignor by Assignee, Assignor shall have the right to exercise all powers with respect to the Collateral or any part thereof for all purposes not inconsistent with the provisions of this Agreement.

17. Event of Default.

(a) Breach of Agreement. If Assignor breaches or fails to timely and fully perform any of Assignor's obligations under this Agreement or if any warranty, representation, or statement made or furnished to Assignee by or on behalf of Assignor under this Agreement or any of the Secured Obligations is false or misleading in any material respect, either now or at the time made or furnished;

(b) Default Under Loan. If there is any default by Assignor or the Company under the Loan;

(c) Insolvency. The appointment of a receiver for any part of Assignor's property, any assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Assignor; or

(d) Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession, or any other

method, by any creditor (other than Assignee) of Assignor or by any governmental agency against the Collateral.

18. Defaults and Remedies.

(a) If an Event of Default shall have occurred, Assignee may exercise, in addition to all other rights and remedies granted in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Secured Obligations. Without limiting the generality of the foregoing, Assignee may, at its election, cause the transfer and register in its name or in the name of its designee the whole or any part of the Collateral, exercise any rights or powers with respect thereto, collect and receive all distributions made thereon, sell in one or more sales after twenty (20) days' notice of the time and place of any public sale or of the time after which a private sale is to take place (which notice Assignor agrees is commercially reasonable), but without any previous notice or advertisement, the whole or any part of the Collateral and/or to otherwise act with respect to the Collateral as though Assignee was the outright owner thereof. Any sale shall be made at a public or private sale at Assignee's place of business, or elsewhere to be named in the notice of sale, either for cash or upon credit or for future delivery at such price as Assignee may deem fair, and Assignee may be the purchaser of the whole or any part of the Collateral so sold and hold the same thereafter in its own right free from any claim of Assignor. Each sale shall be made to the highest bidder, but Assignee reserves the right to reject any and all bids at such sale that, in its absolute discretion, it shall deem inadequate. Demands of performance (except as otherwise specifically provided herein) and for notices of sale, advertisements and the presence of property at sale are hereby waived and any sale hereunder may be conducted by an auctioneer or any officer or agent of Assignee.

(b) Assignee's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in the same manner as Assignee deals with similar securities and property for its own account. Assignee shall not have any duty to initiate any action to protect against the possibility of a decline in the market value of the Collateral. Neither Assignee nor any of its members, managers, employees or agents shall be liable for failure to demand, collect or realize upon the Collateral, or any part thereof, or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any of Assignor, or otherwise or to take any other action whatsoever with regard to the Collateral or any part thereof.

(c) Upon the occurrence of an Event of Default, Assignor hereby appoints Assignee or Assignee's designee as Assignor's attorney-in-fact and proxy, with full authority and power in Assignor's place and stead, and in Assignor's name, from time to time in Assignee's discretion from and after the occurrence of an Event of Default to take any action and to execute any instrument which Assignee may deem necessary or advisable to perfect, protect or enforce any right or security interest hereunder or otherwise accomplish the purposes of this Agreement, including, without limitation, to execute and file alone any financing statement under the UCC and any document or instrument under any other applicable laws, and to receive, endorse and collect all instruments made payable to Assignor representing any distribution in respect of any of the Collateral and to give full discharge for the same. Assignor ratifies and approves all such acts of such attorney and proxy. Neither Assignee nor such attorney and proxy will be liable for any acts or omissions, nor for any error of judgment or mistake of fact or law, other than Assignee's or such

attorney's and proxy's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. This power, being coupled with an interest, is irrevocable until all Secured Obligations have been fully satisfied.

(d) Assignor shall authorize and instruct the Company to comply with any instruction received by the Company from Assignee in writing that: (a) states that an Event of Default has occurred; and (b) is otherwise in accordance with the terms of this Agreement, without any other or further instructions from Assignor, and Assignor agrees that the Company shall be fully protected in so complying.

19. Termination. This Agreement shall terminate at such time as Assignor no longer has any current or future potential Secured Obligations. Until terminated, the security interest created hereby shall continue in full force and effect and shall secure and be applicable to the Secured Obligations. Upon termination, Assignee shall cooperate with Assignor to secure the release of the security interest, assignment and pledge created hereby, including the release and return of all pledged items of Collateral and the execution of any releases of financing statements reasonably requested by Assignor.

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(a) This Agreement constitutes the entire Agreement between the parties and cannot be changed or modified, other than by a written Agreement executed by both Parties.

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(c) THIS AGREEMENT HAS BEEN NEGOTIATED, EXECUTED AND DELIVERED, AND SHALL BE DEEMED TO HAVE BEEN MADE IN THE STATE OF OREGON, AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OREGON. ASSIGNOR HEREBY CONSENTS AND AGREES THAT VENUE FOR ANY ACTION ARISING BY OR THROUGH THIS AGREEMENT SHALL BE IN THE SUPERIOR COURT IN MULTNOMAH COUNTY, OREGON, WHICH COURT SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN ASSIGNOR AND ASSIGNEE PERTAINING TO THIS AGREEMENT, OR ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO PRECLUDE THE ENFORCEMENT BY ASSIGNEE OF ANY JUDGMENT OR ORDER OBTAINED IN SUCH FORUM OR THE TAKING OF ANY ACTION UNDER THIS AGREEMENT TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE FORUM OR JURISDICTION.

(d) This Agreement is the entire, final and complete agreement of the Parties pertaining to the matters described herein, and supersedes and replaces all written and oral agreements heretofore made or existing by and between the Parties or their representatives insofar



as the matters described herein. The Parties shall not be bound by any promises, representations or agreements except as are herein expressly set forth.

(e) In case litigation is instituted arising directly or indirectly out of this Agreement, the losing party shall pay to the prevailing party its reasonable attorney's fees, together with all expenses, which may reasonably incur in taking such action. If an appeal is taken from any Judgment or Decree of the trial court, the losing party shall pay the prevailing party in the appeal its reasonable attorney's fees in such appeal. Said sums shall be in addition to all other sums provided by law.

(f) Failure by either party at any time to require performance by the other Party of any of the provisions hereof shall in no way affect the Party's rights hereunder to enforce the same nor shall any waiver by the Party of any breach hereof be held to be a waiver of any succeeding breach or a waiver of this non-waiver clause.

(g) Time is of the essence of this Agreement.

(h) ASSIGNOR ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES, AND THEREFORE, ASSIGNOR HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING (INCLUDING ACTIONS SOUNDING IN TORT) TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS PLEDGE AGREEMENT OR ARISING FROM THE TRANSACTION CONTEMPLATED HEREUNDER, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE AND NOT BY A JURY.

(i) All notices, requests, demands, and other communications required or permitted under this Agreement shall be given in accordance with the notice requirements set forth in the Loan.

[REMAINDER OF PAGE LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

ASSIGNEE:

[INSERT]

By: \_\_\_\_\_  
[INSERT]

ASSIGNOR:

Jake A. Soberal  
an Individual

By: \_\_\_\_\_  
Jake A. Soberal





Common stock valuation for

# BW Industries Inc.

**Valuation date** June 8, 2022

Prepared by Carta Valuations LLC on July 12, 2022

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July 12, 2022

**JAKE SOBERAL**

Chief Executive Officer

**BW INDUSTRIES INC.**

700 VAN NESS AVE FRESNO, CA 93721-2912

This report details the valuation analysis used to derive the fair market value of the common equity of BW Industries Inc. (hereinafter referred to as “BW Industries Inc.” or the “Company”) on a per share basis (“Subject Interest”) as of June 8, 2022 (“Valuation Date”). It is understood that the valuation of the Subject Interest, as developed in this report, will be used for tax planning and financial reporting purposes in recognition of Internal Revenue Code Section 409A (“409A”) and FASB Accounting Standards Codification Topic 718 – Stock Compensation (“ASC 718”). As such, this report should not be used for any other purpose.

The analysis was prepared following the guidance of the American Institute of Certified Public Accountants (“AICPA”) Accounting and Valuation Guide: Valuation of Privately-Held-Company Equity Securities Issued as Compensation (the “AICPA Guide”).

The definition of fair market value is predicated on IRS Revenue Ruling 59-60.

**STANDARD OF VALUE**

For income tax purposes, the appropriate standard of value is fair market value (“FMV”), which is defined as:

*The price, expressed in terms of cash equivalents, at which such property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm’s length in an open and unrestricted market, when neither is under compulsion to buy or to sell, and when both have reasonable knowledge of relevant facts.*

For financial reporting purposes, the appropriate standard of value is fair value (“FV”), which is defined as:

*The amount at which an asset (or liability) could be bought (or incurred) or sold (or settled) in a current transaction between willing parties, that is, other than in a forced or liquidation sale.*

According to the May 7, 2003 FASB Board meeting, the above definition of fair value is consistent with the definition of fair market value in Internal Revenue Ruling 59-60. We are not aware of any facts that would cause a difference in our conclusions on a fair market value basis compared with fair value. As such, it is not unreasonable that our conclusion of fair value for financial reporting purposes be consistent with our conclusion of fair market value for tax reporting purposes.

**SCOPE OF ENGAGEMENT**

This report was created in compliance with guidance regarding valuation methodologies published by the AICPA.



We considered differences between the Company's preferred and common shares, as applicable, with respect to liquidation preferences, conversion rights, voting rights, and other features. We also considered appropriate adjustments to recognize lack of marketability related to the Subject Interest.

## SCOPE OF ANALYSIS

Carta Valuations, LLC has based this report on information provided and represented by the management of BW Industries Inc. ("Management"). Our review and analysis included, but was not necessarily limited to, the following steps:

- Communication with Management concerning the assets, financial and operating history and forecasted future operations of the Company;
- Analysis of audited and unaudited historical and forecast financial statements, as applicable, and other financial and operational data concerning the Company;
- Review of corporate documents including, but not limited to, the capitalization summary of preferred stock ("Preferred Stock" or "Preferred Shares"), Common Stock, options and warrants;
- Analysis of the Company, its financial and operating history, the nature of its product(s)/service(s), technologies and its competitive position;
- Analysis of the industry in which the Company competes, the stage of the development of the Company's target markets and the pace of adoption of its chosen technology platforms;
- Research and analysis concerning comparable public companies and transactions involving comparable public and private companies;
- Analysis concerning the current economic conditions and outlook for the US economy, as well as applicable global economic conditions; and
- Analysis and estimation of the FMV and FV of the common equity on a non-marketable, minority interest basis as of the Valuation Date.

## CONCLUSIONS

Based on the information provided and the analysis conducted, and subject to the attached Statement of Assumptions and Limiting Conditions, it is our opinion that the fair value and fair market value of one share of the Company's common stock on a non-marketable, minority basis as of the Valuation Date is as follows:

Common Stock of BW Industries Inc.: **\$0.95**

Carta Valuations LLC's fee for this service is not contingent upon the results of the Valuation expressed herein. This Valuation is subject to the terms and conditions of the master subscription agreement between eShares, Inc. (an affiliate of Carta Valuations LLC) and BW Industries Inc. executed on July 29, 2019.



## VALUATION SUMMARY

### Company value

Approach	Value	Weighting
Market approach (subject company transaction method)	\$257,271,000	100.00%
<b>Concluded value</b>	<b>\$257,271,000</b>	<b>100.00%</b>

### Common share value

Inputs	Conclusion
Allocation methodology	Option pricing model
Fully marketable value	\$1.56
Discount for lack of marketability	39.00%
<b>Concluded fair market value</b>	<b>\$0.95</b>





## COMPANY OVERVIEW

Bitwise Industries is the scaled solution to the tech equity gap in the U.S. workforce. Fixing the way the world sources technology talent, Bitwise is a three part ecosystem solution that creates an onramp into the technology industry for historically excluded people groups, and places.

Bitwise Workforce Training teaches historically excluded people groups in historically overlooked geographies to code through its approved apprenticeship program. Its distinction is that it provides students with both skills-based training and the critical non-technical supports (for example - transportation, compensation, childcare, food security, etc.) that are often the barrier to entry for individuals coming from stories of systemic poverty. Bitwise is the policy-aligned, category leader in government workforce development and already the preferred future of workforce partner to the U.S. government. Bitwise Workforce Training has trained over 8,000 students, with >80% of those exiting its programs earning technical employment (>50% female, >60% underrepresented minority, and ~20% first generation).

Bitwise Technology Consulting is an enterprise software consulting firm that exists to provide world-class solutions, while demonstrating that great companies can and should be built using non-traditional talent. Bitwise's investment in diverse talent pipelines allows them to scale faster than their competitors confronting historic talent competition shortages. And Bitwise Tech consulting is winning in the fastest-growing segments of the industry - Salesforce, Broadband, Call Center, Modernization, and Cybersecurity. has grown to >\$40M in annual revenue and is doubling each year. It's client list includes more than 20 states, Salesforce, Essence Media, and growers that account for more than 20% of the world's table food.

To wrap this work in supportive community, and ensure that the impact of this model works to the benefit of the overlooked places that Bitwise calls home--what Bitwise refers to as "Underdog Cities"-- the Bitwise ecosystem includes an innovative and scalable real estate model called Bitwise Infrastructure. Bitwise partners with real estate investors to buy blighted real estate at the urban core of the cities in which it operates; improves that real estate; and leases it to mission-aligned technology companies and supportive services. The Bitwise real estate model has led to the activation of nearly 1 million square feet of downtown real estate across four cities.

In so doing, Bitwise opens up pipelines of technology talent for the world while lifting underdog cities and the people in them. Bitwise has now expanded to four California cities--Fresno, Bakersfield, Merced, and Oakland--as well as Toledo, Ohio, and recently announced expansion to five new U.S. states, with sights already set on an additional 30 cities in the coming years.

### Round Summary

BW Industries Inc. recently raised its Series B-2 Preferred round of equity financing. The Company issued 26,015,696 shares at a price of \$2.31 per share to investors in the round.

Share class	Shares issued	Original issue price
Series B-2 Preferred	26,015,696	\$2.31



Management indicated that the investors in the round of financing underwent significant due diligence before investing in the Company. Given the institutional nature of the participants and the circumstances of the round, the transaction was considered arm's length in nature and was used as the basis for this valuation. The Company will use the capital to help fund operations and accelerate future growth.



## BW INDUSTRIES INC. FINANCIALS

### Income statement

Metric	Historical <sup>[1]</sup>	LTM <sup>[2]</sup>	NTM <sup>[3]</sup>	2022	2023
Revenue	\$35,598,000	\$139,218,629	\$206,782,480	\$116,684,504	\$433,038,228
EBITDA	\$4,693,000	\$2,271,899	\$6,480,372	(\$1,586,937)	\$32,533,041

### Financial Metrics

Metric	Value
EBITDA Margin	1.63%
Historical growth rate	291.09%
Projected growth rate	48.53%

### Balance sheet as of May 31, 2022

Metric	Value
Cash and cash equivalents	\$98,060,732
Interest bearing liabilities	\$21,041,140

[1] 'Historical' refers to the period from June 1, 2020 to May 31, 2021.

[2] 'LTM' refers to the period from June 1, 2021 to May 31, 2022.

[3] 'NTM' refers to the period from June 1, 2022 to May 31, 2023.



## CAPITALIZATION

### Share classes

Outstanding shares	Shares outstanding	Warrants	Options	Total
Series A-1 Preferred	8,468,747	0	0	8,468,747
Series A Preferred	23,681,780	1,503,194	0	25,184,974
Series B	22,933,373	0	0	22,933,373
Series B-1 Preferred	6,231,531	0	0	6,231,531
Series B-2 Preferred	26,015,696	0	0	26,015,696
Series B-3 Preferred	20,568,376	0	0	20,568,376
Class B Common	9,513,241	0	11,337,728	20,850,969
FF Preferred	486,760	0	0	486,760
<b>Total</b>	<b>117,899,504</b>	<b>1,503,194</b>	<b>11,337,728</b>	<b>130,740,426</b>

### Liquidation preferences

Share class	Liquidation rank	Issue price	Multiplier	Dividend type	Dividend rate	Participation Y/N	Participation cap	Conversion ratio
Series A-1 Preferred	1	\$1.24	1.00	Non-Cumulative	N/M	N	N/A	1.00
Series A Preferred	1	\$0.89	1.00	Non-Cumulative	N/M	N	N/A	1.00
Series B	1	\$1.89	1.00	Non-Cumulative	N/M	N	N/A	1.00
Series B-1 Preferred	1	\$2.30	1.00	Non-Cumulative	N/M	N	N/A	1.00
Series B-2 Preferred	1	\$2.31	1.00	Non-Cumulative	N/M	N	N/A	1.00
Series B-3 Preferred	1	\$1.84	1.00	Non-Cumulative	N/M	N	N/A	1.00
Class B Common	2	—	1.00	—	N/M	N	N/A	1.00
FF Preferred	2	—	1.00	—	N/M	N	N/A	1.00

Lowest number liquidation preference is paid out first.



## VALUATION METHODOLOGY SUMMARY

### Selected valuation approaches

The first step in valuing the Company's common shares was to determine the value of the Company. In arriving at a conclusion of the Company value, we considered the methodologies below:

#### Market approach: Subject company transaction method

This methodology consists of examining prior transactions of the subject Company. According to the AICPA guidelines, recent securities transactions in the Company's stock should be considered as a relevant input for computing the enterprise valuation.

Given that there were security transactions near the Valuation Date, the Subject Company Transaction Method was used. Detailed discussion and information about this approach can be found in the exhibits and appendix.

#### Market approach: Guideline public company method

The Guideline (or Comparable) Publicly Traded Company Methodology within the Market Approach relies on an analysis of publicly traded companies similar in industry and/or business model to the Company. This methodology uses these guideline companies to develop relevant market multiples and ratios, using metrics such as revenue, earnings before interest and taxes (EBIT), earnings before interest, taxes, depreciation and amortization (EBITDA), net income and/or tangible book value. These multiples and values are then applied to the Company's corresponding financial metrics. Since no two companies are perfectly comparable, premiums or discounts may be applied to the subject company's metrics if its position in its industry is significantly different from the position of the guideline companies, or if its intangible attributes are significantly different.

Given this context, and the Company's recent arm's length financing, the value indication from the Subject Transaction Method was considered a more relevant indicator of value.

#### Market approach: Guideline M&A transaction method

The Guideline Transactions Methodology of the Market Approach uses prices paid in merger and acquisitions targeting companies similar to the Subject Company. These acquisition values were used in conjunction with the transaction targets' financials to calculate implied exit multiples. These multiples are then applied to the Company's corresponding financial data.

Given the recent financing, the value indication from the Subject Company Transaction Method was considered more appropriate. Accordingly, the Guideline Transaction Methodology was not selected.

#### Income approach: Discounted cash flow

This approach focuses on the income-producing capability of a business. Carta Valuations LLC reviewed the Company's historical financials and any forecasts provided by Management.

The Company has not achieved profitability as of the Valuation Date and does not project consistent margins or stable cash flows in the near-term. Given this context, and the Company's recent arm's length financing, the value indication from the Subject Transaction Method was considered a more relevant indicator of value.



**Asset approach**

The asset approach measures the value of an asset by the cost to recreate or replace it with another of like utility. When applied to the valuation of equity interests in businesses, value is based on the net aggregate fair market value of the entity's underlying individual assets. This approach is frequently used in valuing holding companies or capital-intensive businesses. This methodology was considered and not used, as it does not accurately represent the going concern value of the Company.



## **GUIDELINE PUBLIC COMPANY DISCUSSION**

### **Public companies selected**

A global list of companies that could be considered similar to BW Industries Inc. was compiled for comparative purposes from a variety of sources including Capital IQ and our communication with management. We selected publicly traded guideline companies based on consideration of: business descriptions, operations and geographic presence, financial size and performance, stock liquidity, and management recommendations regarding most similar companies. Refer to the Appendix for business descriptions of the selected guideline public companies.



## COMPARABLE COMPANY STATISTICS

(\$USD in thousands)

Company	LTM revenue	Historic growth rate	Projected growth	EBITDA margin	Projected EBITDA margin	Historical EBITDA growth	Projected EBITDA growth
Accenture plc	\$56,695,000	24.12%	14.41%	16.78%	18.73%	25.32%	27.71%
American Public Education, Inc.	\$485,000	44.47%	28.90%	11.74%	12.14%	22.98%	33.28%
Appian Corporation	\$395,000	25.47%	19.86%	-23.07%	-10.45%	166.46%	45.70%
Citrix Systems, Inc.	\$3,267,000	3.66%	0.26%	18.31%	34.17%	-7.30%	87.16%
Franklin Covey Co.	\$246,000	34.48%	8.01%	11.27%	14.64%	59.11%	40.29%
Graham Holdings Company	\$3,388,000	18.09%	12.70%	10.56%	7.57%	4.88%	-19.26%
IWG plc	\$3,017,000	-8.39%	15.19%	9.83%	-	-22.01%	-
Information Services Group, Inc.	\$284,000	12.63%	5.95%	12.63%	14.99%	64.49%	25.81%
Kforce Inc.	\$1,634,000	14.59%	8.03%	7.19%	7.92%	31.82%	18.93%
Strategic Education, Inc.	\$1,100,000	4.51%	-1.63%	15.72%	16.39%	-24.87%	2.58%
The Howard Hughes Corporation	\$1,448,000	102.48%	-21.46%	32.06%	33.85%	179.65%	-17.09%
VMware, Inc.	\$12,945,000	7.63%	6.93%	22.35%	35.88%	-0.82%	71.70%
Minimum	\$246,000	-8.39%	-21.46%	-23.07%	-10.45%	-24.87%	-19.26%
10th percentile	\$295,000	3.74%	-1.44%	7.46%	7.57%	-20.54%	-17.09%
25th percentile	\$462,000	6.85%	4.53%	10.38%	10.03%	-2.44%	10.76%
Mean	\$7,075,000	23.65%	8.10%	12.11%	16.89%	41.64%	28.80%
Median	\$1,541,000	16.34%	8.02%	12.18%	14.99%	24.15%	27.71%
75th percentile	\$3,297,000	27.72%	14.60%	17.16%	26.29%	60.45%	42.99%
90th percentile	\$11,989,000	43.47%	19.39%	21.94%	34.17%	156.27%	71.70%
Maximum	\$56,695,000	102.48%	28.90%	32.06%	35.88%	179.65%	87.16%
<b>BW Industries Inc.</b>	<b>\$139,219</b>	<b>291.09%</b>	<b>48.53%</b>	<b>1.63%</b>	<b>3.13%</b>	<b>-51.59%</b>	<b>185.24%</b>

Source: Capital IQ





## COMPARABLE COMPANY RANKINGS

(From highest to lowest)

Rank	LTM revenue	Historic growth rate	Projected growth	EBITDA margin	Projected EBITDA margin	Historical EBITDA growth	Projected EBITDA growth
1	Accenture plc	<b>BW Industries Inc.</b>	<b>BW Industries Inc.</b>	The Howard Hughes Corporation	VMware, Inc.	The Howard Hughes Corporation	<b>BW Industries Inc.</b>
2	VMware, Inc.	The Howard Hughes Corporation	American Public Education, Inc.	VMware, Inc.	Citrix Systems, Inc.	Appian Corporation	Citrix Systems, Inc.
3	Graham Holdings Company	American Public Education, Inc.	Appian Corporation	Citrix Systems, Inc.	The Howard Hughes Corporation	Information Services Group, Inc.	VMware, Inc.
4	Citrix Systems, Inc.	Franklin Covey Co.	IWG plc	Accenture plc	Accenture plc	Franklin Covey Co.	Appian Corporation
5	IWG plc	Appian Corporation	Accenture plc	Strategic Education, Inc.	Strategic Education, Inc.	Kforce Inc.	Franklin Covey Co.
6	Kforce Inc.	Accenture plc	Graham Holdings Company	Information Services Group, Inc.	Information Services Group, Inc.	Accenture plc	American Public Education, Inc.
7	The Howard Hughes Corporation	Graham Holdings Company	Kforce Inc.	American Public Education, Inc.	Franklin Covey Co.	American Public Education, Inc.	Accenture plc
8	Strategic Education, Inc.	Kforce Inc.	Franklin Covey Co.	Franklin Covey Co.	American Public Education, Inc.	Graham Holdings Company	Information Services Group, Inc.
9	American Public Education, Inc.	Information Services Group, Inc.	VMware, Inc.	Graham Holdings Company	Kforce Inc.	VMware, Inc.	Kforce Inc.
10	Appian Corporation	VMware, Inc.	Information Services Group, Inc.	IWG plc	Graham Holdings Company	Citrix Systems, Inc.	Strategic Education, Inc.
11	Information Services Group, Inc.	Strategic Education, Inc.	Citrix Systems, Inc.	Kforce Inc.	<b>BW Industries Inc.</b>	IWG plc	The Howard Hughes Corporation
12	Franklin Covey Co.	Citrix Systems, Inc.	Strategic Education, Inc.	<b>BW Industries Inc.</b>	Appian Corporation	Strategic Education, Inc.	Graham Holdings Company
13	<b>BW Industries Inc.</b>	IWG plc	The Howard Hughes Corporation	Appian Corporation		<b>BW Industries Inc.</b>	
<b>BW Industries Inc.</b>	<b>13/13</b>	<b>1/13</b>	<b>1/13</b>	<b>12/13</b>	<b>11/12</b>	<b>13/13</b>	<b>1/12</b>

Source: Capital IQ



## REVENUE MULTIPLES

(\$USD in Millions)

Name	MVIC	LTM	NTM	2022	2023	2024
Accenture plc	\$195,842.50	3.45x	3.02x	3.09x	2.84x	2.59x
American Public Education, Inc.	\$544.60	1.12x	0.87x	0.88x	0.85x	0.83x
Appian Corporation	\$3,733.55	9.46x	7.89x	8.19x	6.95x	5.74x
Citrix Systems, Inc.	\$15,978.01	4.89x	4.88x	4.88x	4.57x	4.57x
Franklin Covey Co.	\$574.62	2.34x	2.17x	2.22x	1.99x	1.82x
Graham Holdings Company	\$4,090.23	1.21x	1.07x	1.08x	1.05x	0.98x
IWG plc	\$12,066.60	4.00x	3.47x	3.47x	3.04x	2.84x
Information Services Group, Inc.	\$351.53	1.24x	1.17x	1.19x	1.11x	1.06x
Kforce Inc.	\$1,504.07	0.92x	0.85x	0.87x	0.82x	-
Strategic Education, Inc.	\$1,947.83	1.77x	1.80x	1.82x	1.75x	-
The Howard Hughes Corporation	\$8,930.34	6.17x	7.86x	7.34x	9.95x	5.04x
VMware, Inc.	\$67,366.10	5.20x	4.87x	4.95x	4.58x	4.19x
Minimum	\$351.53	0.92x	0.85x	0.87x	0.82x	0.83x
10th percentile	\$547.60	1.13x	0.89x	0.90x	0.87x	0.96x
25th percentile	\$1,271.71	1.23x	1.14x	1.16x	1.10x	1.25x
Mean	\$26,077.50	3.48x	3.33x	3.33x	3.29x	2.97x
Median	\$3,911.89	2.90x	2.59x	2.66x	2.42x	2.72x
75th percentile	\$13,044.45	4.97x	4.87x	4.90x	4.57x	4.48x
90th percentile	\$62,227.29	6.07x	7.56x	7.10x	6.71x	5.11x
Maximum	\$195,842.50	9.46x	7.89x	8.19x	9.95x	5.74x

Source: Capital IQ



## MARKET APPROACH: SUBJECT COMPANY TRANSACTION METHOD

The Market Approach: Subject Company Transaction Method calculates the implied total value of an enterprise by accounting for all share class rights and preferences, as of the date of the latest financing. In order to determine the value of the Company's common shares, the Company's recently closed round of financing was used, whereby the Company sold shares of Series B-2 Preferred for \$2.31 per share. The total equity value implied by this transaction was then applied in the context of an option pricing model to determine the value of each class of the Company's shares.

