

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549
FORM 10-Q**

(Mark One)

**Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
for the quarterly period ended September 30, 2021**

Or

**Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
for the transition period from _____ to _____**

Commission File Number: 000-10436

L.B. Foster Company

(Exact name of registrant as specified in its charter)

Pennsylvania

(State of Incorporation)

25-1324733

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

415 Holiday Drive, Suite 100, Pittsburgh, Pennsylvania

(Address of principal executive offices)

15220

(Zip Code)

(412) 928-3400

(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, par value \$0.01	FSTR	NASDAQ Global Select Market

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

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

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

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

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

As of October 27, 2021, there were 10,834,105 shares of the registrant's common stock, par value \$0.01 per share, outstanding.

L.B. FOSTER COMPANY AND SUBSIDIARIES

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Part I. FINANCIAL INFORMATION
Item 1. Financial Statements

L.B. FOSTER COMPANY AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except share data)

	September 30, 2021 (Unaudited)	December 31, 2020
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 6,405	\$ 7,564
Accounts receivable - net (Note 6)	64,601	58,298
Inventories - net (Note 7)	108,895	116,460
Other current assets	14,712	12,997
Total current assets	194,613	195,319
Property, plant, and equipment - net (Note 8)	58,811	62,085
Operating lease right-of-use assets - net (Note 9)	14,403	16,069
Other assets:		
Goodwill (Note 5)	20,147	20,340
Other intangibles - net (Note 5)	32,450	36,897
Deferred tax assets (Note 12)	38,043	38,481
Other assets	1,336	1,204
TOTAL ASSETS	\$ 359,803	\$ 370,395
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 53,686	\$ 54,787
Deferred revenue	13,154	7,144
Accrued payroll and employee benefits	10,024	9,182
Current portion of accrued settlement (Note 16)	8,000	8,000
Current maturities of long-term debt (Note 10)	111	119
Other accrued liabilities	12,963	15,740
Current liabilities of discontinued operations (Note 3)	—	330
Total current liabilities	97,938	95,302
Long-term debt (Note 10)	32,342	44,905
Deferred tax liabilities (Note 12)	3,950	4,085
Long-term portion of accrued settlement (Note 16)	20,000	24,000
Long-term operating lease liabilities (Note 9)	11,959	13,516
Other long-term liabilities	11,240	11,757
Stockholders' equity:		
Common stock, par value \$0.01, authorized 20,000,000 shares; shares issued at September 30, 2021 and December 31, 2020, 11,115,779; shares outstanding at September 30, 2021 and December 31, 2020, 10,645,673 and 10,563,290, respectively	111	111
Paid-in capital	44,048	44,583
Retained earnings	169,067	165,107
Treasury stock - at cost, 470,106 and 552,489 common stock shares at September 30, 2021 and December 31, 2020, respectively	(10,917)	(12,703)
Accumulated other comprehensive loss	(20,257)	(20,268)
Total L.B. Foster Company stockholders' equity	182,052	176,830
Noncontrolling interest	322	—
Total stockholders' equity	182,374	176,830
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	\$ 359,803	\$ 370,395

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

L.B. FOSTER COMPANY AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)

(In thousands, except per share data)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Sales of goods	\$ 112,813	\$ 101,945	\$ 351,668	\$ 321,212
Sales of services	17,240	16,420	48,987	60,623
Total net sales	130,053	118,365	400,655	381,835
Cost of goods sold	93,521	82,881	292,733	263,537
Cost of services sold	14,256	13,423	40,655	44,977
Total cost of sales	107,777	96,304	333,388	308,514
Gross profit	22,276	22,061	67,267	73,321
Selling and administrative expenses	20,056	17,066	57,849	56,273
Amortization expense	1,462	1,428	4,397	4,271
Interest expense - net	722	940	2,454	2,841
Other income - net	(2,880)	(209)	(2,751)	(1,909)
Income from continuing operations before income taxes	2,916	2,836	5,318	11,845
Income tax expense (benefit) from continuing operations	676	(13,742)	1,494	(11,698)
Income from continuing operations	2,240	16,578	3,824	23,543
Net loss attributable to noncontrolling interest	(30)	—	(64)	—
Income from continuing operations attributable to L.B. Foster Company	2,270	16,578	3,888	23,543
Discontinued operations:				
Income (loss) from discontinued operations before income taxes	72	(13,478)	72	(23,565)
Income tax benefit from discontinued operations	—	(3,730)	—	(5,509)
Income (loss) from discontinued operations	72	(9,748)	72	(18,056)
Net income attributable to L.B. Foster Company	\$ 2,342	\$ 6,830	\$ 3,960	\$ 5,487
Basic income (loss) per common share:				
From continuing operations	\$ 0.21	\$ 1.57	\$ 0.36	\$ 2.24
From discontinued operations	0.01	(0.92)	0.01	(1.72)
Basic income per common share	\$ 0.22	\$ 0.65	\$ 0.37	\$ 0.52
Diluted income (loss) per common share:				
From continuing operations	\$ 0.21	\$ 1.56	\$ 0.36	\$ 2.21
From discontinued operations	0.01	(0.92)	0.01	(1.69)
Diluted income per common share	\$ 0.22	\$ 0.64	\$ 0.37	\$ 0.52

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

L.B. FOSTER COMPANY AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(Unaudited)
(In thousands)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Net income	\$ 2,312	\$ 6,830	\$ 3,896	\$ 5,487
Other comprehensive income (loss), net of tax:				
Foreign currency translation adjustment	(1,610)	1,818	(649)	(1,708)
Unrealized loss on cash flow hedges, net of tax benefit of \$11, \$0, \$11, and \$277, respectively	(33)	—	(33)	(809)
Cash flow hedges reclassified to earnings, net of tax expense of \$99, \$98, \$295, and \$98, respectively	136	137	409	137
Reclassification of pension liability adjustments to earnings, net of tax expense of \$23, \$15, \$71, and \$46, respectively*	92	66	274	200
Total comprehensive income	897	8,851	3,897	3,307
Less comprehensive loss attributable to noncontrolling interest:				
Net loss attributable to noncontrolling interest	(30)	—	(64)	—
Foreign currency translation adjustment	(31)	—	(10)	—
Amounts attributable to noncontrolling interest	(61)	—	(74)	—
Comprehensive income attributable to L.B. Foster Company	\$ 958	\$ 8,851	\$ 3,971	\$ 3,307

* Reclassifications out of "Accumulated other comprehensive loss" for pension obligations are charged to "Selling and administrative expenses" within the Condensed Consolidated Statements of Operations.

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

L.B. FOSTER COMPANY AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(In thousands)

	Nine Months Ended September 30,	
	2021	2020
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income from continuing operations	\$ 3,824	\$ 23,543
Adjustments to reconcile net income from continuing operations to cash provided by (used in) operating activities:		
Deferred income taxes	526	(8,653)
Depreciation	6,049	5,838
Amortization	4,397	4,271
Equity in income of nonconsolidated investments	(5)	—
Loss on sales and disposals of property, plant, and equipment	30	—
Stock-based compensation	1,800	1,842
Gain on asset divestiture	(2,741)	—
Change in operating assets and liabilities:		
Accounts receivable	(6,384)	12,099
Inventories	(12,665)	529
Other current assets	(1,245)	(1,527)
Prepaid income tax	776	(9,241)
Other noncurrent assets	2,063	(3,393)
Accounts payable	(892)	(3,739)
Deferred revenue	6,046	(575)
Accrued payroll and employee benefits	852	(4,012)
Accrued settlement	(4,000)	(4,000)
Other current liabilities	(3,461)	(106)
Other long-term liabilities	(1,780)	3,325
Net cash (used in) provided by continuing operating activities	(6,810)	16,201
Net cash used in discontinued operating activities	(253)	(2,921)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Proceeds from the sale of property, plant, and equipment	—	12
Capital expenditures on property, plant, and equipment	(3,568)	(7,650)
Proceeds from asset divestiture	22,707	—
Acquisition	(229)	(1,050)
Net cash provided by (used in) continuing investing activities	18,910	(8,688)
Net cash provided by discontinued investing activities	—	2,278
CASH FLOWS FROM FINANCING ACTIVITIES:		
Repayments of debt	(147,224)	(134,155)
Proceeds from debt	134,705	125,122
Debt issuance costs	(358)	(454)
Treasury stock acquisitions	(549)	(1,660)
Investment of noncontrolling interest	396	—
Net cash used in continuing financing activities	(13,030)	(11,147)
Net cash used in discontinued financing activities	—	(19)
Effect of exchange rate changes on cash and cash equivalents	24	(571)
Net decrease in cash and cash equivalents	(1,159)	(4,867)
Cash and cash equivalents at beginning of period	7,564	14,178
Cash and cash equivalents at end of period	\$ 6,405	\$ 9,311
Supplemental disclosure of cash flow information:		
Interest paid	\$ 2,205	\$ 2,453
Income taxes paid	\$ 1,215	\$ 2,330

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

L.B. FOSTER COMPANY AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(Unaudited)
(Dollars in thousands)

Three Months Ended September 30, 2021

	Common Stock	Paid-in Capital	Retained Earnings	Treasury Stock	Accumulated Other Comprehensive Loss	Noncontrolling Interest	Total Stockholders' Equity
Balance, June 30, 2021	\$ 111	\$ 43,650	\$ 166,725	\$ (11,104)	\$ (18,873)	\$ 383	\$ 180,892
Net income (loss)	—	—	2,342	—	—	(30)	2,312
Other comprehensive loss, net of tax:							
Pension liability adjustment	—	—	—	—	92	—	92
Foreign currency translation adjustment	—	—	—	—	(1,579)	(31)	(1,610)
Unrealized derivative loss on cash flow hedges	—	—	—	—	(33)	—	(33)
Cash flow hedges reclassified to earnings	—	—	—	—	136	—	136
Issuance of 8,113 common shares, net of shares withheld for taxes	—	(189)	—	187	—	—	(2)
Stock-based compensation	—	587	—	—	—	—	587
Balance, September 30, 2021	<u>\$ 111</u>	<u>\$ 44,048</u>	<u>\$ 169,067</u>	<u>\$ (10,917)</u>	<u>\$ (20,257)</u>	<u>\$ 322</u>	<u>\$ 182,374</u>

Three Months Ended September 30, 2020

	Common Stock	Paid-in Capital	Retained Earnings	Treasury Stock	Accumulated Other Comprehensive Loss	Noncontrolling Interest	Total Stockholders' Equity
Balance, June 30, 2020	\$ 111	\$ 44,709	\$ 156,182	\$ (12,722)	\$ (24,384)	\$ —	\$ 163,896
Net income	—	—	6,830	—	—	—	6,830
Other comprehensive income, net of tax:							
Pension liability adjustment	—	—	—	—	66	—	66
Foreign currency translation adjustment	—	—	—	—	1,818	—	1,818
Cash flow hedges reclassified to earnings	—	—	—	—	137	—	137
Stock-based compensation	—	604	—	—	—	—	604
Balance, September 30, 2020	<u>\$ 111</u>	<u>\$ 45,313</u>	<u>\$ 163,012</u>	<u>\$ (12,722)</u>	<u>\$ (22,363)</u>	<u>\$ —</u>	<u>\$ 173,351</u>

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

L.B. FOSTER COMPANY AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(Unaudited)
(Dollars in thousands)

Nine Months Ended September 30, 2021

	Common Stock	Paid-in Capital	Retained Earnings	Treasury Stock	Accumulated Other Comprehensive Loss	Noncontrolling Interest	Total Stockholders' Equity
Balance, December 31, 2020	\$ 111	\$ 44,583	\$ 165,107	\$ (12,703)	\$ (20,268)	\$ —	\$ 176,830
Net income (loss)	—	—	3,960	—	—	(64)	3,896
Other comprehensive income, net of tax:							
Pension liability adjustment	—	—	—	—	274	—	274
Foreign currency translation adjustment	—	—	—	—	(639)	(10)	(649)
Unrealized derivative loss on cash flow hedges	—	—	—	—	(33)	—	(33)
Cash flow hedges reclassified to earnings	—	—	—	—	409	—	409
Issuance of 114,288 common shares, net of shares withheld for taxes	—	(2,335)	—	1,786	—	—	(549)
Stock-based compensation	—	1,800	—	—	—	—	1,800
Investment of noncontrolling interest	—	—	—	—	—	396	396
Balance, September 30, 2021	\$ 111	\$ 44,048	\$ 169,067	\$ (10,917)	\$ (20,257)	\$ 322	\$ 182,374

Nine Months Ended September 30, 2020

	Common Stock	Paid-in Capital	Retained Earnings	Treasury Stock	Accumulated Other Comprehensive Loss	Noncontrolling Interest	Total Stockholders' Equity
Balance, December 31, 2019	\$ 111	\$ 49,204	\$ 157,525	\$ (16,795)	\$ (20,183)	\$ —	\$ 169,862
Net income	—	—	5,487	—	—	—	5,487
Other comprehensive loss, net of tax:							
Pension liability adjustment	—	—	—	—	200	—	200
Foreign currency translation adjustment	—	—	—	—	(1,708)	—	(1,708)
Unrealized derivative loss on cash flow hedges	—	—	—	—	(809)	—	(809)
Cash flow hedges reclassified to earnings	—	—	—	—	137	—	137
Issuance of 140,305 common shares, net of shares withheld for taxes	—	(5,733)	—	4,073	—	—	(1,660)
Stock-based compensation	—	1,842	—	—	—	—	1,842
Balance, September 30, 2020	\$ 111	\$ 45,313	\$ 163,012	\$ (12,722)	\$ (22,363)	\$ —	\$ 173,351

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

L.B. FOSTER COMPANY AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)
(Dollars in thousands, except share data)

Note 1. Financial Statements*Basis of Presentation*

The accompanying unaudited Condensed Consolidated Financial Statements have been prepared in accordance with accounting principles generally accepted in the United States (“GAAP”) for interim financial information and with the instructions to Form 10-Q and Article 8 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. In the opinion of management, all estimates and adjustments (consisting of normal recurring accruals, unless otherwise stated herein) considered necessary for a fair presentation of the financial position of L.B. Foster Company and subsidiaries as of September 30, 2021 and December 31, 2020 and its Condensed Consolidated Statements of Operations, Condensed Consolidated Statements of Comprehensive Income, and Condensed Consolidated Statements of Stockholders’ Equity for the three and nine months ended September 30, 2021 and 2020 and its Condensed Consolidated Statements of Cash Flows for the nine months ended September 30, 2021 and 2020 have been included. However, actual results could differ from those estimates and changes in those estimates are recorded when known. The results of operations for interim periods are not necessarily indicative of the results that may be expected for the year ending December 31, 2021. The Condensed Consolidated Balance Sheet as of December 31, 2020 was derived from audited financial statements. This Quarterly Report on Form 10-Q should be read in conjunction with the consolidated financial statements and footnotes thereto included in L.B. Foster Company’s Annual Report on Form 10-K for the year ended December 31, 2020. In this Quarterly Report on Form 10-Q, references to “we,” “us,” “our,” and the “Company” refer collectively to L.B. Foster Company and its consolidated subsidiaries.

Reclassifications

Certain accounts in the prior year consolidated financial statements have been reclassified for comparative purposes principally to conform to the presentation of the current year period. Effective for the quarter ended September 30, 2020, the Company classified IOS Acquisitions, LLC and subsidiaries (“Test and Inspection Services”) as a discontinued operation. Effective for the quarter and year ended December 31, 2020, the Company implemented operational changes in how its Chief Operating Decision Maker (“CODM”) manages its businesses, including resource allocation and operating decisions. As a result of these changes, the Company now has two operating segments, Rail Technologies and Services and Infrastructure Solutions, representing the individual businesses that are run separately under the new structure. The Company has revised the information for all periods presented in this Quarterly Report on Form 10-Q to reflect these reclassifications.

Recently Issued Accounting Standards

In March 2020 and as clarified in January 2021, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update No. (“ASU”) 2020-04, “Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting” (“ASU 2020-04”), which provides optional expedients and exceptions for applying GAAP to contracts, hedging relationships, and other transactions affected by the discontinuation of the London Interbank Offered Rate (“LIBOR”) or by another reference rate expected to be discontinued. The amendments are effective for all entities as of March 12, 2020 through December 31, 2022. The Company is currently evaluating the impacts of the provisions of ASU 2020-04 on its financial condition, results of operations, and cash flows.

Note 2. Business Segments

The Company provides products and services for the rail industry and solutions to support critical infrastructure projects. The Company’s innovative engineering and product development solutions address the safety, reliability, and performance of its customers’ challenging requirements. The Company maintains locations in North America, South America, Europe, and Asia. The Company’s segments represent components of the Company (a) that engage in activities from which revenue is generated and expenses are incurred, (b) whose operating results are regularly reviewed by the CODM, who uses such information to make decisions about resources to be allocated to the segments, and (c) for which discrete financial information is available. Operating segments are evaluated on their segment profit contribution to the Company’s consolidated results. Other income and expenses, interest, income taxes, and certain other items are managed on a consolidated basis. The Company’s segment accounting policies are described in Note 2 Business Segments of the Notes to the Company’s Consolidated Financial Statements contained in its Annual Report on Form 10-K for the year-ended December 31, 2020.

The following table illustrates the Company's revenues and profit from operations by segment for the periods indicated:

	Three Months Ended September 30, 2021		Three Months Ended September 30, 2020	
	Net Sales	Segment Profit	Net Sales	Segment Profit
Rail Technologies and Services	\$ 73,942	\$ 3,555	\$ 63,988	\$ 3,742
Infrastructure Solutions	56,111	3,484	54,377	2,375
Total	\$ 130,053	\$ 7,039	\$ 118,365	\$ 6,117

	Nine Months Ended September 30, 2021		Nine Months Ended September 30, 2020	
	Net Sales	Segment Profit	Net Sales	Segment Profit
Rail Technologies and Services	\$ 228,956	\$ 12,050	\$ 209,131	\$ 10,729
Infrastructure Solutions	171,699	5,165	172,704	8,836
Total	\$ 400,655	\$ 17,215	\$ 381,835	\$ 19,565

Segment profit from operations, as shown above, includes allocated corporate operating expenses. Operating expenses related to corporate headquarter functions that directly support the segment activity are allocated based on segment headcount, revenue contribution, or activity of the business units within the segments, based on the corporate activity type provided to the segment. The expense allocation excludes certain corporate costs that are separately managed from the segments.

The following table provides a reconciliation of segment net profit from continuing operations to the Company's consolidated continuing operations total for the periods presented:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Profit for reportable segments	\$ 7,039	\$ 6,117	\$ 17,215	\$ 19,565
Interest expense - net	(722)	(940)	(2,454)	(2,841)
Other (expense) income - net	(116)	(243)	74	2,178
Unallocated corporate expenses and other unallocated charges	(3,285)	(2,098)	(9,517)	(7,057)
Income before income taxes from continuing operations	\$ 2,916	\$ 2,836	\$ 5,318	\$ 11,845

The following table illustrates assets of the Company by segment for the periods presented:

	September 30, 2021	December 31, 2020
Rail Technologies and Services	\$ 169,242	\$ 161,485
Infrastructure Solutions	119,184	137,519
Unallocated corporate assets	71,377	71,391
Total	\$ 359,803	\$ 370,395

Note 3. Discontinued Operations

On September 4, 2020, the Company completed the sale of the issued and outstanding membership interests of its upstream oil and gas test and inspection business, IOS Test and Inspection Services. Proceeds from the sale were \$4,000 and resulted in a loss of \$10,034, net of tax. The Company has reflected the results of operations of the IOS Test and Inspection Services business as discontinued operations in the Condensed Consolidated Financial Statements for all periods presented. The IOS Test and Inspection Services business was historically included in the legacy Tubular and Energy segment, whose remaining divisions are now included as part of the Infrastructure Solutions segment.

The following table provides the net sales and income (losses) from discontinued operations for the three and nine months ended September 30, 2020:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Net sales	\$ —	\$ 2,520	\$ —	\$ 13,590
Income (loss) from discontinued operations before income taxes	72	(306)	72	(10,393)
Income tax benefit from discontinued operations	—	592	—	2,371
Loss on the sale of discontinued operations	—	(13,172)	—	(13,172)
Income tax benefit on the sale of discontinued operations	—	3,138	—	3,138
Income (loss) from discontinued operations	\$ 72	\$ (9,748)	\$ 72	\$ (18,056)

Note 4. Revenue

Revenue from products or services provided to customers over time accounted for 35.8% and 32.2% of revenue for the three months ended September 30, 2021 and 2020, respectively, and 29.7% and 27.9% of revenue for the nine months ended September 30, 2021 and 2020, respectively. The majority of revenue under these long-term agreements is recognized over time either using an input measure based upon the proportion of actual costs incurred to estimated total project costs or an input measure based upon actual labor costs as a percentage of estimated total labor costs, depending upon which measure the Company believes best depicts its performance to date under the terms of the contract. Revenue recognized over time using an input measure was \$30,314 and \$27,316 for the three months ended September 30, 2021 and 2020, respectively, and \$79,109 and \$76,606 for the nine months ended September 30, 2021 and 2020, respectively. A certain portion of the Company's revenue recognized over time under these long-term agreements is recognized using an output method, specifically units delivered, based upon certain customer acceptance and delivery requirements. Revenue recognized over time using an output measure was \$16,262 and \$10,800 for the three months ended September 30, 2021 and 2020, respectively, and was \$40,013 and \$29,833 for the nine months ended September 30, 2021 and 2020, respectively. As of September 30, 2021 and December 31, 2020, the Company had contract assets of \$41,164 and \$37,843, respectively, that were recorded in "Inventories - net" within the Condensed Consolidated Balance Sheets. As of September 30, 2021 and December 31, 2020, the Company had contract liabilities of \$4,840 and \$1,324, respectively, that were recorded in "Deferred revenue" within the Condensed Consolidated Balance Sheets.

The majority of the Company's revenue is from products transferred and services rendered to customers at a point in time. Point in time revenue accounted for 64.2% and 67.8% of revenue for the three months ended September 30, 2021 and 2020, respectively, and 70.3% and 72.1% of revenue for the nine months ended September 30, 2021 and 2020, respectively. The Company recognizes revenue at the point in time at which the customer obtains control of the product or service, which is generally when the product title passes to the customer upon shipment or the service has been rendered to the customer. In limited cases, title does not transfer and revenue is not recognized until the customer has received the products at a physical location.

The following table summarizes the Company's net sales by major product and service category for the periods presented:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Rail Products	\$ 48,355	\$ 40,502	\$ 156,730	\$ 144,901
Rail Technologies	25,587	23,486	72,226	64,230
Rail Technologies and Services	73,942	63,988	228,956	209,131
Fabricated Steel Products	25,810	22,138	85,754	66,109
Precast Concrete Products	17,972	15,745	50,723	42,816
Coatings and Measurement	12,329	16,494	35,222	63,779
Infrastructure Solutions	56,111	54,377	171,699	172,704
Total net sales	\$ 130,053	\$ 118,365	\$ 400,655	\$ 381,835

Net sales by the timing of the transfer of products and services was as follows for the periods presented:

	Three Months Ended September 30, 2021		
	Rail Technologies and Services	Infrastructure Solutions	Total
Point in time	\$ 54,470	\$ 29,007	\$ 83,477
Over time	19,472	27,104	46,576
Total net sales	<u>\$ 73,942</u>	<u>\$ 56,111</u>	<u>\$ 130,053</u>

	Three Months Ended September 30, 2020		
	Rail Technologies and Services	Infrastructure Solutions	Total
Point in time	\$ 47,027	\$ 33,222	\$ 80,249
Over time	16,961	21,155	38,116
Total net sales	<u>\$ 63,988</u>	<u>\$ 54,377</u>	<u>\$ 118,365</u>

	Nine Months Ended September 30, 2021		
	Rail Technologies and Services	Infrastructure Solutions	Total
Point in time	\$ 178,225	\$ 103,308	\$ 281,533
Over time	50,731	68,391	119,122
Total net sales	<u>\$ 228,956</u>	<u>\$ 171,699</u>	<u>\$ 400,655</u>

	Nine Months Ended September 30, 2020		
	Rail Technologies and Services	Infrastructure Solutions	Total
Point in time	\$ 163,190	\$ 112,206	\$ 275,396
Over time	45,941	60,498	106,439
Total net sales	<u>\$ 209,131</u>	<u>\$ 172,704</u>	<u>\$ 381,835</u>

The timing of revenue recognition, billings, and cash collections results in billed receivables, costs in excess of billings (contract assets, included in "Inventories - net"), and billings in excess of costs (contract liabilities, included in "Deferred revenue") within the Condensed Consolidated Balance Sheets.

Significant changes in contract assets during the nine months ended September 30, 2021 included transfers of \$20,561 from the contract assets balance as of December 31, 2020 to accounts receivable. Significant changes in contract liabilities during the nine months ended September 30, 2021 resulted from increases of \$4,512 due to billings in excess of costs, excluding amounts recognized as revenue during the period. Contract liabilities were reduced due to revenue recognized during the three months ended September 30, 2021 and 2020 of \$81 and \$175, respectively, and revenue recognized during the nine months ended September 30, 2021 and 2020 of \$985 and \$3,708, respectively, which were included in contract liabilities at the beginning of each period.

As of September 30, 2021, the Company had approximately \$231,726 of obligations under new contracts and remaining performance obligations, which is also referred to as backlog. Approximately 11.2% of the September 30, 2021 backlog was related to projects that are anticipated to extend beyond September 30, 2022.

Note 5. Goodwill and Other Intangible Assets

The following table presents the changes in goodwill balance by reportable segment for the period presented:

	Rail Technologies and Services	Infrastructure Solutions	Total
	Balance as of December 31, 2020	\$ 14,743	\$ 5,597
Larken purchase price adjustment	—	(21)	(21)
Foreign currency translation impact	(172)	—	(172)
Balance as of September 30, 2021	<u>\$ 14,571</u>	<u>\$ 5,576</u>	<u>\$ 20,147</u>

The Company performs goodwill impairment tests annually during the fourth quarter, and also performs interim goodwill impairment tests if it is determined that it is more likely than not that the fair value of a reporting unit is less than the carrying amount. Qualitative

factors are assessed to determine whether it is more likely than not that the fair value of a reporting unit is less than the carrying amount, which included the impacts of COVID-19. However, the future impacts of COVID-19 are unpredictable and are subject to change. No interim goodwill impairment test was required as a result of the evaluation of qualitative factors as of September 30, 2021.

The components of the Company's intangible assets were as follows for the periods presented:

	September 30, 2021			
	Weighted Average Amortization Period In Years	Gross Carrying Value	Accumulated Amortization	Net Carrying Amount
Patents	10	\$ 385	\$ (218)	\$ 167
Customer relationships	18	36,133	(17,610)	18,523
Trademarks and trade names	16	7,798	(4,557)	3,241
Technology	13	35,769	(25,250)	10,519
		<u>\$ 80,085</u>	<u>\$ (47,635)</u>	<u>\$ 32,450</u>

	December 31, 2020			
	Weighted Average Amortization Period In Years	Gross Carrying Value	Accumulated Amortization	Net Carrying Amount
Patents	10	\$ 383	\$ (206)	\$ 177
Customer relationships	18	36,269	(15,914)	20,355
Trademarks and trade names	16	7,809	(4,135)	3,674
Technology	13	35,815	(23,124)	12,691
		<u>\$ 80,276</u>	<u>\$ (43,379)</u>	<u>\$ 36,897</u>

The Company amortizes intangible assets over their useful lives, which range from 5 to 25 years, with a total weighted average amortization period of approximately 16 years as of September 30, 2021. Amortization expense was \$1,462 and \$1,428 for the three months ended September 30, 2021 and 2020, respectively, and was \$4,397 and \$4,271 for the nine months ended September 30, 2021 and 2020, respectively.

As of September 30, 2021, estimated amortization expense for the remainder of 2021 and thereafter was as follows:

	Amortization Expense
Remainder of 2021	\$ 1,445
2022	5,749
2023	5,278
2024	4,284
2025	2,467
2026 and thereafter	13,227
	<u>\$ 32,450</u>

Note 6. Accounts Receivable

The Company extends credit based upon an evaluation of the customer's financial condition and, while collateral is not required, the Company periodically receives surety bonds that guarantee payment. Credit terms are consistent with industry standards and practices. The amounts of trade accounts receivable as of September 30, 2021 and December 31, 2020 have been reduced by an allowance for credit losses of \$523 and \$944, respectively. Changes in reserves for uncollectible accounts, which are recorded as part of "Selling and administrative expenses" within the Condensed Consolidated Statements of Operations, resulted in income of \$145 and expense of \$63 for the three months ended September 30, 2021 and 2020, respectively, and income of \$127 and expense of \$221 for the nine months ended September 30, 2021 and 2020, respectively.

The Company established the allowance for credit losses by calculating the amount to reserve based on the age of a given trade receivable and considering historical collection patterns and bad debt expense experience, in addition to any other relevant subjective adjustments to individual receivables made by management. The Company also considers current and expected future market and other conditions. Trade receivables are pooled within the calculation based on a range of ages, which appropriately groups receivables of similar credit risk together.

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The established reserve thresholds to calculate the allowance for credit loss are based on and supported by historic collection patterns and bad debt expense incurred by the Company, as well as the expectation that collection patterns and bad debt expense will continue to adhere to patterns observed in recent years, which was formed based on trends observed as well as current and expected future conditions, including the impacts of the COVID-19 pandemic. Management maintains high-quality credit review practices as well as positive customer relationships that further mitigate credit risk.

The following table sets forth the Company's allowance for credit losses:

	Allowance for Credit Losses
Balance as of December 31, 2020	\$ 944
Current period provision	(127)
Write-off against allowance	(294)
Balance as of September 30, 2021	\$ 523

Note 7. Inventory

Inventories as of September 30, 2021 and December 31, 2020 are summarized in the following table:

	September 30, 2021	December 31, 2020
Finished goods	\$ 29,597	\$ 60,766
Contract assets	41,164	37,843
Work-in-process	9,767	5,143
Raw materials	28,367	12,708
Inventories - net	\$ 108,895	\$ 116,460

Inventories of the Company are valued at average cost or net realizable value, whichever is lower. Contract assets consist of costs and earnings in excess of billings, retainage, and other unbilled amounts generated when revenue recognized exceeds the amount billed to the customer.

The Company records appropriate provisions related to the allowance for credit losses associated with contract assets, as these assets held in inventory will convert to trade receivables once the customer is billed under the contract to which they pertain. Provisions are recorded based on the specific review of individual contracts as necessary, and a standard provision is recorded over any remaining contract assets pooled together based on similar risk of credit loss. The development of these provisions are based on historic collection trends, accuracy of estimates within contract margin reporting, as well as the expectation that collection patterns, margin reporting, and bad debt expense will continue to adhere to patterns observed in recent years. These expectations were formed based on trends observed as well as current and expected future conditions.

On September 24, 2021, the Company executed the sale of its Piling Products division for \$23,902 in total expected proceeds. The sale included substantially all inventory held by the Company associated with the division. The Piling Products division is included in the Fabricated Steel business unit within the Infrastructure Solutions business segment.

Note 8. Property, Plant, and Equipment

Property, plant, and equipment as of September 30, 2021 and December 31, 2020 consisted of the following:

	September 30, 2021	December 31, 2020
Land	\$ 6,223	\$ 6,627
Improvements to land and leaseholds	15,401	17,573
Buildings	26,966	27,348
Machinery and equipment, including equipment under finance leases	110,821	116,175
Construction in progress	1,276	915
Gross property, plant, and equipment	160,687	168,638
Less accumulated depreciation and amortization, including accumulated amortization of finance leases	(101,876)	(106,553)
Property, plant, and equipment - net	\$ 58,811	\$ 62,085

Depreciation expense was \$2,041 and \$1,940 for the three months ended September 30, 2021 and 2020, respectively, and \$6,049 and \$5,838 for the nine months ended September 30, 2021 and 2020, respectively. The Company reviews its property, plant, and equipment for recoverability whenever events or changes in circumstances indicate that carrying amounts may not be recoverable. The Company recognizes an impairment loss if it believes that the carrying amount of a long-lived asset is not recoverable and exceeds its fair value. There were no impairments of property, plant, and equipment during the nine months ended September 30, 2021 and 2020.

On September 24, 2021, the Company executed the sale of its Piling Products division for \$23,902 in total expected proceeds. The Company retained all pre-closing receivables and liabilities associated with the division. The sale included substantially all fixed assets held by the Company associated with the division. The Piling Products division is included in the Fabricated Steel business unit within the Infrastructure Solutions business segment.

Note 9. Leases

The Company determines if an arrangement is a lease at its inception. Operating leases are included in “Operating lease right-of-use assets - net,” “Other accrued liabilities,” and “Long-term operating lease liabilities” within the Condensed Consolidated Balance Sheets. Finance leases are included within “Property, plant, and equipment - net,” “Current maturities of long-term debt,” and “Long-term debt” within the Condensed Consolidated Balance Sheets.

The Company has operating and finance leases for manufacturing facilities, corporate offices, sales offices, vehicles, and certain equipment. As of September 30, 2021, the Company’s leases had remaining lease terms of 2 to 12 years, some of which include options to extend the leases for up to 12 years, and some of which include options to terminate the leases within 1 year.

The balance sheet components of the Company’s leases were as follows as of September 30, 2021 and December 31, 2020:

	September 30, 2021	December 31, 2020
Operating leases		
Operating lease right-of-use assets	\$ 14,403	\$ 16,069
Other accrued liabilities	\$ 2,444	\$ 2,553
Long-term operating lease liabilities	11,959	13,516
Total operating lease liabilities	<u>\$ 14,403</u>	<u>\$ 16,069</u>
Finance leases		
Property, plant, and equipment	\$ 1,162	\$ 1,116
Accumulated amortization	(977)	(869)
Property, plant, and equipment - net	<u>\$ 185</u>	<u>\$ 247</u>
Current maturities of long-term debt	\$ 111	\$ 119
Long-term debt	74	128
Total finance lease liabilities	<u>\$ 185</u>	<u>\$ 247</u>

The components of lease expense within the Company’s Condensed Consolidated Statements of Operations were as follows for the three and nine months ended September 30, 2021 and 2020:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Finance lease cost:				
Amortization of finance leases	\$ 50	\$ 29	\$ 152	\$ 381
Interest on lease liabilities	19	17	61	53
Operating lease cost	706	719	2,042	2,265
Sublease income	(50)	(50)	(150)	(117)
Total lease cost	<u>\$ 725</u>	<u>\$ 715</u>	<u>\$ 2,105</u>	<u>\$ 2,582</u>

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The cash flow components of the Company's leases were as follows for the three and nine months ended September 30, 2021 and 2020:

	Nine Months Ended September 30,	
	2021	2020
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows related to operating leases	\$ (2,462)	\$ (2,778)
Financing cash flows related to finance leases	(166)	(408)
Right-of-use assets obtained in exchange for new lease liabilities:		
Operating leases	\$ 377	\$ 7,681

The weighted-average remaining lease term (in years) and discount rate related to the operating leases were as follows as of the dates presented:

	September 30,	
	2021	2020
Operating lease weighted-average remaining lease term	7	7
Operating lease weighted-average discount rate	5.2 %	5.1 %
Finance lease weighted-average remaining lease term	1	1
Finance lease weighted-average discount rate	4.2 %	4.2 %

As of September 30, 2021, estimated annual maturities of lease liabilities remaining for the year ending December 31, 2021 and thereafter were as follows:

	Operating Leases	Finance Leases
Remainder of 2021	\$ 817	\$ 41
2022	3,037	115
2023	2,715	42
2024	2,604	11
2025	2,385	—
2026 and thereafter	5,379	—
Total undiscounted lease payments	16,937	209
Interest	(2,534)	(24)
Total	\$ 14,403	\$ 185

Note 10. Long-term Debt and Related Matters

Long-term debt consisted of the following:

	September 30, 2021	December 31, 2020
Revolving credit facility	\$ 32,268	\$ 44,777
Finance leases and financing agreements	185	247
Total	32,453	45,024
Less current maturities	(111)	(119)
Long-term portion	\$ 32,342	\$ 44,905

On August 13, 2021, the Company, its domestic subsidiaries, and certain of its Canadian and United Kingdom subsidiaries (collectively, the "Borrowers"), entered into the Fourth Amended and Restated Credit Agreement (the "Credit Agreement") with PNC Bank, N.A., Citizens Bank, N.A., Wells Fargo Bank, National Association, Bank of America, N.A., and BMO Harris Bank, National Association. The Credit Agreement modifies the prior revolving credit facility, as amended, on more favorable terms and extends the maturity date from April 30, 2024 to August 13, 2026. The Credit Agreement provides for a five-year, revolving credit facility that permits aggregate borrowings of the Borrowers up to \$130,000 (a \$15,000 increase over the previous commitment) with a sublimit of the equivalent of \$25,000 U.S. dollars that is available to the Canadian and United Kingdom borrowers in the aggregate. The Credit Agreement's incremental loan feature permits the Company to increase the available commitments under the facility by up to an additional \$50,000 subject to the Company's receipt of increased commitments from existing or new lenders and the satisfaction of certain conditions.

The obligation of the Company and its domestic, Canadian, and United Kingdom subsidiaries (the “Guarantors”) under the Credit Agreement will be secured by the grant of a security interest by the Borrowers and Guarantors in substantially all of the assets owned by such entities. Additionally, the equity interests in each of the loan parties, other than the Company, and the equity interests held by each loan party in their subsidiaries, will be pledged to the lenders as collateral for the lending obligations.

Borrowings under the Credit Agreement will bear interest at rates based upon either the base rate or LIBOR rate plus applicable margins. Applicable margins are dictated by the ratio of the Company’s total net indebtedness to the Company’s consolidated EBITDA for four trailing quarters, as defined in the Credit Agreement. The base rate is the highest of (a) the Overnight Bank Funding Rate plus 50 basis point, (b) the Prime Rate, or (c) the Daily LIBOR rate plus 100 basis point so long as the Daily LIBOR Rate is offered, ascertainable, and not unlawful (each as defined in the Credit Agreement). The base rate and LIBOR rate spreads range from 25 to 125 basis points and 125 to 225 basis points, respectively.

The Credit Agreement includes two financial covenants: (a) Maximum Gross Leverage Ratio, defined as the Company’s consolidated Indebtedness divided by the Company’s consolidated EBITDA, which must not exceed (i) 3.25 to 1.00 for all testing periods other than during an Acquisition Period, and (ii) 3.50 to 1.00 for all testing periods occurring during an Acquisition Period, and (b) Minimum Consolidated Fixed Charge Coverage Ratio, defined as the Company’s consolidated EBITDA divided by the Company’s Fixed Charges, which must be more than 1.05 to 1.00.

The Credit Agreement permits the Company to pay dividends and make distributions and redemptions with respect to its stock provided no event of default or potential default (as defined in the Credit Agreement) has occurred prior to or after giving effect to the dividend, distribution, or redemption. Additionally, the Credit Agreement permits the Company to complete acquisitions so long as (a) no event of default or potential default has occurred prior to or as a result of such acquisition; (b) the liquidity of the Borrowers is not less than \$15,000 prior to and after giving effect to such acquisition; and (c) the aggregate consideration for the acquisition does not exceed: (i) \$50,000 per acquisition, so long as the Gross Leverage Ratio is less than or equal to 2.75 after giving effect to such acquisition; or (ii) \$75,000 per acquisition, so long as the Gross Leverage Ratio is less than or equal to 1.75 after giving effect to such acquisition.

Other restrictions exist at all times including, but not limited to, limitations on the Company’s sale of assets and the incurrence by either the Borrowers or the non-borrower subsidiaries of the Company of other indebtedness, guarantees, and liens.

As of September 30, 2021, the Company was in compliance with the covenants in the Credit Agreement, as amended.

As of September 30, 2021, the Company had outstanding letters of credit of approximately \$665 and had net available borrowing capacity of \$97,067, subject to covenant restrictions. The maturity date of the facility is August 13, 2026.

Note 11. Earnings Per Common Share

(Share amounts in thousands)

The following table sets forth the computation of basic and diluted earnings (loss) per common share for the periods indicated:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Numerator for basic and diluted earnings (loss) per common share:				
Income from continuing operations	\$ 2,240	\$ 16,578	\$ 3,824	\$ 23,543
Income (loss) from discontinued operations	72	(9,748)	72	(18,056)
Net income	\$ 2,312	\$ 6,830	\$ 3,896	\$ 5,487
Denominator:				
Weighted average shares outstanding	10,642	10,562	10,615	10,533
Denominator for basic income (loss) per common share	10,642	10,562	10,615	10,533
Effect of dilutive securities:				
Stock compensation plans	122	97	129	121
Dilutive potential common shares	122	97	129	121
Denominator for diluted income (loss) per common share - adjusted weighted average shares outstanding	10,764	10,659	10,744	10,654
Continuing operations	\$ 0.21	\$ 1.57	\$ 0.36	\$ 2.24
Discontinued operations	0.01	(0.92)	0.01	(1.72)
Basic income per common share	\$ 0.22	\$ 0.65	\$ 0.37	\$ 0.52
Continuing operations	\$ 0.21	\$ 1.56	\$ 0.36	\$ 2.21
Discontinued operations	0.01	(0.92)	0.01	(1.69)
Diluted income per common share	\$ 0.22	\$ 0.64	\$ 0.37	\$ 0.52

There were no anti-dilutive shares during the periods presented above.

Note 12. Income Taxes

For the three months ended September 30, 2021 and 2020, the Company recorded an income tax expense of \$676 on pre-tax income from continuing operations of \$2,916 and an income tax benefit of \$13,742 on pre-tax income from continuing operations of \$2,836, respectively, for effective income tax rates of 23.2% and (484.6 %), respectively. For the nine months ended September 30, 2021 and 2020, the Company recorded an income tax expense of \$1,494 on pre-tax income from continuing operations of \$5,318 and an income tax benefit of \$11,698 on pre-tax income from continuing operations of \$11,845, respectively, for effective income tax rates of 28.1% and (98.8 %), respectively. The Company's effective tax rate for the three- and nine-month periods ended September 30, 2021 differ from the federal statutory rate of 21% primarily due to state income taxes, nondeductible expenses, and research tax credits.

Note 13. Stock-Based Compensation

The Company applies the provisions of the FASB's Accounting Standards Codification ("ASC") Topic 718, "Compensation – Stock Compensation," to account for the Company's stock-based compensation. Stock-based compensation cost is measured at the grant date based on the calculated fair value of the award and is recognized over the employees' requisite service periods. The Company recorded stock-based compensation expense related to restricted stock awards and performance share units of \$587 and \$604 for the three months ended September 30, 2021 and 2020, respectively, and expense of \$1,800 and \$1,842 for the nine months ended September 30, 2021 and 2020, respectively. As of September 30, 2021, unrecognized compensation expense for unvested awards approximated \$3,647. The Company expects to recognize this expense over the upcoming 3.4 years through February 2025.

Shares issued as a result of vested stock-based compensation awards generally will be from previously issued shares that have been reacquired by the Company and held as treasury stock or authorized and previously unissued common stock.

Restricted Stock Awards, Performance Share Units, and Performance-Based Stock Awards

Under the 2006 Omnibus Plan, the Company grants eligible employees restricted stock and performance share units. The forfeitable restricted stock awards granted generally time-vest ratably over a three-year period, unless indicated otherwise by the underlying restricted stock agreement. Since May 2018, awards of restricted stock have been subject to a minimum one-year vesting period, including those granted to non-employee directors. Performance share units are offered annually under separate three-year long-term

incentive programs. Performance share units are subject to forfeiture and will be converted into common stock of the Company based upon the Company's performance relative to performance measures and conversion multiples, as defined in the underlying program. If the Company's estimate of the number of performance share units expected to vest changes in a subsequent accounting period, cumulative compensation expense could increase or decrease. The change will be recognized in the current period for the vested shares and would change future expense over the remaining vesting period.

Since May 1, 2017, non-employee directors have been permitted to defer receipt of annual stock awards and equity elected to be received in lieu of quarterly cash compensation. If so elected, these deferred stock units will be issued as common stock six months after separation from their service on the Board of Directors. Since May 2018, no non-employee directors have elected the option to receive deferred stock units of the Company's common stock in lieu of director cash compensation.

In February 2021, the Compensation Committee approved the 2021 Performance Share Unit Program and the Executive Annual Incentive Compensation Plan (consisting of cash and equity components). Also in February 2021, the Board of Directors approved a special performance-based stock retention program under the 2006 Omnibus Plan, whereby eligible executives could earn shares of Company common stock provided that the Company's stock price achieves certain enumerated thirty-day average closing stock price hurdles over a five-year performance period. Any shares earned are payable no earlier than the third anniversary of the date of the grant. The program expires on February 28, 2026, after which date no shares may be earned or distributed.