### Equity value calculation

As noted above, this analysis considers the Series B-2 Preferred transaction, specifically those shares issued in exchange for new capital. The analysis uses the Black-Scholes option pricing model (OPM) to determine the value of the Company that results in a cumulative value of the transacted shares equal to the amount paid for those shares, or \$2.31 per share. For purposes of determining company value with a Black-Scholes OPM, five key inputs are required:

- Total consideration of the most recent transaction (discussed above);
- The rights and preferences of the shareholders (discussed above);
- Time to liquidity;
- Risk free rate;
- Volatility

### Time to liquidity

In the context of the OPM, the time to a liquidity event (otherwise referred to as "time to exit") constitutes the time until the Company issues an initial public offering ("IPO"), is acquired, or liquidates assets through a dissolution sale. In determining the time to liquidity, the analysis relied upon guidance from Management.

### Risk-free rate

The risk free rate used is the constant maturity US Treasury rate corresponding to the applicable time to liquidity. A risk free rate of 2.840% was applied which represents the US Treasury rate as of the Valuation Date.

### Volatility

The analysis considered the volatility of companies operating in the Company's comparable industry as well as the Company's capital structure and risk profile relative to the peer group. The list of companies was further refined to include only companies with securities traded on major exchanges with sufficient pricing and volume. Typically, size and volatility are inversely correlated. A volatility of 55.00% was selected for the Company.

### Conclusion

Given the proximity of the transaction and Valuation Date and guidance from Management, no market adjustment to equity value was utilized in this analysis. Based on the Black-Scholes model, a value of \$257,271,000 is necessary to provide a fair value of \$2.31 per share for the Series B-2 Preferred shares issued in exchange for new capital.



## BACKSOLVE INPUTS

Inputs	Value
Selected preferred share class	Series B-2 Preferred
Backsolve date	June 8, 2022
Risk-free interest rate	2.840%
Volatility	55.00%
Weighted time to exit	2.50 year(s)
Calculated backsolve value (rounded)	\$257,271,000



## ALLOCATION

After the value of the Company was determined, it was allocated among the various share classes. The three allocation approaches considered are outlined below:

### Option pricing model (OPM)

The OPM allocates a company's equity value among the various capital investors. The OPM takes into account the preferred shareholders' liquidation preferences, participation rights, dividend policy, and conversion rights to determine how proceeds from a liquidity event shall be distributed among the various ownership classes at a future date.

#### Option pricing model inputs

Inputs	Value
Equity value	\$257,271,000
Risk-free interest rate	2.840%
Selected equity volatility	55.00%
Probability weighted time to exit	2.50 years

To calculate the fair market value of Common Stock, the Black-Scholes Option Pricing Model was used. The Black-Scholes implementation of the Option Pricing Method treats the rights of holders of various classes of securities (preferred stock, common stock, warrants, and options) as call options on any value of the Company above a series of breakpoints. For the Company, these breakpoints were set after examining the Certificate of Incorporation, warrant and option agreements, and management's records of the numbers of securities outstanding as of the Valuation Date. The values of the breakpoints were calculated by reviewing:

- The liquidation preferences of preferred stock (including seniority of any series of preferred stock);
- The participation rights of preferred stock (including any caps on such participation);
- The strike prices of warrants and options

The Black-Scholes Model requires a series of variables, including the: value of company, time to liquidity event, risk-free rate, and volatility. Below are the key assumptions for each of these variables.

### Company value

The implied equity value of \$257,271,000 was used as the underlying value of the Company.

### Time to liquidity

In the context of the OPM, the time to a liquidity event (otherwise referred to as "time to exit") constitutes the time until the Company issues an initial public offering ("IPO"), is acquired, or liquidates assets through a dissolution sale. In determining the time to liquidity, Carta Valuations LLC incorporated guidance from management in the probability weighted time to exit that accounts for different exit, financing, or dissolution scenarios. As for the selected time to exit used in the DLOM, it reflects an approximation of the time to an IPO or M&A event.



As per Section 6.37 of the AICPA Practice Aid, "...for early-stage firms, the next round of financing may be highly uncertain. Using a term in the OPM based on the expected time to exit, including the likelihood of dissolution in the short term, while still estimating the discount for lack of marketability based on the expected time to a successful exit may provide a more representative value for common stock in situations in which the company's ability to raise the next round of funding is highly uncertain."

#### **Risk-free rate**

It is commonly accepted that US Treasury securities are a good proxy for the risk-free rate. We used the yield, as of June 8, 2022 of the 2.50 year US Treasury bond, a maturity which closely approximates the forecasted liquidity horizon of the Company.

#### **Volatility**

The estimate for expected volatilities, over the estimated time to a liquidity event, was based upon an analysis of the historical volatility of guideline public companies as well as factors specific to the Company, including, but not limited to, size, expected growth and relative risk. A volatility of 55.00% was selected for the Company.

#### **Probability weighted expected return method (PWERM)**

The Probability Weighted Expected Return Method of allocating value between security holders analyzes the capital structure of a business at the time of several different potential future outcomes. It assumes that the likelihood, timing, and size of financial success or failure can be estimated. This method involves a forward-looking analysis of the possible future outcomes available to the enterprise, the estimation of ranges of future and present value under each outcome, and the application of a probability factor to each outcome as of the Valuation Date.

Given the subjectivity and difficulty associated with estimating exit values and lack of empirical data to support the values at the Company's current stage of development, the probability-weighted expected return method was not selected.

#### **Current value method**

The Current Value Method allocates the Company's current value among various equity owners based on liquidation preferences and other rights under the assumption that all capital owners act to maximize their financial return. According to AICPA guidelines, the Current Value Method is applicable in three circumstances: 1) the assumption of an imminent liquidity event in the form of an acquisition or dissolution of a company; 2) when a company is assumed to be at such an early stage of its development that no material progress has been made on its business plan, no significant value has been created above the liquidation preference of the senior securities, and there is no reasonable basis for estimating the amount and timing of any such common equity above the liquidation preference that might be created in the future; and 3) In the case of a simple capital structure, the equity value is allocated pro rata to the common stock, consistent with a Current Value Method allocation methodology.

The Company is early in its development and does not face an imminent liquidity/dissolution event as of the Valuation Date. Therefore, the Current Value Method was not selected.



## VOLATILITY SELECTION

Comparable company	Symbol	Equity volatility
Accenture plc	ACN	32.43%
American Public Education, Inc.	APEI	51.65%
Appian Corporation	APPN	85.78%
Citrix Systems, Inc.	CTXS	34.95%
Franklin Covey Co.	FC	52.32%
Graham Holdings Company	GHC	41.00%
IWG plc	IWG:LSE	61.17%
Information Services Group, Inc.	III	65.38%
Kforce Inc.	KFRC	43.17%
Strategic Education, Inc.	STRA	48.30%
The Howard Hughes Corporation	HHC	49.11%
VMware, Inc.	VMW	39.34%
Minimum		32.43%
10th percentile		35.39%
25th percentile		40.59%
Mean		50.38%
Median		48.70%
75th percentile		54.53%
90th percentile		64.96%
Maximum		85.78%
Selected volatility		55.00%

The volatility represents the normalized, standard deviation of the natural log of daily price returns of the comparable public companies. All pricing data is sourced from CapitalIQ.



## BREAKPOINTS

Description	From	To	Delta	Option value	Incremental value
Liquidation preference: Series A-1 Preferred, Series B-1 Preferred, Series A Preferred, Series B-3 Preferred, Series B, Series B-2 Preferred	\$0	\$187,180,564	\$187,180,564	\$120,638,552	\$136,632,624
Participates: Class B Common, FF Preferred	\$187,180,564	\$193,070,565	\$5,890,001	\$117,907,070	\$2,731,482
Exercises: Class B Common \$0.589 Strike	\$193,070,565	\$195,463,234	\$2,392,669	\$116,819,534	\$1,087,536
Exercises: Class B Common \$0.71 Strike	\$195,463,234	\$199,240,012	\$3,776,778	\$115,128,271	\$1,691,264
Converts to common: Series A Preferred, Series A Preferred Warrants \$0.887 Strike	\$199,240,012	\$215,518,305	\$16,278,294	\$108,180,562	\$6,947,708
Converts to common: Series A-1 Preferred	\$215,518,305	\$248,958,606	\$33,440,301	\$95,490,191	\$12,690,371
Converts to common: Series B-3 Preferred	\$248,958,606	\$252,555,254	\$3,596,648	\$94,240,268	\$1,249,923
Converts to common: Series B	\$252,555,254	\$292,917,767	\$40,362,513	\$81,543,946	\$12,696,322
Converts to common: Series B-1 Preferred	\$292,917,767	\$293,326,193	\$408,426	\$81,426,995	\$116,952
Converts to common: Series B-2 Preferred	\$293,326,193	Infinity	Infinity	\$0	\$81,426,995





## OPTION PRICING MODEL

### Percentages

Share classes	1	2	3	4	5	6	7	8	9	10
Series B-2 Preferred	32.05%	-	-	-	-	-	-	-	-	19.90%
Series B	23.19%	-	-	-	-	-	-	23.28%	21.90%	17.54%
Series B-3 Preferred	20.27%	-	-	-	-	-	27.22%	20.88%	19.64%	15.73%
Series A Preferred	11.22%	-	-	-	50.90%	43.06%	31.34%	24.04%	22.61%	18.11%
Series B-1 Preferred	7.67%	-	-	-	-	-	-	-	5.95%	4.77%
Series A-1 Preferred	5.60%	-	-	-	-	15.40%	11.21%	8.60%	8.09%	6.48%
Class B Common	-	95.13%	48.11%	44.58%	20.45%	17.30%	12.59%	9.66%	9.08%	7.28%
FF Preferred	-	4.87%	2.46%	2.28%	1.05%	0.89%	0.64%	0.49%	0.46%	0.37%
Class B Common \$0.589 Strike	-	-	49.43%	45.81%	21.01%	17.77%	12.94%	9.92%	9.33%	7.48%
Class B Common \$0.71 Strike	-	-	-	7.33%	3.36%	2.84%	2.07%	1.59%	1.49%	1.20%
Series A Preferred Warrants \$0.887 Strike	-	-	-	-	3.23%	2.73%	1.99%	1.53%	1.44%	1.15%
<b>Total</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

### \$USD

Share classes	1	2	3	4	5	6	7	8	9	10
Series B-2 Preferred	\$43,797,055	-	-	-	-	-	-	-	-	\$16,202,945
Series B	\$31,682,572	-	-	-	-	-	-	\$2,956,240	\$25,611	\$14,283,230
Series B-3 Preferred	\$27,700,654	-	-	-	-	-	\$340,246	\$2,651,378	\$22,970	\$12,810,277
Series A Preferred	\$15,333,158	-	-	-	\$3,536,641	\$5,465,042	\$391,748	\$3,052,713	\$26,447	\$14,749,349
Series B-1 Preferred	\$10,472,954	-	-	-	-	-	-	-	\$6,959	\$3,881,086
Series A-1 Preferred	\$7,646,231	-	-	-	-	\$1,954,332	\$140,091	\$1,091,669	\$9,457	\$5,274,456
Class B Common	-	\$2,598,524	\$523,209	\$754,035	\$1,420,709	\$2,195,370	\$157,370	\$1,226,310	\$10,624	\$5,924,982
FF Preferred	-	\$132,958	\$26,771	\$38,581	\$72,693	\$112,330	\$8,052	\$62,746	\$544	\$303,161
Class B Common \$0.589 Strike	-	-	\$537,557	\$774,713	\$1,459,669	\$2,255,573	\$161,685	\$1,259,939	\$10,915	\$6,087,462
Class B Common \$0.71 Strike	-	-	-	\$123,934	\$233,509	\$360,833	\$25,865	\$201,558	\$1,746	\$973,836
Series A Preferred Warrants \$0.887 Strike	-	-	-	-	\$224,487	\$346,892	\$24,866	\$193,770	\$1,679	\$936,211
<b>Total</b>	<b>\$136,632,624</b>	<b>\$2,731,482</b>	<b>\$1,087,536</b>	<b>\$1,691,264</b>	<b>\$6,947,708</b>	<b>\$12,690,371</b>	<b>\$1,249,923</b>	<b>\$12,696,322</b>	<b>\$116,952</b>	<b>\$81,426,995</b>



## OPTION PRICING MODEL RESULTS

Share class	Share class value	Shares outstanding	Fully marketable value
Series B-2 Preferred	\$60,000,000	26,015,696	\$2.31
Series B	\$48,947,653	22,933,373	\$2.13
Series B-3 Preferred	\$43,525,525	20,568,376	\$2.12
Series A Preferred	\$42,555,098	23,681,780	\$1.80
Series B-1 Preferred	\$14,360,999	6,231,531	\$2.30
Series A-1 Preferred	\$16,116,236	8,468,747	\$1.90
Class B Common	\$14,811,132	9,513,241	\$1.56
FF Preferred	\$757,835	486,760	\$1.56
Class B Common \$0.589 Strike	\$12,547,513	9,774,122	\$1.28
Class B Common \$0.71 Strike	\$1,921,282	1,563,606	\$1.23
Series A Preferred Warrants \$0.887 Strike	\$1,727,905	1,503,194	\$1.15



## DISCOUNT FOR LACK OF MARKETABILITY

When selecting a discount for lack of marketability (“DLOM”) to be applied to the subject Company’s common shares, Carta Valuations LLC relied primarily on put option models as a means to satisfy the AICPA’s preference to use quantitative approaches over more subjective approaches when appropriate. Court case rulings (i.e. Mandelbaum, et al v. Commissioner Internal Revenue), restricted stock studies, and IPO studies were also considered to gauge the reasonableness of the put option model results. The results from the selected put option model(s) shown below, suggest a DLOM in the range of 29.68% and 39.12%.

Inputs	The Finnerty Approach
Risk-free interest rate	3.030%
Time to exit	5.00 years
Common share class volatility	78.63%
Total equity value, S	—
Equity breakpoint, X	—
Value of the share of common stock without transfer restrictions, V	\$1.00
Continuously compounded dividend yield rate, q	0.00%
Standard normal cumulative distribution of $d1$ , $N(d1)$	64.84%
Standard normal cumulative distribution of $d2$ , $N(d2)$	35.16%
Calculated value of Put option	\$0.30
Calculated discount for lack of marketability	29.68%

*Selected approach: The Incremental Chaffe Approach*

Inputs	Value
Risk-free interest rate	3.030%
Common share class volatility	78.63%
Time to exit	5.00 years



Inputs	Value
Calculated discount for lack of marketability	39.12%
Selected discount for lack of marketability	<b>39.00%</b>



## **APPRAISER BIO AND CREDENTIALS**

### **Alex Swift, CFA, CAIA**

Senior Manager, Carta Valuations LLC

Alex Swift joined Carta Valuations LLC as a Senior Manager in March 2022. Prior to joining Carta Valuations LLC, Alex was a Director in the valuation department at RSM US LLP, an audit, tax and consulting firm focused on the middle market in the United States. Alex has approximately 10 years of experience in the financial services industry, with the last 7 years in investment banking and valuation.

Since 2015, Alex has valued privately held companies for a variety of purposes, including: gift tax and estate planning; capital raising; mergers, acquisitions, and divestitures and other strategic planning; 409A compensation planning; financial reporting; and other corporate planning purposes.

Alex has valued companies in several different industries, including but not limited to, retail and consumer products, healthcare, technology, and industrial products.

Alex is both a CFA and CAIA Charterholder. Alex received his bachelor's degree in Finance, Investment, and Banking from the University of Wisconsin – Madison.

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## APPRAISER BIO AND CREDENTIALS

### Jon Grupp, CFA, ASA

Senior Manager, Carta Valuations LLC

Jon Grupp is a Senior Manager with Carta Valuations LLC and has over 16 years in corporate finance related roles, spanning from business valuation and transaction advisory to corporate financial planning and analysis. During this time, he has served large public and private companies, middle-market firms and early-stage enterprises across multiple industries. Representative engagements include:

- Common stock valuations for tax and financial reporting to comply with section 409A of the Internal Revenue Code and FASB ASC Topic 718: Compensation-Stock Compensation.
- Fund valuations for financial reporting to comply with FASB ASC Topic 820: Fair Value Measurements and Disclosures.
- Valuation engagements for IRC 59-60 and ASC Topics 805, 817, 320, 350, 360, IFRS 2, 3 and IAS 38.
- Valuation of illiquid securities, debt, warrants, profits interests and embedded derivatives.

Jon previously served as a Senior Manager at Plante Moran LLLP, where he was responsible for the management of the Rocky Mountain Region valuation team. In addition, Jon was responsible for the Rocky Mountain region private equity group review and advisory service to internal audit group regarding fair value implementation and valuation practices. Jon holds the Chartered Financial Analyst (CFA) designation from the CFA Institute, as well as the Accredited Senior Appraiser (ASA) designation from the American Society of Appraisers.

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## APPRAISER BIO AND CREDENTIALS

### **Jonathan Adlerman, CFA**

Senior Manager, Carta Valuations LLC

Jonathan joined Carta Valuations LLC in December 2020 where he currently serves as a Senior Technical Manager. In this role, Jonathan regularly oversees complex client engagements and assists in setting internal valuation policy & controls across the organization. Prior to Carta, Jonathan worked in valuations roles at Preferred Return and Gust Equity Management, with his most recent role being Director of Valuations at Preferred Return.

Jonathan's valuation experience is industry agnostic and spans the enterprise life cycle from pre-revenue/prototype startups to multinational profitable businesses. Jonathan has performed valuations of common and preferred equity, convertible & non-convertible debt, time and performance based options & warrants, as well as contingent liabilities and assets. In addition, Jonathan has experience in intangible asset valuation. Tax and financial reporting engagement competencies include: IRC § 409A, IRC § 311, IRC § 280(G), ASC 820, ASC 805, ASC 815 and ASC 718. Jonathan has also performed transaction advisory services in various capacities.

Jonathan graduated Cum-Laude from the Rutgers Business School in 2013 with a Bachelors of Science in Finance, and is an active Chartered Financial Analyst (CFA) in good standing.

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## **APPRAISER BIO AND CREDENTIALS**

### **Kristoffer Warren, CAIA**

Manager, Carta Valuations LLC

Kristoffer Warren is a Manager with Carta Valuations LLC, and has contributed on over 1,000 IRC 409A, ASC 718, and liquidation threshold valuations for profits interests units (“PIUs”) since joining Carta during 2017. Kristoffer also oversees Carta Valuations training initiatives, and participates in product and service improvements that impact Carta’s late-stage private and pre-IPO clients.

Kristoffer began his career in alternative finance by participating with Entrepreneurs and Angel Investors completing early-stage financings across the Pacific Northwest. Kristoffer received his Master of Science in Finance (“MSF”) from Seattle University and is a CAIA Charterholder. Previously, Kristoffer graduated Summa Cum Laude from the University of Washington’s School of Business, Bothell.

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## APPRAISER BIO AND CREDENTIALS

### Runar Sigmarsson

Senior Manager, Carta Valuations LLC

Runar Sigmarsson is a Senior Manager with Carta Valuations LLC and has over 10 years in corporate finance related roles, spanning from business valuation and investment banking to corporate financial planning and analysis. His industry exposure includes energy, real estate, banking, insurance, retail, commercial airline, pharmaceutical, and various private equity holdings scattered across Europe and North America.

Runar began his career in the Corporate Finance group of KPMG in Iceland, focusing on investment banking (debt and equity raising, sell-side mergers and acquisitions) and business valuation for public and private companies. Prior to joining Carta, Runar was a Manager in Business Valuation at KPMG's Houston office, focusing on valuation engagements for tax, financial reporting, and strategic purposes for public and private companies. Before KPMG Houston, Runar worked in corporate financial planning and analysis for FMC Technologies, Inc., a publicly traded Fortune 500 company headquartered in Houston, Texas. Prior to FMC Technologies, Inc., Runar was a Senior Associate in Ernst & Young's Business Valuation group in Houston, Texas.

Runar received his master's degree in International Business and Marketing from the University of Iceland and Copenhagen Business School, and previously, a bachelor's degree in International Studies from the University of Washington.

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### Contributing analysts

Daniel Gladstone  
Valuations Analyst

Kitt Turner  
Reviewing Analyst



## REPRESENTATION OF CARTA VALUATIONS LLC

1. The analysis and conclusion of value included in the valuation report are subject to the specified assumptions and limiting conditions.
2. The economic and industry data included in the valuation report have been obtained from various printed or electronic reference sources that Carta Valuations LLC and its valuation professionals believe to be reliable. No corroborating procedures have been performed to substantiate that data.
3. The parties for which the information and use of the valuation report is restricted are identified; the valuation report is not intended to be and should not be used by anyone other than such parties.
4. The compensation to Carta Valuations LLC and its valuation professionals for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this report.
5. Affiliates of Carta Valuations LLC may provide additional services to the Company including management of Company's capitalization table and other services. Carta Valuations LLC and its valuation professionals do not perform any work related to any such additional services. The valuation conclusions in this report are based solely on the information provided by the Company and Carta Valuations LLC's research of economic, industry and capital market information.
6. Neither Carta Valuations LLC nor its staff who conducted this valuation have a present or intended financial interest in the Company.
7. Carta Valuations LLC has no obligation to update the report or the conclusion of value for information that is provided after the date of the report.



## STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS

1. The conclusion of value arrived at herein is valid only for the stated purpose as of the date of the valuation.
2. Financial statements and other related information provided by BW Industries Inc. or its representatives, in the course of this engagement, have been accepted without any verification as fully and correctly reflecting the enterprise's liquidation preferences, ownership positions, business conditions and operating results for the respective periods, except as specifically noted herein. Carta Valuations LLC has not audited, reviewed, or compiled the financial information provided to us and, accordingly, we express no audit opinion or any other form of assurance on this information.
3. Public information and industry and statistical information have been obtained from sources we believe to be reliable. However, we make no representation as to the accuracy or completeness of such information and have performed no procedures to corroborate the information.
4. We do not provide assurance on the achievability of the results forecasted by BW Industries Inc. because events and circumstances frequently do not occur as expected; differences between actual and expected results may be material; and achievement of the forecasted results is dependent on actions, plans, and assumptions of management.
5. The conclusion of value arrived at herein is based on the assumption that the current level of management expertise and effectiveness would continue to be maintained, and that the character and integrity of the enterprise through any sale, reorganization, exchange, or diminution of the owners' participation would not be materially or significantly changed.
6. This report and the conclusion of value arrived at herein are for the exclusive use of BW Industries Inc.'s Board and management, tax advisors, and auditors for the sole and specific purposes as noted herein. They may not be used for any other purpose or by any other party for any purpose. Furthermore, the report and conclusion of value are not intended by Carta Valuations LLC and should not be construed by the reader to be investment advice in any manner whatsoever. The stated valuation represents the considered conclusion of value of Carta Valuations LLC, based on information furnished to them by BW Industries Inc. and other sources.
7. Neither all nor any part of the contents of this report (especially the conclusion of value, the identity of any valuation specialist(s), or the firm with which such valuation specialists are connected or any reference to any of their professional designations) should be disseminated to the public through advertising media, public relations, news media, sales media, mail, direct transmittal, or any other means of communication without the prior written consent and approval of Carta Valuations LLC.
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9. Future services regarding the subject matter of this report, including, but not limited to testimony or attendance in court, shall not be required of Carta Valuations LLC unless previous arrangements have been made in writing.
10. Carta Valuations LLC is not an environmental consultant or auditor, and it takes no responsibility for any actual or potential environmental liabilities. Any person entitled to rely on this report, wishing to know whether such liabilities exist, or the scope and their effect on the value of the property, is encouraged to obtain a professional environmental assessment. Carta Valuations LLC does not conduct or provide environmental assessments and has not performed one for the subject property.