The following table summarizes the restricted stock awards, deferred stock units, and performance share units activity for the nine months ended September 30, 2021:

	Restricted Stock	Deferred Stock Units	Performance Share Units	Weighted Average Grant Date Fair Value
Outstanding as of December 31, 2020	171,934	66,136	150,022	\$ 18.05
Granted	111,337	8,814	147,367	15.92
Vested	(106,347)	—	(7,940)	19.08
Adjustment for incentive awards expected to vest	—	—	(66,323)	17.84
Cancelled and forfeited	(3,167)	—	(47,111)	16.46
Outstanding as of September 30, 2021	173,757	74,950	176,015	\$ 17.89

Note 14. Fair Value Measurements

The Company determines the fair value of assets and liabilities based on the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants. The fair values are based on assumptions that market participants would use when pricing an asset or liability, including assumptions about risk and the risks inherent in valuation techniques and the inputs to valuations. The fair value hierarchy is based on whether the inputs to valuation techniques are observable or unobservable. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect the Company's own assumptions of what market participants would use. The fair value hierarchy includes three levels of inputs that may be used to measure fair value as described below:

Level 1: Quoted market prices in active markets for identical assets or liabilities.

Level 2: Observable market-based inputs or unobservable inputs that are corroborated by market data.

Level 3: Unobservable inputs that are not corroborated by market data.

The classification of a financial asset or liability within the hierarchy is determined based on the lowest level input that is significant to the fair value measurement.

Cash equivalents - Included in "Cash and cash equivalents" within the Condensed Consolidated Balance Sheets are investments in non-domestic term deposits. The carrying amounts approximate fair value because of the short maturity of the instruments.

LIBOR-based interest rate swaps - To reduce the impact of interest rate changes on outstanding variable-rate debt, the Company entered into forward starting LIBOR-based interest rate swaps with notional values totaling \$50,000 and \$20,000 effective February 2017 and March 2022, respectively. The fair value of the interest rate swaps is based on market-observable forward interest rates and represents the estimated amount that the Company would pay to terminate the agreements. As such, the swap agreements are classified as Level 2 within the fair value hierarchy. As of September 30, 2021 and December 31, 2020, the interest rate swaps were recorded in "Other accrued liabilities" within the Condensed Consolidated Balance Sheets.

	Fair Value Measurements at Reporting Date				Fair Value Measurements at Reporting Date			
	September 30, 2021	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	December 31, 2020	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Term deposits	\$ 18	\$ 18	\$ —	\$ —	\$ 18	\$ 18	\$ —	\$ —
Total assets	\$ 18	\$ 18	\$ —	\$ —	\$ 18	\$ 18	\$ —	\$ —
Interest rate swaps	\$ 445	\$ —	\$ 445	\$ —	\$ 1,097	\$ —	\$ 1,097	\$ —
Total liabilities	\$ 445	\$ —	\$ 445	\$ —	\$ 1,097	\$ —	\$ 1,097	\$ —

The \$20,000 interest rate swaps that become effective March 2022 are accounted for as cash flow hedges and the objective of the hedges is to offset the expected interest variability on payments associated with the interest rate on our debt. The gains and losses related to the interest rate swaps are reclassified from “Accumulated other comprehensive loss” in our Condensed Consolidated Balance Sheets and included in “Interest expense - net” in our Condensed Consolidated Statements of Operations as the interest expense from our debt is recognized.

Prior to the third quarter of 2020, the Company accounted for the \$50,000 of interest rate swaps that became effective February 2017 as cash flow hedges and the objective of the hedges is to offset the expected interest variability on payments associated with the interest rate on its debt. In the third quarter of 2020, the Company redesignated the cash flow hedges and now accounts for the \$50,000 interest rate swaps on a mark-to-market basis with changes in fair value recorded in current period earnings. In connection with this redesignation, the Company froze the balances recorded in “Accumulated other comprehensive loss” at June 30, 2020 and reclassifies balances to earnings as the underlying physical transactions occur, unless it is no longer probable that the physical transaction will occur at which time the related gains deferred in Other Comprehensive Income will be immediately recorded in earnings. The gains and losses related to the interest rate swaps are reclassified from “Accumulated other comprehensive loss” in the Condensed Consolidated Balance Sheets and included in “Interest expense - net” in the Condensed Consolidated Statements of Operations as the interest expense from the Company’s debt is recognized.

For the three months ended September 30, 2021 and 2020, the Company recognized interest expense of \$244 and \$178, respectively, and for the nine months ended September 30, 2021 and 2020, the Company recognized interest expense of \$724 and \$468, respectively, from interest rate swaps.

In accordance with the provisions of ASC Topic 820, “Fair Value Measurement,” the Company measures certain nonfinancial assets and liabilities at fair value, which are recognized and disclosed on a nonrecurring basis.

Note 15. Retirement Plans

Retirement Plans

The Company has three retirement plans that cover its hourly and salaried employees in the United States: one defined benefit plan, which is frozen, and two defined contribution plans. Employees are eligible to participate in the appropriate plan based on employment classification. The Company’s contributions to the defined benefit and defined contribution plans are governed by the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) and the Company’s policy and investment guidelines applicable to each respective plan. The Company’s policy is to contribute at least the minimum in accordance with the funding standards of ERISA.

The Company maintains two defined contribution plans for its employees in Canada, as well as one post-retirement benefit plan. The Company also maintains two defined contribution plans and one defined benefit plan for its employees in the United Kingdom.

United States Defined Benefit Plan

Net periodic pension costs for the United States defined benefit pension plan for the three and nine months ended September 30, 2021 and 2020 were as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Interest cost	\$ 43	\$ 56	\$ 129	\$ 168
Expected return on plan assets	(62)	(58)	(185)	(173)
Recognized net actuarial loss	25	13	74	40
Net periodic pension cost	\$ 6	\$ 11	\$ 18	\$ 35

The Company has made contributions to its United States defined benefit pension plan of \$300 during the nine months ended September 30, 2021 and expects to make total contributions of \$420 during 2021.

United Kingdom Defined Benefit Plan

Net periodic pension costs for the United Kingdom defined benefit pension plan for the three and nine months ended September 30, 2021 and 2020 were as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Interest cost	\$ 28	\$ 43	\$ 84	\$ 129
Expected return on plan assets	(65)	(59)	(195)	(177)
Amortization of prior service costs and transition amount	7	6	21	18
Recognized net actuarial loss	83	63	249	189
Net periodic pension cost	\$ 53	\$ 53	\$ 159	\$ 159

United Kingdom regulations require trustees to adopt a prudent approach to funding required contributions to defined benefit pension plans. For the nine months ended September 30, 2021, the Company contributed approximately \$255 to the plan. The Company anticipates total contributions of approximately \$341 to the United Kingdom pension plan during 2021.

Defined Contribution Plans

The Company sponsors six defined contribution plans for hourly and salaried employees across its domestic and international facilities. The following table summarizes the expense associated with the contributions made to these plans for the periods presented:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
United States	\$ 400	\$ 346	\$ 1,172	\$ 558
Canada	33	25	119	93
United Kingdom	131	111	386	321
	\$ 564	\$ 482	\$ 1,677	\$ 972

Note 16. Commitments and Contingent Liabilities

Product Liability Claims

The Company is subject to product warranty claims that arise in the ordinary course of its business. For certain manufactured products, the Company maintains a product warranty accrual, which is adjusted on a monthly basis as a percentage of cost of sales. In addition, the product warranty accrual is adjusted periodically based on the identification or resolution of known individual product warranty claims.

The following table sets forth the Company's product warranty accrual:

	Warranty Liability
Balance as of December 31, 2020	\$ 1,249
Additions to warranty liability	411
Warranty liability utilized	(783)
Balance as of September 30, 2021	\$ 877

Union Pacific Railroad ("UPRR") Concrete Tie Matter

On March 13, 2019, the Company and its subsidiary, CXT Incorporated ("CXT"), entered into a Settlement Agreement (the "Settlement Agreement") with UPRR to resolve the pending litigation in the matter of *Union Pacific Railroad Company v. L.B. Foster Company and CXT Incorporated*, Case No. CI 15-564, in the District Court for Douglas County, Nebraska.

Under the Settlement Agreement, the Company and CXT will pay UPRR the aggregate amount of \$50,000 without pre-judgment interest, which began with a \$2,000 immediate payment, and with the remaining \$48,000 paid in installments over a six-year period commencing on the effective date of the Settlement Agreement through December 2024 pursuant to a Promissory Note. Additionally, commencing in January 2019 and through December 2024, UPRR agreed to purchase and has been purchasing from the Company and its subsidiaries and affiliates, a cumulative total amount of \$48,000 of products and services, targeting \$8,000 of annual purchases per year beginning March 13, 2019 per letters of intent under the Settlement Agreement. During the third quarter of 2021, in connection with the Company's divestiture of its Piling Products division, the targeted annual purchases per year have been reduced to \$6,000 for 2021 through 2024. The Settlement Agreement also includes a mutual release of all claims and liability regarding or relating to all CXT pre-stressed concrete railroad ties with no admission of liability and dismissal of the litigation with prejudice.

The expected payments under the UPRR Settlement Agreement for the remainder of the year ending December 31, 2021 and thereafter are as follows:

Year Ending December 31,	
Remainder of 2021	\$ 4,000
2022	8,000
2023	8,000
2024	8,000
Total	\$ 28,000

Environmental and Legal Proceedings

The Company is subject to national, state, foreign, provincial, and/or local laws and regulations relating to the protection of the environment. The Company's efforts to comply with environmental regulations may have an adverse effect on its future earnings.

On June 5, 2017, a General Notice Letter was received from the United States Environmental Protection Agency ("EPA") indicating that the Company may be a potentially responsible party ("PRP") regarding the Portland Harbor Superfund Site cleanup along with numerous other companies. More than 140 other companies received such a notice. The Company and a predecessor owned and operated a facility near the harbor site for a period prior to 1982. The net present value and undiscounted costs of the selected remedy throughout the harbor site are estimated by the EPA to be approximately \$1.1 billion and \$1.7 billion, respectively, and the remedial work is expected to take as long as 13 years to complete. These costs may increase given that the remedy will not be initiated or completed for several years. The Company is reviewing the basis for its identification by the EPA and the nature of the historic operations of a Company predecessor near the site. Additionally, the Company executed a PRP agreement which provides for a private allocation process among almost 100 PRPs in a working group whose work is ongoing. On March 26, 2020, the EPA issued a Unilateral Administrative Order to two parties requiring them to perform remedial design work for that portion of the Harbor Superfund Site that includes the area closest to the facility; the Company was not a recipient of this Unilateral Administrative Order. The Company cannot predict the ultimate impact of these proceedings because of the large number of PRPs involved throughout the harbor site, the size and extent of the site, the degree of contamination of various wastes, varying environmental impacts throughout the harbor site, the scarcity of data related to the facility once operated by the Company and a predecessor, potential comparative liability between the allocation parties and regarding non-participants, and the speculative nature of the remediation costs. Based upon information currently available, management does not believe that the Company's alleged PRP status regarding the Portland Harbor Superfund Site or other compliance with the present environmental protection laws will have a material adverse effect on the financial condition, results of operations, cash flows, competitive position, or capital expenditures of the Company. As more information develops and the allocation process is completed, and given the resolution of factors like those described above, an unfavorable resolution could have a material adverse effect.

As of September 30, 2021 and December 31, 2020, the Company maintained environmental reserves approximating \$2,481 and \$2,562, respectively. The following table sets forth the Company's environmental obligation:

	Environmental liability
Balance as of December 31, 2020	\$ 2,562
Environmental obligations utilized	(81)
Balance as of September 30, 2021	<u>\$ 2,481</u>

The Company is also subject to other legal proceedings and claims that arise in the ordinary course of its business. Legal actions are subject to inherent uncertainties, and future events could change management's assessment of the probability or estimated amount of potential losses from pending or threatened legal actions. Based on available information, it is the opinion of management that the ultimate resolution of pending or threatened legal actions, both individually and in the aggregate, will not result in losses having a material adverse effect on the Company's financial position or liquidity as of September 30, 2021.

If management believes that, based on available information, it is at least reasonably possible that a material loss (or additional material loss in excess of any accrual) will be incurred in connection with any legal actions, the Company discloses an estimate of the possible loss or range of loss, either individually or in the aggregate, as appropriate, if such an estimate can be made, or discloses that an estimate cannot be made. Based on the Company's assessment as of September 30, 2021, no such disclosures were considered necessary.

Note 17. Subsequent Events

During the fourth quarter of 2021, the Company implemented operational changes in how its CODM manages its businesses, including resource allocation and operating decisions. As a result of these changes, the Company is assessing its segment presentation. The Company will reflect changes to its operating segment disclosures, if any, in its Annual Report on Form 10-K for the year ending December 31, 2021.

Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations**(Dollars in thousands, except share data)****Forward-Looking Statements**

This Quarterly Report on Form 10-Q contains “forward-looking” statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, and Section 27A of the Securities Act of 1933, as amended. Many of the forward-looking statements are located in “Management’s Discussion and Analysis of Financial Condition and Results of Operations” (“MD&A”). Forward-looking statements provide management’s current expectations of future events based on certain assumptions and include any statement that does not directly relate to any historical or current fact. Sentences containing words such as “believe,” “intend,” “plan,” “may,” “expect,” “should,” “could,” “anticipate,” “estimate,” “predict,” “project,” or their negatives, or other similar expressions of a future or forward-looking nature generally should be considered forward-looking statements. Forward-looking statements in this Quarterly Report on Form 10-Q are based on management’s current expectations and assumptions about future events that involve inherent risks and uncertainties and may concern, among other things, the Company’s expectations relating to our strategy, goals, projections, and plans regarding our financial position, liquidity, capital resources, and results of operations and decisions regarding our strategic growth initiatives, market position, and product development. While the Company considers these expectations and assumptions to be reasonable, they are inherently subject to significant business, economic, competitive, regulatory, and other risks and uncertainties, most of which are difficult to predict and many of which are beyond the Company’s control. The Company cautions readers that various factors could cause the actual results of the Company to differ materially from those indicated by forward-looking statements. Accordingly, investors should not place undue reliance on forward-looking statements as a prediction of actual results. Among the factors that could cause the actual results to differ materially from those indicated in the forward-looking statements are risks and uncertainties related to: the COVID-19 pandemic, including the impact of any worsening of the pandemic, or the emergence of new variants of the virus, on our financial condition or results of operations, and any future global health crises, and the related social, regulatory, and economic impacts and the response thereto by the Company, our employees, our customers, and national, state, or local governments, including vaccine mandates; volatility in the prices of oil and natural gas and the related impact on the upstream and midstream energy markets, which could result in further cost mitigation actions, including additional shutdowns or furlough periods; a continuation or worsening of the adverse economic conditions in the markets we serve, whether as a result of the current COVID-19 pandemic, including its impact on travel and demand for oil and gas, the volatility in the prices for oil and gas, governmental travel restrictions, project delays, and budget shortfalls, or otherwise; volatility in the global capital markets, including interest rate fluctuations, which could adversely affect our ability to access the capital markets on terms that are favorable to us; restrictions on our ability to draw on our credit agreement, including as a result of any future inability to comply with restrictive covenants contained therein; a continuing decrease in freight or transit rail traffic, including as a result of the COVID-19 pandemic; environmental matters, including any costs associated with any remediation and monitoring; the risk of doing business in international markets, including compliance with anti-corruption and bribery laws, foreign currency fluctuations and inflation, and trade restrictions or embargoes; our ability to effectuate our strategy, including cost reduction initiatives, and our ability to effectively integrate acquired businesses or to divest businesses, such as the third quarter of 2021 disposition of the Piling Products business, 2020 disposition of the IOS Test and Inspection Services business and acquisition of the LarKen Precast business, and to realize anticipated benefits; costs of and impacts associated with shareholder activism; continued customer restrictions regarding the on-site presence of third party providers due to the COVID-19 pandemic; the timeliness and availability of materials from our major suppliers, including any continuation or worsening of the disruptions in the supply chain experienced as a result of the COVID-19 pandemic, as well as the impact on our access to supplies of customer preferences as to the origin of such supplies, such as customers’ concerns about conflict minerals; labor disputes; cyber-security risks such as data security breaches, malware, ransomware, “hacking,” and identity theft, including as experienced in 2020, which could disrupt our business and may result in misuse or misappropriation of confidential or proprietary information, and could result in the significant disruption or damage to our systems, increased costs and losses, or an adverse effect to our reputation; the effectiveness of our continued implementation of an enterprise resource planning system; changes in current accounting estimates and their ultimate outcomes; the adequacy of internal and external sources of funds to meet financing needs, including our ability to negotiate any additional necessary amendments to our credit agreement or the terms of any new credit agreement, and reforms regarding the use of LIBOR as a benchmark for establishing applicable interest rates; the Company’s ability to manage its working capital requirements and indebtedness; domestic and international taxes, including estimates that may impact taxes; domestic and foreign government regulations, including tariffs; economic conditions and regulatory changes caused by the United Kingdom’s exit from the European Union; a lack of state or federal funding for new infrastructure projects; an increase in manufacturing or material costs; the loss of future revenues from current customers; and risks inherent in litigation and the outcome of litigation and product warranty claims. Should one or more of these risks or uncertainties materialize, or should the assumptions underlying the forward-looking statements prove incorrect, actual outcomes could vary materially from those indicated. Significant risks and uncertainties that may affect the operations, performance, and results of the Company’s business and forward-looking statements include, but are not limited to, those set forth under Item 1A, “Risk Factors,” and elsewhere in our Annual Report on Form 10-K for the year ended December 31, 2020, or as updated and/or amended by our other current or periodic filings with the Securities and Exchange Commission.

The forward-looking statements in this report are made as of the date of this report and we assume no obligation to update or revise any forward-looking statement, whether as a result of new information, future developments, or otherwise, except as required by the federal securities laws.

General Overview and Business Update

L.B. Foster Company (“Company”) provides products and services for the rail industry and solutions to support critical infrastructure projects. The Company’s innovative engineering and product development solutions address the safety, reliability, and performance of its customers’ challenging requirements. The Company maintains locations in North America, South America, Europe, and Asia. The Company is organized and operates in two business segments: Rail Technologies and Services (“Rail”) and Infrastructure Solutions. The Rail segment is comprised of several manufacturing and distribution businesses that provide a variety of products and services for freight and passenger railroads and industrial companies throughout the world. The Infrastructure Solutions segment is composed of precast concrete products, fabricated bridge, protective coating, threading, and precision measurement offerings across North America.

On September 24, 2021, the Company executed the sale of its Piling Products division for \$23,902 in total expected proceeds. The Company retained all pre-closing receivables and liabilities associated with the division. The sale included substantially all inventory held by the Company associated with the division, as well as the related fixed assets. The Piling Products division was included in the Fabricated Steel business unit within the Infrastructure Solutions business segment. The Piling Products division revenues were \$16,310 and \$14,823 for the three months ended September 30, 2021 and 2020, respectively, and \$59,201 and \$45,882 for the nine months ended September 30, 2021 and 2020, respectively.

Net sales for the third quarter of 2021 were \$130,053, an \$11,688 increase, or 9.9%, compared to the prior year quarter. The sales increase was primarily attributable to the Company’s Rail segment, which increased by 15.6% over the prior year quarter. The \$9,954 increase in the Rail segment was attributable to an increase in rail distribution sales in the Rail Products business unit during the quarter, coupled with an increase in revenues in the Company’s European operations as a result of increased service revenue following easing of pandemic related restrictions in that region. The \$1,734 increase in the Infrastructure Solutions segment was attributable to increases in both its Precast Concrete Products and Fabricated Steel Products business units, partially offset by the Coatings and Measurement business unit, which continues to face a challenging environment in the midstream energy market due to excess infrastructure pipeline capacity.

Gross profit for the third quarter of 2021 was \$22,276, a \$215 increase, or 1.0%, from the prior year quarter. The 17.1% consolidated gross profit margin decreased by 150 basis points when compared to the prior year quarter, with the decline attributable to both segments. Gross profit increased in the Rail segment by \$971, driven by the \$9,954 increase in revenues. The 140 basis point decline in gross profit margin in the Rail segment was primarily attributable to product mix in its Rail Technologies business unit during the quarter. In the Infrastructure Solutions segment, gross profit declined from the prior year quarter by \$756, primarily driven by the decrease in revenues in the Coatings and Measurement business line. Infrastructure Solution gross profit margin was down 180 basis points compared to last year’s third quarter.

Selling and administrative expenses in the third quarter of 2021 increased by \$2,990, or 17.5%, from the prior year quarter, primarily driven by increases in personnel related costs, including travel and entertainment expenses, as well as costs associated with the Company’s strategic initiatives. Selling and administrative expenses as a percent of net sales increased by 100 basis points from the prior year quarter to 15.4%.

Net income from continuing operations for the third quarter of 2021 was \$2,240, or \$0.21 per diluted share, a reduction of \$14,338, or \$1.35 per diluted share, from the prior year quarter. The third quarter of 2021 was favorably impacted by a gain of \$2,046, net of tax, on the sale of the Piling Products division. The prior year quarter was favorably impacted by a non-recurring income tax benefit of \$15,824 resulting from the sale of the IOS Test and Inspection Services business.

The Company’s consolidated backlog was \$231,726 as of September 30, 2021, a decrease of \$3,464, or 1.5%, from the prior year period. The divestiture of the Piling Products business unit during the quarter resulted in a \$23,890 decline in backlog versus last year. This backlog decline was partially offset by a \$20,867 increase in the Precast Concrete Products business unit, which continues to benefit from infrastructure investment. The current inflationary cost environment, including labor rates, is expected to continue to put pressure on margins across our businesses, particularly in the Precast Concrete Products and Fabricated Steel Products businesses. Actions to mitigate these impacts as much as possible are on going. In addition, the Company continues to take proactive steps to manage disruptions in raw materials, labor, supply chain, service partner, and other lingering COVID-related effects in an attempt to mitigate their adverse impact as much as possible. The Coatings and Measurement business line continues to be affected by the ongoing deferral of infrastructure investment in the midstream pipeline markets despite rising energy prices. Certain areas of this business have experienced some modest improvement in the current quarter with backlog increasing by \$4,056 compared to September 30, 2020. However, demand levels remain depressed compared to historical levels as pipeline projects continue to be deferred, and the outlook for this business unit remains weak for the foreseeable future. The Company will continue to adjust the cost

structure of this business as appropriate to mitigate these negative market conditions as much as possible. While the Rail segment's backlog increased modestly year-over-year by \$756 driven by increases in the Rail Products business unit, new orders for this segment increased by 22.6% compared to the prior year quarter. Global ridership has improved, but levels remain depressed and well below pre-pandemic levels, a trend which is expected to continue to adversely impact the Company's friction management consumable sales, particularly in international markets. However, the Company is maintaining its optimistic outlook regarding longer-term trends in the North American freight and transit markets given supply chain and transportation needs coupled with government-subsidized investment expected.