11. Carta Valuations LLC has not determined independently whether BW Industries Inc. is subject to any present or future liability relating to environmental matters (including, but not limited to CERCLA/Superfund liability) nor the scope of any such liabilities. Carta Valuations LLC's valuation takes no such liabilities into account, except as they have been reported to Carta Valuations LLC by BW Industries Inc. or by an environmental consultant working for BW Industries Inc., and then only to the extent that the liability was reported to us in an actual or estimated dollar amount. Such matters, if any, are noted in the report. To the extent such information has been reported to us, Carta Valuations LLC has relied on it without verification and offers no warranty or representation as to its accuracy or completeness.
12. Carta Valuations LLC has not made a specific compliance survey or analysis of any subject property to determine whether it is subject to, or in compliance with, the American Disabilities Act of 1990, and this valuation does not consider the effect, if any, of noncompliance.
13. No change of any item in this report shall be made by anyone other than Carta Valuations LLC, and we shall have no responsibility for any unauthorized change.
14. Unless otherwise stated, no effort has been made to determine the possible effect, if any, on the subject business due to future Federal, state, or local legislation, including any environmental or ecological matters or interpretations thereof.
15. If prospective financial information approved by management has been used in our work, we have not examined or compiled the prospective financial information and therefore, do not express an audit opinion or any other form of assurance on the prospective financial information or the related assumptions. Events and circumstances frequently do not occur as expected and there will usually be differences between prospective financial information and actual results, and those differences may be material.
16. The management of BW Industries Inc. has provided materials concerning the past, present, and prospective operating results of the company via interviews, request forms and/or direct correspondence.
17. Except as noted, we have relied on the representations of the owners, management, and other third parties concerning the value and useful condition of all equipment, real estate, investments used in the business, and any other assets or liabilities, except as specifically stated to the contrary in this report. We have not attempted to confirm whether or not all assets of the business are free and clear of liens and encumbrances or that the entity has good title to all assets.
18. Nothing in this valuation report is to be construed as a fairness opinion as to the fairness of an actual or proposed transaction, a solvency opinion, or an investment recommendation. For various reasons, the price at which the assets might be sold in a specific transaction between specific parties on a specific date might be significantly different from the value expressed in this report.
19. This report is limited to issues concerning compliance with IRC §409(A). Additional issues may exist that could affect the federal tax treatment of the interests that are subject to the report, and the report does not consider or provide a conclusion with respect to any additional issues. Carta Valuations LLC's report is not intended or written to be used, and cannot be used, by the Company or any other person or entity, for the purpose of avoiding any penalties that may be imposed on any taxpayer.
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# Appendix



## COMPARABLE COMPANY DESCRIPTIONS

### **Accenture plc**

Accenture plc, a professional services company, provides strategy and consulting, interactive, and technology and operations services worldwide. The company also provides outsourcing services. It serves communications, media, high tech, software, and platform companies; banking, capital market, and insurance industries; and consumer goods, retail, travel services, industrial, and life science industries, as well as clients in health, public service, chemicals and natural resources, energy, and utility sectors. Accenture plc has alliance relationships with Adobe, Alibaba, Amazon Web Services, Blue Yonder, Cisco, Dell, Google, HPE, IBM RedHat, Microsoft, Oracle, Pegasystems, Salesforce, SAP, ServiceNow, VMWare, Workday, Massachusetts Institute of Technology, Institut Polytechnique de Paris, CNH Industrial, and Reactive Technologies. It has an agreement with Duke Energy Corporation for the development of a technology platform designed to measure actual baseline methane emissions from natural gas distribution systems. The company was incorporated in 2009 and is based in Dublin, Ireland.

### **American Public Education, Inc.**

American Public Education, Inc., together with its subsidiaries, provides online and campus-based postsecondary education. The company operates in two segments, American Public Education and Hondros College of Nursing. It offers 129 degree programs and 112 certificate programs in various fields of study, including business administration, health science, technology, criminal justice, education, and liberal arts, as well as national security, military studies, intelligence, and homeland security. The company also provides diploma in practical nursing, an associate degree in nursing, and an associate degree in medical laboratory technology. American Public Education, Inc. was founded in 1991 and is headquartered in Charles Town, West Virginia.

### **Appian Corporation**

Appian Corporation provides low-code automation platform in the United States and internationally. The company's platform automates the creation of forms, workflows, data structures, reports, and other software elements that are needed to be manually coded. The company also offers professional and customer support services. Its customers financial services, government, life sciences, education, technology, media and telecommunications, consumer, and industrials. The company was incorporated in 1999 and is headquartered in McLean, Virginia.

### **Citrix Systems, Inc.**

Citrix Systems, Inc., an enterprise software company, provides workspace, app delivery and security, and professional services worldwide. The company offers workspace services, including Citrix Workspace; Citrix Virtual Apps and Desktops; Citrix Content Collaboration, a cloud-based file sharing and storage solution, which provides enterprise-class data services on various corporate and personal mobile devices for businesses; Citrix Endpoint Management for mobility and device management capabilities; Citrix Analytics for Security that assesses the behavior of Citrix Virtual Apps and Desktops, and Citrix Workspace users and applies actions to protect sensitive corporate information; Citrix Analytics for Performance that uses machine learning to quantify user experience; Citrix Secure Workspace Access, which provides an end-to-end solution to implement Zero Trust principles; and Citrix Secure Internet Access, which provides a solution that protects direct internet access for branch and remote workers using unsanctioned apps. It also provides networking products comprising Citrix ADC, an application delivery controller and load balancing solution for web, traditional and cloud-native applications; and Citrix SD-WAN, a WAN Edge solution that delivers flexible, automated, secure connectivity and performance for the workspace. In addition, the



company offers customer services, hardware maintenance, consulting, and product training and certification services. The company serves healthcare, financial services, technology, manufacturing, consumer, and government agencies. It markets and licenses its products through resellers, distributors, systems integrators, independent software vendors, original equipment manufacturers, and service providers. The company was formerly known as Citrus Systems, Inc. and changed its name to Citrix Systems, Inc. in March 2009. Citrix Systems, Inc. was founded in 1989 and is headquartered in Fort Lauderdale, Florida.

#### **Franklin Covey Co.**

Franklin Covey Co. provides training and consulting services in the areas of execution, sales performance, productivity, customer loyalty, leadership, and educational improvement for organizations and individuals worldwide. The company operates through three segments: Direct Offices, International Licensees, and Education Practice. It also provides a suite of individual-effectiveness and leadership-development training and products. The company serves various private sector, government, and educational institutions in approximately 150 countries and territories. Franklin Covey Co. was founded in 1983 and is headquartered in Salt Lake City, Utah.

#### **Graham Holdings Company**

Graham Holdings Company, through its subsidiaries, operates as a diversified education and media company worldwide. It provides test preparation services and materials; data science education, and training and healthcare simulation services; professional training and exam preparation for professional certifications and licensures; and non-academic operations support services to Purdue University Global. The company also offers training, test preparation, and degrees for accounting and financial services professionals; English-language training, academic preparation programs, and test preparation for English proficiency exams; and A-level examination preparation services, as well as operates three colleges, including a business school, a higher education institution, and an online learning institution. In addition, it owns and operates seven television stations; and provides social media management tools designed to connect newsrooms with their users, as well as produces Foreign Policy magazine and ForeignPolicy.com website. Further, the company publishes Slate, an online magazine; and two French-language news magazine websites at slate.fr and slateafrique.com. Additionally, it provides social media marketing solutions; home health and hospice services; burners, igniters, dampers, and controls; screw jacks, linear actuators and related linear motion products, and lifting systems; pressure impregnated kiln-dried lumber and plywood products; cybersecurity training solutions; digital advertising services; and power charging and data systems, industrial and commercial indoor lighting solutions, and electrical components and assemblies. The company also owns and operates 11 restaurants; and engages in automobile dealerships business. The company was formerly known as The Washington Post Company and changed its name to Graham Holdings Company in November 2013. Graham Holdings Company was founded in 1877 and is based in Arlington, Virginia.

#### **IWG plc**

IWG plc, together with its subsidiaries, provides workspace solutions in the Americas, Europe, the Middle East, Africa, the Asia Pacific, the United Kingdom, and internationally. The company offers co working and office space; virtual and membership offices, as well as lounges; private workshop, professional, and flexible and scalable spaces; meeting rooms; and reception services and conference products. It provides its services to property owners and investors, landlords, franchisees, brokers, and various other customers under the Regus, Spaces, No18, HQ, and Signature, as well as Open Office, The Clubhouse, The Office Operators, Stop & Work, BizDojo, and Basepoint brands. In addition, the company operates Meetingo, a digital platform that provides solutions for meeting;



Easy Offices, an online broker that helps to find places to work; Rovva, an online toolkit which provides a range of products and services that help the clients to take their businesses further; Worka, an easy-to-use app. to search, compare, and book office space, coworking, and meeting rooms; and managed conventional office solutions that provides customized workspaces. It operates through 3,313 locations in 1,131 towns and cities across 120 countries. The company was formerly known as Regus plc and changed its name to IWG plc in December 2016. IWG plc was founded in 1989 and is headquartered in Zug, Switzerland.

#### **Information Services Group, Inc.**

Information Services Group, Inc., together with its subsidiaries, operates as a technology research and advisory company in the Americas, Europe, and the Asia Pacific. The company offers digital transformation services, including automation, cloud, and data analytics; sourcing advisory; managed governance and risk; network carrier; technology strategy and operations design; change management; and market intelligence and technology research and analysis services. It supports private and public sector organizations to transform and optimize their operational environments. The company also provides ISG Digital, a client solution platform that helps clients developing technology, transformation, sourcing, and digital solutions; and ISG Enterprise, a client solution platform that helps clients manage change and optimize operations in areas comprising finance, human resource, and Procure2Pay. In addition, it offers ISG GovernX, a software platform, which provides insights from market and performance data, and automates the management of third-party supplier relationships that comprise contract and project lifecycles, and risk management. The company serves private sector clients operating in the manufacturing, banking and financial services, insurance, health sciences, energy and utilities, and consumer services industries; and public sector clients, including state and local governments, airport and transit authorities, and national and provincial government units. Information Services Group, Inc. was founded in 2006 and is headquartered in Stamford, Connecticut.

#### **Kforce Inc.**

Kforce Inc. provides professional staffing services and solutions in the United States. It operates through Technology (Tech) and Finance and Accounting (FA) segments. The Tech segment provides temporary and permanent staffing services to its clients primarily in the areas of information technology, such as systems/applications architecture and development, data management, business and artificial intelligence, machine learning, and network architecture and security. This segment serves clients in various industries comprising financial and business services, communications, and technology industries. The FA segment offers temporary and permanent staffing services to its clients in areas, including accounting, transactional finance, financial analysis and reporting, taxation, budgeting, loan servicing, professional administration, audit services and systems, and controls analysis and documentation. This segment serves clients in various industries, including financial services, healthcare, and manufacturing sectors. Kforce Inc. was founded in 1962 and is headquartered in Tampa, Florida.

#### **Strategic Education, Inc.**

Strategic Education, Inc., through its subsidiaries, provides post-secondary education and non-degree programs. It operates in three segments: Strayer University, Capella University, and Australia/New Zealand. The company operates Strayer University that provides undergraduate and graduate degree programs in business administration, accounting, information technology, education, health services administration, public administration, and criminal justice for working adult students through its 64 physical campuses located in the eastern United States, as well as through online; and an executive MBA online through its Jack Welch Management Institute. It also operates a





software development school that provides Web development, iOS development, quality assurance, and UX design programs in Lehi, Utah and Dallas, Texas through online; and a software engineering school for women, which offers software development programs through online in San Francisco. In addition, the company operates Capella University, an online post-secondary education company that offers bachelor's, master's, and doctoral degree programs in public service leadership, nursing and health sciences, psychology, business and technology, counseling and human services, and education primarily for working adults; and provides self-paced online general education courses. Further, it operates Torrens University that offers undergraduate and graduate courses in business, design and creative technology, health, hospitality, and education fields through online and on physical campuses located in Australia; Think Education, a vocational training organization that delivers education at various campuses; and Media Design School, which offers industry-endorsed courses in 3D animation and visual effects, game art and programming, graphic and motion design, digital media artificial intelligence, and creative advertising in New Zealand. The company was founded in 1892 and is headquartered in Herndon, Virginia.

### **The Howard Hughes Corporation**

The Howard Hughes Corporation owns, manages, and develops commercial, residential, and hospitality operating properties in the United States. It operates through four segments: Operating Assets; Master Planned Communities (MPCs); Seaport District; and Strategic Developments. As of December 31, 2020, the Operating Assets segment owned 15 retail, 33 office, 12 multi-family, 3 hospitality, and 13 other operating assets and investments primarily located in The Woodlands, Texas; Chicago, Illinois; Columbia, Maryland; Las Vegas, Nevada; and Honolulu, Hawaii. The MPCs segment develops and sells detached and attached single family homes, and range from entry-level to luxury homes to residential homebuilders and developers; and sells or leases land for commercial development, including land parcels designated for retail, office, hospitality, and residential projects. The Seaport District segment is involved in the landlord operations, managed businesses, and events and sponsorships. The Strategic Development segment invests in residential condominium and commercial property projects. This segment consists of 18 development or redevelopment projects. The Howard Hughes Corporation was founded in 2010 and is headquartered in Dallas, Texas.

### **VMware, Inc.**

VMware, Inc. provides software in the areas of hybrid and multi-cloud, modern applications, networking, security, and digital workspaces in the United States and internationally. It offers VMware multi-cloud solutions, including VMware vSphere, a data center infrastructure that provides the fundamental compute layer and utilizes its hypervisor software, a layer of software that resides between the operating system and system hardware to enable compute virtualization; vSAN and VxRail, which offers holistic data storage and protection options to all applications running on vSphere; and vRealize Cloud Management solutions that manages hybrid and multi-cloud environments running in virtual machines and containers, as well as VMware Cloud Foundation, a hybrid cloud platform that combines its vSphere, vSAN, and NSX with vRealize Cloud Management into an integrated stack and delivers enterprise-ready cloud infrastructure for private and public clouds. The company also provides networking solutions, such as VMware NSX, VMware Service-defined Firewall, VMware SD-WAN, VMware SASE, VMware vRealize Network Insight, and VMware NSX Advanced Load Balancer; digital workspace solutions that comprise Workspace ONE Unified Endpoint Management, Access, and Horizon; and application modernization solutions, such as Tanzu Basic, standard, and advanced edition, Tanzu Application Service, and Tanzu Labs. In addition, it offers intrinsic security solutions consisting of VMware Carbon Black Cloud Endpoint and Workload. The company sells its products through distributors, resellers, system vendors, and systems integrators. VMware, Inc. has strategic alliances with



Amazon Web Services to build and deliver an integrated hybrid solution. The company was incorporated in 1998 and is headquartered in Palo Alto, California. VMware, Inc. operates as a subsidiary of Dell Technologies Inc.



## ECONOMIC OVERVIEW 4Q 2021

The U.S. economy—as indicated by GDP—grew at an annual rate of 6.9% in the fourth quarter of 2021, faster than the third-quarter figure of 2.3%. The fourth-quarter rate came in ahead of forecasts for a 5.5% rate, according to a poll by the Wall Street Journal, which credited strong consumer spending as well as a big lift from businesses restocking their barren inventory.

Total government spending decreased 2.9% in the fourth quarter, which is slower than the rate from the prior quarter, when it rose by 0.9%. Private fixed investment, which includes residential and business spending, increased 1.3%, after contracting in the third quarter of 2021 by 0.9%. The trade deficit increased in December, coming in at \$80.7 billion, up from the \$79.3 billion reported in November and greater than the \$65.8 billion from one year ago. The December increase in the goods and services deficit reflected an increase in the goods deficit of \$3.2 billion, to \$101.4 billion, and an increase in the services surplus of \$1.8 billion, to \$20.7 billion. For 2021, the goods and services deficit increased \$182.4 billion, or 27.0%, from 2020. Exports increased \$394.1 billion, or 18.5%. Imports increased \$576.5 billion, or 20.5%.

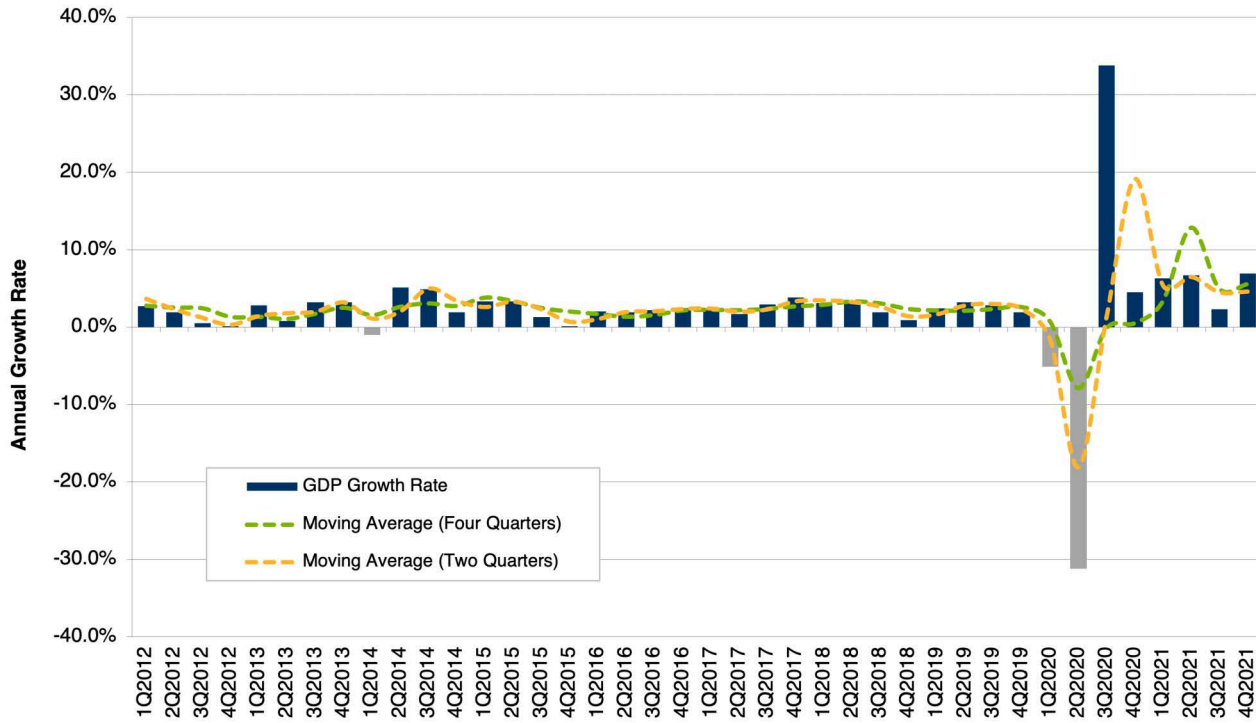
The U.S. Leading Economic Index (LEI) closed 2021 with a string of strong monthly performances, with the rise in December of 0.8% bringing the index to 120.8 points. The LEI broke its previous record-high mark, which was reached in November 2021. The increased pace now suggests that the economy is projected to grow in the first half of 2022, although the reports list the risks that could still negatively impact economic growth as inflationary pressures, supply-chain disruptions, rising interest rates, and the resurgence of COVID-19. The Conference Board now forecasts real GDP growth to reach 3.5% in 2022, well above prepandemic levels.

The Chicago Fed's National Activity Index worsened in December following a decline of 0.59 point, lowering the index from +0.44 to -0.15. Two of the four broad categories of indicators used to construct the index made positive contributions in December, but all four categories decelerated from November. As a result of the decline, the three-month average moved lower, from +0.40 to +0.33.

In December, nonfarm payrolls added 199,000 jobs to the economy, a disappointing figure as expectations were for gains of 422,000 jobs, according to a poll by CNBC. The report did, however, include revisions showing increases to the prior two months' figures, with the number of jobs in October increasing by 102,000 and the figures from November increasing by 39,000, for a net increase of 141,000 jobs.



**EXHIBIT 1A: Real Gross Domestic Product and Moving Averages**

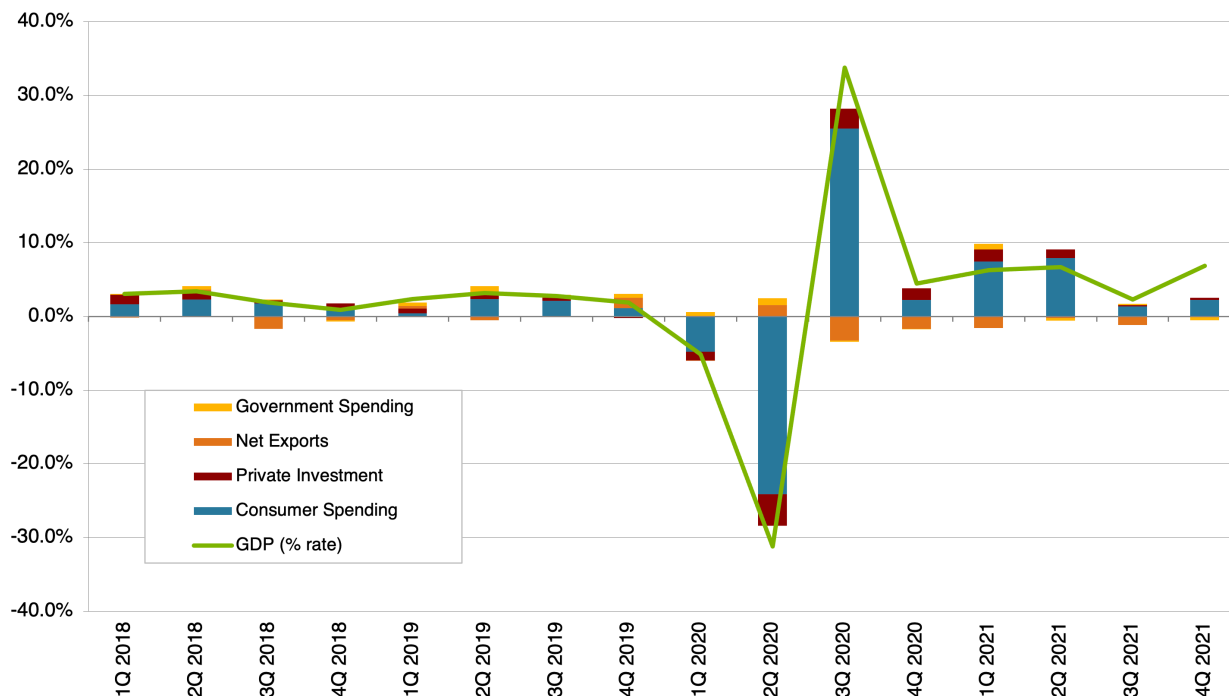


Source of data: U.S. Department of Commerce.

Note: Figures are seasonally adjusted at annual rates. As the U.S. Department of Commerce issues revised data, some historically reported figures may change.



**EXHIBIT 1B: GDP Components—Contribution to GDP Rate**



In December, the unemployment rate improved by 0.3 percentage point, to 3.9%, its lowest rate since the onset of the pandemic. The U6 unemployment rate improved 0.4 percentage point, to 7.3%.

Initial claims for unemployment insurance in the last week of December increased by 7,000 and totaled 207,000. The figure is above the 195,000 estimate and 7,000 more than the previous week.

Wages increased 0.19 cents in December, to \$31.31. Real average hourly earnings, seasonally adjusted from December 2020 to December 2021, increased 1.40 cents, or nearly 4.7%.

In the fourth quarter, the Federal Open Market Committee (FOMC) met twice. In the first meeting, the FOMC voted to maintain the federal funds rate at between 0.0% and 0.25%. In determining to maintain the existing level, the committee cited that it expects maintaining this target range will be appropriate until labor market conditions have reached levels consistent with the committee’s assessment of maximum employment. In addition, while inflation has risen, largely reflecting transitory factors, overall financial conditions remain accommodative, in part reflecting policy measures to support the economy and the flow of credit to U.S. households and businesses.

**EXHIBIT 1: Historical Economic Data 2009-2021 and Forecasts 2022-2032**

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Consensus Forecasts**						
														2022	2023	2024	2025	2026	2027	2028-2032
Real GDP*	-2.5	2.6	1.6	2.2	1.8	2.5	3.1	1.7	2.3	2.9	2.3	-3.4	5.6	3.9	2.6	2.1	2.1	2.1	2.1	2.1
Industrial production*	-11.5	5.5	2.9	2.8	2.0	3.1	-1.0	-2.0	1.3	3.2	-0.8	-7.2	5.7	4.3	2.6	2.2	2.0	1.9	1.9	1.9
Consumer spending*	-1.3	1.7	1.9	1.5	1.5	3.0	3.8	2.8	2.4	2.9	2.2	-3.8	8.0	3.6	2.4	2.3	2.3	2.2	2.2	2.2
Real disposable personal income*	-0.4	1.0	2.5	3.1	-1.4	4.0	4.1	1.8	2.8	3.4	2.3	6.2	2.2	-2.9	2.7	2.3	2.2	2.1	2.1	2.3
Business investment*	-14.5	4.5	8.7	9.5	4.1	6.9	1.8	0.7	4.1	6.4	4.3	-5.3	7.5	5.2	4.2	3.6	3.1	3.2	3.2	3.1
Nominal pretax corp. profits*	8.4	25.0	4.0	10.0	1.7	5.4	-2.8	-2.4	4.5	8.3	2.7	-5.2	24.6	6.0	3.3	4.1	4.4	4.5	4.5	4.3
Total government spending*	3.5	0.0	-3.1	-2.1	-2.4	-0.9	1.8	1.8	0.5	1.4	2.2	2.5	0.7	1.4	1.6	NA	NA	NA	NA	NA
Consumer price inflation*	-0.4	1.6	3.2	2.1	1.5	1.6	0.1	1.3	2.1	2.4	1.8	1.2	4.7	4.8	2.6	2.4	2.4	2.4	2.4	2.3
Core PCE						1.6	1.2	1.6	1.7	2.0	1.7	1.4	3.3	3.8	2.6	NA	NA	NA	NA	NA
3-month Treasury bill rate	0.2	0.1	0.1	0.1	0.1	0.0	0.2	0.5	1.4	2.4	1.5	0.1	0.1	0.8	1.5	1.5	1.9	2.2	2.2	2.3
10-year Treasury bond yield	3.3	3.2	2.8	1.8	2.4	2.5	2.2	2.5	2.8	2.7	1.9	0.9	1.6	2.2	2.5	2.9	3.1	3.2	3.2	3.3
Unemployment rate	9.3	9.6	8.9	8.1	7.4	6.2	5.3	4.9	4.4	3.9	3.7	8.1	5.4	3.7	3.5	NA	NA	NA	NA	NA
Housing starts (millions)	0.6	0.6	0.6	0.8	0.9	1.0	1.1	1.2	1.2	1.3	1.3	1.4	1.6	1.6	1.6	NA	NA	NA	NA	NA

Source of historical data: U.S. Department of Commerce, U.S. Department of Labor, U.S. Census Bureau and The Federal Reserve Board.

Source of forecasts: Consensus Forecasts - USA, January 2022.

## Notes:

\*Numbers are based on percent change from preceding period.

Historic consumer price inflation, unemployment rate, 3-month Treasury rate, and 10-year Treasury yield are the annual averages.

\*\*Forecast numbers are based on percent change from preceding period (excludes unemployment rate, housing starts, 3-month Treasury rate, and 10-year Treasury yield). Consumer price inflation information is annual averages. The 2021 through 2026 forecasts for the 3-month Treasury rate and 10-year Treasury yield are for the end of each period. Forecasts for 2027-2031 signify the average for that period.

Consumer spending, also known as personal consumption expenditures, includes spending on services, durable, and nondurable goods.

Business investment is also referred to as nonresidential fixed investment.

Total government spending includes federal, state, and local government spending.

Every month, Consensus Economics surveys a panel of 30 prominent United States economic and financial forecasters for their predictions on a range of variables including future growth, inflation, current account and budget balances, and interest rates.

During the second meeting of the quarter, the FOMC voted to maintain the federal funds rate at between 0.0% and 0.25%. In determining to maintain the rate, the FOMC cited the progress on vaccinations and strong policy support, indicators that economic activity and employment continue to strengthen. However, the FOMC would like to continue until its goal of maximum employment is met and inflation is 2% over the longer run. With inflation having exceeded 2% for some time, the committee expects it will be appropriate to maintain this target range until labor market conditions have reached levels consistent with the committee's assessments of maximum employment. In light of inflation developments and the further improvement in the labor market, the committee decided to reduce the monthly pace of its net asset purchases by \$20 billion for Treasury securities and \$10 billion for agency mortgage-backed securities.

**EXHIBIT 2B: Historical Energy Data 2009-2021 and Forecasts 2022-2023**

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	EIA Forecasts		% Change	
														2022	2023	2022	2023
Brent crude oil spot price*	61.8	79.6	111.3	111.7	108.6	98.9	52.3	43.7	54.2	71.2	64.3	41.7	70.9	75.0	67.5	5.7%	-9.9%
West Texas intermediate crude oil price*	62.0	79.5	94.9	94.1	98.0	93.2	48.7	43.3	50.8	65.1	57.0	39.2	68.2	71.3	63.5	4.6%	-11.0%
Heating oil retail price**	252.4	297.1	365.7	378.6	378.3	371.4	264.9	210.3	250.7	301.2	299.9	244.3	299.9	321.9	291.4	7.3%	-9.5%
Gasoline regular grade retail price**	234.9	278.1	352.6	362.7	350.6	336.4	242.8	214.9	241.7	272.7	260.4	218.4	301.9	305.8	280.7	1.3%	-8.2%
Electricity residential retail price***	11.5	11.5	11.7	11.9	12.1	12.5	12.7	12.6	12.9	12.9	13.0	13.2	13.7	14.2	14.3	3.8%	0.6%
Electricity commercial retail price***	10.2	10.2	10.2	10.1	10.3	10.7	10.6	10.4	10.7	10.7	10.7	10.6	11.3	11.7	11.8	3.6%	1.2%
Electricity industrial retail price***	6.8	6.8	6.8	6.7	6.9	7.1	6.9	6.8	6.9	6.9	6.8	6.7	7.3	7.2	7.2	-0.8%	-0.4%
Natural gas Henry Hub spot price****	4.0	4.4	4.0	2.8	3.7	4.4	2.6	2.5	3.0	3.2	2.6	2.0	3.9	3.8	3.6	-2.8%	-4.2%
Airline Ticket Price Index	258.0	278.2	304.0	305.0	312.7	307.7	292.2	282.6	275.8	264.9	265.4	217.6	216.8	236.6	260.7	9.1%	10.2%
Producer Price Index: Petroleum	1.8	2.3	3.0	3.1	3.0	2.8	1.8	1.4	1.7	2.1	1.9	1.4	2.4	2.3	2.1	-4.7%	-7.6%
Producer Price Index: all commodities	1.7	1.9	2.0	2.0	2.0	2.1	1.9	1.9	1.9	2.0	2.0	1.9	2.3	2.3	2.4	3.5%	0.4%

Source of historical and forecast data: U.S. Energy Information Administration.

## Notes:

\*Dollars per barrel

\*\*Cents per gallon, U.S. average

\*\*\*Cents per kilowatt-hour, U.S. average

\*\*\*\*Dollars per million Btu

The Consumer Confidence Index improved in December, rising 3.9 points, to 115.8 points. Following a revision to the November score, the index has now risen for three consecutive months. The report attributed the rise in confidence to an easing of the level of concern about inflation, although, looking forward to 2022, strong levels of consumer confidence will continue to face headwinds if prices continue to rise and the omicron variant continues to spread. The index's current conditions component, which measures consumers' assessment of current business and labor market conditions, ticked lower by 0.3 point, to 144.1, but the expectations component, which measures consumers' short-term outlook for income, business, and labor market conditions, moved higher by 6.7 points, to 96.9 points. The Consumer Sentiment Index increased in December by 3.2 points, to 70.6 points. The rise in the index for the month is attributed to a significant increase among households with incomes that fall in the bottom



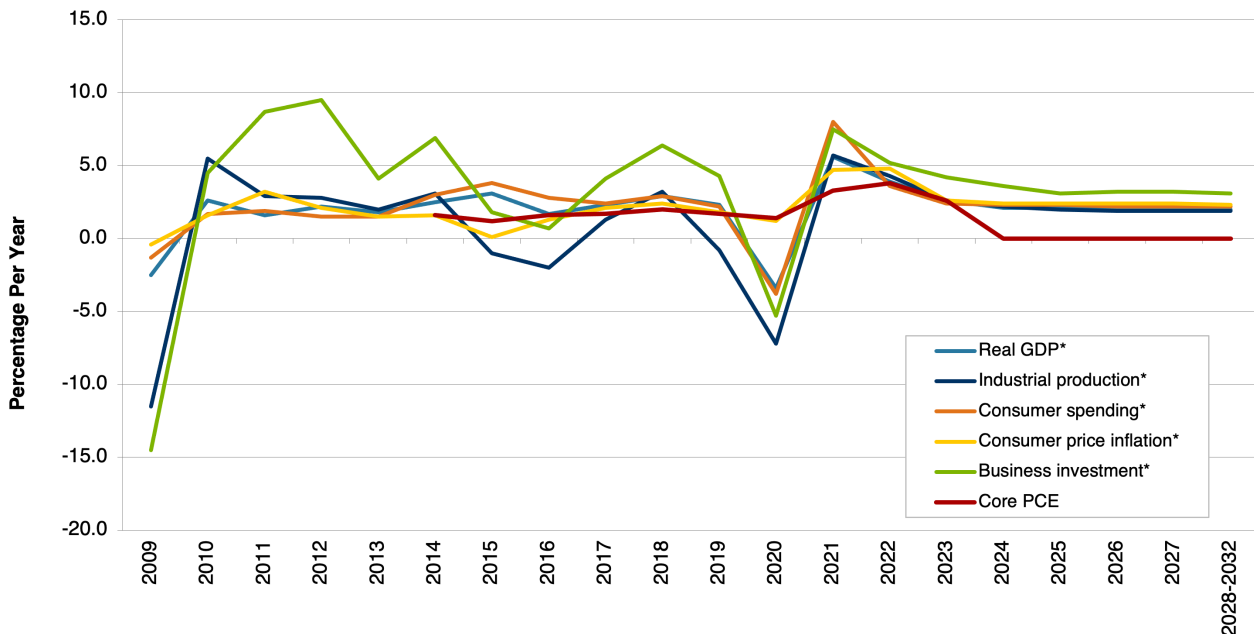
third of the distribution. Despite the rise, the index remains lower by 12.5% on the year.

MetLife and the U.S. Chamber of Commerce published their fourth-quarter 2021 survey, which climbed to its highest level since the start of the pandemic. The fourth-quarter score jumped 6.4 points, to 63.0 points. Despite the rise, the score remains below prepandemic levels, such as when it was 71.7 points in the first quarter of 2020.

The survey highlighted four key findings for the quarter:

- Sixty-two percent of small-business decision-makers say that their business is in good health, which is up from 55% from the prior quarter;
- Fifty-five percent of small-business owners remain skeptical about the health of their local and national economy, which is unchanged from last quarter;
- Thirty-eight percent of small businesses plan to increase their headcount in the coming year, which is up from 28% in the prior quarter and the highest mark since the start of the index in 2017; and
- 4. Fifty-nine percent of small-business owners expect to see higher revenues in 2022, compared to 22% who expect them to remain the same.

**EXHIBIT 3: Key Economic Variables Actual 2009-2021 and Forecast 2022-2032**



Source of historical data: U.S. Department of Commerce, U.S. Department of Labor and The Federal Reserve Board.  
 Source of forecasts: Consensus Forecasts.

\*Numbers are based on percent change from preceding period. Consumer price inflation information is annual averages.



Middle-market business sentiment, as reported by the RSM U.S. Middle Market Business Index, retreated 14.0 points in the fourth-quarter reading, to 129.7 points, falling from its record-high 143.7 in the prior quarter. Still, the rate is above the score of 126.2 in the fourth quarter of 2019, just prior to the outbreak of the pandemic. The report noted concerns among those surveyed that supply-chain issues and rising inflationary pressures could slow the growth of the U.S. economy. Despite these concerns, responses from the survey forecast indicate that middle-market business conditions will remain solid even as firms work to confront challenges in securing materials and workers.

The manufacturing sector worsened in December, as the Institute for Supply Management's manufacturing index (PMI) subtracted 2.4 percentage points. Despite the decline, the score in December, 58.7%, indicates an expansion in the manufacturing economy for the 19th consecutive month. A reading above 50% indicates that the manufacturing economy is generally expanding, while a reading below 50% indicates that it is generally contracting. Over the past 12 months, the PMI has averaged 60.7%.

The Federal Reserve reported that total industrial production decreased 0.1% in December after revisions showed an increase of 0.7% in November. At 101.9% of its 2017 average, total industrial production was 3.7% higher than it was at the end of 2020. Capacity utilization for the industrial sector decreased 1.0 percentage point in December, to 76.5%, a rate that is 3.1 percentage points below its long-run (1972-to-2020) average.

The Institute for Supply Management's Services PMI index, formerly referred to as NMI, slowed in December, subtracting 7.1 percentage points from its score, to 62.0%. Despite the decline, the score in December represented growth for the 19th consecutive month and is one month removed from its all-time high score after a two-month contraction in April 2020 and May 2020 at the onset of the coronavirus pandemic and has expanded in all but two of the last 142 months. The survey results indicated that the tight labor market, materials shortages, inflation, and logistics issues continue to cause capacity constraints. Over the past 12 months, the Services PMI has averaged 62.5%.

In the last month of 2021, all the major U.S. stock market indices posted positive returns despite higher volatility in the markets due to concerns about the spread of the omicron variant and data forecasting rising interest rates. In December, the Dow Jones Industrial Average rose 5.5% and the S&P 500 Index gained 4.5%. The Nasdaq Composite saw a small increase, inching up 0.7%. Smaller stocks kept pace as the Russell MidCap rose 4.1% and the Russell 2000 gained 2.2%. Volatility, as measured by the Chicago Board Options Exchange Volatility Index, increased in December when compared to prior months. In December, the index produced a monthly average of 21.6, which is higher than the annual average in 2021. On the month, volatility ranged from 16.6 to 35.3. The annual average in 2021 was 19.7.

During the fourth quarter, the yield on the benchmark 10-year U.S. Treasury bond started the quarter at 1.48% and rose to 1.52% by the end of the quarter.

Residential construction unexpectedly increased, rising 1.4% in December and reaching a nine-month high. The increase in December produced a seasonally adjusted rate of 1.702 million units, which is higher than the 1.678 million units in November and is 2.5% higher than one year ago. The report attributed the rise to a surge in starts for the multifamily sector, which rose 13.7% on the month compared to starts for single-family homes, which fell 2.3% on the month. On a year-over-year basis, single-family starts are down 10.9% whereas multifamily starts rose





56.0%. On the month, housing starts increased in two of the four regions, which saw sizable increases in the Midwest, at 36.5%, and in the Northeast, at 20.2%, which offset declines in the South and the West regions. The number of building permits authorized, which measures how much construction is in the pipeline, rose 9.1% in December. On a year-over-year basis, the figure is up 6.5%. The adjusted annual rate was 1.873 million. The number of building permits authorized rose 2.0% for single-family homes and 19.9% for multifamily homes when compared to one month ago.

Existing-home sales closed the final month of 2021 with a whimper, ending a string of strong gains in recent months. In December, sales fell 4.6% when compared to November. The decline came as prospective buyers struggled with a shortage of inventory and potential first-time buyers were priced out of the market. On a year-over-year basis, home sales fell 7.1%, and there is a slowing optimism for the outlook in 2022 as potential homebuyers are facing rising prices, competition with investors, and the persistent shortage of inventory. The number of distressed home sales was less than 1.0% of sales in December, which is unchanged from November and from one year ago. In December, the NAHB/Wells Fargo Housing Marking Index increased 1.0 point, to 84.0 points, with the rise being attributed to strong demand by potential homebuyers despite the challenges of rising prices for materials and delays due to supply-chain issues. Two of the three HMI components increased in December, with the component measuring current sales conditions rising 1.0 point, to 90.0; the component gauging sales conditions over the next six months remaining at 84.0; and the component that measures buyer traffic moving higher by 2.0 points, to 70.0.

The National Association of Realtors' most recent "Commercial Market Insights," which analyzed the commercial real estate market through December 18, reported growth in the occupancy rate in the multifamily, industrial, and retail sectors but declines in the office sector due to the rise in the number of cases of the delta and omicron variant.

Specifically, within the apartment sector, the vacancy rate has declined to 4.6% from 6.7% in Q1 2020. In addition, due to strong demand, asking rents are up 11% compared to one year ago. In the industrial sector, which has the lowest vacancy rate among the core property markets, at 4.1%, this is a decrease from the rate of 5.3% in the first quarter of 2020. Rents in this sector are up 8.4% year over year. In the retail property sector, the vacancy rate is at 4.7% and rents are up at a rate of 2.8% year over year. The office sector, however, has continued to struggle, as the vacancy rate has increased to 12.5% from 9.8% in the first quarter of 2020. Rents have, however, stopped declining and are at the same level as they were one year ago.



#### EXHIBIT 4: Economic Indicators Historical Data

	Monthly Data											
	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21
Real GDP			6.3			6.7			2.3			6.9
Consumer spending			11.4			12.0			2.0			3.3
Business investment			12.9			9.2			1.7			2.0
Total government spending			4.2			-2.0			0.9			-2.9
Exports			-2.9			7.6			-5.3			24.5
Imports			9.3			7.1			4.7			17.7
CPI (one-month % change)	0.3	0.4	0.6	0.8	0.6	0.9	0.5	0.3	0.4	0.9	0.8	0.5
Unemployment rate	6.3	6.2	6.0	6.1	5.8	5.9	5.4	5.2	4.8	4.6	4.2	3.9
PMI	58.7	60.8	64.7	60.7	61.2	60.6	59.5	59.9	61.1	60.8	61.1	58.7
Services PMI	58.7	55.3	63.7	62.7	64.0	60.1	64.1	61.7	61.9	66.7	69.1	62.0
HMI	83.0	84.0	82.0	83.0	83.0	81.0	70.0	75.0	76.0	80.0	83.0	84.0
Housing starts (millions)	1.6	1.4	1.7	1.5	1.6	1.7	1.6	1.6	1.6	1.6	1.7	1.7
Building permits (millions)	1.9	1.7	1.8	1.7	1.7	1.6	1.6	1.7	1.6	1.7	1.7	1.9

Notes: Real GDP and subcomponents data only available on a quarterly basis and therefore, are quarterly figures. GDP and its subcomponents, along with housing starts and building permits, are seasonally adjusted at annual rates. PMI is the Institute of Supply Management's Manufacturing Index—any reading above 50.0% suggests growth in the manufacturing economy, whereas a reading below 50.0% indicates contraction. Services PMI is the Institute of Supply Management's Non-Manufacturing Index, which measures the strength of the services sector—any reading above 50.0% suggests growth, whereas a reading below 50.0% indicates contraction. HMI is the National Association of Home Builders/Wells Fargo Housing Market Index—any reading over 50 indicates that more builders view sales conditions as good than poor.

	Quarterly Data											
	1Q 18	2Q 18	3Q 18	4Q 18	1Q19	2Q19	3Q19	4Q19	1Q20	2Q20	3Q20	4Q20
Real GDP	3.1	3.4	1.9	0.9	2.4	3.2	2.8	1.9	-5.1	-31.2	33.8	4.5
Consumer spending	2.4	3.5	2.7	1.7	0.6	3.6	3.2	1.7	-6.9	-33.4	41.4	3.4
Business investment	10.2	6.8	2.8	4.8	4.7	6.7	2.9	-1.7	-8.1	-30.3	18.7	12.5
Total government spending	0.9	2.8	1.0	-0.8	2.7	5.0	2.1	3.0	3.7	3.9	-2.1	-0.5
Exports	1.8	5.0	-6.1	0.5	3.1	-2.2	-0.8	1.2	-16.3	-59.9	54.5	22.5
Imports	2.6	1.4	5.9	3.9	0.0	1.7	-1.1	-8.5	-13.1	-53.1	89.2	31.3
CPI (3-month % change)	1.0	0.1	0.2	0.1	0.3	-0.1	0.1	-0.1	-0.2	-0.1	1.2	0.5
Unemployment rate	4.0	4.0	3.7	3.9	3.8	3.7	3.5	3.5	4.4	11.1	7.9	4.2
PMI	59.3	60.0	59.5	54.3	54.6	51.6	48.2	47.8	49.7	52.2	55.7	60.5
Services PMI	58.7	58.7	60.8	58.0	56.3	55.4	53.5	54.9	53.6	56.5	57.2	57.7
HMI	70.0	68.0	67.0	56.0	62.0	64.0	68.0	76.0	72.0	58.0	83.0	86.0
Housing starts (millions)	1.3	1.2	1.2	1.1	1.2	1.2	1.3	1.6	1.3	1.3	1.4	1.7
Building permits (millions)	1.4	1.3	1.3	1.3	1.3	1.3	1.4	1.5	1.4	1.3	1.6	1.8

Notes: Unemployment rate, housing starts, building permits, PMI, Services PMI, and HMI are readings from the last month of the quarter. GDP and its subcomponents, along with housing starts and building permits, are seasonally adjusted at annual rates.

	Yearly Data											
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Real GDP	2.6	1.6	2.2	1.8	2.3	2.7	1.7	2.3	2.9	2.3	-3.4	5.7
Consumer spending	1.7	1.9	1.5	1.5	2.7	3.3	2.5	2.4	2.9	2.2	-3.8	7.9
Business investment	4.5	8.7	9.5	4.1	7.2	2.3	0.9	4.1	6.4	4.3	-5.3	7.3
Total government spending	0.0	-3.1	-2.1	-2.4	-0.9	1.8	2.0	0.5	1.4	2.2	2.5	0.5
Exports	12.1	7.1	3.4	3.0	3.9	0.3	0.4	4.1	2.8	-0.1	-13.6	4.6
Imports	13.1	5.6	2.7	1.2	5.2	5.2	1.5	4.4	4.1	1.2	-8.9	14.0
Consumer Price Index	1.6	3.2	2.1	1.5	1.6	0.1	1.3	2.1	1.9	2.3	0.1	0.6
Unemployment rate	9.6	8.9	8.1	7.4	6.2	5.3	4.9	4.4	3.9	3.7	8.1	5.4
Housing starts (millions)	0.6	0.6	0.8	0.9	1.0	1.1	1.2	1.2	1.2	1.3	1.4	1.6
Building permits (millions)	0.6	0.6	0.8	1.0	1.1	1.2	1.2	1.3	1.3	1.4	1.5	1.7

Notes: Yearly Consumer Price Index rates and yearly unemployment rates are the annual average rates.

Personal consumption includes spending on services and durable and nondurable goods.

Government spending includes federal, state, and local government spending.

As the government issues revised data, some historical reported figures may have changed.

Source of data: U.S. Department of Commerce, U.S. Department of Labor, U.S. Census Bureau, The Federal Reserve Board, the Institute of Supply Management, and the National Association of Home Builders.

## ECONOMIC OUTLOOK

Consensus Economics Inc., publisher of Consensus Forecasts—USA, reports that the consensus of U.S. forecasters believe that real GDP will rise at a seasonally adjusted annual rate of 3.8% in the first quarter of 2022 and increase by 3.8% in the second quarter of 2022. Every month, Consensus Economics surveys a panel of 30 prominent U.S. economic and financial forecasters for their predictions on a range of variables, including future growth, inflation, current account and budget balances, and interest rates. The forecasters expect GDP to increase 5.6% in 2021 and 4.0% in 2022.



They forecast that consumer spending will increase at a rate of 2.9% in the first quarter of 2022 and rise 3.1% in the second quarter of 2022. They expect consumer spending to increase 8.0% in 2021 and 3.6% in 2022.

The forecasters believe unemployment will average 3.1% in the first quarter of 2022 and rise 3.9% in the second quarter of 2022. They predict that unemployment will average 5.4% in 2021 and 3.9% in 2022.

The forecasters believe that the three-month Treasury bill rate will be 0.1% in the first quarter of 2022 and rise 0.2% in the second quarter of 2022. They predict the 10-year Treasury bond yield will be 1.6% in the first quarter of 2022 and rise 1.7% in the second quarter of 2022.

They also believe consumer prices will rise at a rate of 3.5% in the first quarter of 2022 and rise 2.8% in the second quarter of 2022. They expect consumer prices to increase 4.6% in 2021 and 4.2% in 2022. They expect producer prices to increase 4.9% in the first quarter of 2022 and rise 3.5% in the second quarter of 2022. The forecasters anticipate producer prices will rise 8.1% in 2021 and 5.6% in 2022.

The forecasters believe real disposable personal income will fall 0.2% in the first quarter of 2022 but rise 2.1% in the second quarter of 2022. They believe real disposable personal income will increase 2.2% in 2021 but fall 2.3% in 2022.

The forecasters expect industrial production to increase 4.3% in the first quarter of 2022 and rise 4.0% in the second quarter of 2022. They forecast that industrial production will increase 5.6% in 2021 and rise 4.1% in 2022.

Nominal pretax corporate profits are expected to increase 24.7% in 2021 and 5.6% in 2022. The forecasters also project housing starts will be 1,580,000 in 2021 and 1,580,000 in 2022.

The most recent release of The Livingston Survey (the Survey) predicts GDP growth of 3.9% for the first half of 2022, which is an upward revision from the previously forecasted rate of 3.7% in the prior survey. The Survey, conducted by the Federal Reserve Bank of Philadelphia, is the oldest continuous survey of economists' expectations. It summarizes the forecasts of economists from industry, government, banking, and academia. The survey forecasts GDP growth of 3.5% in the second half of 2022. The forecasters predict a lower unemployment rate compared with their expectations in June. In June 2022, they see the unemployment rate steadily decreasing to 4.0% and improving 3.8% in December 2022.

The Congressional Budget Office (CBO) provided its baseline economic forecast that is used as the basis for updating its budget projections for 2021 to 2031. In the report, the CBO projects that, if current laws governing federal taxes and spending generally remain in place, the economy will grow rapidly for the rest of the year. Real (inflation-adjusted) gross domestic product (GDP) is expected to grow at a 7.2% annual rate in 2022 and by 3.8% in 2023. The unemployment rate is projected to fall to 3.8% in 2022 and to 3.7% in 2023.

One major driver of CBO's forecast of the economy for the next several years is the agency's projections about how the pandemic and social distancing will unfold. CBO projects that the degree of social distancing will decline by about two-thirds from its November 2020 peak during the second half of this year, leading to an increase in social activities and commerce. That projection is in the middle of the distribution of possible outcomes, in CBO's assessment. It allows for regional and seasonal variation, and it accounts for the possibility of multiple waves of increased transmission of the virus and retightening of social distancing measures, as well as other steps people might take



to protect their health while engaging in economic activity.

The Federal Reserve published its summary of economic projections, which is released with the FOMC meeting minutes. For 2022, the Federal Reserve forecasts real GDP to increase by 4.0%, which is greater than its prior forecast for growth of 3.8%. Real GDP is forecasted to grow by 2.2% in 2023 and by 2.0% in 2024. The unemployment rate is projected to be 3.5% for 2022, which is lower than the previously forecasted rate, 3.8%. Unemployment is expected to be at 3.5% in 2023 and 3.5% in 2024. The Federal Reserve forecasts PCE to be at 2.6% in 2022, higher than the previously projected rate of 2.2%, but it is expected to moderate to 2.3% in 2023 and 2.1% in 2024. Core PCE is forecasted to be 2.7%, higher than the originally projected rate of 2.3% in 2022, before falling to 2.3% in 2023 and 2.1% in 2024.

The Energy Information Administration (EIA) predicts that the West Texas Intermediate crude oil spot price will average approximately \$71.32 per barrel in 2022 and \$63.50 per barrel in 2023, compared with \$68.21 per barrel in 2021. The EIA expects retail prices for regular-grade gas to average \$3.24 per gallon in 2022 and \$2.84 per gallon in 2023, compared with \$3.02 per gallon in 2021.

The EIA believes the Henry Hub natural gas spot price will average \$3.79 per million Btu (MMBtu) in 2022 and \$3.63 per MMBtu in 2023, compared with \$3.90 per MMBtu in 2021. The cost of coal delivered to electricity-generating plants, which averaged \$1.98 per MMBtu in 2021, is expected to average \$1.98 per MMBtu in 2022 and \$1.84 per MMBtu in 2023. Residential electricity prices, which averaged 13.72 cents per kilowatt-hour (kWh) in 2021, are expected to average 14.22 cents per kWh in 2022 then rise to 14.30 cents per kWh in 2023. The airline ticket price index, which averaged \$216.81 in 2021, is expected to be \$236.64 in 2022 before rising to \$260.67 in 2023.

The National Association of Realtors' Realtors Confidence Index (RCI) survey reported that its Buyer Traffic Index fell 1.0 point, to 59.0, and is down from 71.0 points from one year ago. The Seller Traffic Index fell 3.0 points, to 37.0, in November and is down 2.0 points from one year ago. The RCI is a key indicator of housing market strength based on a monthly survey of over 50,000 real estate practitioners. Practitioners are asked about their expectations for home sales, prices, and market conditions.

NAR, in its quarterly U.S. economic outlook, projects existing-home sales in 2022 to be 5.95 million (-2.8%) but expects them rise to 6.07 million (+2.0%) in 2023. It believes that new single-family home sales will be 0.850 million (+9.0%) in 2022, before increasing to 0.950 million (+11.8%) in 2023. NAR believes the median existing-home price will be \$364,700 (+5.1%) in 2022, before increasing to \$378,200 (+3.7%) in 2023. NAR believes the median new-home price will be \$411,600 (+5.5%) in 2022, before rising to \$432,000 (+5.0%) in 2023. It expects housing starts to increase to 1,650,000 (+3.4%) in 2022, then to 1,680,000 (+1.8%) in 2023. NAR believes the 30-year fixed mortgage rate will average 3.6% in 2022 and rise to 4.0% in 2023 and the 5-1 hybrid adjustable-rate mortgage will average 3.0% in 2022 and 3.6% in 2023.