The Company expects its businesses will continue to directly benefit from infrastructure investment activity, particularly if a U.S. Federal infrastructure bill is passed by Congress. Additionally, with the proceeds from the Piling Products division divestiture coupled with the additional flexibility and capacity resulting from its recently amended credit agreement, the Company believes that it has significant funding capacity to execute on organic and acquisitive growth opportunities in 2022 and beyond.

Results of the Quarter

	Three Months Ended September 30,		Percent Increase/ (Decrease)	Percent of Total Net Sales Three Months Ended September 30,	
	2021	2020		2021	2020
Net Sales:					
Rail Technologies and Services	\$ 73,942	\$ 63,988	15.6 %	56.9 %	54.1 %
Infrastructure Solutions	56,111	54,377	3.2	43.1	45.9
Total net sales	<u>\$ 130,053</u>	<u>\$ 118,365</u>	9.9 %	100.0 %	100.0 %
Gross Profit:					
	Three Months Ended September 30,		Percent Increase/ (Decrease)	Gross Profit Percentage Three Months Ended September 30,	
	2021	2020		2021	2020
Rail Technologies and Services	\$ 13,928	\$ 12,957	7.5 %	18.8 %	20.2 %
Infrastructure Solutions	8,348	9,104	(8.3)	14.9	16.7
Total gross profit	<u>\$ 22,276</u>	<u>\$ 22,061</u>	1.0 %	17.1 %	18.6 %
Expenses:					
	Three Months Ended September 30,		Percent Increase/ (Decrease)	Percent of Total Net Sales Three Months Ended September 30,	
	2021	2020		2021	2020
Selling and administrative expenses	\$ 20,056	\$ 17,066	17.5 %	15.4 %	14.4 %
Amortization expense	1,462	1,428	2.4	1.1	1.2
Interest expense - net	722	940	(23.2)	0.6	0.8
Other income - net	(2,880)	(209)	**	(2.2)	(0.2)
Income from continuing operations before income taxes	\$ 2,916	\$ 2,836	2.8 %	2.2 %	2.4 %
Income tax expense (benefit)	676	(13,742)	104.9	0.5	(11.6)
Income from continuing operations	\$ 2,240	\$ 16,578	(86.5 %)	1.7 %	14.0 %
Net loss attributable to noncontrolling interest	(30)	—	**	(0.0)	—
Income from continuing operations attributable to L.B. Foster Company	<u>\$ 2,270</u>	<u>\$ 16,578</u>	(86.3 %)	1.7 %	14.0 %

** Results of the calculation are not considered meaningful for presentation purposes.

Third Quarter 2021 Compared to Third Quarter 2020 – Company Analysis

Net sales of \$130,053 for the three months ended September 30, 2021 increased by \$11,688, or 9.9%, compared to the prior year quarter. The sales growth was attributable to a \$9,954, or 15.6%, increase in the Rail Technologies and Services segment and an increase in the Infrastructure Solutions segment of \$1,734, or 3.2%. The increased sales were driven by new rail delivery volume, easing of pandemic restrictions in the U.K. leading to an uptick in operational activity, and increased demand in our Fabricated Steel Products and Precast Concrete Products business units.

Gross profit increased by \$215 compared to the prior year quarter to \$22,276 for the three months ended September 30, 2021. The increase in gross profit was attributable to the Rail Technologies and Services segment, which increased by 7.5% over the prior year quarter. The increase was partially offset by Infrastructure Solutions segment, which decreased by 8.3%, driven primarily by the year-over-year decline in sales in the Coatings and Measurement business unit. Gross profit margin for the three months ended September 30, 2021 was 17.1%, or 150 basis points (“bps”) lower than the prior year quarter, realized in both segments.

Selling and administrative expenses increased by \$2,990, or 17.5%, compared to the prior year quarter. The increase in expense was primarily driven by an increase of \$1,698 in personnel expenses, including travel and entertainment, and \$898 in third-party professional service expenses primarily related to the Company’s strategic initiatives. As a percent of sales, selling and administrative expenses increased by 100 bps compared to the prior year quarter. Other income - net increased by \$2,671 compared to the prior year quarter, due to the \$2,741 gain on sale of the Piling Products division in the current year quarter.

The Company's effective income tax rate for the three months ended September 30, 2021 was 23.2%, compared to (484.6 %) in the prior year quarter. The Company's effective income tax rate for the quarter ended September 30, 2021 differed from the federal statutory rate of 21% primarily due to state income taxes, nondeductible expenses, and research tax credits. The Company's effective income tax rate for the three months ended September 30, 2020 included a discrete income tax benefit of \$15,824 related to the disposition of the Test and Inspection Services business.

Net income from continuing operations for the third quarter of 2021 was \$2,240, or \$0.21 per diluted share, compared to \$16,578, or \$1.56 per diluted share, in the prior year quarter. The decrease was driven by increases in selling and administrative expense and the discrete income tax benefit realized in the prior year quarter.

Results of Operations – Segment Analysis

Rail Technologies and Services

	Three Months Ended September 30,		Increase/(Decrease) 2021 vs. 2020	Percent Increase/(Decrease) 2021 vs. 2020
	2021	2020		
Net sales	\$ 73,942	\$ 63,988	\$ 9,954	15.6 %
Gross profit	\$ 13,928	\$ 12,957	\$ 971	7.5 %
Gross profit percentage	18.8 %	20.2 %	(1.4 %)	(7.0 %)
Segment profit	\$ 3,555	\$ 3,742	\$ (187)	(5.0 %)
Segment profit percentage	4.8 %	5.8 %	(1.0 %)	(17.2 %)

Third Quarter 2021 Compared to Third Quarter 2020

The Rail Technologies and Services segment sales for the three months ended September 30, 2021 increased by \$9,954, or 15.6%, compared to the prior year quarter. The increase in sales was driven by both the Rail Products and Rail Technologies business units, which increased by \$7,853, or 19.4%, and \$2,101, or 8.9%, respectively, from the prior year quarter. The increase in the Rail Products business line was driven by the increase in rail distribution sales, while the increase in the Rail Technologies business unit was related to increases in our European operations attributable to increased contract service revenue following the easing of pandemic related restrictions, as well as an increase in North American friction management sales stemming from a modest recovery in markets served.

The Rail Technologies and Services segment gross profit increased by \$971, or 7.5%, from the prior year quarter. The increase was driven by increased sales volume across both business units. Segment gross profit margin decreased by 140 bps as a result of revenue increases in our lower-margin distribution business and inflationary cost pressure versus the prior year quarter. Segment profit was \$3,555, a \$187 decrease over the prior year quarter. Selling and administrative expenses incurred by the segment increased by \$834 compared to the prior year period, primarily attributable to increased personnel related costs, as well as increased travel costs.

During the current quarter, the Rail Technologies and Services segment had an increase in new orders of 22.6% compared to the prior year period, driven mostly by the Rail Products business unit, although improvements were realized in both business units. Backlog as of September 30, 2021 was \$109,815, an increase of \$756, or 0.7%, from September 30, 2020, driven by increases in the Rail Products business unit. Backlog remains strong, and was above pre-pandemic levels as of September 30, 2021.

Infrastructure Solutions

	Three Months Ended September 30,		Increase/(Decrease) 2021 vs. 2020	Percent Increase/(Decrease) 2021 vs. 2020
	2021	2020		
Net sales	\$ 56,111	\$ 54,377	\$ 1,734	3.2 %
Gross profit	\$ 8,348	\$ 9,104	\$ (756)	(8.3 %)
Gross profit percentage	14.9 %	16.7 %	(1.8 %)	(11.1 %)
Segment profit	\$ 3,484	\$ 2,375	\$ 1,109	46.7 %
Segment profit percentage	6.2 %	4.4 %	1.8 %	42.2 %

Third Quarter 2021 Compared to Third Quarter 2020

On September 24, 2021, the Company completed the sale of its Piling Products division. Proceeds expected from the sale were \$23,902 and resulted in a net gain of \$2,741. The Company retained all pre-closing receivables and liabilities associated with the division. The sale includes substantially all inventory held by the Company associated with the division, as well as the related fixed assets. The Piling Products division is included in the Fabricated Steel business unit. The Piling Products division produced revenues of \$16,310 and \$14,823 for the three months ended September 30, 2021 and 2020, respectively.

The Infrastructure Solutions segment sales for the three months ended September 30, 2021 increased by \$1,734, or 3.2%, compared to the prior year quarter. The increase in revenues for the third quarter of 2021 was attributable to increases in both its Fabricated Steel and Precast Concrete Products business units, which had increases in sales compared to the prior year quarter of \$3,672, or 16.6%, and \$2,227, or 14.1%, respectively. These increases in revenues were partially offset by the Coatings and Measurement business unit, which experienced a sales reduction of \$4,165 compared to the quarter ended September 30, 2020, driven by unfavorable conditions in the midstream energy market, which has resulted from the current excess capacity in U.S. pipeline infrastructure and general lack of pipeline infrastructure investment.

Infrastructure Solutions gross profit decreased by \$756, or 8.3%, from the prior year quarter. The decline was primarily attributable to decreases in sales volume in the Coatings and Measurement business unit, which accounted for a significant portion of the overall segment gross profit decline, and was also the primary driver of segment gross profit margin decline of 180 bps for the third quarter of 2021 when compared to the prior year quarter. Additionally, inflationary cost pressure in the current quarter negatively impacted the gross profit margins of the Precast Concrete Products and Fabricated Steel Products businesses. Other income for the third quarter of 2021 increased by \$2,671 when compared to the prior quarter, primarily due to the Piling Products division sale in the current quarter which resulted in a gain of \$2,741. The segment profit of \$3,484 was an improvement of \$1,109 from the prior year quarter segment profit of \$2,375.

During the quarter, the Infrastructure Solutions segment had an decrease in new orders of 11.5% compared to the prior year quarter, driven by a decrease in Fabricated Steel Products, which was partially offset by an increase in Precast Concrete Products. Backlog as of September 30, 2021 was \$121,911, a decrease of \$4,220, or 3.3%, from September 30, 2020 driven entirely by Fabricated Steel Products, with the decrease in backlog related to the divested Piling Products division representing \$23,890 of the decrease. The decline in the Fabricated Steel Products backlog was partially offset by increases in both Precast Concrete Products and Coatings and Measurement backlog compared to September 30, 2020. Adjusting for the Piling Products division divestiture, Infrastructure Solutions backlog was up \$19,670, or 19.6%.

Nine Month Results

	Nine Months Ended September 30,		Percent Increase/ (Decrease)	Percent of Total Net Sales Nine Months Ended September 30,	
	2021	2020		2021	2020
Net Sales:					
Rail Technologies and Services	\$ 228,956	\$ 209,131	9.5 %	57.1 %	54.8 %
Infrastructure Solutions	171,699	172,704	(0.6)	42.9	45.2
Total net sales	<u>\$ 400,655</u>	<u>\$ 381,835</u>	4.9 %	100.0 %	100.0 %
Gross Profit:					
Rail Technologies and Services	\$ 43,393	\$ 40,470	7.2 %	19.0 %	19.4 %
Infrastructure Solutions	23,874	32,851	(27.3)	13.9	19.0
Total gross profit	<u>\$ 67,267</u>	<u>\$ 73,321</u>	(8.3 %)	16.8 %	19.2 %
Expenses:					
Selling and administrative expenses	\$ 57,849	\$ 56,273	2.8 %	14.4 %	14.7 %
Amortization expense	4,397	4,271	3.0	1.1	1.1
Interest expense - net	2,454	2,841	(13.6)	0.6	0.7
Other income - net	(2,751)	(1,909)	44.1	(0.7)	(0.5)
Income from continuing operations before income taxes	\$ 5,318	\$ 11,845	(55.1 %)	1.3 %	3.1 %
Income tax expense (benefit)	1,494	(11,698)	112.8	0.4	(3.1)
Income from continuing operations	\$ 3,824	\$ 23,543	(83.8 %)	1.0 %	6.2 %
Net loss attributable to noncontrolling interest	(64)	—	**	(0.0)	—
Income from continuing operations attributable to L.B. Foster Company	<u>\$ 3,888</u>	<u>\$ 23,543</u>	(83.5 %)	1.0 %	6.2 %

** Results of the calculation are not considered meaningful for presentation purposes.

First Nine Months 2021 Compared to First Nine Months 2020 – Company Analysis

Net sales of \$400,655 for the nine months ended September 30, 2021 increased by \$18,820, or 4.9%, compared to the prior year period. The sales growth was attributable to an increase of \$19,825, or 9.5%, within the Rail Technologies and Services segment. The increase was partially offset by a sales reduction in the Infrastructure Solutions segment of \$1,005, or 0.6%.

Gross profit decreased by \$6,054 compared to the prior year period to \$67,267 for the nine months ended September 30, 2021. The Rail Technologies and Services segment's gross profit increased by 7.2%. The decline in the Company's gross profit was attributable to the Infrastructure Solutions segment, which decreased by 27.3%, driven by the year-over-year decline in the Coatings and Measurement business unit. Gross profit margin for the nine months ended September 30, 2021 was 16.8%, or 240 bps lower than the prior year period, due primarily to Infrastructure Solutions.

Selling and administrative expenses increased by \$1,576, or 2.8%, compared to the prior year period. The increase in expense was primarily driven by third-party professional service expenses of \$1,361. As a percent of sales, selling and administrative expenses decreased 30 bps compared to the prior year period. Other income - net increased by \$842 compared to the prior year period primarily from the gain on sale of the Piling Products division of \$2,741 in the nine months ended September 30, 2021, while a non-routine distribution from an unconsolidated partnership of \$1,874 was received in the prior year period.

The Company's effective income tax rate for the nine months ended September 30, 2021 was 28.1%, compared to (98.8 %) in the prior year period. The Company's effective income tax rate for the nine months ended September 30, 2021 differed from the federal statutory rate of 21% primarily due to state income taxes, nondeductible expenses, and research tax credits. The Company's effective income tax rate for the nine months ended September 30, 2020 included a discrete income tax benefit of \$15,824 related to the disposition of the Test and Inspection Services business.

Net income from continuing operations for the nine months ended September 30, 2021 was \$3,824, or \$0.36 per diluted share, compared to \$23,543, or \$2.21 per diluted share, in the prior year period. The year-over-year reduction was driven by the decrease in gross profit, increased selling and administrative expenses, and the discrete income tax benefit realized in the prior year period. This was partially offset by the increase in other income resulting from the divestiture gain.

Results of Operations – Segment Analysis

Rail Technologies and Services

	Nine Months Ended September 30,		Increase/(Decrease) 2021 vs. 2020	Percent Increase/(Decrease) 2021 vs. 2020
	2021	2020		
Net sales	\$ 228,956	\$ 209,131	\$ 19,825	9.5 %
Gross profit	\$ 43,393	\$ 40,470	\$ 2,923	7.2 %
Gross profit percentage	19.0 %	19.4 %	(0.4 %)	(2.1 %)
Segment profit	\$ 12,050	\$ 10,729	\$ 1,321	12.3 %
Segment profit percentage	5.3 %	5.1 %	0.2 %	2.6 %

First Nine Months 2021 Compared to First Nine Months 2020

The Rail Technologies and Services segment sales for the nine months ended September 30, 2021 increased by \$19,825, or 9.5%, compared to the prior year period, driven by increases in the Rail Products and Rail Technologies business units of \$11,830, or 8.2%, and \$7,996 or 12.4%, respectively. The sales increase was primarily driven by rises in demand due to more favorable conditions in markets served for the first nine months of 2021 versus the first nine months of 2020, as the pandemic impact on freight and transit activity began to modestly improve.

The Rail Technologies and Services segment gross profit increased by \$2,923, or 7.2%, from the prior year period. The increase was driven by increased sales volume across both business units, including increases related to activity on the London Crossrail project. Segment gross profit margin of 19.0% for the nine months ended September 30, 2021 declined by 40 basis points when compared to the prior year period, driven by volume increases in lower margin rail products coupled with some inflationary cost pressures. Segment profit was \$12,050, a \$1,321 increase over the prior year period. Selling and administrative expenses incurred by the segment increased by \$161 compared to the prior year period, primarily attributable to personnel related costs. Other income declined \$1,138 from the prior year period primarily from the reversal of an estimated disposal liability in the prior year period.

During the nine months ended September 30, 2021, the Rail Technologies and Services segment had an increase in new orders of 2.7% compared to the prior year period. The increase was related to increased order activity within the Company's Rail Technologies business unit.

Infrastructure Solutions

	Nine Months Ended September 30,		Decrease 2021 vs. 2020	Percent Decrease 2021 vs. 2020
	2021	2020		
Net sales	\$ 171,699	\$ 172,704	\$ (1,005)	(0.6 %)
Gross profit	\$ 23,874	\$ 32,851	\$ (8,977)	(27.3 %)
Gross profit percentage	13.9 %	19.0 %	(5.1 %)	(26.9 %)
Segment profit	\$ 5,165	\$ 8,836	\$ (3,671)	(41.5 %)
Segment profit percentage	3.0 %	5.1 %	(2.1 %)	(41.2 %)

First Nine Months 2021 Compared to First Nine Months 2020

On September 24, 2021, the Company completed the sale of its Piling Products division. Proceeds from the sale were \$23,902 and resulted in a net gain of \$2,741. The Company is retaining all pre-closing receivables and liabilities associated with the division. The sale includes substantially all inventory held by the Company associated with the division, as well as the related fixed assets. The

Piling Products division is included in the Fabricated Steel business unit. The Piling Products division produced revenues of \$59,201 and \$45,882 for the nine months ended September 30, 2021 and 2020, respectively.

The Infrastructure Solutions segment sales for the nine months ended September 30, 2021 decreased by \$1,005, or 0.6%, compared to the prior year period. The decline was wholly attributable to the Coatings and Measurement business unit, which experienced a sales reduction of \$28,557 compared to the nine months ended September 30, 2020, driven by unfavorable conditions in the midstream energy market, which have resulted from excess capacity in U.S. pipeline infrastructure and general lack of pipeline infrastructure investment. Partially offsetting the sales decline, both the Fabricated Steel Products and Precast Concrete Products business units had increases in sales compared to the prior year period of \$19,645 and \$7,907, respectively.

Infrastructure Solutions gross profit for the nine months ended September 30, 2021 decreased by \$8,977, or 27.3%, from the prior year period. The decrease was primarily attributable to decreases in sales volume in the Coatings and Measurement business unit, which accounted for the overall segment gross profit decline, and was also the primary driver of segment gross profit margin decline of 510 bps for the nine months ended September 30, 2021 when compared to the prior year period. Additionally, inflationary cost pressure in the current period negatively impacted the gross profit margins of the Precast Concrete Products and Fabricated Steel Products businesses. Selling and administrative expenses for the segment declined by \$1,095 from the prior year period, primarily from decreases in personnel related expenses, bad debt expense, and general administrative expenses. Other income increased by \$4,269 from the prior year period primarily due to the Piling Products division sale in the current period resulting in a gain of \$2,741, while the prior year period was impacted by relocation and restructuring costs. The segment profit of \$5,165 was a reduction of \$3,671 from the prior year period segment profit of \$8,836.

During the nine months ended September 30, 2021, the Infrastructure Solutions segment had an increase in new orders of 6.7% compared to the prior year period, driven primarily by an increase in Precast Concrete Products partially offset by Fabricated Steel Products.

Other

Segment Backlog

Total Company backlog is summarized by business segment in the following table for the periods indicated:

	September 30, 2021	December 31, 2020	September 30, 2020
Rail Technologies and Services	\$ 109,815	\$ 121,231	\$ 109,059
Infrastructure Solutions	121,911	127,001	126,131
Total backlog	\$ 231,726	\$ 248,232	\$ 235,190

The backlog for Infrastructure Solutions includes \$1,961, \$32,042, and \$25,851 related to the divested Piling Products division as of September 30, 2021, December 31, 2020, and September 30, 2020, respectively, in the above table.

The Company's backlog represents the sales price of received customer purchase orders and any contracts for which the performance obligations have not been met, and therefore are precluded from revenue recognition. Although the Company believes that the orders included in backlog are firm, customers may cancel or change their orders with limited advance notice; however, these instances have been rare. Backlog should not be considered a reliable indicator of the Company's ability to achieve any particular level of revenue or financial performance. While a considerable portion of the Company's business is backlog-driven, certain product lines within the Company are not driven by backlog as the orders are fulfilled shortly after they are received.

Liquidity and Capital Resources

The Company's principal sources of liquidity are its existing cash and cash equivalents, cash generated by operations, and the available capacity under the revolving credit facility, which provides for a total commitment of up to \$130,000. The Company's primary needs for liquidity relate to working capital requirements for operations, capital expenditures, debt service obligations, and payments related to the Union Pacific Railroad Settlement. The Company's total debt was \$32,453 and \$45,024 as of September 30, 2021 and December 31, 2020, respectively, and was primarily comprised of borrowings under its revolving credit facility.

The following table reflects available funding capacity, subject to covenant restrictions, as of September 30, 2021:

	September 30, 2021
Cash and cash equivalents	\$ 6,405
Credit agreement:	
Total availability under the credit agreement	130,000
Outstanding borrowings on revolving credit facility	(32,268)
Letters of credit outstanding	(665)
Net availability under the revolving credit facility	97,067
Total available funding capacity	<u>\$ 103,472</u>

The Company's cash flows are impacted from period to period by fluctuations in working capital. While the Company places an emphasis on working capital management in its operations, factors such as its contract mix, commercial terms, customer payment patterns, and market conditions as well as seasonality may impact its working capital. The Company regularly assesses its receivables and contract assets for collectability, and provides allowances for credit losses where appropriate. The Company believes that its reserves for credit losses are appropriate as of September 30, 2021, but adverse changes in the economic environment and adverse financial conditions of its customers resulting from, among other things, the COVID-19 pandemic, may impact certain of its customers' ability to access capital and pay the Company for its products and services, as well as impact demand for its products and services.