The most recent three-year outlook from the Urban Land Institute (ULI) and Ernst & Young (EY) found that real estate economists and analysts believe the economy, which was severely impacted in 2020, will markedly improve over the next three years, from 2021 to 2023. The forecast also projects employment growth will be at 5.5 million in 2021, 3.0 million in 2022, and 2.1 million in 2023, which will be a partial recovery from the 9.4 million jobs lost in 2020. The ULI/EY Real Estate Consensus Forecast, a semiannual publication, is based on a survey of 43 of the industry's top economists and analysts representing 37 of the country's leading real estate investment, advisory,



and research firms and organizations. The forecast for each indicator is the median forecast from the 43 survey respondents. The key findings from the Real Estate Consensus Forecast include:

- U.S. real estate transaction volumes are predicted to increase to \$500 billion in 2021, to \$550 billion in 2022, and to \$590 billion in 2023, all well above the long-term annual average of \$347 million, and up from the actual \$427 billion in 2020.
- Commercial property prices are projected to rise by 4.2% in 2021 and by 5.0% in 2022 and 2023. The index rose by 5.2% in 2020.
- Office vacancy rates are predicted to rise more than rates for other property types in 2021, following a weak 2020. Vacancy rates will rise 150 basis points, to 16.5%, in 2021 after rising 280 basis points in 2020. The office vacancy rate is forecast to exceed its long-term average (14.3%) over the entire forecast period.
- Single-family housing starts are projected to be 1.1 million in 2021, compared with a predicted 940,000 units just six months ago. In 2022 and 2023, it is estimated that there will be 1.2 million new starts.
- NCREIF total returns, which were positive for 11 consecutive years, are expected to be 4.5% in 2021, up from the 3.0% predicted six months ago. Total returns are predicted to be 5.9% in 2021 and 6.5% in 2022. With an actual return of 1.6% in 2020, private real estate returns weathered the COVID-19 downturn with positive total returns throughout, a much better performance than during the global financial crisis of 2007 to 2008.
- In 2021, the vacancy/availability rates for apartment performance will be similar to that of industrial, with little change in the vacancy rate over the forecast period, although expensive urban markets such as New York City and San Francisco have reportedly weakened while suburban and Sun Belt markets have improved over the past year or so.
- Commercial property rent growth differs widely by property type, as well. In 2021, industrial is predicted to lead all property types in rent growth over the forecast period, averaging 3.6% per year from 2021 to 2023. Apartment rent growth will average 2.6%, whereas office and retail rent growth will be slightly negative. For hotels—which track revenue per available room (RevPAR), combining rental rates and occupancy—growth will average 19.9% over the next three years, bouncing back from a 47.4% decline in 2020.

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**Source**

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## INDUSTRY SUMMARY

This industry develops software or platforms for customer relationship management (CRM). CRM is a widely-implemented strategy for managing a company's interactions with customers, clients and sales prospects.

## MAJOR PRODUCTS

### Software as a service CRM

While SaaS CRM requires individual businesses to host the system in-house, SaaS, or on-demand, CRM enables businesses to host the needed software and hardware in an off-site location managed by third-party service providers. These service providers operate and manage a large number of servers within their location and rent out the internet-based software to clients as a service. In effect, businesses and other various users pay monthly or annual fees to gain access to the web-based CRM, as well as a fee for maintenance and support. SaaS CRM is often viewed as more affordable compared with SaaS CRM, since hosted systems do not require clients to purchase software and hardware individually. In addition, clients do not have to have an extensive IT staff to routinely check and maintain the system. As a result, SaaS CRM has attracted many smaller businesses that previously did not have the resources to invest in customer management solutions over the past five years. Hence, this segment's share of revenue has expanded substantially during the five-year period at the expense of SaaS systems; SaaS CRM is estimated to represent 37.8% of industry revenue. Nevertheless, SaaS CRM is not without its drawbacks; there are a few disadvantages to the system. Since the software is developed and managed by third-party providers, extensive customization is often difficult with this platform. In addition, there are many concerns regarding the security of web-based products. Since the data is not stored in house, any security breaches can result in permanent loss of information for the company using the service. In recent years, demand for open source CRM has risen within the SaaS segment. Open source CRM differs from traditional CRM in that the basic version of the service is generally provided for free. Open source CRM companies then generate revenue through advertisements, or by selling a premium version of a product that includes proprietary add-ons. Many open source CRM programs are available in the market today; prominent players include Sugar CRM, Splendid CRM and Centric CRM.

### Software as a product CRM

SaaS, or on-premise, CRM is an application that requires all software and hardware components to be housed by the company that will be using the system. While some developers provide installation and training services, client companies' own IT staff is generally responsible for installation, integration and maintenance of the systems. Since all aspects of the CRM are hosted within the company, SaaS solutions generally offer maximum flexibility and greater control. Users can make extensive modifications to their system to customize the user interface, data collected and analysis of data to meet their unique business needs. Since all hardware and software must be purchased and set up in-house, however, SaaS systems require substantial up-front investment. As a result, SaaS systems are often perceived as costlier than SaaS solutions (though long-term costs may be less expensive for SaaS, since this type of system does not require monthly charges). This factor has deterred many businesses from adopting SaaS CRM systems, especially during tough economic times. Consequently, this segment has lost much of its market share over the past five years. Nonetheless, SaaS CRM systems still accounts for 58.8% of industry revenue.



### **Services and other fees**

Operators in this industry also earn additional revenue through installation and training services. This segment is expected to account for just a small share of industry revenue, at 3.4%. However, SaaS providers often earn a larger share of their sales through services because customers often need specific training to learn to use the product.

## **MAJOR MARKETS**

### **Retailers and online businesses**

Retailers and online businesses, including e-commerce and internet publishers, are the second-largest market segment served by this industry, representing 26.3% of revenue. Operators in this market segment are heavy users of enterprise software, including CRM systems, since they often need to keep track of a large number of clients and vendors. This segment is also particularly prepared to adopt enterprise software because they already make heavy use of information technology as a core part of their business. In particular, the online businesses market segment is relatively mature because of its early adoption of enterprise software. However, this segment is expected to continue growing as online businesses displace more traditional competitors.

### **Banks and financial institutions**

By sector, banks and financial institutions are the largest market segment served by this industry, with a 27.3% share. Banks and financial institutions handle vast sums of sensitive personal information related to their customers and private transactions. CRM solutions are often used to securely manage and analyze such data for applications such as lending and cross-selling. Industry products are also used to manage potential sales leads, while improving customer satisfaction.

### **Other**

Manufacturers account for 17.4% of industry revenue, but they are a market segment with significant growth potential. Most manufacturers today, particularly small operators, are unsophisticated in their use of information technology. Moving forward, on-demand CRM is expected to cater this market for better and more efficient business-to-business sales. Healthcare and other service industries are the fourth-largest market segment served by this industry, currently accounting for 14.9% of revenue. Health plan providers use CRM systems to grow new clients and renewals, while pharmaceutical businesses use it to tap into more clinics and hospitals. Academic institutions (e.g. research universities and public and private colleges) and others such as nonprofit research groups account for 14.1% of industry revenue. This market segment heavily uses statistical analysis and collaboration software.



## OPERATING CONDITIONS

### CAPITAL INTENSITY

The level of capital intensity for the CRM System Providers industry indicates that operators on average spend an estimated \$0.05 on capital assets for every dollar spent on labor. This figure is considered a low level of capital intensity, reflecting the industry's needs for labor and technology. Since the industry produces an intangible product, producing quality software and system integration chiefly requires talented employees and time. To this end, wages account for the largest industry expense, making up an estimated 40.6% of revenue. Capital investments made by this industry include any hardware that is used to develop and host customer relationship management (CRM) systems. Over the five years to 2019, the industry's investment in capital assets has increased due to the gaining acceptance and popularity of Software as a service (SaaS) CRM solutions. Since SaaS systems must be hosted by industry players (versus Software as a product CRM solution that are hosted on the client's site), rising prevalence of such systems indicate that the industry must invest more on servers and other hardware. While capital expenditure has been increasing, wage growth has nevertheless been greater, and capital intensity has remained steady. IBISWorld projects that capital costs will continue to rise over the five years to 2024 as SaaS and web-based systems increasingly gain traction within the CRM market.

### REVENUE VOLATILITY

The CRM System Providers industry experienced moderate revenue volatility over the past five years. Software, including customer relationship management (CRM) systems is a capital good for businesses, subjecting the industry to some volatility when investment cycles are volatile, during recessions for example. IT investment tends to lag growth in corporate profit by nine months, but shrink in concert with any decline. Investments in CRM software, however, is counter cyclical, as companies attempting to cut costs purchase the software to increase their own efficiency. Industry revenue has experienced strong and stable growth over the five years to 2019 and is expected to continue on its trajectory over the five years to 2024.

### REGULATION

Operators in the CRM Service Providers industry endure few formal regulations. Nevertheless, as with other software-developing industries, intellectual property law and litigation are prominent features of the industry. In fact, in 2007, Oracle Corporation (Oracle) filed a lawsuit against SAP, the industry's largest player, alleging "theft of trade secrets." Oracle alleged that SAP stole copyrighted software products and other confidential materials. The alleged theft was conducted by employees of TomorrowNow, a now defunct subsidiary of SAP. In the fourth quarter of 2010, SAP admitted contributory liability in the case, and was ordered to pay Oracle a \$1.3 billion settlement. This settlement was overturned in September 2011 due to its excessive size. Oracle and SAP ultimately settled the case for \$356.7 million, after the federal appeals court said Oracle could either accept \$356.7 million, or opt for a retrial against SAP.





## INDUSTRY STRUCTURE

### BARRIERS TO ENTRY

Barriers to entry are moderate in the CRM System Providers industry. There are no formal prohibitions preventing the adoption of one customer relationship management (CRM) system over another, but the inertia of widespread usage is a barrier in itself. It is unlikely for an incumbent CRM software vendor to lose major existing customers, due to path dependence and that customer's existing investment in a particular software system. New industry entrants are usually forced to expand by targeting small businesses or developing more powerful or usable software. The industry has had a large number of new entrants via open-source CRM systems. Open-source CRM differs from traditional systems in that the basic versions of the service are generally provided for free. This system enables new users to try the product before signing a contract or investing large sums of money, enabling new entrants to gain foothold in the moderately concentrated industry. Open-source CRM systems then generate revenue through advertisements or by selling premium versions of the product that include special features or proprietary add-ons to consumers. Limited pool of skilled workers. The limited pool of skilled software developers acts as another barrier to entry in this industry. CRM software providers compete with all other software development industries for the same pool of engineering talent. Since the performance of industry players depends heavily on the product itself, the limited pool of skilled workers may lead to slow product development, making it hard for new entrants to remain profitable in the long run.



## COMPETITIVE LANDSCAPE

### MARKET SHARE CONCENTRATION

The CRM System Providers industry is moderately concentrated, with the four largest companies accounting for 51.6% of industry revenue. The competitive characteristics of this industry, and IT in general, tend to favor a higher level of concentration. Software development generally has high upfront costs and patent protection, somewhat limiting the number of entrants in this industry. Over the five years to 2019, industry concentration has been rising. This trend can be attributed to the quick growth of industry major player Salesforce. As web-based customer relationship management (CRM) systems gained increasing popularity over the past five years, the company has captured a larger share of the market at the expense of traditional on-premise CRM providers. Acquisitions made by other major companies have also contributed to the industry's rising concentration. IBISWorld projects more acquisitions will occur over the five years to 2024 as the industry becomes more saturated. Accordingly, concentration is expected to remain high over the next five years.

### COMPETITION

Usability Usability, or user-friendliness, is one of the main design aspects with any software. Usability is particularly important for customer relationship management (CRM) software, because it is intended to be used by a broad audience of salespeople across various industries. Excessively complex design elements (e.g. unclear verbose menus) tend to frustrate novice users and will limit the software's appeal, even if it boasts top-of-the-line features. To this end, having an easy-to-use user interface is a crucial basis of competition for CRM system providers. Ubiquity and compatibility Ubiquity and compatibility are tightly related bases of competition for software. When a particular software product has a large market share, that market share tends to increase. Consumers and businesses alike prefer to purchase widely used software because data and other files can be more easily transferred or shared between computers. In the case of operating systems, independent software developers have to make an exceptional effort to design and code software that is compatible across operating systems such as Windows, OSX, Linux and Unix. Nevertheless, competition based on operating system compatibility is becoming obsolete, as more companies develop online-based platforms. These on-demand CRM systems can be accessed with any device that has a connection to the internet, including laptop computers, tablets and mobile phones. In this regard, compatibility with these technology gadgets is increasingly becoming a basis for competition among industry players.

### GLOBALIZATION

The CRM Systems Providers industry is moderately globalized. While international trade is not accounted at this level, international companies often use industry products. In fact, more than one-third of major player Salesforce's revenue is generated overseas. The fact that the industry's product can be digitally distributed instantly also raises the level of globalization. In terms of foreign ownership, only one of the industry's major players is based abroad; SAP, the largest provider of customer relationship management systems in the United States today, is headquartered in Germany.



## **STAGE OF DEVELOPMENT**

### **SELECTED STAGE OF DEVELOPMENT: STAGE FOUR**

The American Institute of Certified Public Accountants (AICPA) defines six stages of enterprise development:

#### **STAGE ONE**

Enterprise has no product revenue to date and limited expense history, and typically an incomplete management team with an idea, plan, and possibly some initial product development. Typically, seed capital or first-round financing is provided during this stage by friends and family, angels, or venture capital firms focusing on early-stage enterprises, and the securities issued to those investors are occasionally in the form of common stock but are more commonly in the form of preferred stock.

#### **STAGE TWO**

Enterprise has no product revenue but substantive expense history, as product development is underway and business challenges are thought to be understood. Typically, a second or third round of financing occurs during this stage. Typical investors are venture capital firms, which may provide additional management or board of directors expertise. The typical securities issued to those investors are in the form of preferred stock.

#### **STAGE THREE**

Enterprise has made significant progress in product development; key development milestones have been met (for example, hiring of a management team); and development is near completion (for example, alpha and beta testing), but generally there is no product revenue. Typically, later rounds of financing occur during this stage. Typical investors are venture capital firms and strategic business partners. The typical securities issued to those investors are in the form of preferred stock.

#### **STAGE FOUR**

Enterprise has met additional key development milestones (for example, first customer orders, first revenue shipments) and has some product revenue, but is still operating at a loss. Typically, mezzanine rounds of financing occur during this stage. Also, it is frequently in this stage that discussions would start with investment banks for an IPO.

#### **STAGE FIVE**

Enterprise has product revenue and has recently achieved breakthrough measures of financial success such as operating profitability or breakeven or positive cash flows. A liquidity event of some sort, such as an IPO or a sale of the enterprise, could occur in this stage. The form of securities issued is typically all common stock, with any outstanding preferred converting to common upon an IPO (and perhaps also upon other liquidity events).



## **STAGE SIX**

Enterprise has an established financial history of profitable operations or generation of positive cash flows. An IPO or sale of the enterprise could also occur during this stage.



## VALUATION METHODOLOGIES

In valuing the FMV of BW Industries Inc.'s common shares, Carta Valuations LLC has considered the three generally accepted valuation approaches as recommended by the American Institute of Certified Public Accountants (AICPA).

In its Valuation of Privately-Held-Company Equity Securities Issued as Compensation publication, the AICPA outlines three approaches to determining fair market value: market approach, income approach, and asset approach.

### MARKET APPROACH

According to the AICPA, the **market approach** is a valuation technique that uses prices and other relevant information generated by market transactions involving identical or comparable (that is, similar) assets, liabilities, or a group of assets and liabilities, such as a business. The market approach derives value based on the value implied by these other similar enterprises or transactions. Using this approach, Carta Valuations LLC would examine investments by unrelated parties or examine transactions in enterprises with equity securities similar to BW Industries Inc.. Within the market approach, Carta Valuations LLC considers three valuation methods:

- **Guideline Public Company Method**
- **Guideline Company Transactions Method**
- **Subject Company Transactions Method**

### GUIDELINE PUBLIC COMPANY METHOD

Relevant market multiples from the guideline comparable public companies are developed using metrics such as revenue and earnings before interest, taxes, depreciation and amortization (EBITDA).

### GUIDELINE TRANSACTIONS METHOD

This methodology utilizes valuation multiples based on actual transactions that have occurred in the subject entity's industry or related industries to arrive at an indication of value. These derived multiples are then adjusted and applied to the appropriate operating data of the subject entity to arrive at an indication of value.

### SUBJECT COMPANY TRANSACTIONS METHOD

The method is useful for valuers when there has been a recent transaction in the company's own securities. At a fundamental level, the Subject Company Transactions Method answers the singular question:

*What would the total value of the enterprise need to be, in order for a third-party investor to invest at the given per-share price, accounting for all liquidation preferences and seniorities for all share classes in the enterprise?*



In other words, given that an investment occurred, the method calculates the implied total value of the enterprise if the valuation accounts for all share class rights and preferences, as of the date of the latest financing.

According to the AICPA, the backsolve is the most reliable indicator of enterprise value for early-stage customers, provided that the relevant transactions in the enterprise's shares have occurred at **arm's length**\*.

The Subject Company Transactions Method considers the various terms of an enterprise's shareholder agreements that would affect the distributions to each class of equity upon a liquidity event as of the future liquidation date, including:

- the level of seniority among securities,
- dividend policy,
- conversion ratios,
- and cash allocations.

\***Arm's length transaction:** A transaction that was entered into by informed but unrelated market participants, simultaneously seeking the best terms possible.

\***Note:** In many situations, the transactions are not done at arm's length. It is still possible to perform the valuation in these cases, but additional considerations need to be made.

## INCOME APPROACH

According to the FASB ASC glossary, the Income Approach is defined as a:

*"Valuation technique that converts future amounts (for example, cash flows or income and expenses) to a single current (that is, discounted) amount."*

This approach finds conceptual support in the basic assumption that the value of an enterprise is represented by the aggregate expectations of future income and cash flows.

## DISCOUNTED CASH FLOW METHOD

The income approach converts future cash flows to a single, current discounted amount. The fair value measurement is estimated on the basis of the value indicated by current market expectations about those future cash flow amounts. The DCF method converts these future cash flows to their present value using a specific discount rate that factors in the time value of money and any measurable level of risks associated with the business.



## WACC CALCULATION

The Weighted Average Cost of Capital ("WACC") is the rate of return specific to the enterprise being valued that reflects the risk of investment in said enterprise. In general, the higher the WACC, the higher an investor's expected return would be for an investment in the enterprise. When performing a Discounted Cash Flow analysis, Carta Valuations LLC computes an enterprise-specific WACC using the Capital Asset Pricing Model ("CAPM").

The CAPM formula is defined as follows:

$$R_E = R_F + B * (R_M) + SP + CSRP$$

Where:

$R_e$  = Return on equity

$R_f$  = Risk-free rate

$\beta$  = Beta

$R_m$  = Market risk premium

$SP$  = Small company size premium

$CSRP$  = Company-specific risk premium

## SMALL COMPANY SIZE PREMIUM

Given that most of the comparable public companies are much larger than the enterprise being valued, we apply an additional premium to the cost of equity calculation to reflect the additional premium that investors would require to invest in small cap public shares.

## COMPANY-SPECIFIC RISK PREMIUM

To capture the added risk involved in investing in smaller, less profitable, and less mature companies, an additional company specific risk premium is applied to the cost of equity calculation. This risk premium reflects the additional risk associated with the enterprise's revenue relative to the market at large.

## ASSET APPROACH

Among the three valuation approaches discussed, the AICPA considers the Asset Approach in most circumstances to be the weakest valuation method from a conceptual standpoint. This approach is frequently used in valuing capital-intensive companies and holding companies. Typically this approach would only be used when valuing enterprises that:

- are in the very early stages of development,
- have not yet raised any arms-length financing,
- or when there is a limited (or no) basis for the application of the Income Approach or the Market Approach.



## **COST TO RECREATE METHOD**

This method defines an enterprise's fair market value as the sum total of the enterprise's assets minus the sum total of the corresponding liabilities. In the case that an enterprise's assets are not sufficiently captured on its balance sheet, the **cost to recreate** method assumes that the enterprise's fair market value is consistent with the replacement cost (i.e. **cost to recreate**) of the enterprise's assets.





## EQUITY VALUE ALLOCATION

After calculating the total value of the enterprise, valuers must then allocate the value to the various classes of securities in the capital structure. The generally accepted methods of equity allocation are explained below.

### CURRENT VALUE METHOD (CVM)

The Current Value Method allocates enterprise value to the various series of an enterprise's preferred stock based on the respective liquidation preferences or conversion values, in accordance with the terms of the enterprise's Articles/Certificate of Incorporation.

This approach involves allocating the company's current value among the various capital owners based on their respective liquidation preferences and conversion, dividend, and other rights under the assumption that all capital owners act in a manner that maximizes their financial return. Unlike the OPM and the PWERM approaches, this methodology is not forward-looking, and therefore fails to consider the possibility that the value of the company and the individual share classes will increase or decrease between the Valuation Date and a future date when the common shareholders receive a return on their investment (e.g., through a liquidity event such as an IPO or sale/merger). Per the AICPA guidelines:

*“Because the CVM focuses on the present and is not forward looking, the task force believes its usefulness is limited primarily to two types of circumstances. The first occurs when a liquidity event in the form of an acquisition or dissolution of the enterprise is imminent, and expectations about the future of the enterprise as a going concern are virtually irrelevant. The second occurs when an enterprise is at such an early stage of its development that (a) no material progress has been made on the enterprise’s business plan, (b) no significant common equity value has been created in the business above the liquidation preference on the preferred shares, and (c) no reasonable basis exists for estimating the amount and timing of any such common equity value above the liquidation preference that might be created in the future.”*



## OPTION PRICING MODEL

This approach allows for the allocation of the determined value of the company among the various equity capital owners (preferred and common shareholders). The OPM uses the preferred shareholders' liquidation preferences, participation rights, dividend policy, and conversion rights to determine how proceeds from a liquidity event shall be distributed among the various ownership classes at a future date. Per the AICPA guidelines:

*"The OPM treats common stock and preferred stock as call options on the company's value, with exercise prices based on the liquidation preferences of the preferred stock. Under this method, the common stock has value only if the funds available for distribution to shareholders exceed the value of the liquidation preferences at the time of a liquidity event (for example, a merger or sale), assuming the enterprise has funds available to make a liquidation preference meaningful and collectible by the shareholders. The common stock is modeled as a call option that gives its owner the right, but not the obligation, to buy the underlying value at a predetermined or exercise price. In the model, the exercise price is based on a comparison with the value rather than, as in the case of a "regular" call option, a comparison with a per-share stock price. Thus, common stock is considered to be a call option with a claim on the equity at an exercise price equal to the remaining value immediately after the preferred stock is liquidated."*

## PROBABILITY WEIGHTED EXPECTED RETURN

This approach involves the estimation of future potential outcomes for the company, as well as values and probabilities associated with each respective potential outcome. The common stock per share value determined using this approach is ultimately based upon probability-weighted per share values resulting from the various future scenarios, which can include an IPO, merger or sale, dissolution, or continued operation as a private company. Per the AICPA guidelines:

*"Under a PWERM, the value of the various equity securities are estimated based upon an analysis of future values for the enterprise, assuming various future outcomes. Share value is based upon the probability-weighted present value of expected future investment returns, considering each of the possible future outcomes available to the enterprise, as well as the rights of each share class."*



## OPTION PRICING MODEL

Carta Valuations LLC estimated the fair market value of BW Industries Inc. common shares using the Option Pricing Model (OPM).

One of the most common AICPA-approved methods to value private companies with complex capital structures is the Option Pricing Model. The Option Pricing Model (OPM) treats each share class as a call option on the value of the entire firm, with exercise prices based on the liquidation preferences of the preferred stock. One notable benefit to using the OPM is that it accounts for the economic rights often seen in venture-capital backed preferred shares, including preferred liquidation preferences and payout seniority. In this method, each share class only has value if the funds available for distribution to shareholders exceed the value of the liquidation preferences at the time of a liquidity event for each of the prior share classes in a company's cap table.

Using the OPM, the common stock is modeled as a call option that gives its owner the right, but not the obligation, to buy the underlying value at a predetermined price. The considered "price" of these common-stock "call options" is based on the value of the entire enterprise at specific values ('breakpoints'). Thus, the common stock is considered to be a call option with a claim on the equity at an exercise price equal to the remaining value immediately after all share classes with lower-numbered liquidation seniority have liquidated. Carta Valuations LLC utilizes the Black-Scholes-Merton Option Pricing Model.

## OPTION PRICING MODEL CONSIDERATIONS

The OPM considers the various terms of an enterprise's stockholder agreements that would affect the distributions to each class of equity upon a liquidity event as of the future liquidation date, including:

- the level of seniority among securities,
- dividend policy,
- conversion ratios,
- and cash allocations.

## OPTION PRICING MODEL INPUTS

The Option Pricing Model relies on four inputs:

- the total value of the enterprise,
- the expected time to exit,
- the risk free rate of interest as of the Valuation Date,
- the volatility derived from similar publicly traded companies.

The formula for the Option Pricing Model is as follows:

$$C = S_0 e^{-qt} * N(d_1) - X e^{-rt} * N(d_2)$$

**Where:**

- $S_0$  = Total value
- $X$  = Breakpoint value
- $q$  = Continuously compounded dividend yield
- $t$  = Time to exit (years)
- $\sigma$  = Volatility
- $r$  = Risk free rate

and  $d_1$  and  $d_2$  are defined as:

$$d_1 = \frac{\ln\left(\frac{S_0}{X}\right) + t\left(r - q + \frac{\sigma^2}{2}\right)}{\sigma\sqrt{t}}$$

$$d_2 = d_1 - \sigma\sqrt{t}$$



## VOLATILITY ASSUMPTIONS

Volatilities are estimated using historical daily pricing data, provided by CapIQ, for the selected comparable companies. The historical pricing data is gathered for a look-back period that matches the expected term.

Although more typical in later stage companies, the subject company may use both equity and debt instruments to finance their business activities. Per Section 6.36 of the AICPA Valuation of Privately-Held-Company Equity Securities Issued as Compensation, “[...] consideration should be given to the effect of the company’s leverage.” In order to account for the different capital structures across the subject company and its peer group, Carta Valuations LLC makes adjustments to the capital structure based on the Merton model and the equity volatility and asset volatility relationships listed below.

Under certain circumstances, applying an asset volatility and allocating enterprise value may have the effect of shifting value from the senior equity securities to the junior equity securities, as the liquidation preference for the senior securities is “sandwiched” between debt and the junior securities. When this sandwich effect occurs, Carta Valuations LLC deems it appropriate to apply an equity volatility (instead of an asset volatility) and allocate equity value. When such circumstance does not exist, the most appropriate volatility to use when allocating value across all investments is the asset volatility.

$$EquityValue = AssetValue * N(d_1) - [Debt * e^{(-rT)} * N(d_2)]$$

$$EquityVolatility = \frac{AssetVolatility * (AssetValue * N(d_1))}{EquityValue}$$

- **Asset Value** = total equity and debt value ( $S_0$ )
- **Equity Value** = total equity value only
- **Debt** = total value of debt claims outstanding ( $X$ )
- **q** = continuously compounded dividend yield
- **t** = probability weighted time to exit (years)
- **$\sigma$**  = volatility
- **r** = risk-free rate
- **N(.)** = standard normal cumulative distribution function



## VALUATION ADJUSTMENTS

### DISCOUNT FOR LACK OF MARKETABILITY

When valuing closely-held (private) companies, valuers typically apply a discount for lack of marketability (DLOM) to the share price, to account for the fact that private company shares are not as liquid as their public comparable company counterparts. In other words, one should expect to pay less for a closely-held (private) share of stock than that same investor would pay for a publicly-traded, fully liquid security.

**Discount for lack of marketability:** "An amount or percentage deducted from the value of an ownership interest to reflect the relative absence of marketability."<sup>1</sup>

**Marketability:** "The ability to quickly convert property to cash at minimal cost, with a high degree of certainty of realizing the anticipated amount of proceeds."<sup>1,2</sup>

### WHAT TO CONSIDER

This valuation, in accordance with the parameters set forth in **Mandelbaum v. Commissioner**<sup>3</sup>, takes into account the following:

- The value of the subject corporation's privately traded securities vis-a-vis its publicly traded securities (or, if the subject corporation does not have stock that is traded both publicly and privately, the cost of a similar corporation's public and private stock);
- an analysis of the subject corporation's financial statements;
- the corporation's dividend-paying capacity, its history of paying dividends, and the amount of its prior dividends;
- the nature of the corporation, its history, its position in the industry, and its economic outlook;
- the corporation's management;
- the degree of control transferred with the block of stock to be valued;
- any restriction on the transferability of the corporation's stock;
- the period of time for which an investor must hold the subject stock to realize a sufficient profit;
- the corporation's redemption policy;
- the cost of effectuating a public offering of the stock to be valued, e.g. legal, accounting, and underwriting fees.



## SUMMARY OF APPROACHES

In preparing this valuation, we considered number of different approaches to computing the proper Discount for Lack of Marketability, loosely categorizable into the following: **benchmark study approach** and **securities-based approaches**.

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<sup>1</sup>International Glossary of Business Valuation Terms, as adopted in 2001 by American Institute of Certified Public Accountants, American Society of Appraisers, Canadian Institute of Chartered Business Valuators, National Association of Certified Valuation Analysts, and The Institute of Business Appraisers.

<sup>2</sup>Shannon P. Pratt, Alina V. Niculita, Valuing a Business, The Analysis and Appraisal of Closely Held Businesses, 5th ed (New York: McGraw Hill, 2008), p.39.

<sup>3</sup>Mandelbaum v. Commissioner, T.C. Memo 1995-255, 36.

<sup>4</sup>Securities Act of 1933 (Section 230.144). Note: Because the holder of restricted common stock is prohibited from selling any of the stock for full year (1997-2008, thereafter holding period is six months) and has additional constraints on the amounts that may be sold for an additional year, the restricted stock is significantly less liquid (and therefore less valuable) than its unrestricted counterpart.

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## BENCHMARK STUDY APPROACH

This approach estimates the appropriate DLOM based on restricted stock studies, as well as pre-Initial Public Offering (IPO) pricing studies. This valuation considers the pre-IPO pricing studies a generally less-accurate indicator of private company DLOM for smaller, earlier-stage companies. Accordingly, we have not relied upon pre-IPO studies in determining an appropriate DLOM.

**Restricted stock:** unregistered common stock of a corporation identical in every respect to its publicly traded shares, except that it has not been registered, and is therefore, not freely tradable.<sup>4</sup>

We considered the following restricted stock studies because the effect of lack of marketability can be quantified by comparing the sale price of publicly traded shares to the sale price of so-called restricted shares of the same company that are identical in all rights and powers except for their ability to be freely marketed. Restricted stock studies are published, empirical studies, the most often cited of which are indicated below:

Empirical study	Time period covered	Mean DLOM
SEC overall average <sup>[a]</sup>	Jan 1966 - Jan 1969	25.8%
SEC non-reporting OTC companies <sup>[a]</sup>	Jan 1966 - Jan 1969	32.6%
Gelman <sup>[b]</sup>	Jan 1968 - Dec 1970	33.0%
Trout <sup>[c]</sup>	Jan 1968 - Dec 1972	33.5%
Moroney <sup>[d]</sup>	Jan 1969 - Dec 1972	35.6%
Maher <sup>[e]</sup>	Jan 1969 - Dec 1973	35.4%
Standard Research Consultants <sup>[f]</sup>	Oct 1978 - Jun 1982	45.0% (median)
Willamette Management Associates <sup>[g]</sup>	1981 - 1984	31.2% (median)
Silber <sup>[h]</sup>	Jan 1981 - Dec 1988	33.8%
FMV Opinions, Inc. <sup>[i]</sup>	Jan 1979 - Apr 1992	23.0%
Management Planning, Inc. <sup>[j]</sup>	Jan 1980 - Dec 1996	27.1%
Bruce Johnson Study <sup>[k]</sup>	Jan 1991 - Dec 1995	20.0%
Columbia Financial Advisors <sup>[l]</sup>	Jan 1996 - Apr 1997	21.0%
Columbia Financial Advisors <sup>[l]</sup>	May 1997 - Dec 1998	13.0%

<sup>[a]</sup>Discounts Involved in Purchases of Common Stock (1966-1969), Institutional Investor Study Report of the Securities and Exchange Commission, H.R. Do. No. 92-64, Part 5, 92nd Congress, 1st Session, 1971, 2444- 2456.

<sup>[b]</sup>Gelman, Milton, An Economist Financial Analyst's Approach to Valuing Stock of a Closely Held Company, *Journal of Taxation*, June 1972, 353-354.

<sup>[c]</sup>Trout, Robert R., Estimation of the Discount Associated with the Transfer of Restricted Securities, *Taxes*, June 1997, 381-384.

<sup>[d]</sup>Moroney, Robert E., Most Courts Overvalue Closely Held Stocks, *Taxes*, March 1993, 144-154.

<sup>[e]</sup>Maher, Michael J., Discounts for Lack-of-marketability for Closely Held Business Interests, *Taxes*, September 1976, 562-71.

<sup>[f]</sup>Pitcock, William F., and Stryker, Charles H., Revenue Ruling 77-287 Revisited, *SRC Quarterly Reports*, Spring 1983.

<sup>[g]</sup>Willamette Management Associates study (unpublished)

<sup>[h]</sup>Silber, William L., Discounts on Restricted Stock: The Impact of Illiquidity on Stock Prices, *Financial Analysts Journal*, July-August 1991, 60-64.

<sup>[i]</sup>Hall, Lance S., and Timothy C. Polacek, "Strategies for Obtaining the Largest Valuation Discounts," *Estate Planning*, January/February 1994, pp. 38-44.

<sup>[j]</sup>Oliver, Robert P. and Roy H Meyers, "Discounts Seen in Private Placements of Restricted Stock: The Management Planning, Inc., Long-Term Study (1980-1996)" (Chapter 5) in Robert F. Reilly and Robert P. Schweih, eds, *The Handbook of Advanced Business Valuations* (New York: McGraw-Hill, 2000).

<sup>[k]</sup>Johnson, Bruce, "Restricted Stock Discounts, 1991-95", *Shannon Pratt's Business Valuation Update*, Vol. 5, No. 3, March 1999, pp. 1-3. "Quantitative Support for Discounts for Lack of Marketability," *Business Valuation Review*, December, 1999, pp. 152- 155

<sup>[l]</sup>CFAI Study, Aschwald, Kathryn F., "Restricted Stock Discounts Decline as Result of 1-Year Holding Period - Studies After 1990 'No Longer Relevant' for Lack of Marketability Discounts", *SHANNON PRATT'S BUSINESS VALUATION UPDATE*, Vol. 6, No. 5, May 2000, pp. 1-5.







## **SECURITIES-BASED APPROACHES**

Securities-based approaches to computing Discount for Lack of Marketability rely on firmly-established stock option pricing theory. In compiling this valuation, we considered three distinct stock option pricing models - **The Chaffe Approach, The Asian Put Approach and The Finnerty Approach.**



## THE CHAFFE APPROACH<sup>6</sup>

$$P = Xe^{-rt} * \mathcal{N}(-d_2) - S_0e^{-qt} * \mathcal{N}(-d_1)$$

$S_0$  = total equity value

$X$  = equity breakpoint value

$q$  = continuously compounded dividend yield

$t$  = time to expiration (% of year)

$\sigma$  = volatility

$r$  = risk-free rate

$\mathcal{N}(\cdot)$  = standard normal cumulative distribution function

## REPRESENTATIVE DLOMS

Time to exit	Volatility:	25.00%	50.00%	75.00%	100.00%	125.00%
1 year		9.25%	18.97%	27.48%	37.40%	45.86%
2 years		12.61%	26.01%	37.41%	50.11%	60.25%
3 years		14.97%	30.98%	44.20%	58.28%	68.81%
4 years		16.81%	34.84%	49.30%	64.02%	74.35%
5 years		18.32%	37.97%	53.50%	68.20%	78.00%

<sup>6</sup> David B.H. Chaffe III, "Option Pricing as a Proxy for Discount for Lack of Marketability in Private Company Valuations," *Business Valuation Review* (December 1993): 182-6. (Model corrected and updated in 2009; the Carta Valuations LLC uses the corrected, updated model)



## THE ASIAN PUT APPROACH<sup>7</sup>

$$p = e^{-rT} [KN(-d_2) - F_0N(-d_1)]$$

Where

$$d_1 = \frac{\ln(S_0 e^{aT} / K) + \left(\frac{1}{2}\sigma_A^2\right)T}{\sigma_A \sqrt{T}}, \quad d_2 = d_1 - \sigma_A \sqrt{T}$$

$$a = \frac{1}{2} \left( r - q - \frac{\sigma^2}{6} \right), \quad \sigma_A = \frac{\sigma}{\sqrt{3}}$$

And

$$F_0 = S_0 e^{aT}$$

$P$  = Discount for Lack of Marketability

$K = F_0$  = The value of the share of common stock without transfer restrictions

$q$  = Continuously compounded dividend yield

$T$  = Time to expiration (% of year)

$\sigma$  = Volatility

$r$  = Risk-free rate

$e$  = The mathematical constant = 2.71828...

$N(\cdot)$  = Standard normal cumulative distribution function

## REPRESENTATIVE DLOMS

Time to exit	Volatility:	25.00%	50.00%	75.00%	100.00%	125.00%
1 year		6.00%	12.00%	19.00%	26.00%	33.00%
2 years		9.00%	18.00%	28.00%	37.00%	47.00%
3 years		11.00%	22.00%	34.00%	46.00%	57.00%
4 years		12.00%	26.00%	39.00%	53.00%	64.00%
5 years		14.00%	29.00%	44.00%	58.00%	70.00%

<sup>7</sup> David LeRay, "Efficient Pricing of an Asian Put Option Using Stiff ODE Methods", A Master's Project, Worcester Polytechnic Institute Review (2007).



## THE FINNERTY APPROACH<sup>8</sup>

$$D(T) = V_0 e^{-qT} [\mathcal{N}(v\sqrt{T}/2) - \mathcal{N}(-v\sqrt{T}/2)] \quad v\sqrt{T} = \sqrt{\sigma^2 T + \ln[2(e^{\sigma^2 T} - \sigma^2 T - 1)] - 2 \ln(e^{\sigma^2 T} - 1)}$$

$D(T)$  = Discount for Lack of Marketability

$V_0$  = The value of the share of common stock without transfer restrictions

$q$  = Continuously compounded dividend yield

$t$  = Time to expiration (% of year)

$\sigma$  = Volatility

$r$  = Risk-free rate

$e$  = The mathematical constant = 2.71828...

$\mathcal{N}(\cdot)$  = standard normal cumulative distribution function

## REPRESENTATIVE DLOMS

Time to exit	Volatility:	25.00%	50.00%	75.00%	100.00%	125.00%
1 year		5.72%	11.24%	16.34%	20.85%	24.62%
2 years		8.04%	15.50%	21.84%	26.63%	29.74%
3 years		9.79%	18.52%	25.26%	29.50%	31.49%
4 years		11.24%	20.85%	27.54%	30.95%	32.05%
5 years		12.49%	22.73%	29.10%	31.66%	32.22%

Note: The Finnerty model has a mathematical asymptote at approximately 32%. Thus, for companies at higher volatilities, this model may understate the proper DLOM. <sup>8</sup> John D. Finnerty, "An Average-Strike Put Option Model of the Marketability Discount", *The Journal of Derivatives* (2012).



## THE DIFFERENTIAL PUT APPROACH

The Differential Put Approach is an option pricing model method that quantitatively approximates a discount for lack of marketability of common stock in a company where a precedent transaction, typically a preferred stock financing round, is used as an indication of fair value.

When applying the backsolve methodology to determine the value of common stock based on the price paid in the most recent preferred financing round, the resulting value of common stock already incorporates an implied discount for lack of marketability that is reflected in the price of the most recent preferred stock transaction. Therefore, according to the differential put approach, the appropriate discount for lack of marketability for the common stock is the incremental discount between the common stock and most recently transacted preferred share class.

The Chaffe or the Finnerty put models are applied to the share class volatilities to determine the specific discount for each share class.

$$D(T) = V_0 e^{-qT} \left( N(v\sqrt{T}/2) - N(-v\sqrt{T}/2) \right)$$

$$v\sqrt{T} = \sqrt{\sigma^2 T + \ln(2(e^{\sigma^2 T})) - 2 \ln(e^{\sigma^2 T} - 1)}$$

$$DLOM_{\text{incremental}} = 1 - (1 - DLOM_{\text{common}}) / (1 - DLOM_{\text{preferred}})$$

$$\sigma_{\text{class}} = \sigma_{\text{equity}} * \text{Equity Value} * N(d_1) / \text{Class Value}$$

$$N(d_1)_{\text{class}} = \sum (N(d_1)_{\text{incremental}} * \text{Incremental Allocation})$$

$$p = X e^{-rt} N(-d_2) - S_0 N(-d_1)$$

$S_0$  = total equity value

$X$  = equity breakpoint value

$t$  = Time to expiration (% of year)

$\sigma$  = Volatility

$r$  = Risk-free rate

$e$  = The mathematical constant = 2.71828...

$N(\cdot)$  = standard normal cumulative distribution function



## VOLATILITY ANALYSIS

Historical volatilities as of the Valuation Date.

Company name	1 year	2 years	3 years	4 years	5 years
Accenture plc	26.95%	25.78%	30.44%	28.27%	26.61%
American Public Education, Inc.	46.04%	46.26%	51.38%	48.60%	49.98%
Appian Corporation	80.60%	84.66%	81.18%	75.47%	72.94%
Citrix Systems, Inc.	30.74%	31.80%	32.46%	29.36%	27.51%
Franklin Covey Co.	37.63%	39.24%	48.91%	45.22%	43.60%
Graham Holdings Company	24.48%	28.43%	37.99%	34.13%	31.50%
IWG plc	35.77%	41.05%	56.73%	53.49%	54.89%
Information Services Group, Inc.	48.22%	44.77%	62.07%	56.32%	52.25%
Kforce Inc.	33.15%	37.59%	40.65%	38.44%	37.06%
Strategic Education, Inc.	38.93%	42.22%	45.69%	43.58%	40.74%
The Howard Hughes Corporation	31.54%	32.26%	51.02%	45.78%	41.64%
VMware, Inc.	38.47%	34.54%	38.52%	37.90%	37.30%
Maximum	80.60%	84.66%	81.18%	75.47%	72.94%
90th percentile	48.00%	46.11%	61.54%	56.03%	54.63%
75th percentile	40.70%	42.86%	52.71%	49.82%	50.55%
Median	36.70%	38.42%	47.30%	44.40%	41.19%
Mean	39.38%	40.72%	48.09%	44.71%	43.00%
25th percentile	31.34%	32.15%	38.39%	36.96%	35.67%
10th percentile	27.33%	28.76%	33.02%	29.84%	27.91%
Minimum	24.48%	25.78%	30.44%	28.27%	26.61%

Source: Capital IQ

## BW Industries Inc. Summary Capitalization Table

As of 04/13/2023 • Generated by Pavin Kang (pkang@bitwiseindustries.com) at 04/13/2023 11:37:50

	Shares Authorized	Shares Issued and Outstanding	Fully Diluted Shares	Fully Diluted Ownership	Cash Raised
<b>Common Stock classes</b>					
Class A Common Stock	153,200,000			0.0000%	
Class B Common Stock	9,513,241	9,513,241	9,513,241	7.1976%	\$ -
<b>Total Common Stock issued and outstanding</b>			9,513,241	7.1976%	\$ -
<b>Preferred Stock classes</b>					
FF Preferred Stock	486,760	486,760	486,760	0.3683%	\$ -
Series A-1 Preferred Stock	8,468,747	8,468,747	8,468,747	6.4073%	\$ 10,474,993.21
Series A Preferred Stock	25,184,974	23,681,780	23,681,780	17.9172%	\$ 14,746,992.41
Series B-1 Preferred Stock	13,029,882	5,569,179	5,569,179	4.2135%	\$ 14,347,477.09
Series B Preferred Stock	22,933,373	22,933,373	22,933,373	17.3510%	\$ 43,403,701.87
Series B-2 Preferred Stock	27,700,820	14,694,515	14,694,515	11.1176%	\$ 42,437,762.24
Series B-3 Preferred Stock	10,577,269	10,577,269	10,577,269	8.0026%	\$ -
Series B-4 Non-Voting Preferred Stock	3,462,602	744,321	744,321	0.5631%	\$ 2,149,599.05
<b>Total Preferred Stock issued and outstanding</b>			87,155,944	65.9407%	\$ 127,560,525.87
<b>Series A Preferred Stock Warrants</b>					
Series A Warrants			1,503,194	1.1373%	\$ -
<b>Total Series A Preferred Stock Warrants issued and outstanding</b>			1,503,194	1.1373%	\$ -
<b>Convertibles</b>					
CN Notes					\$ 29,075,000.00
<b>Total Convertibles issued</b>					\$ 29,075,000.00
<b>2019 Stock Plan</b>	34,000,819				



<b>RSAs not purchased</b>		0.0000%	
<b>Options and RSUs issued and outstanding</b>	20,031,153	15.1552%	
<b>Shares available for issuance under the plan</b>	13,969,666	10.5692%	
<b>Totals</b>	<b>132,173,198</b>	<b>100.0000%</b>	<b>\$ 156,635,525.87</b>

BW Industries Inc. Intermediate Capitalization Table

As of (04/13/2023) - Generated by Pavin Kang (pkang@bblatsecurities.com) at 04/13/2023 11:37:50

Table with columns for Stakeholder II Name, Class B Common (CSB), FF Preferred (PFF), FF Preferred (PFF) 1:1 Conversion Ratio, Series A-1 Preferred (PA1), Series A-1 Preferred (PA1) 1:1 Conversion Ratio, Series A Preferred (PA), Series A Preferred (PA) 1:1 Conversion Ratio, Series B-1 Preferred (PB1), Series B-1 Preferred (PB1) 1:1 Conversion Ratio, Series B Preferred (PB), Series B Preferred (PB) 1:1 Conversion Ratio, Series B-2 Preferred (PB2), Series B-2 Preferred (PB2) 1:1 Conversion Ratio, Series B-3 Preferred (PB3), Series B-3 Preferred (PB3) 1:1 Conversion Ratio, Series B-4 Non-Voting Preferred (PB4), Series B-4 Non-Voting Preferred (PB4) 1:1 Conversion Ratio, Options and RSU's Outstanding Under 2019 Stock Plan, Series A Preferred Warrants, Outstanding Shares, Fully Diluted Shares, Outstanding Ownership, Fully Diluted Ownership.





# Balance Sheet

December 31, 2022

	31 Dec 22 Plan	31 Dec 22	Variance (Actual - Plan)
<b>ASSETS</b>			
<b>Current Assets</b>			
Cash	\$31,896,792	\$77,431,211	\$45,534,419
Accounts receivable	\$20,117,599	\$29,444,302	\$9,326,703
Unbilled receivable	\$0	\$28,676,308	\$28,676,308
Prepaid expenses and other current assets	\$4,351,208	\$5,771,212	\$1,420,004
<b>Total Current Assets</b>	<b>\$56,365,599</b>	<b>\$141,323,033</b>	<b>\$84,957,434</b>
<b>Long Term Assets</b>			
Property and Equipment, Net	\$20,309,997	\$16,155,217	-\$4,154,780
Other Long Term Assets	\$33,582,314	\$7,520,568	-\$26,061,746
<b>Total Long Term Assets</b>	<b>\$53,892,311</b>	<b>\$23,675,785</b>	<b>-\$30,216,526</b>
<b>Total Assets</b>	<b>\$110,257,910</b>	<b>\$164,998,818</b>	<b>\$54,740,908</b>
<b>LIABILITIES</b>			
<b>Current liabilities</b>			
Loans	\$8,350,445	\$2,871,399	-\$5,479,046
	\$0	\$7,523,884	\$7,523,884
<b>Total Liabilities</b>	<b>\$8,350,445</b>	<b>\$10,395,283</b>	<b>\$2,044,838</b>
<b>STOCKHOLDER EQUITY</b>			
Capital Stock	\$128,421,393	\$163,977,026	\$35,555,633
Accumulated Deficit	-\$28,929,790	-\$8,848,246	\$20,081,544
<b>Net Income</b>	<b>\$2,415,862</b>	<b>-\$525,245</b>	<b>-\$2,941,107</b>
<b>Total Stockholder Equity</b>	<b>\$101,907,465</b>	<b>\$154,603,535</b>	<b>\$52,696,070</b>
<b>Total Liabilities and Equity</b>	<b>\$110,257,910</b>	<b>\$164,998,818</b>	<b>\$54,740,908</b>

# Profit and Loss

January 1 - December 31, 2022

	2022 Plan	2022 Actual	Variance (Act - Plan)
<b>REVENUE</b>			
Workforce	\$24,090,000	\$26,549,875	\$2,459,875
Enterprise Solutions	\$89,190,472	\$105,383,021	\$16,192,549
Community	\$17,997,783	\$11,467,412	-\$6,530,371
<b>Total Revenue</b>	<b>\$131,278,255</b>	<b>\$143,400,308</b>	<b>\$12,122,053</b>
Cost of Sales	\$54,699,273	\$65,059,558	\$10,360,285
Gross Margin	\$76,578,982	\$78,340,750	\$1,761,768
Gross Margin %	58.33%	54.63%	-3.70%
<b>EXPENSE</b>			
Sales & Marketing	\$31,405,322	\$24,987,606	-\$6,417,716
General & Administrative	\$39,420,670	\$31,690,713	-\$7,729,957
Total SG&A Expenses	\$70,825,992	\$56,678,319	-\$14,147,673
<b>EBITDA</b>	<b>\$5,752,990</b>	<b>\$21,662,431</b>	<b>\$15,909,441</b>
Tax, Interest and Depreciation Expense	\$4,024,629	\$5,269,035	\$1,244,406
<b>Net Income</b>	<b>\$1,728,361</b>	<b>\$16,393,396</b>	<b>\$14,665,035</b>

# 2023 Forecast

	2022 Plan
<b>REVENUE</b>	
Workforce	\$42,752,102
Enterprise Solutions	\$184,307,108
Community	\$19,921,663
<b>Total Revenue</b>	<b>\$246,980,873</b>
Cost of Sales	\$116,502,846
Gross Margin	\$130,478,027
Gross Margin %	52.83%
<b>EXPENSE</b>	
Sales & Marketing	\$24,222,700
General & Administrative	\$71,226,704
<b>Total SG&amp;A Expenses</b>	<b>\$95,449,404</b>
<b>EBITDA</b>	<b>\$35,028,623</b>
Tax, Interest & Depreciation Expense	\$7,235,658
<b>Net Income</b>	<b>\$27,792,965</b>

# **EXHIBIT “2”**



---

**From:** Jake Soberal <[jsoberal@bitwiseindustries.com](mailto:jsoberal@bitwiseindustries.com)>  
**Sent:** Tuesday, April 25, 2023 3:58 PM  
**To:** Jim Maxwell <[jim@AGRILANDFARMING.COM](mailto:jim@AGRILANDFARMING.COM)>  
**Subject:** RE: Bitwise Call

**RAPID TECHNOLOGIES**

**Warning:** Sender [@jsoberal@bitwiseindustries.com](mailto:jsoberal@bitwiseindustries.com) is not yet trusted by your organization. Please be careful before replying or clicking on the URLs.

[Report Phishing](#) [This Sender is Safe](#)

powered by Graphus®

This collateral would be unique to your portion. Those participating at smaller amounts are entirely unsecured. And we are offering pledges of shares held by other founding team members to others who are considering large amounts.

Best,  
Jake

**Jake A. Soberal (he/him)**  
Co-Founder & CEO | Bitwise Industries  
559.618.1279 | [jsoberal@bitwiseindustries.com](mailto:jsoberal@bitwiseindustries.com) | [bitwiseindustries.com](http://bitwiseindustries.com)  
[Stay up-to-date on everything Bitwise](#)

On Tue, Apr 25 2023 at 3:52 PM, Jim Maxwell <[jim@agrilandfarming.com](mailto:jim@agrilandfarming.com)> wrote:

Are you apportioning some or all of the security to amounts lent? Is this to be pro rata?

---

**From:** Jake Soberal <[jsoberal@bitwiseindustries.com](mailto:jsoberal@bitwiseindustries.com)>  
**Sent:** Tuesday, April 25, 2023 3:36 PM  
**To:** Jim Maxwell <[jim@AGRILANDFARMING.COM](mailto:jim@AGRILANDFARMING.COM)>  
**Subject:** Re: Bitwise Call

**RAPID TECHNOLOGIES**

**Warning:** Sender [@jsoberal@bitwiseindustries.com](mailto:jsoberal@bitwiseindustries.com) is not yet trusted by your organization. Please be careful before replying or clicking/downloading the attachment and URLs.

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Jim,

Thanks so much for your call. In case it's helpful in discussing with your sons, I wanted to share a written summary, below, and related documents, attached. As I mentioned in our call, we are happy to adjust the loan documents and/or deal structure if helpful to you. The key on our end is getting the funds in time to pay the settlement by Friday.