The changes in cash and cash equivalents for the nine months ended September 30, 2021 and 2020 were as follows:

	Nine Months Ended September 30,	
	2021	2020
Net cash (used in) provided by continuing operating activities	\$ (6,810)	\$ 16,201
Net cash provided by (used in) continuing investing activities	18,910	(8,688)
Net cash used in continuing financing activities	(13,030)	(11,147)
Effect of exchange rate changes on cash and cash equivalents	24	(571)
Net cash used in discontinued operations	(253)	(662)
Net decrease in cash and cash equivalents	<u>\$ (1,159)</u>	<u>\$ (4,867)</u>

Cash Flow from Operating Activities

During the nine months ended September 30, 2021, cash flows used in continuing operating activities were \$6,810, compared to cash flows provided by continuing operating activities of \$16,201 during the prior year to date period. For the nine months ended September 30, 2021, the net income from continuing operations and adjustments to net income from continuing operating activities provided \$13,880, compared to \$26,841 in the 2020 period. Working capital and other assets and liabilities used \$20,690 in the current period, compared to \$10,640 in the prior year period. During the nine months ended September 30, 2021 and 2020, the Company made payments of \$4,000 under the terms of the concrete tie settlement agreement with Union Pacific Railroad.

The Company's calculation for days sales outstanding at September 30, 2021 and December 31, 2020 was 46 and 51 days, respectively, and the Company believes it has a high quality receivables portfolio.

Cash Flow from Investing Activities

Capital expenditures for the nine months ended September 30, 2021 and 2020 were \$3,568 and \$7,650, respectively. The current period expenditures primarily relate to the expansion of the Precast Concrete Products business line in Texas and the implementation of the SAP ERP system at additional Company divisions. Expenditures for the nine months ended September 30, 2020 related to the purchase of a continuous welded rail car and unloader within the Rail Technologies and Services segment, facility start-up expenditures within the Infrastructure Solutions segment, and general plant and operational improvements throughout the Company. During the nine months ended September 30, 2021, the Company received proceeds of \$22,707 from the disposition of the Piling Products division.

Cash Flow from Financing Activities

During the nine months ended September 30, 2021 and 2020, the Company had a reduction in outstanding debt of \$12,519 and \$9,033, respectively. The decrease in debt for the nine months ended September 30, 2021 was the result of the application of the proceeds of the Piling Products division, while the decrease in 2020 was primarily attributable to the utilization of excess cash generated through operating activities. Treasury stock acquisitions of \$549 and \$1,660 for the nine months ended September 30, 2021

and 2020, respectively, represent stock repurchases from employees to satisfy their income tax withholdings in connection with the vesting of stock awards.

Financial Condition

As of September 30, 2021, the Company had \$6,405 in cash and cash equivalents. The Company's cash management priority continues to be short-term maturities and the preservation of its principal balances. As of September 30, 2021, approximately \$3,141 of the Company's cash and cash equivalents were held in non-domestic bank accounts. The Company principally maintains its cash and cash equivalents in accounts held by major banks and financial institutions.

The Company's principal uses of cash in recent years have been to fund its operations, including capital expenditures, and to service its indebtedness. The Company views its liquidity as being dependent on its results of operations, changes in working capital needs, and its borrowing capacity. As of September 30, 2021, its revolving credit facility had \$97,067 of net availability, while the Company had \$32,453 in total debt. The Company's current ratio as of September 30, 2021 was 1.99 compared to 2.05 as of December 31, 2020.

On August 13, 2021, the Company entered into the Credit Agreement, which increases the total commitments under the revolving credit facility to \$130,000 from \$115,000, extends the maturity from April 30, 2024 to August 13, 2026, and provides more favorable covenant terms. Borrowings under the Credit Agreement bear interest rates based upon either the base rate or LIBOR rate plus applicable margins. The Company believes that the combination of its cash and cash equivalents, cash generated from operations, and the capacity under its revolving credit facility should provide the Company with sufficient liquidity to provide the flexibility to operate the business in a prudent manner and enable the Company to continue to service its outstanding debt. For a discussion of the terms and availability of the credit facilities, please refer to Note 10 of the Notes to Condensed Consolidated Financial Statements contained in this Quarterly Report on Form 10-Q.

To reduce the impact of interest rate changes on outstanding variable-rate debt, the Company entered into forward starting LIBOR-based interest rate swaps with notional values totaling \$50,000 and \$20,000, effective February 28, 2017 and March 1, 2022, respectively, at which point they effectively converted a portion of the debt from variable to fixed-rate borrowings during the term of the swap contract. During 2020, the Company dedesignated its cash flow hedges and now accounts for the \$50,000 tranche of interest rate swaps on a mark-to-market basis with changes in fair value recorded in current period earnings. As of September 30, 2021 and December 31, 2020, the swap liability was \$445 and \$1,097, respectively.

Critical Accounting Policies

The Condensed Consolidated Financial Statements have been prepared in conformity with accounting principles generally accepted in the United States. When more than one accounting principle, or method of its application, is generally accepted, management selects the principle or method that, in its opinion, is appropriate in the Company's specific circumstances. Application of these accounting principles requires management to reach opinions regarding estimates about the future resolution of existing uncertainties. As a result, actual results could differ from these estimates. In preparing these financial statements, management has reached its opinions regarding the best estimates and judgments of the amounts and disclosures included in the financial statements giving due regard to materiality. A summary of the Company's critical accounting policies and estimates is included in Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations - Critical Accounting Policies and Estimates in the Company's Annual Report on Form 10-K for the year ended December 31, 2020.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

This item is not applicable to a smaller reporting company.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

L.B. Foster Company carried out an evaluation, under the supervision and with the participation of the Company's management, including the Chief Executive Officer and the Chief Financial Officer, of the effectiveness of the design and operation of the Company's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended) as of September 30, 2021. Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures were effective as of such date such that the information required to be disclosed by the Company in reports filed under the Exchange Act is (i) recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms and (ii) accumulated and communicated to management, including the chief executive officer, chief financial officer, or person performing such functions, as appropriate to allow timely decisions regarding disclosure.

Changes in Internal Control Over Financial Reporting

There were no changes to our “internal control over financial reporting” (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the nine months ended September 30, 2021, and that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Limitations on Effectiveness of Controls and Procedures

In designing and evaluating disclosure controls and procedures and internal control over financial reporting, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures and internal control over financial reporting must reflect the fact that there are resource constraints and that management is required to apply judgment in evaluating the benefits of possible controls and procedures relative to their costs.

PART II. OTHER INFORMATION**(Dollars in thousands, except share data)****Item 1. Legal Proceedings**

See Note 16 of the Notes to Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q, which is incorporated herein by reference.

Item 1A. Risk Factors

This item is not applicable to a smaller reporting company.

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

The Company's purchases of equity securities for the three months ended September 30, 2021 were as follows:

	Total number of shares purchased	Average price paid per share	Total number of shares purchased as part of publicly announced plans or programs	Approximate dollar value of shares that may yet be purchased under the plans or programs
July 1, 2021 - July 31, 2021	—	\$ —	—	\$ —
August 1, 2021 - August 31, 2021	—	—	—	—
September 1, 2021 - September 30, 2021	20	15.06	—	—
Total	20	\$ 15.06	—	\$ —

Item 3. Defaults Upon Senior Securities

Not applicable.

Item 4. Mine Safety Disclosures

This item is not applicable to the Company.

Item 5. Other Information

None.

Item 6. Exhibits

See Exhibit Index below.

Exhibit Index

<u>Exhibit Number</u>	<u>Description</u>
*2.1	Asset Purchase Agreement between L.B. Foster Company and J.D. Fields & Company, Inc. dated September 24, 2021.
10.1	Fourth Amended and Restated Credit Agreement dated August 13, 2021, between Registrant and PNC Bank, Citizens Bank, N.A., Wells Fargo Bank, National Association, Bank of America, N.A., and BMO Harris Bank, National Association is incorporated herein by reference to Exhibit 10.1 to the Current Report on Form 8-K, File No. 0-10436, filed on August 16, 2021.
*31.1	Certification of Chief Executive Officer under Section 302 of the Sarbanes-Oxley Act of 2002.
*31.2	Certification of Chief Financial Officer under Section 302 of the Sarbanes-Oxley Act of 2002.
*32.0	Certification of Chief Executive Officer and Chief Financial Officer under Section 906 of the Sarbanes-Oxley Act of 2002.
*101.INS	XBRL Instance Document-the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
*101.SCH	XBRL Taxonomy Extension Schema Document.
*101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document.
*101.DEF	XBRL Taxonomy Extension Definition Linkbase Document.
*101.LAB	XBRL Taxonomy Extension Label Linkbase Document.
*101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document.
*104	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101)

* Exhibits marked with an asterisk are filed herewith.

SIGNATURE

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

L.B. FOSTER COMPANY
(Registrant)

Date: **November 3, 2021**

By: /s/ William M. Thalman
William M. Thalman
Senior Vice President
and Chief Financial Officer
(Duly Authorized Officer of Registrant)

ASSET PURCHASE AGREEMENT

between

L.B. FOSTER COMPANY

and

J.D. FIELDS & COMPANY, INC.

dated as of

September 24, 2021

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EXHIBITS

Exhibit A	Form of Bill of Sale
Exhibit B	Form of Assignment and Assumption Agreement
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Exhibit E	Form of Intellectual Property Assignment Agreement
Exhibit F	Form of Transition Services Agreement

ANNEX

Annex 1	Inventory Spreadsheet
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Annex 2 Funds Flow Memorandum

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “**Agreement**”), dated as of September 24, 2021 is entered into between L.B. FOSTER COMPANY, a Pennsylvania corporation (“**Seller**”) and J.D. FIELDS & COMPANY, INC., a Texas corporation (“**Buyer**” and, together with Seller, each a “**Party**” and, collectively, the “**Parties**”).

RECITALS

WHEREAS, Seller is engaged through its Piling Division in the business of marketing, selling, and distributing steel piling for heavy civil and marine applications (the “**Business**”);

WHEREAS, Seller wishes to sell and assign to Buyer, and Buyer wishes to purchase and assume from Seller, substantially all the assets and liabilities of the Business, subject to the terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I DEFINITIONS

The following terms have the meanings specified or referred to in this ARTICLE I:

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, examination, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Agreement**” has the meaning set forth in the preamble.

“**Allocation Schedule**” has the meaning set forth in Section 2.08.

“**Assigned Contracts**” has the meaning set forth in Section 2.01(b).

“**Assignment and Assumption Agreement**” has the meaning set forth in Section 3.02(a)(ii).

“**Assignment and Assumption of Lease**” has the meaning set forth in Section 3.02(a)(iv).

“**Assumed Liabilities**” has the meaning set forth in Section 2.03.

“**Audited Financial Statements**” has the meaning set forth in Section 4.04.

“**Balance Sheet**” has the meaning set forth in Section 4.04.

“**Balance Sheet Date**” has the meaning set forth in Section 4.04.

“**Bill of Sale**” has the meaning set forth in Section 3.02(a)(i).

“**Books and Records**” has the meaning set forth in Section 2.01(j).

“**Business**” has the meaning set forth in the recitals.

“**Business Day**” means any day except Saturday, Sunday or any other day on which commercial banks located in Pittsburgh, Pennsylvania are authorized or required by Law to be closed for business.

“**Buyer**” has the meaning set forth in the preamble.

“**Buyer Closing Certificate**” has the meaning set forth in Section 7.03(d).

“**CERCLA**” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.

“**Closing**” has the meaning set forth in Section 3.01.

“**Closing Date**” has the meaning set forth in Section 3.01.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Confidentiality Agreement**” means the Confidentiality Agreement, dated as of May 26, 2021, between Buyer and Seller.

“**Contracts**” means all written or oral contracts, leases, mortgages, licenses, instruments, notes, commitments, undertakings, indentures and other agreements and legally binding arrangements.

“**Customer**” has the meaning set forth in Section 6.01 of this Agreement.

“**Deed**” has the meaning set forth in Section 3.02(a)(iii).

“**Direct Claim**” has the meaning set forth in Section 8.05(b).

“Disclosure Schedules” means the Disclosure Schedules delivered by Seller and Buyer concurrently with the execution and delivery of this Agreement.

“Dollars or \$” means the lawful currency of the United States.

“Employees” means those Persons employed by Seller who worked exclusively for the Business immediately prior to the Closing.

“Encumbrance” means any lien, pledge, mortgage, deed of trust, security interest, charge, claim, easement, encroachment or other similar encumbrance.

“Environmental Claim” means any Governmental Order, action, suit, claim, investigation or other legal proceeding by any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

“Environmental Law” means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term “Environmental Law” includes, without limitation, the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

“Environmental Notice” means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

“Environmental Permit” means any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

“ERISA Affiliate” shall mean any other Person or entity under common control with the Seller within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“Excluded Assets” has the meaning set forth in Section 2.02.

“Excluded Liabilities” has the meaning set forth in Section 2.04.

“Excluded UP Inventory” means inventory of the Business that is subject to a UP Purchase Order that is not cancelled within 90 days following the Closing Date.

“Financial Statements” has the meaning set forth in Section 4.04.

“FIRPTA Certificate” has the meaning set forth in Section 7.02(g).

“GAAP” means United States generally accepted accounting principles in effect from time to time.

“Governmental Authority” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“Governmental Order” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“Hazardous Materials” means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or man-made, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls.

“Indemnification Holdback Amount” has the meaning set forth in Section 2.05 of this Agreement.

“Indemnified Party” has the meaning set forth in Section 8.05.

“Indemnifying Party” has the meaning set forth in Section 8.05.

“Intellectual Property” means any and all of the following arising pursuant to the Laws of any jurisdiction throughout the world: (a) trademarks, service marks, trade names, and similar indicia of source of origin, all registrations and applications for registration thereof, and the goodwill connected with the use of and symbolized by the foregoing; (b) copyrights and all registrations and applications for registration thereof; (c) trade secrets and know-how; (d) patents and patent applications; (e) internet domain name registrations; and (f) other intellectual property and related proprietary rights.

“Intellectual Property Assignment Agreement” shall have the meaning set forth in Section 3.02(a)(v).

“Intellectual Property Agreements” means all licenses, sublicenses and other agreements by or through which other Persons grant Seller or Seller grants any other Persons any exclusive or non-exclusive rights or interests in or to any Intellectual Property Assets.

“Intellectual Property Assets” means all Intellectual Property that is owned by Seller and used solely in connection with the Business, including without limitation the Intellectual Property Registrations set forth on Section 4.11(a) of the Disclosure Schedules.

“Intellectual Property Registrations” means all Intellectual Property Assets that are subject to any issuance, registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including registered trademarks, domain names, and copyrights, issued and reissued patents and pending applications for any of the foregoing.

“Interim Balance Sheet” has the meaning set forth in Section 4.04.

“Interim Balance Sheet Date” has the meaning set forth in Section 4.04.

“Interim Financial Statements” has the meaning set forth in Section 4.04.

“Inventory” has the meaning set forth in Section 2.01(a).

“Inventory Spreadsheet” shall mean an electronic spreadsheet setting forth, as of a given date, the Inventory that is included in the Purchased Assets and the Inventory Value for such Inventory, including the categories of information and methods of calculation set forth on Annex 1.

“Inventory Value” means the Inventory Value as calculated and set forth in the Estimated Inventory Spreadsheet.

“Knowledge of Seller or Seller’s Knowledge” or any other similar knowledge qualification, means the actual or constructive knowledge of William F. Treacy, James M. Kempton, and Gregory Goad in each case after due inquiry.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

“**Leased Real Property**” has the meaning set forth in Section 4.10(b).

“**Leases**” has the meaning set forth in Section 4.10(b).

“**Liabilities**” means liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise.

“**Losses**” means losses, Taxes, damages, Liabilities, costs or expenses, deficiencies, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder; provided, however, that “Losses” shall not include punitive, consequential, or indirect damages, except to the extent actually awarded to a Governmental Authority or other third party.

“**Material Adverse Effect**” means any event, occurrence, fact, condition or change that is materially adverse to (a) the business, results of operations, financial condition or assets of the Business, taken as a whole, or (b) the ability of Seller to consummate the transactions contemplated hereby; *provided, however*, that “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which the Business operates; (iii) any changes in financial, banking or securities markets in general, including any disruption thereof and any decline in the price of any security or any market index or any change in prevailing interest rates; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any action required or permitted by this Agreement or any action taken (or omitted to be taken) with the written consent of or at the written request of Buyer; (vi) any matter of which Buyer is aware on the date hereof; (vii) any changes in applicable Laws or accounting rules (including GAAP) or the enforcement, implementation or interpretation thereof; (viii) the announcement, pendency or completion of the transactions contemplated by this Agreement, including losses or threatened losses of employees, customers, suppliers, distributors or others having relationships with the Seller and the Business; (ix) any natural or man-made disaster or acts of God; (x) any epidemics, pandemics, disease outbreaks, or other public health emergencies; or (xi) any failure by the Business to meet any internal or published projections, forecasts or revenue or earnings predictions (provided that the underlying causes of such failures (subject to the other provisions of this definition) shall not be excluded).

“**Owned Real Property**” has the meaning set forth in Section 4.10(a).

“**Permits**” means all permits, licenses, franchises, approvals, authorizations and consents required to be obtained from Governmental Authorities.

“Permitted Encumbrances” means (a) liens for Taxes not yet due and payable; (b) mechanics’, carriers’, workmen’s, repairmen’s or other like liens arising or incurred in the ordinary course of business; (c) easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property; and (d) other than with respect to Owned Real Property, liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business.

“Person” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“Purchase Price” has the meaning set forth in Section 2.05.

“Purchased Assets” has the meaning set forth in Section 2.01.

“Purchased UP Inventory” means inventory of the Business that is subject to a UP Purchase Order that is cancelled by UP within 90 days following the Closing Date.

“Real Property” means, collectively, the Owned Real Property and the Leased Real Property.

“Release” means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

“Representative” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“Restricted Area” has the meaning set forth in Section 6.01 of this Agreement.

“Restricted Business” has the meaning set forth in Section 6.01 of this Agreement.

“Restricted Period” has the meaning set forth in Section 6.01 of this Agreement.

“Restrictive Covenants” means the provisions of Section 6.01 of this Agreement.

“Seller” has the meaning set forth in the preamble.

“Seller Closing Certificate” has the meaning set forth in Section 7.02(d).

“Seller Employee Plan” means each plan, program, policy, practice, contract, agreement or other arrangement providing for employment, compensation, incentive or deferred compensation, severance, relocation, retention or change in control compensation or benefits, termination pay, retirement pay, profit-sharing, performance awards, stock or stock-related awards, fringe benefits or other employee benefits, including each “employee benefit plan”

within the meaning of Section 3(3) of the ERISA which is maintained, contributed to, or required to be contributed to by a Seller or with respect to which a Seller has or may have any Liability.

“**Tangible Personal Property**” has the meaning set forth in Section 2.01(e).

“**Taxes**” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties, unclaimed property or escheat, or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

“**Tax Return**” means any return, declaration, report, claim for refund, information return or statement or other document filed or required to be filed with respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“**Third-Party Claim**” has the meaning set forth in Section 8.05(a).

“**Transaction Documents**” means this Agreement, the Bill of Sale, the Assignment and Assumption Agreement, Deeds, the Assignment and Assumption of Lease, the Intellectual Property Assignment Agreement, the Transition Services Agreement and the other agreements, instruments and documents required to be delivered by the Parties at the Closing.

“**Transferred Employee**” has the meaning set forth in Section 6.02(a).

“**Transition Services Agreement**” has the meaning set forth in Section 3.02(a)(xiv).

“**UP**” means the Union Pacific Railroad.

“**UP Purchase Orders**” means (i) the outstanding purchase orders between the Company and UP as of the Closing Date, all of which are set forth on Section 2.01(b) of the Disclosure Schedules (the “**Pre-Closing UP Purchase Orders**”); and (ii) the purchased orders issued with respect to the material forecasted by UP on the Pre-Closing UP Purchase Orders as material to be purchased after the Closing Date but which is not as of the Closing Date subject to an issued purchase order.

“**UP Settlement Agreement**” means that certain Confidential Settlement and Release Agreement dated March 13, 2019 by and among L.B. Foster Company, CXT Incorporated and Union Pacific Railroad Company.

ARTICLE II PURCHASE AND SALE

Section 2.01 Purchase and Sale of Assets. Subject to the terms and conditions set forth herein, at the Closing, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall

purchase from Seller, all of Seller's right, title and interest in, to and under all of the tangible and intangible assets and properties that exist as of the Closing Date and exclusively relate to the Business, including, without limitation, the following (collectively, the "**Purchased Assets**"):

(a) all inventory, finished goods, raw materials, work in progress, packaging, supplies, parts and other inventories used or held for use in the Business, which, other than the representations contained in Section 4.09 of the Agreement, are delivered to Buyer hereunder on an AS-IS, WHERE-IS, WITH ALL FAULTS basis ("**Inventory**"), including the Purchased UP Inventory and excluding the Excluded UP Inventory;

(b) all outstanding purchase orders of the Business to the extent not fulfilled and posted to accounts receivable as of the Closing Date, other than the UP Purchase Orders set forth on Section 2.01(b) of the Disclosure Schedules;

(c) Contracts relating to the Business that are set forth on Section 2.01(c) of the Disclosure Schedules, including without limitation the Leases set forth on Section 4.10(b) of the Disclosure Schedules and the Intellectual Property Agreements set forth on Section 4.11(a) of the Disclosure Schedules but excluding the UP Purchase Orders (collectively, the "**Assigned Contracts**");

(d) all Intellectual Property Assets;

(e) all furniture, fixtures, equipment, supplies and other tangible personal property of the Business listed on Section 2.01(e) of the Disclosure Schedules (the "**Tangible Personal Property**");

(f) all Owned Real Property and Leased Real Property;

(g) all Permits, including Environmental Permits listed on Section 2.01(g) of the Disclosure Schedules; provided that such Permits shall only be transferred to Buyer as allowed under applicable Law;

(h) all causes of action, judgments and claims or demands of whatever kind or description arising out of or relating to the Business or the Purchased Assets, including without limitation, prepaid expenses, prepayments, advance payments, deposits, surety accounts and other similar deposits, including deposits with suppliers and utilities, other than prepaid income Taxes;

(i) all of Seller's rights under warranties, indemnities and all similar rights against third parties to the extent related to any Purchased Assets;

(j) originals, or where not available, copies, of all books and records which relate exclusively to the Business and the Purchased Assets as such Business is conducted and Purchased Assets are used in the Business as of the Closing Date, including books of account, ledgers and general, financial and accounting records, machinery and equipment maintenance files, customer lists, customer purchasing histories, price lists, distribution

lists, supplier lists, production data, quality control records and procedures, customer complaints and inquiry files, research and development files, records and data (including all correspondence with any Governmental Authority), sales material and records, material and research and files relating to the Intellectual Property Assets and the Intellectual Property Agreements, and excluding any Excluded Assets (“**Books and Records**”); and

- (k) all goodwill associated with any of the assets described in the foregoing clauses.