Best,

Jake

**The Ask:**

Bitwise is seeking up to a \$5 million loan.

- Term - 90 days
- Return on Investment - fixed loan fee TBD
- Collateral - ~12 million shares in Bitwise owned by Irma and I

**The Need:**

Bitwise needs to raise \$5M in debt by April 28, 2023, to use those same proceeds to make a \$5M settlement payment to the fund that purchased its ERC Credits.

Bitwise sold the ERC credits to the firm in 2022 and signed documents with the IRS to have the funds go straight to the purchaser. The IRS errantly deposited the credits into Bitwise's bank account in 2023. Bitwise does not contest that the monies should go to the fund that purchased the tax credits.

Last week Bitwise reached verbal agreement with the firm who purchased the ERC Credits to repay the entire amount on or before June 1 for an additional fee. However, without notice to Bitwise the firm sought and obtained a temporary restraining order against Bitwise. Since that time the firm's attorneys, Reed Smith, have undertaken to contact customers, lenders, investors, and anyone who will take their call to share their negative assessment of Bitwise. This aggressive tactic and the issuance of the temporary restraining order has made it urgent for Bitwise to repay and settle with the firm.

While Bitwise has ~\$65M in cash on hand, it cannot use those proceeds to pay the settlement because of a negative covenant with Goldman Sachs.

Goldman Sachs is both an existing investor in Bitwise and in active diligence as the lead of a syndicate that plans to fund \$80M to Bitwise on or before May 31, 2023. However, related to its earlier investment in Bitwise, Bitwise has a covenant stating that it will keep \$65M or more in cash on hand (minimum liquidity covenant). Compliance with this covenant is especially important because of the active diligence of Bitwise by Goldman Sachs. Bitwise has asked if Goldman would consider an exception to the covenant and it said that it would not. As such, Bitwise paying \$5M to the ERC firm would jeopardize the \$80M transaction being led by Goldman Sachs that is set to close on May 31, 2023.

### **The Deal Structure:**

I have attached proposed deal documents to this e-mail. We are proposing a Term Note accompanied by a Pledge Agreement. We have endeavored to be simple, but complete with the documentation.

In its proposed form, the loan would be secured by mine and Irma's shares in Bitwise. We collectively own ~12 million of the ~132 million shares. The company completed a third party 409A valuation last year, which returned a valuation of \$257M; at this valuation, our shares have a value of ~\$28M. Thereafter the company completed a financing led by Goldman that valued the company at \$380M. Based on performance since that time we believe the company has a present value of \$500M.

Attached in support of the prior paragraph are:

- The 2022 409A Valuation
- Bitwise's Capitalization Table showing ownership amounts, including mine and Irma's
- Bitwise Financials
- The Bitwise Financial Model

Here are what we see as the possible outcomes from this loan transaction:

1. Bitwise pays the purchaser of its ERC Credits, closes the deal with Goldman, and repays the loan from the ~\$140M in cash it projects to have in July 2023.
2. Bitwise pays the purchasers of its ERC Credits, but does not close the deal with Goldman, and repays the loan from the ~\$65M in cash it has on hand today.
3. Bitwise fails in some unforeseen way to perform in its repayment obligation under the loan, and you foreclose on our shares which have a third party valuation of \$28M.

**Jake A. Soberal (he/him)**

Co-Founder & CEO | Bitwise Industries

559.618.1279 | [jsoberal@bitwiseindustries.com](mailto:jsoberal@bitwiseindustries.com) | [bitwiseindustries.com](http://bitwiseindustries.com)

[Stay up-to-date on everything Bitwise](#)

On Tue, Apr 25, 2023 at 2:03 PM, Jake Soberal <[jsoberal@bitwiseindustries.com](mailto:jsoberal@bitwiseindustries.com)> wrote:

Jim,

I am working on an urgent challenge and was wondering if you have time to visit today? My cell is 559-618-1279 and I can be available at your convenience.

Best,

Jake

**Jake A. Soberal (he/him)**

Co-Founder & CEO | Bitwise Industries

559.618.1279 | [jsoberal@bitwiseindustries.com](mailto:jsoberal@bitwiseindustries.com) | [bitwiseindustries.com](http://bitwiseindustries.com)

[Stay up-to-date on everything Bitwise](#)

# **EXHIBIT “3”**

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**From:** Jake Soberal <[jsoberal@bitwiseindustries.com](mailto:jsoberal@bitwiseindustries.com)>

**Sent:** Wednesday, April 26, 2023 9:01 AM

**To:** Jim Maxwell <[jim@AGRILANDFARMING.COM](mailto:jim@AGRILANDFARMING.COM)>

**Cc:** Scott Agricapital <[scott@agricapitalinc.com](mailto:scott@agricapitalinc.com)>; Brian Agricapital <[brian@agricapitalinc.com](mailto:brian@agricapitalinc.com)>; Blake Davis <[blake@AGRILANDFARMING.COM](mailto:blake@AGRILANDFARMING.COM)>

**Subject:** RE: Bitwise Call

Jim,

Please find evidence of the JPM Chase balance here.

Best,

Jake

**Jake A. Soberal (he/him)**

Co-Founder & CEO | Bitwise Industries

559.618.1279 | [jsoberal@bitwiseindustries.com](mailto:jsoberal@bitwiseindustries.com) | [bitwiseindustries.com](https://bitwiseindustries.com)

[Stay up-to-date on everything Bitwise](#)

On Wed, Apr 26, 2023 at 8:35 AM, Jake Soberal <[jsoberal@bitwiseindustries.com](mailto:jsoberal@bitwiseindustries.com)> wrote:

Jim,

I'm very sorry, the events at First Republic are outside of our control and we are reacting to them in real time. I will send you evidence of our account balance at Chase shortly.

Best,

Jake

**Jake A. Soberal (he/him)**

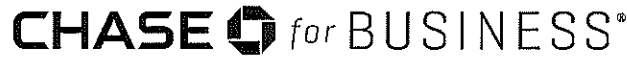
Co-Founder & CEO | Bitwise Industries

559.618.1279 | [jsoberal@bitwiseindustries.com](mailto:jsoberal@bitwiseindustries.com) | [bitwiseindustries.com](https://bitwiseindustries.com)

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On Wed, Apr 26 2023 at 6:42 AM, Jim Maxwell <[jim@agrilandfarming.com](mailto:jim@agrilandfarming.com)> wrote:

Jake:



Printed from Chase for Business

BRUCE'S BAGELS, BEVERAGES, AND BITES,

BUS COMPLETE CHK (...7311) >

**\$65,803,465.36**

Available balance

**\$0.00**

Available credit

**\$65,803,465.36**

Available plus credit

**\$65,803,465.36**

Present balance

Pending approvals (0)

Disclosures

JPMorgan Chase Bank, N.A. and its affiliates (collectively "JPMCB") offer investment products, which may include bank managed accounts and custody, as part of its trust and fiduciary services. Other investment products and services, such as brokerage and advisory accounts, are offered through J.P. Morgan Securities LLC (JPMS), a member of FINRA and SIPC. Annuities are made available through Chase Insurance Agency, Inc. (CIA), a licensed insurance agency, doing business as Chase Insurance Agency Services, Inc. in Florida. JPMCB, JPMS and CIA are affiliated companies under the common control of JPMorgan Chase & Co. Products not available in all states.

INVESTMENT AND INSURANCE PRODUCTS ARE:

- NOT FDIC INSURED
- NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY
- NOT A DEPOSIT OR OTHER OBLIGATION OF, OR GUARANTEED BY, JPMORGAN CHASE BANK, N.A. OR ANY OF ITS AFFILIATES
- SUBJECT TO INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF THE PRINCIPAL AMOUNT INVESTED

# **EXHIBIT “4”**



## TERM NOTE

This loan agreement (this "Term Note") dated April 26, 2023 ("Effective Date"), is made by BW Industries Inc., a Delaware corporation with offices at 700 Van Ness Ave, Fresno, CA 93721 (the "Borrower") in favor of Agri Capital, Inc., a California Corporation (the "Lender").

1. Promise to Pay. For value received, the Borrower promises to pay to the Lender the principal amount of ONE MILLION DOLLARS AND NO CENTS (\$1,000,000.00; "Principal"), at the times described below, together with Interest (as defined below).
2. Collateral. Any amounts owed by Borrower under this Term Note shall be secured by the shares in Borrower owned by Irma L. Olguin, Jr., and Jake A. Soberal (Together, "Holders") fully described in Exhibit "A" ("Collateral"), attached and incorporated herein by this reference.
3. Fixed Loan Fee. Borrower shall pay Lender the fixed loan fee of ONE HUNDRED AND TWENTY THOUSAND DOLLARS AND NO CENTS (\$120,000.00), all due at the end of the Term.
4. Term. The term of this Term Note shall be ninety (90) days from the Effective Date. Borrower shall pay the Principal and Fixed Loan Fee owing under this Term Note in full on or before July 26, 2023.
5. Prepayments. Borrower may prepay all or part of the Principal and Fixed Loan Fee of this Term Note at any time, without discount or penalty.
6. Default. Each of the following shall be an event of default under this Term Note:
  - a. Borrower's failure to pay any amount due as Principal or Fixed Loan Fee on the date required hereunder.
  - b. Borrower dissolves, becomes insolvent, or makes an assignment for the benefit of creditors.
7. Default Interest. In an event of default, interest shall accrue on all overdue principal and fees from the time of default up to the date of actual payment at a rate of eighteen percent (18%) per annum. Any interest accruing under this clause shall be immediately due and payable.
8. Applicable Law and Jurisdiction. This Term Note shall be governed by and interpreted according to the laws of California and that any action or proceeding arising under this Term Note may be commenced in any federal or state court of the State of California sitting in Fresno County.

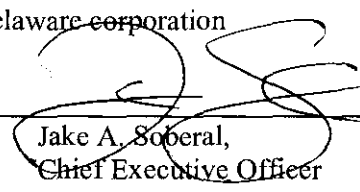
9. Severability. Any provision of this Term Note which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability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

IN WITNESS WHEREOF, the Borrower and Lender hereby execute this Term Note as of the Effective Date.

**BORROWER:**

BW Industries Inc.,  
a Delaware corporation

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

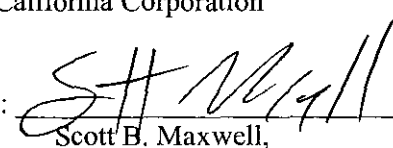
  
Jake A. Soberal,  
Chief Executive Officer

ATTN:  
Jake A. Soberal  
BW Industries, Inc.  
700 Van Ness Ave.  
Fresno, CA 93271

**LENDER:**

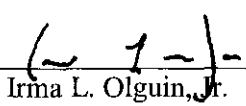
Agri Capital, Inc.  
A California Corporation

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

  
Scott B. Maxwell,  
President

**HOLDERS:**

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

  
Irma L. Olguin, Jr.

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

  
Jake A. Soberal

## **EXHIBIT "A"**

"Collateral" shall mean the 6,691,480 shares owned by Irma L. Olguin, Jr., in Borrower; and the 6,378,238 shares owned by Jake A. Soberal in Borrower.

Borrower has a total of 132,173,198 shares outstanding as of the Effective Date.

Holder's have pledged the Collateral through the Security Agreement to this Term Note.

**SECURITY AGREEMENT –  
PLEDGE AND ASSIGNMENT OF OWNERSHIP INTERESTS**

This SECURITY AGREEMENT – PLEDGE AND ASSIGNMENT OF OWNERSHIP INTERESTS (the “Agreement”) is made as of April 26, 2023, by and between Irma L. Olguin, Jr., (“Assignor”) and Agri Capital, Inc., a California Corporation (“Assignee”). Assignor and Assignee are sometimes referenced herein as the “Party(ies).”

**RECITALS**

A. Assignor is a shareholder in BW Industries, Inc., a Delaware Corporation dba Bitwise Industries (the “Company”), and Assignee has made a loan to the Company in the principal amount of ONE MILLION DOLLARS AND NO CENTS (\$1,000,000.00; the “Loan”).

B. As a condition to making the Loan, Assignee has required that Assignor pledge its entire beneficial ownership interest in the Company to Assignee as security for the Loan.

C. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Loan.

NOW, THEREFORE, for and in consideration of the mutual promises set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties hereby agree as follows:

1. Secured Obligations. The security interest granted pursuant to this Agreement secures the payment and performance of the obligations of Assignor to Assignee under (i) the Loan; (ii) any other agreements, documents or instruments executed contemporaneously herewith or hereafter by Assignor in favor of Assignee; and (iii) all other indebtedness of any kind of Assignor to Assignee (the “Secured Obligations”).

2. Security Interest. For the purposes hereof, “Collateral” shall collectively mean Assignor’s entire ownership interest (i.e., shares) in the Company. As security for the prompt and full payment and performance of the Secured Obligations, Assignor hereby pledges, assigns and grants to Assignee a security interest in all of Assignor’s right, title and interest in and to the Collateral, including without limitation, (i) all right, title and interest in and to any distributions, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Collateral, together in each case with all proceeds thereof, (ii) all rights to share in allocations of income and losses with respect to the Collateral, and (iii) all management rights with respect to the Collateral.

3. Perfection of Security Interest. Assignor agrees to execute such financing statements and to take whatever other actions are requested by Assignee to perfect and continue Assignee’s security interest in the Collateral.

4. Representations and Warranties. Assignor represents and warrants to Assignee as follows:

(a) Assignor is a shareholder the Company and the Collateral, and his/her shares are free and clear of any liens or adverse claims thereon or affecting the title thereto, except

for the security interest created by this Agreement;

(b) Assignor owns 6,691,480 shares in the Company;

(c) The Company has issued a total of 132,173,198 shares;

(d) Assignor has the right and requisite authority to pledge, assign, transfer, deliver, deposit and set over the Collateral to Assignee as provided herein, and no provision of any organizational documents, agreements or instruments to which Assignor is a party conflicts with or limits the right and power of Assignor to do so, except to the extent that the application of any such provision has been properly and effectively waived;

(e) This Agreement has been duly authorized, executed and delivered by Assignor and constitutes the legal, valid and binding obligations of Assignor enforceable in accordance with its terms, except as enforceability against Assignor may be limited by bankruptcy, insolvency, or other similar laws affecting the rights of creditors generally or by the application of general equity principles; and

(f) The Collateral has not been certificated.

The representations and warranties set forth in this Section shall survive the execution and delivery of this Agreement.

5. Covenants. Assignor covenants to Assignee as follows:

(a) Without the prior written consent of Assignee, Assignor will not sell, assign, transfer, pledge, or otherwise encumber any rights in or to the Collateral or any distributions or payments with respect thereto or grant a lien, security interest or encumbrance thereon;

(b) Assignor, at its expense, will promptly execute, acknowledge and deliver all such instruments and take all such action as Assignee may reasonably request from time to time in order to ensure to Assignee the benefits of the liens and security interest in and to the Collateral intended to be created by this Agreement;

(c) Assignor will defend the title to the Collateral and the liens and security interest of Assignee therein against the claim of any person and will maintain and preserve such liens and security interest until such time as the Secured Obligations have been paid and performed in full;

(d) Assignor will comply with the provisions of its organizational documents, and will not take any action which would have the effect of impairing the position or interest of Assignee in respect of the Collateral or which would authorize or effect (a) the dissolution or liquidation, in whole or in part, of Assignor, (b) the consolidation or merger of Assignor with any other person, or (c) the bankruptcy or reorganization of Assignor.

(e) Without the prior written consent of Assignee, Assignor will not (i) consent to or permit any amendment, modification, restatement, or termination of the organizational

documents of Assignor, or (ii) otherwise consent to or permit any dissolution, termination, merger, consolidation or sale of Assignor.

(f) If Assignor shall, as a result of its ownership of the Collateral, become entitled to receive or shall receive any membership or other interests (including, without limitation, any other interests representing a distribution in connection with any reclassification, increase or reduction of capital and any certificate issued in connection with any reorganization), option or right, whether in addition to, in substitution of, as a conversion of, or in exchange for any Collateral, Assignor shall accept the same as Assignee's agent, hold the same in trust for Assignee and deliver the same forthwith to Assignee in the exact form received, duly endorsed by Assignor to Assignee to be held by Assignee hereunder as additional collateral security for the Secured Obligations. Any sums paid upon or in respect of the Collateral upon the liquidation or dissolution of Assignor or in redemption of the Collateral shall be forthwith paid over to Assignee to be held by it for use in its own discretion and in case any distribution of capital shall be made on or in respect of the Collateral or any property shall be distributed upon or with respect to the Collateral pursuant to the recapitalization or reclassification of the capital of Assignor or pursuant to the reorganization thereof, the property so distributed shall be forthwith delivered to Assignee to be held by it, for use in its own discretion.

6. Rights with Respect to Collateral. As long as no Event of Default shall have occurred and be continuing and until written notice shall be given to Assignor by Assignee, Assignor shall have the right to exercise all powers with respect to the Collateral or any part thereof for all purposes not inconsistent with the provisions of this Agreement.

7. Event of Default.

(a) Breach of Agreement. If Assignor breaches or fails to timely and fully perform any of Assignor's obligations under this Agreement or if any warranty, representation, or statement made or furnished to Assignee by or on behalf of Assignor under this Agreement or any of the Secured Obligations is false or misleading in any material respect, either now or at the time made or furnished;

(b) Default Under Loan. If there is any default by Assignor or the Company under the Loan;

(c) Insolvency. The appointment of a receiver for any part of Assignor's property, any assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Assignor; or

(d) Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession, or any other method, by any creditor (other than Assignee) of Assignor or by any governmental agency against the Collateral.

8. Defaults and Remedies.

(a) If an Event of Default shall have occurred, Assignee may exercise, in addition to all other rights and remedies granted in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Secured Obligations, the right to demand the

Assignor deliver physical possession of the Collateral to Assignee. Without limiting the generality of the foregoing, Assignee may, at its election, cause the transfer and register in its name or in the name of its designee the whole or any part of the Collateral, exercise any rights or powers with respect thereto, collect and receive all distributions made thereon, sell in one or more sales after twenty (20) days' notice of the time and place of any public sale or of the time after which a private sale is to take place (which notice Assignor agrees is commercially reasonable), but without any previous notice or advertisement, the whole or any part of the Collateral and/or to otherwise act with respect to the Collateral as though Assignee was the outright owner thereof. Any sale shall be made at a public or private sale at Assignee's place of business, or elsewhere to be named in the notice of sale, either for cash or upon credit or for future delivery at such price as Assignee may deem fair, and Assignee may be the purchaser of the whole or any part of the Collateral so sold and hold the same thereafter in its own right free from any claim of Assignor. Each sale shall be made to the highest bidder, but Assignee reserves the right to reject any and all bids at such sale that, in its absolute discretion, it shall deem inadequate. Demands of performance (except as otherwise specifically provided herein) and for notices of sale, advertisements and the presence of property at sale are hereby waived and any sale hereunder may be conducted by an auctioneer or any officer or agent of Assignee.

(b) Assignee's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in the same manner as Assignee deals with similar securities and property for its own account. Assignee shall not have any duty to initiate any action to protect against the possibility of a decline in the market value of the Collateral. Neither Assignee nor any of its members, managers, employees or agents shall be liable for failure to demand, collect or realize upon the Collateral, or any part thereof, or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any of Assignor, or otherwise or to take any other action whatsoever with regard to the Collateral or any part thereof.

(c) Upon the occurrence of an Event of Default, Assignor hereby appoints Assignee or Assignee's designee as Assignor's attorney-in-fact and proxy, with full authority and power in Assignor's place and stead, and in Assignor's name, from time to time in Assignee's discretion from and after the occurrence of an Event of Default to take any action and to execute any instrument which Assignee may deem necessary or advisable to perfect, protect or enforce any right or security interest hereunder or otherwise accomplish the purposes of this Agreement, including, without limitation, to execute and file alone any financing statement under the UCC and any document or instrument under any other applicable laws, and to receive, endorse and collect all instruments made payable to Assignor representing any distribution in respect of any of the Collateral and to give full discharge for the same. Assignor ratifies and approves all such acts of such attorney and proxy. Neither Assignee nor such attorney and proxy will be liable for any acts or omissions, nor for any error of judgment or mistake of fact or law, other than Assignee's or such attorney's and proxy's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. This power, being coupled with an interest, is irrevocable until all Secured Obligations have been fully satisfied.

(d) Assignor shall authorize and instruct the Company to comply with any instruction received by the Company from Assignee in writing that: (a) states that an Event of Default has occurred; and (b) is otherwise in accordance with the terms of this Agreement, without

any other or further instructions from Assignor, and Assignor agrees that the Company shall be fully protected in so complying.

9. Termination. This Agreement shall terminate at such time as Assignor no longer has any current or future potential Secured Obligations. Until terminated, the security interest created hereby shall continue in full force and effect and shall secure and be applicable to the Secured Obligations. Upon termination, Assignee shall cooperate with Assignor to secure the release of the security interest, assignment and pledge created hereby, including the release and return of all pledged items of Collateral and the execution of any releases of financing statements reasonably requested by Assignor.

10. General Provisions.

(a) This Agreement constitutes the entire Agreement between the parties and cannot be changed or modified, other than by a written Agreement executed by both Parties.

(b) The provisions of this Agreement shall extend to, bind and inure to the benefit of the Parties hereto and their respective personal representatives, heirs, successors and assigns.

(c) THIS AGREEMENT HAS BEEN NEGOTIATED, EXECUTED AND DELIVERED, AND SHALL BE DEEMED TO HAVE BEEN MADE IN THE STATE OF CALIFORNIA, AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA. ASSIGNOR HEREBY CONSENTS AND AGREES THAT VENUE FOR ANY ACTION ARISING BY OR THROUGH THIS AGREEMENT SHALL BE IN THE SUPERIOR COURT IN FRESNO COUNTY, CALIFORNIA, WHICH COURT SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN ASSIGNOR AND ASSIGNEE PERTAINING TO THIS AGREEMENT, OR ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO PRECLUDE THE ENFORCEMENT BY ASSIGNEE OF ANY JUDGMENT OR ORDER OBTAINED IN SUCH FORUM OR THE TAKING OF ANY ACTION UNDER THIS AGREEMENT TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE FORUM OR JURISDICTION.

(d) This Agreement is the entire, final and complete agreement of the Parties pertaining to the matters described herein, and supersedes and replaces all written and oral agreements heretofore made or existing by and between the Parties or their representatives insofar as the matters described herein. The Parties shall not be bound by any promises, representations or agreements except as are herein expressly set forth.

(e) In case litigation is instituted arising directly or indirectly out of this Agreement, the losing party shall pay to the prevailing party its reasonable attorney's fees, together with all expenses, which may reasonably incur in taking such action. If an appeal is taken from any Judgment or Decree of the trial court, the losing party shall pay the prevailing party in the



appeal its reasonable attorney's fees in such appeal. Said sums shall be in addition to all other sums provided by law.

(f) Failure by either party at any time to require performance by the other Party of any of the provisions hereof shall in no way affect the Party's rights hereunder to enforce the same nor shall any waiver by the Party of any breach hereof be held to be a waiver of any succeeding breach or a waiver of this non-waiver clause.

(g) Time is of the essence of this Agreement.

(h) ASSIGNOR ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES, AND THEREFORE, ASSIGNOR HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING (INCLUDING ACTIONS SOUNDING IN TORT) TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS PLEDGE AGREEMENT OR ARISING FROM THE TRANSACTION CONTEMPLATED HEREUNDER, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE AND NOT BY A JURY.

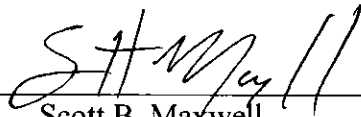
(i) All notices, requests, demands, and other communications required or permitted under this Agreement shall be given in accordance with the notice requirements set forth in the Loan.

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

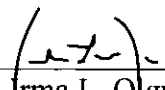
ASSIGNEE:

Agri Capital, Inc.  
a California Corporation

By:   
\_\_\_\_\_  
Scott B. Maxwell,  
President

ASSIGNOR:

Irma L. Olguin, Jr.  
an Individual

By:   
\_\_\_\_\_  
Irma L. Olguin, Jr.

**SECURITY AGREEMENT –  
PLEDGE AND ASSIGNMENT OF OWNERSHIP INTERESTS**

This SECURITY AGREEMENT – PLEDGE AND ASSIGNMENT OF OWNERSHIP INTERESTS (the “Agreement”) is made as of April 26, 2023, by and between Jake A. Soberal, (“Assignor”) and Agri Capital, Inc., a California Corporation (“Assignee”). Assignor and Assignee are sometimes referenced herein as the “Party(ies).”

**RECITALS**

A. Assignor is a shareholder in BW Industries, Inc., a Delaware Corporation dba Bitwise Industries (the “Company”), and Assignee has made a loan to the Company in the principal amount of ONE MILLION DOLLARS AND NO CENTS (\$1,000,000.00; the “Loan”).

B. As a condition to making the Loan, Assignee has required that Assignor pledge its entire beneficial ownership interest in the Company to Assignee as security for the Loan.

C. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Loan.

NOW, THEREFORE, for and in consideration of the mutual promises set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties hereby agree as follows:

1. Secured Obligations. The security interest granted pursuant to this Agreement secures the payment and performance of the obligations of Assignor to Assignee under (i) the Loan; (ii) any other agreements, documents or instruments executed contemporaneously herewith or hereafter by Assignor in favor of Assignee; and (iii) all other indebtedness of any kind of Assignor to Assignee (the “Secured Obligations”).

2. Security Interest. For the purposes hereof, “Collateral” shall collectively mean Assignor’s entire ownership interest (i.e., shares) in the Company. As security for the prompt and full payment and performance of the Secured Obligations, Assignor hereby pledges, assigns and grants to Assignee a security interest in all of Assignor’s right, title and interest in and to the Collateral, including without limitation, (i) all right, title and interest in and to any distributions, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Collateral, together in each case with all proceeds thereof, (ii) all rights to share in allocations of income and losses with respect to the Collateral, and (iii) all management rights with respect to the Collateral.

3. Perfection of Security Interest. Assignor agrees to execute such financing statements and to take whatever other actions are requested by Assignee to perfect and continue Assignee’s security interest in the Collateral.