Section 2.02 Excluded Assets. Other than the Purchased Assets, Buyer expressly understands and agrees that it is not purchasing or acquiring, and Seller is not selling or assigning, any other assets or properties of Seller (all such assets and properties other than the Purchased Assets, the “**Excluded Assets**”), including the following assets and properties of Seller:

- (a) all accounts or notes receivable of the Business accruing prior to the Closing Date;
- (b) all cash and cash equivalents, bank accounts and securities of Seller;
- (c) all Contracts that are not Assigned Contracts, including without limitation the Chowchilla Sublease;
- (d) all Intellectual Property other than the Intellectual Property Assets;
- (e) the corporate seals, organizational documents, minute books, stock books, Tax Returns, books of account or other records having to do with the corporate organization of Seller, all employee-related or employee benefit-related files or records, other than personnel files of Transferred Employees, and any other books and records which Seller is prohibited from disclosing or transferring to Buyer under applicable Law and is required by applicable Law to retain, which books and records, to the extent they relate to or are used in the Business, are described on Section 2.02(e) of the Disclosure Schedules;
- (f) all insurance policies of Seller and all rights to applicable claims and proceeds thereunder;
- (g) all Tax assets (including duty and Tax refunds and prepayments) of Seller or any of its Affiliates;
- (h) all rights to any Action, suit or claim of any nature available to or being pursued by Seller, whether arising by way of counterclaim or otherwise, other than those relating to the Business or the Purchased Assets; and
- (i) the rights which accrue or will accrue to Seller under the Transaction Documents.

Section 2.03 Assumed Liabilities. Subject to the terms and conditions set forth herein, Buyer shall assume and agree to pay, perform and discharge when due any and all Liabilities and obligations arising out of or relating to Buyer's ownership and operation of the Business and the Purchased Assets on or after the Closing Date, other than the Excluded Liabilities (collectively, the "**Assumed Liabilities**"), including, without limitation, the following:

(a) all Liabilities and obligations arising under or relating to the Assigned Contracts, but only to the extent that such Liabilities and obligations thereunder arise or are required to be performed, respectively, after the Closing Date and do not relate to any failure to perform, improper performance, warranty or other breach, default or violation by Seller on or prior to the Closing;

(b) the Separation Pay and all Liabilities and obligations of Buyer or its Affiliates relating to employee benefits, compensation or other arrangements with respect to any Transferred Employee arising on or after the Closing Date;

(c) all Liabilities and obligations for (i) Taxes relating to the Business, the Purchased Assets or the Assumed Liabilities for any taxable period beginning after the Closing Date and (ii) Taxes for which Buyer is liable pursuant to Section 6.06 and Section 6.07; and

(d) all Liabilities and obligations of Seller set forth on Section 2.03(d) of the Disclosure Schedules.

Section 2.04 Excluded Liabilities. Buyer shall not assume and shall not be responsible to pay, perform or discharge any Liabilities or obligations of Seller other than the Assumed Liabilities (collectively, the "**Excluded Liabilities**"). Without limiting the generality of the foregoing, the Excluded Liabilities shall include, but not be limited to, the following:

(a) any accrued expenses, accounts payable, and deferred revenue of the Business as of the Closing Date;

(b) any Liabilities or obligations arising out of or relating to (i) Seller's ownership or operation of the Business prior to the Closing Date, (ii) Seller's ownership of the Purchased Assets prior to the Closing Date, and (iii) the Assigned Contracts prior to the Closing Date;

(c) any Liabilities or obligations relating to or arising out of the Excluded Assets;

(d) any Liabilities or obligations for (i) Taxes relating to the Business, the Purchased Assets or the Assumed Liabilities for any taxable period ending on or prior to the Closing Date and (ii) Taxes for which Seller is liable pursuant to Section 6.06 and Section 6.07;

(e) other than the Separation Pay and except as provided in the Transition Services Agreement, any Liabilities of Seller arising under or in connection with any benefits, compensation or other arrangements with respect to any present or former employee or service provider of Seller;

(f) any Liabilities or obligations arising or incurred by Seller or its Representatives or Affiliates in connection with the negotiation, preparation, investigation and performance of this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby, including, without limitation, fees and expenses of counsel, accountants, consultants, advisers and others;

(g) any Liabilities in respect of any pending or threatened Action arising out of, relating to or otherwise in respect of the operation of the Business or the Purchased Assets, including without limitation any Liability related to the matter *Jay-Reese Contractors v. L.B. Foster Company, Roman Gwiscz, and Ricky Richardson*, an action filed in the 424th District Court for Burnet County, Texas;

(h) any Liabilities associated with the UP Settlement Agreement, the UP Purchase Orders and the Excluded UP Inventory;

(i) any Liabilities associated with debt, loans or credit facilities of Seller or the Business owing to financial institutions; and

(j) any Liabilities arising out of, in respect of or in connection with the failure by Seller or any of its Affiliates to comply with any Law or Governmental Order.

Section 2.05 Purchase Price. The consideration for the Purchased Assets shall be Buyer's assumption of the Assumed Liabilities plus an amount of cash equal to (i) the Inventory Value as of the Closing Date, as the same may be adjusted pursuant to the terms of this Agreement, plus (ii) \$4,192,899 (collectively, the "**Purchase Price**"). At the Closing, Buyer shall pay to Seller, or to a third party on behalf of Seller as set forth on the Funds Flow Memorandum attached hereto as Annex 2 (the "**Funds Flow Memorandum**"), an amount, in cash, equal to \$22,716,931.20, which represents (x) the Purchase Price calculated based on the Inventory Value set forth in the Inventory Spreadsheet prepared as of the Closing Date, which shall be delivered to Buyer at least one Business Day prior to the Closing Date (the "**Estimated Inventory Spreadsheet**"); plus (y) \$10,250.18, which represents the parties' good faith estimate, as of the Closing Date, of the net amount of Seller's and Buyer's portions of the aggregate amounts due from and to Seller, as the case may be, pursuant to Section 6.06 and Section 6.07, in each case as set forth on the Funds Flow Memorandum; minus (z) \$1,195,088 (the "**Indemnification Holdback Amount**") (the "**Closing Payment**"), by wire transfer of immediately available funds to accounts designated in writing by Seller to Buyer on the Funds Flow Memorandum.

Section 2.06 Indemnification Holdback Amount. The Indemnification Holdback Amount is being withheld by Buyer for the purpose of allowing Buyer to recover therefrom amounts due from Seller pursuant to the indemnification obligations of Section 8.02 hereof.

(a) On the date that is six (6) months after the Closing Date (the “**Holdback Payment Date**”), Buyer shall pay the Indemnification Holdback Amount by wire transfer of immediately available funds to the account designated by Seller in writing to Buyer at least two Business Days prior to such date; provided that, the amount paid to Seller pursuant to this Section 2.06(a) shall be reduced dollar-for-dollar for any pending or unresolved claims made by Buyer pursuant to Section 8.02 and Section 2.06(b) and any recovery from the Indemnification Holdback Amount made by Buyer on or prior to the Holdback Payment Date. If Buyer seeks recovery from the Indemnification Holdback Amount on or prior to the Holdback Payment Date pursuant to its rights under Section 2.06(b), then Buyer shall provide Seller with an accounting thereof.

(b) Until the Holdback Payment Date, Buyer’s remedy under Section 8.02 of this Agreement will be to first seek recovery from the Indemnification Holdback Amount. If the Indemnification Holdback Amount is not sufficient to cover the aggregate amount that may be due to Buyer from Seller pursuant to Section 8.02 hereof, then Buyer shall inform Seller in writing of such deficiency (with written support therefor) and Seller shall pay Buyer the undisputed amount of such deficiency by wire transfer of immediately available funds within five (5) days of receipt of such written notice.

(c) After the Holdback Payment Date, Buyer’s remedy under Section 8.02 of this Agreement shall be made directly against Seller.

Section 2.07 Purchase Price Adjustment.

(a) Within twenty (20) Business Days after the Closing Date, Seller shall provide to Buyer (i) an Inventory Spreadsheet, as of the Closing Date (the “**Closing Inventory Spreadsheet**”) reflecting the Inventory Value as of the Closing Date (the “**Closing Inventory Value**”); and (ii) shall permit access to the appropriate Seller personnel and all supporting financial statements, work sheets and other documentation used to make the related calculations that are reasonably requested by Purchaser.

(b) On or prior to the date that ninety (90) days following the Closing Date, Seller shall deliver a written notice to Buyer setting forth a list of any Inventory constituting Purchased UP Inventory, along with evidence of the cancellation of all applicable UP Purchase Orders and the Inventory Value attributable to such Purchased UP Inventory, as set forth on the Inventory Spreadsheet (the “**Purchased UP Inventory Notice**” and the Inventory Value set forth therein, the “**Purchased UP Inventory Value**”).

(c) Within ninety (90) days after the Closing Inventory Spreadsheet is delivered to Buyer pursuant to Section 2.07(a) (the “**Adjustment Report Period**”), Buyer shall complete its Inventory audit and examination of the Closing Inventory Spreadsheet and any Purchased UP Inventory Notice and shall deliver to Seller either (i) a written acknowledgement accepting the Closing Inventory Spreadsheet and the Closing Inventory Value, including the Purchased UP Inventory Value, if any; or (ii) a written

report setting forth in reasonable detail any proposed adjustments to the Closing Inventory Spreadsheet and the Closing Inventory Value or the Purchased UP Inventory Value, as the case may be (“**Adjustment Report**”).

(d) Within twenty (20) days after the Adjustment Report is delivered to Seller pursuant to Section 2.07(a), Buyer shall provide a notice to Seller setting forth any dispute with respect to the Adjustment Report (the “**Dispute Period**”). In the event Seller and Buyer fail to agree on Buyer’s proposed adjustments contained in the Adjustment Report within thirty (30) days after Seller receives the Adjustment Report, then Seller and Buyer agree that a mutually acceptable nationally recognized independent accounting firm (“**Independent Auditors**”) shall make the final determination with respect to the correctness of the proposed adjustments in the Adjustment Report in light of the terms and provisions of this Agreement. Buyer and Seller shall use their commercially reasonable efforts to select the Independent Auditors within ten (10) days of the expiration of such period and to cause the Independent Auditors to resolve all disagreements as soon as practicable, but in any event within sixty (60) days after submission of the dispute to the Independent Auditors. The decision of the Independent Auditors shall be final and binding on Seller and Buyer. Seller and Buyer shall each pay one-half of the Independent Auditor’s fees and expenses in connection with this Section 2.07.

(e) The terms “**Final Inventory Spreadsheet**” and “**Final Inventory Value**” shall mean (i) the Closing Inventory Spreadsheet and (ii) the Closing Inventory Value plus the Purchased UP Inventory Value, if any, respectively, in each case as adjusted, if at all, pursuant to this Section 2.07. The Final Inventory Spreadsheet and Final Inventory Value shall be finally determined as follows: (i) if Buyer does not timely deliver an Adjustment Report, upon the expiration of the Adjustment Report Period, based on the Closing Inventory Spreadsheet, the Closing Inventory Value and including the Purchased UP Inventory Value set forth in the Purchased UP Inventory Notice; (ii) if Buyer timely delivers an Adjustment Report with no changes, upon delivery of such Adjustment Report, based on the Closing Inventory Spreadsheet, the Closing Inventory Value and including the Purchased UP Inventory Value set forth in the Purchased UP Inventory Notice, if any; (iii) if Buyer timely delivers an Adjustment Report with changes, upon the earlier to occur of (A) Seller’s delivery to Buyer of written acceptance of such Adjustment Report, based on the Inventory Spreadsheet and the Inventory Value (including the adjusted Purchased UP Inventory Value, if any) set forth in the Adjustment Report, (B) if Seller does not timely dispute the Adjustment Report, the expiration of the Dispute Period, based on the Inventory Spreadsheet and Inventory Value (including the adjusted Purchased UP Inventory Value, if any) set forth in the Adjustment Report, or (C) if Seller timely disputes the Adjustment Report, upon the decision of the Independent Auditor pursuant to Section 2.07(c), based on the Independent Auditor’s determination of Inventory Value (including the Auditor’s determination of Purchased UP Inventory Value, if any). The date on which the Final Inventory Spreadsheet and Final Inventory Value are finally determined pursuant to this Section 2.07 shall hereinafter be referred to as the “**Settlement Date**.”

(f) In the event the Final Inventory Value is less than the Inventory Value set forth on the Estimated Inventory Spreadsheet, then Seller shall pay to Buyer, within five (5) days after the Settlement Date, an amount equal to such deficiency; provided, however, that Buyer may elect, in Buyer's sole discretion, to offset any remaining deficiency amount from the Indemnification Holdback Amount.

(g) In the event the Final Inventory Value is more than the Inventory Value on the Estimated Inventory Spreadsheet, then Buyer shall pay to Seller within five (5) days after the Settlement Date an amount equal to such excess.

(h) Any payment required pursuant to Section 2.07(e) shall be by the transfer of immediately available funds for credit to the recipient at a bank account designated by such recipient in writing.

Section 2.08 Allocation of Purchase Price. Within 60 days after the Closing Date, Buyer shall deliver a schedule allocating the Purchase Price (including any Assumed Liabilities treated as consideration for the Purchased Assets for Tax purposes) (the "**Allocation Schedule**"). The Allocation Schedule shall be prepared in accordance with Section 1060 of the Code. The Allocation Schedule shall be deemed final unless Seller notifies Buyer in writing that Seller objects to one or more items reflected in the Allocation Schedule within 30 days after delivery of the Allocation Schedule to Buyer. In the event of any such objection, Seller and Buyer shall negotiate in good faith to resolve such dispute; *provided, however*, that if Seller and Buyer are unable to resolve any dispute with respect to the Allocation Schedule within 30 days after the delivery of the Allocation Schedule to Buyer, such dispute shall be resolved by an impartial, nationally recognized firm of independent certified public accountants mutually appointed by Buyer and Seller. The fees and expenses of such accounting firm shall be borne equally by Seller and Buyer. Seller and Buyer agree to file their respective IRS Forms 8594 and all federal, state and local Tax Returns in accordance with the Allocation Schedule.

Section 2.09 Non-assignable Assets.

(a) Notwithstanding anything to the contrary in this Agreement, and subject to the provisions of this Section 2.09, to the extent that the sale, assignment, transfer, conveyance or delivery, or attempted sale, assignment, transfer, conveyance or delivery, to Buyer of any Purchased Asset would result in a violation of applicable Law, or would require the consent, authorization, approval or waiver of a Person who is not a Party to this Agreement (including any Governmental Authority), and such consent, authorization, approval or waiver shall not have been obtained prior to the Closing, this Agreement shall not constitute a sale, assignment, transfer, conveyance or delivery, or an attempted sale, assignment, transfer, conveyance or delivery, thereof; *provided, however*, that, subject to the satisfaction or waiver of the conditions contained in ARTICLE VII, the Closing shall occur notwithstanding the foregoing without any adjustment to the Purchase Price on account thereof. Following the Closing, Seller shall, at Seller's expense, use commercially reasonable efforts, and shall cooperate with Buyer, to obtain any such required consent, authorization, approval or waiver, or any release, novation, substitution or amendment required for the assignment to Buyer of the Assigned Contracts or with

respect to the assumption by Buyer of the Assumed Liabilities; *provided, however*, that neither Seller nor Buyer shall be required to pay any consideration therefor unless so agreed by the Parties or provided in the applicable Contract. Once such consent, authorization, approval, waiver, release, substitution, novation, or amendment is obtained, Seller shall sell, assign, transfer, convey and deliver to Buyer the relevant Purchased Asset to which such consent, authorization, approval, waiver, release, substitution, novation, or amendment relates for no additional consideration. Applicable sales, transfer, and other similar Taxes in connection with such sale, assignment, transfer, conveyance, or license shall be paid by Buyer and Seller in accordance with Section 6.06.

(b) To the extent that any Purchased Asset or Assumed Liability cannot be transferred to Buyer following the Closing pursuant to this Section 2.09, and in any event if such transfer has not occurred on or prior to the date that is 120 days following the Closing Date, Buyer and Seller shall use commercially reasonable efforts to enter into such arrangements (such as subleasing, sublicensing or subcontracting) to provide to the Parties the economic and, to the extent permitted under applicable Law, operational equivalent of the transfer of such Purchased Asset or Assumed Liability to Buyer as of the Closing. To the extent permitted under applicable Law, Buyer shall, as agent or subcontractor for Seller, pay, perform, and discharge fully such Assumed Liabilities from and after the Closing Date, provided, however, that Seller shall, promptly (and in any event within ten (10) business days or such longer period as is required by such Assigned Contract) upon written request by Buyer, terminate any Assigned Contract or engagement giving rise to any such Assumed Liability in accordance with its terms to be effective as of the date requested by Buyer (or such later date as is required by the applicable Assigned Contract). To the extent permitted under applicable Law, Seller shall hold in trust for and pay to Buyer promptly upon receipt thereof, any such Purchased Asset and all income, proceeds and other monies received by Seller to the extent related to such Purchased Asset in connection with the arrangements under this Section 2.09. Seller shall be permitted to set off against such amounts all direct costs associated with the retention and maintenance of such Purchased Assets.

ARTICLE III CLOSING

Section 3.01 Closing. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the “**Closing**”) shall take place at the offices of L.B. Foster Company, 415 Holiday Drive, Suite 100, Pittsburgh, Pennsylvania 15220 or remotely by exchange of documents and signatures (or their electronic counterparts), on the date hereof, at a mutually agreed time, or at such other time, date or place as Seller and Buyer may mutually agree upon in writing. The date on which the Closing is to occur is herein referred to as the “**Closing Date**.”

Section 3.02 Closing Deliverables.

(a) At the Closing, Seller shall deliver to Buyer the following:

- (i) a bill of sale in the form of Exhibit A hereto (the “**Bill of Sale**”) and duly executed by Seller, transferring the Inventory and the Tangible Personal Property to the Buyer;
- (ii) an assignment and assumption agreement in the form of Exhibit B hereto (the “**Assignment and Assumption Agreement**”) and duly executed by Seller, effecting the assignment to and assumption by Buyer of the Purchased Assets and the Assumed Liabilities;
- (iii) with respect to each parcel of Owned Real Property, a special warranty deed in the form of Exhibit C hereto (each, a “**Deed**”) and duly executed and notarized by Seller;
- (iv) with respect to the Lease for the Leased Real Property located in Chowchilla, California, an Assignment and Assumption of Lease substantially in the form of Exhibit D (the “**Assignment and Assumption of Lease**”), duly executed by Seller and, if necessary, Seller’s signatures shall be witnessed and/or notarized;
- (v) an assignment agreement in the form of Exhibit E attached hereto with respect to the Intellectual Property Registrations, duly executed by Seller (the “**Intellectual Property Assignment Agreement**”);
- (vi) with respect to each Assigned Contract listed on Section 3.02(a)(vi) of the Disclosure Schedules, a consent to assignment in form reasonably satisfactory to Buyer and duly executed by the counterparty thereto and acknowledged by Seller;
- (vii) written evidence, in form satisfactory to Buyer in its sole discretion, of the release in full of all Encumbrances, other than Permitted Encumbrances, relating to the Purchased Assets;
- (viii) the Seller Closing Certificate;
- (ix) the FIRPTA Certificate;
- (x) the certificates of the Secretary or Assistant Secretary of Seller required by Section 7.02(e) and Section 7.02(f);
- (xi) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to this Agreement;
- (xii) the consent to termination, in each case in a form acceptable to Buyer and effective on or prior to the Closing Date, of (A) that certain Preferred Distributor Agreement between Seller and Gerdau Ameristeel US, Inc.

(“**Gerdau**”) dated December 10, 2020 and (B) that certain Proposed Term Sheet for Supply Agreement for the Sale of PZC (and any Supply Agreement relating to such Term Sheet) between Seller and Gerdau dated September 18, 2020, in each case duly executed by Gerdau and acknowledged by Seller;

(xiii) a Transition Services Agreement, in the form of Exhibit F (the “**Transition Services Agreement**”), duly executed by Seller regarding limited transition services to be provided by Seller to Buyer following the Closing; and

(xiv) the Funds Flow Memorandum, duly executed by Seller.

(b) At the Closing, Buyer shall deliver to Seller the following:

(i) the Closing Payment by wire transfer of immediately available funds to the accounts designated by Seller on the Funds Flow Memorandum;

(ii) the Assignment and Assumption Agreement duly executed by Buyer;

(iii) the Assignment and Assumption of Lease duly executed by Buyer and, if necessary, Buyer’s signature shall be witnessed and/or notarized;

(iv) the Buyer Closing Certificate;

(v) the certificates of the Secretary or Assistant Secretary of Buyer required by Section 7.03(e) and Section 7.03(f);

(vi) the Transition Services Agreement, duly executed by Buyer;

(vii) sales tax exemption certificate for all states in which Buyer or Seller is ineligible to claim an exemption from sales tax for occasional or isolated sales or similar for the Business and/or the Purchased Assets; and

(viii) the Funds Flow Memorandum, duly executed by Buyer.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the Disclosure Schedules, Seller represents and warrants to Buyer that the statements contained in this ARTICLE IV are true and correct as of the date hereof.

Section 4.01 Organization and Qualification of Seller. Seller is a corporation duly organized, validly existing and in good standing under the Laws of the Commonwealth of Pennsylvania and has all necessary corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on the Business as currently conducted.

Section 4.02 Authority of Seller. Seller has all necessary corporate power and authority to enter into this Agreement and the other Transaction Documents to which Seller is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and any other Transaction Document to which Seller is a party, the performance by Seller of its obligations hereunder and thereunder and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Seller. This Agreement has been duly executed and delivered by Seller, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). When each other Transaction Document to which Seller is or will be a party has been duly executed and delivered by Seller (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Seller enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 4.03 No Conflicts; Consents. The execution, delivery and performance by Seller of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) result in a violation or breach of any provision of the certificate of incorporation or by-laws of Seller; (b) result in a violation or breach of any provision of any Law or Governmental Order applicable to Seller, the Business or the Purchased Assets; or (c) except as set forth in Section 4.03 of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default under or result in the acceleration of any Assigned Contract other than any purchase order entered into in the ordinary course of business, reflected on the Estimated Inventory Spreadsheet and having a value no greater than \$100,000. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Seller in connection with the execution and delivery of this Agreement or any of the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby.