4. Representations and Warranties. Assignor represents and warrants to Assignee as follows:

(a) Assignor is a shareholder the Company and the Collateral, and his/her shares are free and clear of any liens or adverse claims thereon or affecting the title thereto, except

follows:

- (a) Assignor is a shareholder the Company and the Collateral, and his/her shares are free and clear of any liens or adverse claims thereon or affecting the title thereto, except for the security interest created by this Agreement;
- (b) Assignor owns 6,378,238 shares in the Company;
- (c) The Company has issued a total of 132,173,198 shares;
- (d) Assignor has the right and requisite authority to pledge, assign, transfer, deliver, deposit and set over the Collateral to Assignee as provided herein, and no provision of any organizational documents, agreements or instruments to which Assignor is a party conflicts with or limits the right and power of Assignor to do so, except to the extent that the application of any such provision has been properly and effectively waived;
- (e) This Agreement has been duly authorized, executed and delivered by Assignor and constitutes the legal, valid and binding obligations of Assignor enforceable in accordance with its terms, except as enforceability against Assignor may be limited by bankruptcy, insolvency, or other similar laws affecting the rights of creditors generally or by the application of general equity principles; and
- (f) The Collateral has not been certificated.

The representations and warranties set forth in this Section shall survive the execution and delivery of this Agreement.

5. Covenants. Assignor covenants to Assignee as follows:

- (a) Without the prior written consent of Assignee, Assignor will not sell, assign, transfer, pledge, or otherwise encumber any rights in or to the Collateral or any distributions or payments with respect thereto or grant a lien, security interest or encumbrance thereon;
- (b) Assignor, at its expense, will promptly execute, acknowledge and deliver all such instruments and take all such action as Assignee may reasonably request from time to time in order to ensure to Assignee the benefits of the liens and security interest in and to the Collateral intended to be created by this Agreement;
- (c) Assignor will defend the title to the Collateral and the liens and security interest of Assignee therein against the claim of any person and will maintain and preserve such liens and security interest until such time as the Secured Obligations have been paid and performed in full;
- (d) Assignor will comply with the provisions of its organizational documents, and will not take any action which would have the effect of impairing the position or interest of Assignee in respect of the Collateral or which would authorize or effect (a) the dissolution or

liquidation, in whole or in part, of Assignor, (b) the consolidation or merger of Assignor with any other person, or (c) the bankruptcy or reorganization of Assignor.

(e) Without the prior written consent of Assignee, Assignor will not (i) consent to or permit any amendment, modification, restatement, or termination of the organizational documents of Assignor, or (ii) otherwise consent to or permit any dissolution, termination, merger, consolidation or sale of Assignor.

(f) If Assignor shall, as a result of its ownership of the Collateral, become entitled to receive or shall receive any membership or other interests (including, without limitation, any other interests representing a distribution in connection with any reclassification, increase or reduction of capital and any certificate issued in connection with any reorganization), option or right, whether in addition to, in substitution of, as a conversion of, or in exchange for any Collateral, Assignor shall accept the same as Assignee's agent, hold the same in trust for Assignee and deliver the same forthwith to Assignee in the exact form received, duly endorsed by Assignor to Assignee to be held by Assignee hereunder as additional collateral security for the Secured Obligations. Any sums paid upon or in respect of the Collateral upon the liquidation or dissolution of Assignor or in redemption of the Collateral shall be forthwith paid over to Assignee to be held by it for use in its own discretion and in case any distribution of capital shall be made on or in respect of the Collateral or any property shall be distributed upon or with respect to the Collateral pursuant to the recapitalization or reclassification of the capital of Assignor or pursuant to the reorganization thereof, the property so distributed shall be forthwith delivered to Assignee to be held by it, for use in its own discretion.

6. Rights with Respect to Collateral. As long as no Event of Default shall have occurred and be continuing and until written notice shall be given to Assignor by Assignee, Assignor shall have the right to exercise all powers with respect to the Collateral or any part thereof for all purposes not inconsistent with the provisions of this Agreement.

7. Event of Default.

(a) Breach of Agreement. If Assignor breaches or fails to timely and fully perform any of Assignor's obligations under this Agreement or if any warranty, representation, or statement made or furnished to Assignee by or on behalf of Assignor under this Agreement or any of the Secured Obligations is false or misleading in any material respect, either now or at the time made or furnished;

(b) Default Under Loan. If there is any default by Assignor or the Company under the Loan;

(c) Insolvency. The appointment of a receiver for any part of Assignor's property, any assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Assignor; or

(d) Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession, or any other

method, by any creditor (other than Assignee) of Assignor or by any governmental agency against the Collateral.

8. Defaults and Remedies.

(a) If an Event of Default shall have occurred, Assignee may exercise, in addition to all other rights and remedies granted in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Secured Obligations, the right to demand that Assignor deliver physical possession of the Collateral of Assignee. Without limiting the generality of the foregoing, Assignee may, at its election, cause the transfer and register in its name or in the name of its designee the whole or any part of the Collateral, exercise any rights or powers with respect thereto, collect and receive all distributions made thereon, sell in one or more sales after twenty (20) days' notice of the time and place of any public sale or of the time after which a private sale is to take place (which notice Assignor agrees is commercially reasonable), but without any previous notice or advertisement, the whole or any part of the Collateral and/or to otherwise act with respect to the Collateral as though Assignee was the outright owner thereof. Any sale shall be made at a public or private sale at Assignee's place of business, or elsewhere to be named in the notice of sale, either for cash or upon credit or for future delivery at such price as Assignee may deem fair, and Assignee may be the purchaser of the whole or any part of the Collateral so sold and hold the same thereafter in its own right free from any claim of Assignor. Each sale shall be made to the highest bidder, but Assignee reserves the right to reject any and all bids at such sale that, in its absolute discretion, it shall deem inadequate. Demands of performance (except as otherwise specifically provided herein) and for notices of sale, advertisements and the presence of property at sale are hereby waived and any sale hereunder may be conducted by an auctioneer or any officer or agent of Assignee.

(b) Assignee's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in the same manner as Assignee deals with similar securities and property for its own account. Assignee shall not have any duty to initiate any action to protect against the possibility of a decline in the market value of the Collateral. Neither Assignee nor any of its members, managers, employees or agents shall be liable for failure to demand, collect or realize upon the Collateral, or any part thereof, or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any of Assignor, or otherwise or to take any other action whatsoever with regard to the Collateral or any part thereof.

(c) Upon the occurrence of an Event of Default, Assignor hereby appoints Assignee or Assignee's designee as Assignor's attorney-in-fact and proxy, with full authority and power in Assignor's place and stead, and in Assignor's name, from time to time in Assignee's discretion from and after the occurrence of an Event of Default to take any action and to execute any instrument which Assignee may deem necessary or advisable to perfect, protect or enforce any right or security interest hereunder or otherwise accomplish the purposes of this Agreement, including, without limitation, to execute and file alone any financing statement under the UCC and any document or instrument under any other applicable laws, and to receive, endorse and collect all instruments made payable to Assignor representing any distribution in respect of any of the Collateral and to give full discharge for the same. Assignor ratifies and approves all such acts of such attorney and proxy. Neither Assignee nor such attorney and proxy will be liable for any acts or omissions, nor for any error of judgment or mistake of fact or law, other than Assignee's or such

attorney's and proxy's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. This power, being coupled with an interest, is irrevocable until all Secured Obligations have been fully satisfied.

(d) Assignor shall authorize and instruct the Company to comply with any instruction received by the Company from Assignee in writing that: (a) states that an Event of Default has occurred; and (b) is otherwise in accordance with the terms of this Agreement, without any other or further instructions from Assignor, and Assignor agrees that the Company shall be fully protected in so complying.

9. Termination. This Agreement shall terminate at such time as Assignor no longer has any current or future potential Secured Obligations. Until terminated, the security interest created hereby shall continue in full force and effect and shall secure and be applicable to the Secured Obligations. Upon termination, Assignee shall cooperate with Assignor to secure the release of the security interest, assignment and pledge created hereby, including the release and return of all pledged items of Collateral and the execution of any releases of financing statements reasonably requested by Assignor.

10. General Provisions.

(a) This Agreement constitutes the entire Agreement between the parties and cannot be changed or modified, other than by a written Agreement executed by both Parties.

(b) The provisions of this Agreement shall extend to, bind and inure to the benefit of the Parties hereto and their respective personal representatives, heirs, successors and assigns.

(c) THIS AGREEMENT HAS BEEN NEGOTIATED, EXECUTED AND DELIVERED, AND SHALL BE DEEMED TO HAVE BEEN MADE IN THE STATE OF CALIFORNIA, AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA. ASSIGNOR HEREBY CONSENTS AND AGREES THAT VENUE FOR ANY ACTION ARISING BY OR THROUGH THIS AGREEMENT SHALL BE IN THE SUPERIOR COURT IN FRESNO COUNTY, CALIFORNIA, WHICH COURT SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN ASSIGNOR AND ASSIGNEE PERTAINING TO THIS AGREEMENT, OR ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO PRECLUDE THE ENFORCEMENT BY ASSIGNEE OF ANY JUDGMENT OR ORDER OBTAINED IN SUCH FORUM OR THE TAKING OF ANY ACTION UNDER THIS AGREEMENT TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE FORUM OR JURISDICTION.

(d) This Agreement is the entire, final and complete agreement of the Parties pertaining to the matters described herein, and supersedes and replaces all written and oral agreements heretofore made or existing by and between the Parties or their representatives insofar

as the matters described herein. The Parties shall not be bound by any promises, representations or agreements except as are herein expressly set forth.

(e) In case litigation is instituted arising directly or indirectly out of this Agreement, the losing party shall pay to the prevailing party its reasonable attorney's fees, together with all expenses, which may reasonably incur in taking such action. If an appeal is taken from any Judgment or Decree of the trial court, the losing party shall pay the prevailing party in the appeal its reasonable attorney's fees in such appeal. Said sums shall be in addition to all other sums provided by law.

(f) Failure by either party at any time to require performance by the other Party of any of the provisions hereof shall in no way affect the Party's rights hereunder to enforce the same nor shall any waiver by the Party of any breach hereof be held to be a waiver of any succeeding breach or a waiver of this non-waiver clause.

(g) Time is of the essence of this Agreement.

(h) ASSIGNOR ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES, AND THEREFORE, ASSIGNOR HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING (INCLUDING ACTIONS SOUNDING IN TORT) TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS PLEDGE AGREEMENT OR ARISING FROM THE TRANSACTION CONTEMPLATED HEREUNDER, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE AND NOT BY A JURY.

(i) All notices, requests, demands, and other communications required or permitted under this Agreement shall be given in accordance with the notice requirements set forth in the Loan.

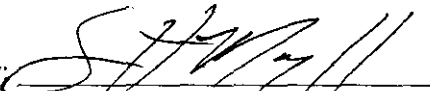
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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

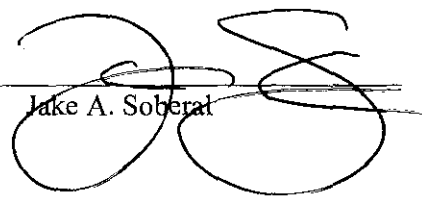
ASSIGNEE:

Agri Capital, Inc.  
a California Corporation

By:   
Scott B. Maxwell,  
President

ASSIGNOR:

Jake A. Soberal  
an Individual

By:   
Jake A. Soberal

# **EXHIBIT “5”**

## TERM NOTE

This loan agreement (this "Term Note") dated April 26, 2023 ("Effective Date"), is made by BW Industries Inc., a Delaware corporation with offices at 700 Van Ness Ave, Fresno, CA 93721 (the "Borrower") in favor of CA AG LLC, a California limited liability company (the "Lender").

1. Promise to Pay. For value received, the Borrower promises to pay to the Lender the principal amount of FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$500,000.00; "Principal"), at the times described below, together with Interest (as defined below).
2. Collateral. Any amounts owed by Borrower under this Term Note shall be secured by the shares in Borrower owned by Bethany E. Mily ("Holder") fully described in Exhibit "A" ("Collateral"), attached and incorporated herein by this reference.
3. Fixed Loan Fee. Borrower shall pay Lender the fixed loan fee of SIXTY THOUSAND DOLLARS AND NO CENTS (\$60,000.00), all due at the end of the Term.
4. Term. The term of this Term Note shall be ninety (90) days from the Effective Date. Borrower shall pay the Principal and Fixed Loan Fee owing under this Term Note in full on or before July 26, 2023.
5. Prepayments. Borrower may prepay all or part of the Principal and Fixed Loan Fee of this Term Note at any time, without discount or penalty.
6. Default. Each of the following shall be an event of default under this Term Note:
  - a. Borrower's failure to pay any amount due as Principal or Fixed Loan Fee on the date required hereunder.
  - b. Borrower dissolves, becomes insolvent, or makes an assignment for the benefit of creditors.
7. Default Interest. In an event of default, interest shall accrue on all overdue principal and fees from the time of default up to the date of actual payment at a rate of eighteen percent (18%) per annum. Any interest accruing under this clause shall be immediately due and payable.
8. Applicable Law and Jurisdiction. This Term Note shall be governed by and interpreted according to the laws of California and that any action or proceeding arising under this Term Note may be commenced in any federal or state court of the State of California sitting in Fresno County.

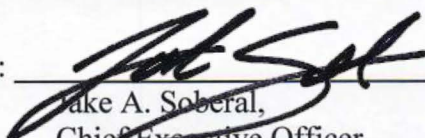
9. Severability. Any provision of this Term Note which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability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

IN WITNESS WHEREOF, the Borrower and Lender hereby execute this Term Note as of the Effective Date.

**BORROWER:**

BW Industries Inc.,  
a Delaware corporation

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

  
Jake A. Soberal,  
Chief Executive Officer

ATTN:  
Jake A. Soberal  
BW Industries, Inc.  
700 Van Ness Ave.  
Fresno, CA 93271

**LENDER:**

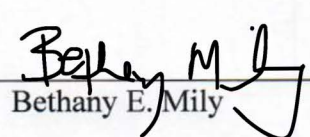
CA AG LLC, a California limited liability company

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

  
Brian Maxwell, Manager

**HOLDER:**

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

  
Bethany E. Mily

**EXHIBIT "A"**

"Collateral" shall mean the 2,835,742 shares owned by Bethany E. Mily.

Borrower has a total of 132,173,198 shares outstanding as of the Effective Date.

Holder has pledged the Collateral through the Security Agreement to this Term Note.

**SECURITY AGREEMENT –  
PLEDGE AND ASSIGNMENT OF OWNERSHIP INTERESTS**

This SECURITY AGREEMENT – PLEDGE AND ASSIGNMENT OF OWNERSHIP INTERESTS (the “Agreement”) is made as of April 26, 2023, by and between Bethany E. Mily, (“Assignor”) and CA AG LLC, a California limited liability company (“Assignee”). Assignor and Assignee are sometimes referenced herein as the “Party(ies).”

**RECITALS**

A. Assignor is a shareholder in BW Industries, Inc., a Delaware Corporation dba Bitwise Industries (the “Company”), and Assignee has made a loan to the Company in the principal amount of FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$500,000.00; the “Loan”).

B. As a condition to making the Loan, Assignee has required that Assignor pledge its entire beneficial ownership interest in the Company to Assignee as security for the Loan.

C. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Loan.

NOW, THEREFORE, for and in consideration of the mutual promises set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties hereby agree as follows:

1. Secured Obligations. The security interest granted pursuant to this Agreement secures the payment and performance of the obligations of Assignor to Assignee under (i) the Loan; (ii) any other agreements, documents or instruments executed contemporaneously herewith or hereafter by Assignor in favor of Assignee; and (iii) all other indebtedness of any kind of Assignor to Assignee (the “Secured Obligations”).

2. Security Interest. For the purposes hereof, “Collateral” shall collectively mean Assignor’s entire ownership interest (i.e., shares) in the Company. As security for the prompt and full payment and performance of the Secured Obligations, Assignor hereby pledges, assigns and grants to Assignee a security interest in all of Assignor’s right, title and interest in and to the Collateral, including without limitation, (i) all right, title and interest in and to any distributions, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Collateral, together in each case with all proceeds thereof, (ii) all rights to share in allocations of income and losses with respect to the Collateral, and (iii) all management rights with respect to the Collateral.

3. Perfection of Security Interest. Assignor agrees to execute such financing statements and to take whatever other actions are requested by Assignee to perfect and continue Assignee’s security interest in the Collateral.

4. Representations and Warranties. Assignor represents and warrants to Assignee as follows:

(a) Assignor is a shareholder the Company and the Collateral, and his/her

shares are free and clear of any liens or adverse claims thereon or affecting the title thereto, except for the security interest created by this Agreement;

(b) Assignor owns 2,835,742 shares in the Company;

(c) The Company has issued a total of 132,173,198 shares;

(d) Assignor has the right and requisite authority to pledge, assign, transfer, deliver, deposit and set over the Collateral to Assignee as provided herein, and no provision of any organizational documents, agreements or instruments to which Assignor is a party conflicts with or limits the right and power of Assignor to do so, except to the extent that the application of any such provision has been properly and effectively waived;

(e) This Agreement has been duly authorized, executed and delivered by Assignor and constitutes the legal, valid and binding obligations of Assignor enforceable in accordance with its terms, except as enforceability against Assignor may be limited by bankruptcy, insolvency, or other similar laws affecting the rights of creditors generally or by the application of general equity principles; and

(f) The Collateral has not been certificated.

The representations and warranties set forth in this Section shall survive the execution and delivery of this Agreement.

5. Covenants. Assignor covenants to Assignee as follows:

(a) Without the prior written consent of Assignee, Assignor will not sell, assign, transfer, pledge, or otherwise encumber any rights in or to the Collateral or any distributions or payments with respect thereto or grant a lien, security interest or encumbrance thereon;

(b) Assignor, at its expense, will promptly execute, acknowledge and deliver all such instruments and take all such action as Assignee may reasonably request from time to time in order to ensure to Assignee the benefits of the liens and security interest in and to the Collateral intended to be created by this Agreement;

(c) Assignor will defend the title to the Collateral and the liens and security interest of Assignee therein against the claim of any person and will maintain and preserve such liens and security interest until such time as the Secured Obligations have been paid and performed in full;

(d) Assignor will comply with the provisions of its organizational documents, and will not take any action which would have the effect of impairing the position or interest of Assignee in respect of the Collateral or which would authorize or effect (a) the dissolution or liquidation, in whole or in part, of Assignor, (b) the consolidation or merger of Assignor with any other person, or (c) the bankruptcy or reorganization of Assignor.

(e) Without the prior written consent of Assignee, Assignor will not (i) consent to or permit any amendment, modification, restatement, or termination of the organizational

documents of Assignor, or (ii) otherwise consent to or permit any dissolution, termination, merger, consolidation or sale of Assignor.

(f) If Assignor shall, as a result of its ownership of the Collateral, become entitled to receive or shall receive any membership or other interests (including, without limitation, any other interests representing a distribution in connection with any reclassification, increase or reduction of capital and any certificate issued in connection with any reorganization), option or right, whether in addition to, in substitution of, as a conversion of, or in exchange for any Collateral, Assignor shall accept the same as Assignee's agent, hold the same in trust for Assignee and deliver the same forthwith to Assignee in the exact form received, duly endorsed by Assignor to Assignee to be held by Assignee hereunder as additional collateral security for the Secured Obligations. Any sums paid upon or in respect of the Collateral upon the liquidation or dissolution of Assignor or in redemption of the Collateral shall be forthwith paid over to Assignee to be held by it for use in its own discretion and in case any distribution of capital shall be made on or in respect of the Collateral or any property shall be distributed upon or with respect to the Collateral pursuant to the recapitalization or reclassification of the capital of Assignor or pursuant to the reorganization thereof, the property so distributed shall be forthwith delivered to Assignee to be held by it, for use in its own discretion.

6. Rights with Respect to Collateral. As long as no Event of Default shall have occurred and be continuing and until written notice shall be given to Assignor by Assignee, Assignor shall have the right to exercise all powers with respect to the Collateral or any part thereof for all purposes not inconsistent with the provisions of this Agreement.

7. Event of Default.

(a) Breach of Agreement. If Assignor breaches or fails to timely and fully perform any of Assignor's obligations under this Agreement or if any warranty, representation, or statement made or furnished to Assignee by or on behalf of Assignor under this Agreement or any of the Secured Obligations is false or misleading in any material respect, either now or at the time made or furnished;

(b) Default Under Loan. If there is any default by Assignor or the Company under the Loan;

(c) Insolvency. The appointment of a receiver for any part of Assignor's property, any assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Assignor; or

(d) Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession, or any other method, by any creditor (other than Assignee) of Assignor or by any governmental agency against the Collateral.

8. Defaults and Remedies.

(a) If an Event of Default shall have occurred, Assignee may exercise, in addition to all other rights and remedies granted in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Secured Obligations, the right to demand the



Assignor deliver physical possession of the Collateral to Assignee. Without limiting the generality of the foregoing, Assignee may, at its election, cause the transfer and register in its name or in the name of its designee the whole or any part of the Collateral, exercise any rights or powers with respect thereto, collect and receive all distributions made thereon, sell in one or more sales after twenty (20) days' notice of the time and place of any public sale or of the time after which a private sale is to take place (which notice Assignor agrees is commercially reasonable), but without any previous notice or advertisement, the whole or any part of the Collateral and/or to otherwise act with respect to the Collateral as though Assignee was the outright owner thereof. Any sale shall be made at a public or private sale at Assignee's place of business, or elsewhere to be named in the notice of sale, either for cash or upon credit or for future delivery at such price as Assignee may deem fair, and Assignee may be the purchaser of the whole or any part of the Collateral so sold and hold the same thereafter in its own right free from any claim of Assignor. Each sale shall be made to the highest bidder, but Assignee reserves the right to reject any and all bids at such sale that, in its absolute discretion, it shall deem inadequate. Demands of performance (except as otherwise specifically provided herein) and for notices of sale, advertisements and the presence of property at sale are hereby waived and any sale hereunder may be conducted by an auctioneer or any officer or agent of Assignee.

(b) Assignee's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in the same manner as Assignee deals with similar securities and property for its own account. Assignee shall not have any duty to initiate any action to protect against the possibility of a decline in the market value of the Collateral. Neither Assignee nor any of its members, managers, employees or agents shall be liable for failure to demand, collect or realize upon the Collateral, or any part thereof, or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any of Assignor, or otherwise or to take any other action whatsoever with regard to the Collateral or any part thereof.

(c) Upon the occurrence of an Event of Default, Assignor hereby appoints Assignee or Assignee's designee as Assignor's attorney-in-fact and proxy, with full authority and power in Assignor's place and stead, and in Assignor's name, from time to time in Assignee's discretion from and after the occurrence of an Event of Default to take any action and to execute any instrument which Assignee may deem necessary or advisable to perfect, protect or enforce any right or security interest hereunder or otherwise accomplish the purposes of this Agreement, including, without limitation, to execute and file alone any financing statement under the UCC and any document or instrument under any other applicable laws, and to receive, endorse and collect all instruments made payable to Assignor representing any distribution in respect of any of the Collateral and to give full discharge for the same. Assignor ratifies and approves all such acts of such attorney and proxy. Neither Assignee nor such attorney and proxy will be liable for any acts or omissions, nor for any error of judgment or mistake of fact or law, other than Assignee's or such attorney's and proxy's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. This power, being coupled with an interest, is irrevocable until all Secured Obligations have been fully satisfied.

(d) Assignor shall authorize and instruct the Company to comply with any instruction received by the Company from Assignee in writing that: (a) states that an Event of Default has occurred; and (b) is otherwise in accordance with the terms of this Agreement, without

any other or further instructions from Assignor, and Assignor agrees that the Company shall be fully protected in so complying.

9. Termination. This Agreement shall terminate at such time as Assignor no longer has any current or future potential Secured Obligations. Until terminated, the security interest created hereby shall continue in full force and effect and shall secure and be applicable to the Secured Obligations. Upon termination, Assignee shall cooperate with Assignor to secure the release of the security interest, assignment and pledge created hereby, including the release and return of all pledged items of Collateral and the execution of any releases of financing statements reasonably requested by Assignor.

10. General Provisions.

(a) This Agreement constitutes the entire Agreement between the parties and cannot be changed or modified, other than by a written Agreement executed by both Parties.

(b) The provisions of this Agreement shall extend to, bind and inure to the benefit of the Parties hereto and their respective personal representatives, heirs, successors and assigns.

(c) THIS AGREEMENT HAS BEEN NEGOTIATED, EXECUTED AND DELIVERED, AND SHALL BE DEEMED TO HAVE BEEN MADE IN THE STATE OF CALIFORNIA, AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA. ASSIGNOR HEREBY CONSENTS AND AGREES THAT VENUE FOR ANY ACTION ARISING BY OR THROUGH THIS AGREEMENT SHALL BE IN THE SUPERIOR COURT IN FRESNO COUNTY, CALIFORNIA, WHICH COURT SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN ASSIGNOR AND ASSIGNEE PERTAINING TO THIS AGREEMENT, OR ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO PRECLUDE THE ENFORCEMENT BY ASSIGNEE OF ANY JUDGMENT OR ORDER OBTAINED IN SUCH FORUM OR THE TAKING OF ANY ACTION UNDER THIS AGREEMENT TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE FORUM OR JURISDICTION.

(d) This Agreement is the entire, final and complete agreement of the Parties pertaining to the matters described herein, and supersedes and replaces all written and oral agreements heretofore made or existing by and between the Parties or their representatives insofar as the matters described herein. The Parties shall not be bound by any promises, representations or agreements except as are herein expressly set forth.

(e) In case litigation is instituted arising directly or indirectly out of this Agreement, the losing party shall pay to the prevailing party its reasonable attorney's fees, together with all expenses, which may reasonably incur in taking such action. If an appeal is taken from any Judgment or Decree of the trial court, the losing party shall pay the prevailing party in the

appeal its reasonable attorney's fees in such appeal. Said sums shall be in addition to all other sums provided by law.

(f) Failure by either party at any time to require performance by the other Party of any of the provisions hereof shall in no way affect the Party's rights hereunder to enforce the same nor shall any waiver by the Party of any breach hereof be held to be a waiver of any succeeding breach or a waiver of this non-waiver clause.

(g) Time is of the essence of this Agreement.

(h) ASSIGNOR ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES, AND THEREFORE, ASSIGNOR HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING (INCLUDING ACTIONS SOUNDING IN TORT) TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS PLEDGE AGREEMENT OR ARISING FROM THE TRANSACTION CONTEMPLATED HEREUNDER, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE AND NOT BY A JURY.

(i) All notices, requests, demands, and other communications required or permitted under this Agreement shall be given in accordance with the notice requirements set forth in the Loan.

[REMAINDER OF PAGE LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

ASSIGNEE:

CA AG LLC., a California limited liability company

By: 

Brian Maxwell, Manager

ASSIGNOR:

Bethany E. Mily, an Individual

By: 

Bethany E. Mily