Section 4.04 Financial Statements. Copies of the audited financial statements consisting of the balance sheet of the Business as at December 31, and the related statements of income and retained earnings, stockholders' equity and cash flow for the year then ended (the "**Audited Financial Statements**"), and unaudited financial statements consisting of the balance sheet of the Business as at July 31, 2021 and the related statements of income and retained earnings, stockholders' equity and cash flow for the seven-month period then ended (the "**Interim Financial Statements**" and together with the Audited Financial Statements, the "**Financial Statements**") have been made available to Buyer. The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments and the absence of notes. The Financial Statements fairly present in all material respects the financial condition of the Business as of the respective dates they were prepared and the results of the operations of the Business for the periods indicated. The balance sheet of the

Business as of December 31, 2020 is referred to herein as the “**Balance Sheet**” and the date thereof as the “**Balance Sheet Date**” and the balance sheet of the Business as of July 31, 2021 is referred to herein as the “**Interim Balance Sheet**” and the date thereof as the “**Interim Balance Sheet Date.**”

Section 4.05 Absence of Certain Changes, Events and Conditions. Except as set forth on Section 4.05 of the Disclosure Schedule, from the Interim Balance Sheet Date until the date of this Agreement, Seller has operated the Business in the ordinary course of business in all material respects and there has not been any Material Adverse Effect or, with respect to the Business, any changes, event, condition, or development that, individually or in the aggregate, could, or could reasonably be expected to, result in a Material Adverse Effect to:

- (a) The business, results of operations, financial condition, or assets of the Business taken as whole; or;
- (b) The ability of Seller to consummate the transactions contemplated hereunder.

Section 4.06 Assigned Contracts. Except as set forth on Section 4.06 of the Disclosure Schedules, none of Seller or, to Seller’s Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under) in any material respect, or has provided or received any notice of any intention to terminate, any Assigned Contract. Each Assigned Contract is valid and binding on Seller in accordance with its terms and is in full force and effect. Complete and correct copies of each Assigned Contract (including all modifications, amendments, and supplements thereto and waivers thereunder) have been made available to Buyer. The Assigned Contracts constitute all the Contracts necessary to the conduct of the Business as currently conducted.

Section 4.07 Title to Purchased Assets. Except as set forth in Section 4.07 of the Disclosure Schedules, Seller has good and valid title to, or a valid leasehold interest in, the Purchased Assets, free and clear of Encumbrances except for Permitted Encumbrances.

Section 4.08 Sufficiency of Assets.

(a) Except as set forth on Section 4.08(a) of the Disclosure Schedules, the Purchased Assets are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the Business as currently conducted. Except as set forth on Section 4.08(a) of the Disclosure Schedules, none of the Excluded Assets is material to the Business.

(b) The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property included in the Purchased Assets are adequate for the uses to which they are being put. None of such buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property is in need of material maintenance or repairs other than in the ordinary course of business.

Section 4.09 Inventory. The Estimated Inventory Spreadsheet delivered to Buyer pursuant to Section 2.07(a) lists Seller's good faith estimate of all of the Inventory as of the Closing Date. With the exception of Inventory stored for customers, all of which is noted as such on Schedule A to the Estimated Inventory Spreadsheet, all Inventory is owned by Seller free and clear of all Encumbrances, and no Inventory is held on a consignment basis. Except for the Inventory set forth on Section 4.09 of the Disclosure Schedules (including the location thereof), other than Inventory on rent and Inventory in transit, all of which is noted as such in the Estimated Inventory Spreadsheet, all Inventory is located on the Real Property. Other than those representations and warranties in this Section 4.09, Seller makes no other representations or warranties, express or implied, including the implied warranties of merchantability and fitness for a particular purpose, regarding the Inventory.

Section 4.10 Real Property.

(a) Section 4.10(a) of the Disclosure Schedules sets forth all material real property owned by Seller and used in connection with the Business (collectively, the "**Owned Real Property**"). Seller has good and marketable fee simple title to the Owned Real Property, free and clear of all Encumbrances, except (i) Permitted Encumbrances and (ii) those Encumbrances set forth on Section 4.10(a) of the Disclosure Schedules.

(b) Section 4.10(b) of the Disclosure Schedules sets forth all real property leased by Seller and, except as noted on such schedule with regard to the license for space to CXT, Incorporated ("**CXT**") at the Chowchilla, California location (the "**Chowchilla Sublease**"), which sublease will be terminated on or prior to the date that is 120 days after Closing (the "**Sublease Expiration Date**"), used in connection with the Business (collectively, the "**Leased Real Property**"), and a list, as of the date of this Agreement, of all leases or other agreements pertaining to Seller's occupation or use of each parcel of Leased Real Property (collectively, the "**Leases**").

(c) Seller has not received any written notice of existing, pending or threatened (i) condemnation proceedings affecting the Real Property, or (ii) zoning, building code or other moratorium proceedings, or similar matters which would reasonably be expected to materially and adversely affect the ability to operate the Real Property as currently operated. Neither the whole nor any material portion of any Real Property has been damaged or destroyed by fire or other casualty.

(d) To Seller's Knowledge, the current use and occupancy of the Real Property and the operation of the Business as currently conducted thereon do not violate any easement, covenant, condition, restriction or similar provision in any instrument of record or other unrecorded agreement affecting such Real Property (the "**Encumbrance Documents**"). Seller has not received any written notice of violation of any Encumbrance Documents.

(e) There are no pending property insurance claims with respect to any Real Property or any portion thereof. Seller has not received any written notice from any insurance company or any board of fire underwriters (or any entity exercising similar

functions) with respect to any Real Property or any portion thereof: (i) requesting Seller to perform any repairs, alterations, improvements, or other work for such Real Property which Seller has not completed in full or (ii) notifying Seller of any defects or inadequacies in such Real Property which would adversely affect the insurability of the Real Property or the premiums for the insurance thereof.

Section 4.11 Intellectual Property.

(a) Section 4.11(a) of the Disclosure Schedules lists (i) all Intellectual Property Registrations; and (ii) all Intellectual Property Agreements. Except for Intellectual Property Assets licensed from third parties pursuant to Intellectual Property Agreements listed Section 4.11(a) of the Disclosure Schedule, Seller owns all of the Intellectual Property Assets free and clear of any Encumbrances. Seller has not transferred ownership of or licensed any Intellectual Property Assets to any other Person.

(b) To the Knowledge of the Seller, each Intellectual Property Registration is valid and subsisting. None of the Intellectual Property Assets, other than Intellectual Property Assets licensed from third parties pursuant to the Intellectual Property Agreements are registered in the name of any Person other than the Seller.

(c) Except as set forth in Section 4.11(c) of the Disclosure Schedules, (i) the conduct of the Business as currently conducted does not infringe, misappropriate, dilute or otherwise violate the Intellectual Property of any Person; and (ii) to Seller's Knowledge, no Person is infringing, misappropriating or otherwise violating any Intellectual Property Assets. Notwithstanding anything to the contrary in this Agreement, this Section 4.11 constitutes the sole representations and warranties of the Seller under this Agreement with respect to any actual or alleged infringement, misappropriation or other violation by Seller of any Intellectual Property of any other Person.

Section 4.12 Insurance. Section 4.12 of the Disclosure Schedules sets forth the insurance coverages applicable to the Business, the Purchased Assets or the Assumed Liabilities and a list of all pending claims with respect to the Business, the Purchased Assets or the Assumed Liabilities under insurance policies maintained by the Seller (the "**Insurance Policies**"). There are no such claims pending as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. All premiums due on the Insurance Policies have either been paid or, if not yet due, accrued. All such Insurance Policies (a) are in full force and effect and enforceable in accordance with their terms; and (b) have not been subject to any lapse in coverage. None of Seller or any of its Affiliates is in material default under, or has otherwise failed to comply in any material respect with any provision contained in any such Insurance Policy which default would have or be reasonably expected to have an adverse effect on the Business or the Purchased Assets.

Section 4.13 Legal Proceedings; Governmental Orders.

(a) Except as set forth in Section 4.13(a) of the Disclosure Schedules, there are no Actions, suits, claims, investigations or other legal proceedings pending or, to Seller's Knowledge, threatened against or by Seller (a) relating to or affecting the

Business, the Purchased Assets or the Assumed Liabilities, or (b) that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. To Seller's Knowledge, no event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

(b) Except as set forth in Section 4.13(b) of the Disclosure Schedules, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting the Business or the Purchased Assets.

Section 4.14 Compliance With Laws; Permits.

(a) Except as set forth in Section 4.14(a) of the Disclosure Schedules, Seller is in compliance in all material respects with all Laws applicable to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets.

(b) Section 4.14(b) of the Disclosure Schedules lists all current Permits issued to Seller that are related to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets, including the names of the Permits and their respective dates of issuance and expiration. All Permits required for Seller to conduct the Business as currently conducted or for the ownership and use of the Purchased Assets have been obtained by Seller and are valid and in full force and effect in all material respects. All fees and charges with respect to such Permits as of the date hereof have been paid in full.

(c) None of the representations and warranties in this Section 4.14 shall be deemed to relate to environmental matters (which are governed by Section 4.15), employment matters (which are governed by Section 4.16), employee benefit matters (which are governed by Section 4.17), or Tax matters (which are governed by Section 4.18).

Section 4.15 Environmental Matters.

(a) Except as set forth in Section 4.15(a) of the Disclosure Schedules, the operations of Seller with respect to the Business and the Purchased Assets are in compliance with all Environmental Laws. Seller has not received from any Person, with respect to the Business or the Purchased Assets, any: (i) Environmental Notice or Environmental Claim; or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.

(b) Except as set forth in Section 4.15(b) of the Disclosure Schedules, Seller has obtained and is in material compliance with all Environmental Permits (each of which is disclosed in Section 4.15(b) of the Disclosure Schedules) necessary for the conduct of the Business as currently conducted or the ownership, lease, operation or use of the Purchased Assets.

(c) None of the Real Property is listed on, or has been proposed for listing on, the National Priorities List (or CERCLIS) under CERCLA, or any similar state list.

(d) Except as set forth in Section 4.15(d) of the Disclosure Schedules, there has been no material Release of Hazardous Materials in contravention of Environmental Law with respect to the Business, the Purchased Assets or any Real Property. Seller has not received any Environmental Notice that the Business or any of the Purchased Assets or Real Property has been contaminated with any Hazardous Material.

(e) Seller has previously made available to Buyer any and all environmental reports, studies, audits, records, sampling data, site assessments and other similar documents with respect to the Business, the Purchased Assets or any Real Property which are in the possession or control of Seller.

(f) The representations and warranties set forth in this Section 4.15 are the Seller's sole and exclusive representations and warranties regarding environmental matters.

Section 4.16 Employment Matters.

(a) Seller is not a party to, bound by, any collective bargaining or other agreement with a labor organization representing any of the Employees. During the past five years, there has been no request for collective bargaining or for an employee election from any employee, union, or the National Labor Relations Board. During the past five years, there has been no (i) unfair labor practice complaint against the Business pending or threatened before the National Labor Relations Board or the United States Department of Labor, (ii) question concerning representation raised or threatened respecting the employees of the Business, or (iii) grievance or arbitration Action pending or threatened against Seller related to the Business. Neither the Seller nor any of its predecessors has experienced any labor strike, dispute, slowdown or stoppage or any other material labor difficulty with respect to the Business and, to the Sellers' Knowledge, there are no facts or circumstances that might lead to any such labor dispute. Seller is not a party to or bound by any employment contract, independent contractor agreement, consultation agreement or other similar type of Contract with respect to the Business.

(b) Section 4.16(b) of the Disclosure Schedules sets forth, to the extent applicable, as of the Closing Date, for each employee, consultant, officer, independent contractor and director of the Seller that works solely in the Business, a true, correct and complete list of his or her: (i) name; (ii) title; (iii) location; (iv) date of hire; and (v) exempt/non-exempt status under applicable wage and hour laws. As of the date hereof, all compensation, including wages, commissions and bonuses payable to all employees, independent contractors or consultants of the Seller for services performed on or prior to the date hereof on behalf of the Business have been paid in full or accrued, and there are no outstanding agreements, understandings or commitments of Seller with respect to any compensation, commissions or bonuses.

(c) To the Seller's Knowledge, no employee, consultant, or independent contractor of the Business intends to terminate his or her employment relationship or engagement with the Seller.

(d) With respect to the Employees, the Seller has at all times since January 1, 2017 complied in all material respects with all Laws relating to employment practices, terms and conditions of employment, equal employment opportunity, nondiscrimination, sexual harassment, immigration, wages, hours, meal and rest period, paid sick leave, privacy, leaves of absence, benefits, collective bargaining and similar requirements, the payment of social security and similar Taxes, and occupational safety and health.

(e) The representations and warranties set forth in this Section 4.16 are the Seller's sole and exclusive representations and warranties regarding Employment Matters.

Section 4.17 Seller Employee Plans

(a) Benefits accrued under any Seller Employee Plan that are unfunded have been paid or accrued. Nothing has occurred with respect to any Seller Employee Plan that has subjected or could reasonably be expected to subject the Seller or, with respect to any period on or after the Closing, Buyer or any of its Affiliates, to a civil action, penalty, surcharge, or Tax under Applicable Law. Except as set forth on Section 4.17(a) of the Disclosure Schedules, neither the Seller nor any ERISA Affiliate presently maintains, participates in or contributes to or has previously maintained, participated in or contributed to any Seller Employee Plan that is (1) a "multiemployer plan," as defined in Section 3(37) of ERISA, (2) a "defined benefit plan," as defined in Section 3(35) of ERISA or (3) a "voluntary employees' beneficiary association" as defined in Section 501(c)(9) of the Code. Neither the Seller nor any ERISA Affiliate has any Liabilities under Title IV of ERISA, and neither the Seller nor any ERISA Affiliate has ever fully or partially withdrawn from a multiemployer plan.

(b) Except as set forth on Disclosure Schedule 4.17(b), neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby or thereby could (either alone or in conjunction with any other event) result in the acceleration of vesting or payment, trigger any payment or funding, or increase the amount or value of any compensation, payment or benefits (including severance and unemployment compensation) to any Person or trigger any other material obligation pursuant to any Seller Employee Plan.

(c) The representations and warranties set forth in this Section 4.17 are the Seller's sole and exclusive representations and warranties regarding employee benefit plans.

Section 4.18 Taxes.

(a) Except as set forth in Section 4.18(a) of the Disclosure Schedules, Seller has filed (taking into account any valid extensions) all Tax Returns with respect to the Business and Purchased Assets required to be filed by Seller and has duly and timely paid all Taxes whether or not shown thereon as owing. Seller is not currently the beneficiary of any extension of time within which to file any Tax Return other than extensions of time to file Tax Returns obtained in the ordinary course of business.

(b) Seller is not a “foreign person” as that term is used in Treasury Regulations Section 1.1445-2.

(c) Seller has withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, shareholder or other party to the extent relating to the Business or the Purchased Assets, and complied with all information reporting and backup withholding provisions of applicable Law.

(d) Seller is not a party to any action, claim or proceeding by any taxing authority with respect to the Business or the Purchased Assets. There are no pending or threatened actions, claims, or proceedings by any taxing authority with respect to the Business or the Purchased Assets.

(e) No extensions or waivers of statutes of limitations have been given or requested in writing with respect to any Taxes of Seller, which waivers remain in effect as of the Closing.

(f) All deficiencies for Taxes asserted, or assessments for Taxes made, against Seller by any taxing authority, in any case to the extent relating to the Business or the Purchased Assets, have been fully paid.

(g) There are no Encumbrances for Taxes upon any of the Purchased Assets nor is any taxing authority in the process of imposing any Encumbrances for Taxes on any of the Purchased Assets (other than for current Taxes not yet due and payable).

(h) Seller has, with respect to the Business or the Purchased Assets, collected all sales, use, value added, goods and services, and similar Taxes required to be collected (or for which Seller is customarily responsible under applicable Law to collect) and timely remitted in full all such Taxes collected to the appropriate taxing authority in accordance with applicable Law (or to the extent not required to be collected and remitted, Seller has been furnished properly completed exemption certificates and has maintained all such records and supporting documents in the manner required by applicable Law).

(i) The representations and warranties set forth in this Section 4.18 are the Seller’s sole and exclusive representations and warranties regarding Tax matters.

Section 4.19 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Seller or its Affiliates.

Section 4.20 No Other Representations and Warranties. Except for the representations and warranties contained in this ARTICLE IV (as qualified by the related portions of the Disclosure Schedules), neither Seller nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Seller, including any representation or warranty as to the accuracy or completeness of any information regarding the Business and the Purchased Assets furnished or made available to Buyer and its Representatives or as to the future revenue, profitability or success of the Business, or any representation or warranty arising from statute or otherwise in law.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER

Except as set forth in the Disclosure Schedules, Buyer represents and warrants to Seller that the statements contained in this ARTICLE V are true and correct as of the date hereof.

Section 5.01 Organization and Authority of Buyer. Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the state of State of Texas.

Section 5.02 Authority of Buyer. Buyer has all necessary corporate power and authority to enter into this Agreement and the other Transaction Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any other Transaction Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). When each other Transaction Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 5.03 No Conflicts; Consents. The execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) result in a violation or breach of

any provision of the certificate of incorporation or by-laws of Buyer; (b) result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) except for the written consent of JPMorgan Chase Bank, N.A. under Buyer's Amended and Restated Credit Agreement, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default under or result in the acceleration of any agreement to which Buyer is a party, except in the cases of clauses (b) and (c), where the violation, breach, conflict, default, acceleration or failure to give notice would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and such consents, approvals, Permits, Governmental Orders, declarations, filings or notices which would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby and thereby.

Section 5.04 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Buyer or its Affiliates.

Section 5.05 Sufficiency of Funds. Buyer has sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Purchase Price and consummate the transactions contemplated by this Agreement.

Section 5.06 Solvency. Immediately after giving effect to the transactions contemplated hereby, Buyer shall be solvent and shall: (a) be able to pay its debts as they become due; (b) own property that has a fair saleable value greater than the amounts required to pay its debts as they come due; and (c) have adequate capital to carry on its business. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated hereby with the intent to hinder, delay or defraud either present or future creditors of Buyer or Seller. In connection with the transactions contemplated hereby, Buyer has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured.

Section 5.07 Legal Proceedings. Except as set forth in Section 5.07 of the Disclosure Schedules, there are no actions, suits, claims, investigations or other legal proceedings pending or, to Buyer's knowledge, threatened against or by Buyer or any Affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.

Section 5.08 Independent Investigation; No Other Representations and Warranties. Buyer has conducted its own independent investigation, review, and analysis of the Business and the Purchased Assets and acknowledges that it has been provided adequate access to the Business for such purpose. Buyer acknowledges that it has relied solely upon its own investigation and the express representations and warranties of Seller set forth in this Agreement as qualified by the Disclosure Schedules hereto. Except for the representations and warranties contained in this ARTICLE V, neither

Buyer nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Buyer.

ARTICLE VI COVENANTS

Section 6.01 Restrictive Covenants.

(a) General. Seller hereby acknowledges and agrees: (i) Buyer, as the purchaser of the Purchased Assets, is and will be engaged in the Business; (ii) Seller is intimately familiar with the Business and the Purchased Assets, including extensive and valuable knowledge of the Seller's confidential and proprietary information, including trade secrets, relating to the business and operations of the Seller, and will derive substantial economic benefit from this Agreement; (iii) the Business is currently conducted in the United States and its territories, Canada, Mexico, Central America and the Caribbean (the "**Restricted Area**"); (iv) Buyer intends to continue the Business throughout the Restricted Area and further intends, by acquisition or otherwise, to expand the Business into other geographic areas where it is not presently conducted; (v) Seller has had access to Confidential Information concerning the Business; and (vi) the agreements and covenants contained in this Section 6.01 are essential to protect the Business and the value of the goodwill and other Purchased Assets being purchased by Buyer, including valuable customer relationships, and this Agreement would not be entered into without Seller, on behalf of itself and its Affiliates, agreeing to the covenants contained in this Section 6.01.

(b) Non-Solicitation. During the period commencing on the day after the Closing Date and terminating on the five-year anniversary of the Closing Date (the "**Restricted Period**"), without the written consent of Buyer, which may be granted or withheld by Buyer in its sole discretion, Seller shall not, and shall cause its Affiliates not to, directly or indirectly: (A) solicit or encourage to leave the employ of Buyer or its Affiliates any person who is or was employed in the Business on the Closing Date, but excluding any employees whose employment has been terminated by Buyer; or (B) solicit, attempt to solicit, interfere with, seek to curtail the business of, accept the business of, or do business with, any Customer (as defined below) relating to the Business within the Restricted Area. For purposes of this Agreement, a "**Customer**" is any Person who at such time is, or at any time within the twenty-four (24) months prior to the date hereof or within twenty-four (24) months prior to the date of such solicitation, influence, enticement, encouragement or inducement, was, a client, customer, advertising network partner, vendor, supplier, contractor, subcontractor, dealer, distributor, licensor, licensee or any other business relation of the Business (including any potential customer contacted by the Seller related to the Business).

(c) Non-Competition. During the Restricted Period, without the written consent of Buyer, which may be granted or withheld by Buyer in its sole discretion, Seller shall not, and shall cause its Affiliates not to, directly or indirectly, (i) own, engage

in, manage, operate, control, establish or participate in the ownership, management, operation or control of, or (ii) be a stockholder, agent, representative, partner, director, joint venturer, member, manager, operator, landlord, employee, consultant, contractor, advisor or lender to, or have any interest in, or a right to obtain any interest in, any entity, organization or individual that engages in the Restricted Business (as defined below); provided, however, that the following shall not constitute Seller's engaging in the Restricted Business (as defined below): (x) Seller's performance of its post-Closing obligations to Buyer pursuant to and in accordance with (1) this Agreement, including without limitation Section 2.04(b), but only to the extent necessary to fulfill obligations pursuant to an Assigned Contract or a UP Purchase Order, in either case that constitute an Excluded Liability, Section 2.09 and Section 6.11 hereof; and (2) the Transition Services Agreement; and (y) for a period not to exceed 90 days following the Closing Date, Seller's performance of its obligations under the UP Purchase Orders. As used herein, "**Restricted Business**" shall mean the business of marketing, selling, and distributing steel piling for heavy civil and marine applications within the Restricted Area.

(d) Reasonableness of Restrictive Covenants. Seller acknowledges and agrees that the restrictions contained in this Section 6.01 are no greater than necessary to protect the legitimate business interest of Buyer and waive any objection or complaint to the temporal scope, scope of activity, or geographic scope of any of the restrictions contained herein. The geographic scope of the Restricted Area is coextensive with the Business conducted by Seller within a reasonable period of time prior to the Closing Date. Seller further acknowledges it has been represented by the counsel of its choosing and has obtained any and all advice necessary and, therefore, knowingly and voluntarily agrees to the Restrictive Covenants.

(e) Rights and Remedies Upon Breach. If Seller or any of its Affiliates breaches or threatens to breach the Restrictive Covenants, Buyer shall have the following rights and remedies, each of which rights and remedies shall be independent of the others and severally enforceable, and each of which is in addition to, and not in lieu of, any other rights and remedies available to Buyer at law or in equity:

(i) *Specific Performance*. For the avoidance of doubt, the right and remedy to have the Restrictive Covenants specifically enforced by any court of competent jurisdiction, it being agreed that any breach or threatened breach of the Restrictive Covenants would cause irreparable injury to Buyer and that money damages would not provide an adequate remedy to Buyer. Accordingly, Seller hereby acknowledges and agrees that, in addition to any other rights or remedies, Buyer shall be entitled to seek equitable and injunctive relief, including by temporary restraining order, temporary injunction, permanent injunction or otherwise, without posting a bond, to enforce the terms of the Restrictive Covenants and to restrain Seller or any of its respective Affiliates from any violation thereof.

(ii) *Accounting*. The right and remedy to seek relief requiring Seller to account for and pay over to Buyer all compensation, profits, monies, accruals, increments or other benefits derived or received by Seller as a result of any transaction constituting a breach of the Restrictive Covenants.

(f) *Severability of Restrictive Covenants*. Seller acknowledges and agrees that the Restrictive Covenants are reasonable and valid in geographical and temporal scope and in all other respects. If any court determines that any portion of the Restrictive Covenants is invalid, the remaining portions shall not thereby be affected and shall be given full effect, without regard to the invalid portion. If any court of competent jurisdiction determines that any of the Restrictive Covenants, or any part thereof, is unenforceable because of the duration, geographic scope or other limitation of such provision, such court shall reduce the duration or scope of such provision, or otherwise revise such provision, as the case may be, to the extent necessary to render it enforceable and, in its reduced form, such provision shall then be enforced.

(g) *Independence of Obligations*. The covenants and obligations of Seller set forth in this Restrictive Covenants section shall be construed as independent of any other agreement or arrangement between Seller and Buyer, and the existence of any claim or cause of action by Seller against Buyer shall not constitute a defense to the enforcement of such covenants or obligations against Seller.

Section 6.02 Employees.

(a) Buyer shall, or shall cause an Affiliate of Buyer to, offer employment effective the day after the Closing Date to all Employees listed on Section 6.02(a) of the Disclosure Schedules (the “**Transferred Employees**”). The employment by Seller of such Transferred Employees shall be terminated as of the Closing Date. Seller agrees to bear all costs associated with the termination by Seller of the Transferred Employees, including pay-out of accrued but unused vacation and/or PTO and final pay through the Closing Date, and to remit such payments timely and in accordance with the law to the Transferred Employees.

(b) With respect to all Employees set forth on Section 6.02(b) of the Disclosure Schedules (the “**Terminated Employees**”), Seller shall terminate the employment of such employees effective as set forth in the Transition Services Agreement. In addition to the consideration set forth in the Transition Services Agreement, although not otherwise required to do so by contract or law, Buyer agrees to fund a severance payment in the amount set forth on Section 6.02(b) of the Disclosure Schedules for each Terminated Employee, which amount is equal to two weeks of base salary plus one week of salary per year of service, subject to a minimum of four weeks of base salary and a maximum of 26 weeks of base salary, for each such Terminated Employee (the “**Separation Pay**”), subject to the execution by each such Employee of a full general release of claims in a form acceptable to Buyer and signed between Seller and such Terminated Employee (the “**Release**”) and the expiration of any applicable

waiting periods in such Release. Except for the Separation Pay, all other costs related to the termination of the Terminated Employees, including final pay and payment of accrued but unused vacation and/or PTO, shall be borne by Seller. Buyer shall remit payment of the Separation Pay for each Terminated Employee to Seller upon Buyer's receipt of a Release for such Terminated Employee and the expiration of any applicable waiting periods with respect to such Release.

Section 6.03 Confidentiality.

(a) Buyer and Seller acknowledge and agree that the Confidentiality Agreement remains in full force and effect in accordance with its terms, and, in addition, covenant and agree to keep confidential, in accordance with the provisions of the Confidentiality Agreement, information provided by either Party to the other Party pursuant to the Confidentiality Agreement and this Agreement.

(b) From and after the Closing, Seller shall, and shall cause its Affiliates to, hold, and shall use its commercially reasonable efforts to cause its or their respective Representatives to hold, in confidence any and all information, whether written or oral, concerning the Business, except to the extent that Seller can show that such information: (i) is generally available to and known by the public through no fault of Seller, any of its Affiliates or their respective Representatives; or (ii) is lawfully acquired by Seller, any of its Affiliates or their respective Representatives from and after the Closing from sources that are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If Seller or any of its Affiliates or their respective Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, Seller shall promptly notify Buyer in writing and shall disclose only that portion of such information that Seller is advised by its counsel in writing is legally required to be disclosed; provided, however, that Seller shall use commercially reasonable efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information.

Section 6.04 Public Announcements. Unless otherwise required by applicable Law or stock exchange requirements (based upon the reasonable advice of counsel), no Party to this Agreement shall make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the other Party (which consent shall not be unreasonably withheld, conditioned or delayed), and the Parties shall cooperate as to the timing and contents of any such announcement(s).

Section 6.05 Bulk Sales Laws. The Parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer.

Section 6.06 Transfer Taxes; Sales Tax Exemption.

(a) Transfer Taxes. All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred

in connection with this Agreement and the other Transaction Documents (including any real property transfer Tax and any other similar Tax) shall be borne and paid equally by Seller and Buyer when due. The Party required under applicable Law shall, at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and the non-filing Party shall cooperate with respect thereto as reasonably necessary).

(b) Sales Tax Exemption. If applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed pursuant to applicable Law in connection with and directly related to the sale of Purchased Assets (“**Sales Taxes**”), Buyer will be responsible for paying such Sales Taxes that Seller separately states on an invoice or other billing document provided at or after the Closing Date to the extent payment is required under applicable Law; provided, however, that nothing herein will preclude Buyer from claiming whatever Sales Tax exemptions are applicable.

Section 6.07 Certain Tax Matters.

(a) At or after the Closing Date, all personal property Taxes, real property Taxes and similar ad valorem Taxes pertaining to the Purchased Assets (“**Pro-Rated Taxes**”) for any Tax year or period beginning on or before and ending after the Closing Date (“**Straddle Period**”) shall be prorated on the basis of the number of days of the relevant Tax year or period which have elapsed through the Closing Date. Seller shall be responsible for that portion of such amounts relating to the portion of the Straddle Period ending on the Closing Date and Buyer shall be responsible for that portion of such amounts relating to the portion of the Straddle Period beginning after the Closing Date. The amount of all such prorations shall be settled and paid on the Closing Date; provided, however, that final payments with respect to prorations that are not able to be calculated on the Closing Date shall be calculated and paid as soon as practicable thereafter.

(b) Buyer and Seller shall cooperate, as and to the extent reasonably requested by either Party, in connection with the filing of any Tax Returns and any Action with respect to Taxes, in each case relating to the Purchased Assets or the Business. Such cooperation shall include the retention and (upon a Party’s reasonable request) the provision of records and information which are reasonably relevant to any such Tax Return or Action, making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder, and timely notification of receipt of any notice of an Action or notice of deficiency relating to any Tax or Tax Return with respect to which the non-recipient may have liability hereunder.

For the avoidance of doubt, Seller shall (i) timely prepare and file all Tax Returns required by applicable Law to be filed by Seller for all Tax periods ending on or before the Closing Date and (ii) timely pay all Taxes in full relating to such Tax Returns.

Section 6.08 Receivables. From and after the Closing, if Seller or any of its Affiliates receives or collects any funds constituting or relating to any Purchased Asset, Seller or its Affiliate shall remit such funds to Buyer within thirty (30) business days after its receipt thereof. From and after the

Closing, if Buyer or its Affiliate receives or collects any funds constituting or relating to any Excluded Asset, Buyer or its Affiliate shall remit any such funds to Seller within thirty (30) business days after its receipt thereof.

Section 6.09 Shipment of UP Purchase Orders. For a period not to exceed ninety (90) days after the Closing Date, and upon reasonable advance written notice and instruction from Seller, Buyer agrees to cause its employees or its agents, as the case may be, to load the Excluded UP Inventory onto trucks or railcars provided by UP and, in exchange for such loading services, Seller hereby agrees to pay Buyer for such services in accordance with a rate schedule to be reasonably agreed to by the Parties. Buyer shall promptly provide, or cause to be provided, to Seller a report of the Excluded UP Inventory shipped from the Real Property or third-party locations in accordance with Seller's instructions. Buyer shall invoice Seller for such loading services, and Seller shall pay such invoices within thirty (30) days of receipt of invoice(s).

Section 6.10 Chowchilla Sublease. Seller shall use, and shall cause its Affiliates to use, the portion of the Leased Real Property subject to the Chowchilla Sublease that, as of immediately prior to the Closing, consists of the work stations occupied by Jim Peddie and Gary Burger (the "**Subleased Property**") only for the general office purposes for which such space is being used as of immediately prior to the Closing (the "**Permitted Use**"). Seller, on behalf of itself and its Affiliates, acknowledges and agrees that any use by Seller or its Affiliate of any portion of the Subleased Property shall in no way interfere with Buyer's right to use the remainder of the Leased Real Property. Neither Seller nor its Affiliate shall not make any changes, additions, improvements, alterations or other physical changes to the Subleased Property any portion thereof. Seller acknowledges and agrees that Buyer has no maintenance obligations to Seller or any of its Affiliates with respect to the Subleased Property. Seller shall, prior to the Sublease Expiration Date, and at its sole cost and expense, repair any damage to the Subleased Property caused by Seller or its Affiliates or their agents, employees or invitees. Seller shall not, and shall cause its Affiliates not to, assign the Chowchilla Sublease or any interest therein or in the Subleased Property, or mortgage, pledge, encumber, hypothecate or otherwise transfer or sublet the Subleased Property or any part thereof, or permit the use of the Subleased Property by any party other than CXT, without Buyer's prior written consent.

Section 6.11 Further Assurances. Following the Closing, each of the Parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the other Transaction Documents.

ARTICLE VII CONDITIONS TO CLOSING

Section 7.01 Conditions to Obligations of All Parties. The obligations of each Party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of the following condition: No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting

consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

Section 7.02 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of Seller contained in ARTICLE IV shall be true and correct in all respects as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date).

(b) Seller shall have duly performed and complied with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

(c) Seller shall have delivered to Buyer duly executed counterparts to the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in Section 3.02(a).

(d) Buyer shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Seller, that each of the conditions set forth in Section 7.02(a) and Section 7.02(b) have been satisfied (the "**Seller Closing Certificate**").

(e) Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Seller certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Seller authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

(f) Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Seller certifying the names and signatures of the officers of Seller authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.

(g) Buyer shall have received a certificate pursuant to Treasury Regulations Section 1.1445-2(b) (the "**FIRPTA Certificate**") that Seller is not a foreign person within the meaning of Section 1445 of the Code duly executed by Seller.

(h) Buyer shall have received the Preferred Distributor Agreement between Buyer and Gerdau, in the form satisfactory to Buyer in its sole discretion, duly executed by Gerdau and dated to be effective on the Closing Date.

Section 7.03 Conditions to Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Seller's waiver, at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of Buyer contained in ARTICLE V shall be true and correct in all respects as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date).

(b) Buyer shall have duly performed and complied with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

(c) Buyer shall have delivered to Seller or such other parties set forth on the Funds Flow Memorandum the Closing Payment, duly executed counterparts to the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in Section 3.02(b).

(d) Seller shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in Section 7.03(a) and Section 7.03(b) have been satisfied (the "**Buyer Closing Certificate**").

(e) Seller shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Buyer authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

(f) Seller shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying the names and signatures of the officers of Buyer authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.

ARTICLE VIII ARTICLE VIII INDEMNIFICATION

Section 8.01 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect for a period of nine (9) months following the Closing Date. All covenants and agreements of the Parties contained herein shall survive the Closing indefinitely unless another period is explicitly specified herein. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching Party to

the breaching Party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of such survival period and such claims shall survive until finally resolved.

Section 8.02 Indemnification By Seller. Subject to the other terms and conditions of this ARTICLE VIII, Seller shall indemnify Buyer against, and shall hold Buyer harmless from and against, any and all Losses incurred or sustained by, or imposed upon, Buyer based upon, arising out of, with respect to or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement;
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement or the other Transaction Documents;
- (c) any Excluded Asset or any Excluded Liability; or
- (d) any Third Party Claim based upon, resulting from or arising out of the business, operations, properties, assets or obligations of Seller or any of its Affiliates (other than the Purchased Assets or Assumed Liabilities) conducted, existing or arising on or prior to the Closing Date.

Section 8.03 Indemnification By Buyer. Subject to the other terms and conditions of this ARTICLE VIII, Buyer shall indemnify Seller against, and shall hold Seller harmless from and against, any and all Losses incurred or sustained by, or imposed upon, Seller based upon, arising out of, with respect to or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement;
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement or the other Transaction Documents;
- (c) any Assumed Liability;
- (d) Seller's failure to terminate, or cause the termination of, the Chowchilla Sublease effective on or prior to the Sublease Expiration Date.

Section 8.04 Certain Limitations. The Party making a claim under this ARTICLE VIII is referred to as the "**Indemnified Party**", and the Party against whom such claims are asserted under this ARTICLE VIII is referred to as the "**Indemnifying Party**". The indemnification provided for in Section 8.02 and Section 8.03 shall be subject to the following limitations:

- (a) The Indemnifying Party shall not be liable to the Indemnified Party for indemnification under Section 8.02(a) or Section 8.03(a), as the case may be, until the aggregate amount of all Losses in respect of indemnification under Section 8.02(a) or Section 8.03(a), as the case may be, exceeds \$125,000.00 (the "**Basket**"), in which event

the Indemnifying Party shall be liable for Losses from the first dollar. With respect to any claim as to which the Indemnified Party may be entitled to indemnification under Section 8.02(a) or Section 8.03(a), as the case may be, the Indemnifying Party shall not be liable for any individual or series of related Losses which do not exceed \$15,000.00 in the aggregate; provided that such Losses shall be counted toward the Basket. Notwithstanding anything to the contrary, the limitations set forth in this Section 8.04(a) shall not apply to Losses arising from claims of fraud or willful misconduct.

(b) The aggregate amount of all Losses for which an Indemnifying Party shall be liable pursuant to Section 8.02(a) or Section 8.03(a), as the case may be, shall not exceed the Indemnification Holdback Amount; provided, however, that such limitation shall not apply to Losses arising from claims of fraud or willful misconduct.

(c) Payments by an Indemnifying Party pursuant to Section 8.02 or Section 8.03 in respect of any Loss shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds and any indemnity, contribution or other similar payment actually received by the Indemnified Party in respect of any such claim.

(d) Each Indemnified Party shall take, and cause its Affiliates to take, all commercially reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance giving rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such Loss.

(e) Neither Seller nor Buyer shall be liable under this Article VIII for any Losses based upon or arising out of any inaccuracy in or breach of any of the representations or warranties of the other Party contained in this Agreement if Seller or Buyer, as the case may be, had actual knowledge of such inaccuracy or breach prior to the Closing.

Section 8.05 Indemnification Procedures.

(a) Third-Party Claims. Whenever any claim shall arise for indemnification hereunder that is based on the assertion or commencement of any Action made or brought by any Person who is not a Party to this Agreement or an Affiliate of a Party to this Agreement or a Representative of the foregoing (a “**Third Party Claim**”), the Indemnified Party shall promptly (but in any event within thirty (30) days) provide written notice of such claim to the Indemnifying Party. Such notice by the Indemnified Party shall: (i) describe the claim in reasonable detail; (ii) include copies of all material written evidence thereof; and (iii) indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. The Indemnifying Party, at its sole cost and expense and upon written notice to the

Indemnified Party, may participate in or assume the defense of any such Action with counsel reasonably satisfactory to the Indemnified Party; provided, that if the Indemnifying Party is Seller, such Indemnifying Party shall not have the right to defend or direct the defense of any Third Party Claim that (x) is asserted directly by or on behalf of a Person that is a supplier or customer of the Business, or (y) seeks an injunction or other equitable relief against the Indemnified Party. The Indemnified Party shall be entitled to participate in the defense of any such Action, with its counsel and at its own cost and expense, subject to the Indemnifying Party's right to control the defense thereof. If the Indemnifying Party does not assume the defense of any such Action, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, but shall not be obligated to, defend against such Action in such manner as it may deem appropriate, including settling such Action, after giving notice of it to the Indemnifying Party, on such terms as the Indemnified Party may deem appropriate, and no action or omission by the Indemnified Party in accordance with such defense and settlement shall relieve the Indemnifying Party of its indemnification obligations herein provided with respect to any damages resulting therefrom. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any claim, including making available (subject to the provisions of Section 6.03) records relating to such claim; and (ii) furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such claim. The Indemnifying Party shall not settle any Third-Party Claim without the Indemnified Party's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed in respect of any settlement offer that will not lead to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides for the unconditional release of the Indemnified Party from all Liabilities and obligations in connection with such Third Party Claim).

(b) Direct Claims. Any Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a "**Direct Claim**") shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim, and the Indemnified Party shall assist the Indemnifying Party's investigation by giving such

information and assistance (including access to the Indemnified Party's premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such thirty (30) day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

Section 8.06 Offset Right. Buyer may set off any amount to which Buyer may be entitled from Seller under this Agreement against the Indemnification Holdback Amount as set forth in Section 2.06.

Section 8.07 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the Parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

Section 8.08 Exclusive Remedies. The Parties acknowledge and agree that, except as expressly set forth in this Agreement, including without limitation in Section 6.01(e), their sole and exclusive remedy with respect to any and all claims for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this ARTICLE VIII. In furtherance of the foregoing, except with respect to Section 6.01(e), each Party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other Party hereto arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this ARTICLE VIII. Without limiting the generality of the foregoing, nothing in this Section 8.08 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled.

ARTICLE IX MISCELLANEOUS

Section 9.01 Expenses. Except as otherwise expressly provided herein (including Section 6.06 hereof), all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses.

Section 9.02 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 9.02):

If to Seller:

L.B. Foster Company
Facsimile: (412) 928-7891
E-mail: wtreacy@lbfoster.com
Attention: SVP – Infrastructure Solutions

with a copy to:

L.B. Foster Company
Facsimile: (412) 928-7891
E-mail: pguinee@lbfoster.com
Attention: General Counsel

If to Buyer:

J.D. Fields & Company, Inc.
Facsimile: [FAX NUMBER]
E-mail: jshowalter@jdfields.com
Attention: Joel S. Showalter

with a copy to:

Dwyer Murphy Calvert LLP
Facsimile: (512) 610-1131
E-mail: lpickle@dmc-law.com
Attention: Lori Pickle

Section 9.03 Interpretation. For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules, Annexes and Exhibits mean the Articles and Sections of, and Disclosure Schedules, Annexes and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules, Annexes and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 9.04 Disclosure Schedules. All section headings in the Disclosure Schedules correspond to the sections of this Agreement, but information provided in any section of the Disclosure Schedules shall constitute disclosure for purposes of each section of this Agreement where it is reasonably apparent from the face of such disclosure that such information is relevant; provided, however, that no items shall be deemed listed on any section of the Disclosure Schedule required under Section 2.01, Section 2.02, Section 2.03 or Section 2.04 unless expressly disclosed on such section of the Disclosure Schedule. Unless the context otherwise requires, all capitalized terms used in the Disclosure Schedules shall have the respective meanings assigned to such terms in this Agreement. No

reference to or disclosure of any item or other matter in the Disclosure Schedules shall be construed as an admission or indication that such item or other matter is required to be referred to or disclosed in the Disclosure Schedules. No disclosure in the Disclosure Schedules relating to any possible breach or violation of any agreement or Law shall be construed as an admission or indication to any third party that any such breach or violation exists or has actually occurred. The inclusion of any information in the Disclosure Schedules shall not be deemed to be an admission or acknowledgment by Seller that in and of itself, such information is material to, or outside the ordinary course of, the business or is required to be disclosed on the Disclosure Schedules. No disclosure in the Disclosure Schedules shall be deemed to create any rights in any third party.

Section 9.05 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 9.06 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 9.07 Entire Agreement. This Agreement and the other Transaction Documents constitute the sole and entire agreement of the Parties with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents, the Annexes, Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 9.08 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Neither Party may assign its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. No assignment shall relieve the assigning Party of any of its obligations hereunder.

Section 9.09 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 9.10 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in

respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 9.11 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania without giving effect to any choice or conflict of law provision or rule.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE COMMONWEALTH OF PENNSYLVANIA, IN EACH CASE LOCATED IN THE CITY OF PITTSBURGH AND COUNTY OF ALLEGHENY, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE

IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.11(c).

Section 9.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

L.B. FOSTER COMPANY

By: _____

Name: William F. Treacy

Title: SVP -Infrastructure Solutions

J.D. FIELDS & COMPANY, INC.

By: _____

Name: Jay D. Fields

Title: President and Chief Executive Officer

**Signature Page to
Asset Purchase Agreement**

Exhibit A

Form of Bill of Sale

(See attached)

Exhibit B

Form of Assignment and Assumption Agreement

(See attached)

Exhibit C

Form of Special Warranty Deed

(See attached)

Exhibit D

Form of Assignment and Assumption of Lease

(See attached)

Exhibit E

Form of Intellectual Property Assignment Agreement

(See attached)

Exhibit F

Form of Transition Services Agreement

(See attached)

Annex 1
Inventory Spreadsheet
(See attached)

Annex 2

Funds Flow Memorandum

(See attached)

**Certification under Section 302 of the
Sarbanes-Oxley Act of 2002**

I, John F. Kasel, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of L.B. Foster Company;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: **November 3, 2021**

/s/ John F. Kasel

Name: John F. Kasel

Title: President and Chief Executive Officer

**Certification under Section 302 of the
Sarbanes-Oxley Act of 2002**

I, William M. Thalman, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of L.B. Foster Company;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: **November 3, 2021**

/s/ William M. Thalman

Name: William M. Thalman
Title: Senior Vice President
and Chief Financial Officer

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

In connection with the Quarterly Report of L.B. Foster Company (the "Company") on Form 10-Q for the period ended September 30, 2021, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned certify pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 that:

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

Date: **November 3, 2021**

/s/ John F. Kasel

Name: John F. Kasel

Title: President and Chief Executive Officer

Date: **November 3, 2021**

/s/ William M. Thalman

Name: William M. Thalman

Title: Senior Vice President
and Chief Financial Officer