UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-Q

☒ **Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the quarterly period ended September 30, 2023

☐ **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 1-12711

AULT ALLIANCE, INC.
(*Exact name of registrant as specified in its charter*)

Delaware	**94-1721931**
(State or other jurisdiction of incorporation or organization)	*(I.R.S. Employer Identification Number)*

11411 Southern Highlands Pkwy #240
Las Vegas, NV 89141
(Address of principal executive offices) (Zip code)

(949) 444-5464
(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
Class A Common Stock, $0.001 par value	AULT	NYSE American
13.00% Series D Cumulative Redeemable Perpetual Preferred Stock, par value $0.001 per share	AULT PRD	NYSE American

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 year (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 Date File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

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

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

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

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

At November 17, 2023, the registrant had outstanding 68,742,947 shares of common stock.

AULT ALLIANCE, INC.
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Forward-Looking Statements

This Quarterly Report on Form 10-Q contains forward-looking statements that involve a number of risks and uncertainties. Words such as "anticipates," "expects," "intends," "goals," "plans," "believes," "seeks," "estimates," "continues," "may," "will," "would," "should," "could," and variations of such words and similar expressions are intended to identify such forward-looking statements. In addition, any statements that refer to projections of our future financial performance, our anticipated growth and trends in our businesses, uncertain events or assumptions, and other characterizations of future events or circumstances are forward-looking statements. Such statements are based on management's expectations as of the date of this filing and involve many risks and uncertainties that could cause our actual results to differ materially from those expressed or implied in our forward-looking statements. Such risks and uncertainties include those described throughout this report and our Annual Report on Form 10-K for the year ended December 31, 2022, as amended, particularly the "Risk Factors" sections of such reports. Given these risks and uncertainties, readers are cautioned not to place undue reliance on such forward-looking statements. The forward-looking statements in this Form 10-Q do not reflect the potential impact of any divestitures, mergers, acquisitions, or other business combinations that had not been completed as of the date of filing of this Quarterly Report on Form 10-Q. In addition, the forward-looking statements in this Form 10-Q are made as of the date of this filing, and we do not undertake, and expressly disclaim any duty to update such statements, whether as a result of new information, new developments or otherwise, except to the extent that disclosure may be required by law.

PART I – FINANCIAL INFORMATION

Item 1. Financial Statements.

AULT ALLIANCE, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(Unaudited)

	September 30, 2023	December 31, 2022
ASSETS		
CURRENT ASSETS		
Cash and cash equivalents	$ 8,736,000	$ 7,942,000
Restricted cash	1,903,000	732,000
Cash and marketable securities held in trust account	-	118,193,000
Marketable equity securities	72,000	6,590,000
Accounts receivable	24,651,000	19,322,000
Inventories	22,482,000	22,036,000
Investment in promissory notes and other, related party	3,018,000	2,868,000
Loans receivable, current	1,166,000	7,593,000
Prepaid expenses and other current assets	8,709,000	5,074,000
Current assets of discontinued operations	98,596,000	5,959,000
TOTAL CURRENT ASSETS	169,333,000	196,309,000
Cash and marketable securities held in trust account	2,171,000	-
Intangible assets, net	16,980,000	34,786,000
Goodwill	8,973,000	27,902,000
Property and equipment, net	132,044,000	146,779,000
Right-of-use assets	10,419,000	8,419,000
Investments in common stock, related parties	2,712,000	6,449,000
Investments in other equity securities	26,014,000	42,494,000
Other assets	9,810,000	5,841,000
Noncurrent assets of discontinued operations	-	92,535,000
TOTAL ASSETS	$ 378,456,000	$ 561,514,000
LIABILITIES AND STOCKHOLDERS' EQUITY		
CURRENT LIABILITIES		
Accounts payable and accrued expenses	$ 88,213,000	$ 60,780,000
Operating lease liability, current	1,901,000	2,975,000
Notes payable, net	30,255,000	39,621,000
Notes payable, related party	16,225,000	-
Convertible notes payable, current	8,601,000	1,325,000
Redeemable noncontrolling interests in equity of subsidiaries	-	117,993,000
Current liabilities of discontinued operations	69,212,000	2,631,000
TOTAL CURRENT LIABILITIES	214,407,000	225,325,000

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

AULT ALLIANCE, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS (continued)
(Unaudited)

	September 30, 2023	December 31, 2022
LONG TERM LIABILITIES		
Operating lease liability, non-current	8,697,000	5,836,000
Notes payable	21,211,000	29,831,000
Convertible notes payable	9,453,000	11,451,000
Deferred underwriting commissions of Ault Disruptive Technologies Corporation (“Ault Disruptive”) subsidiary	3,450,000	3,450,000
Noncurrent liabilities of discontinued operations	-	61,633,000
TOTAL LIABILITIES	257,218,000	337,526,000
COMMITMENTS AND CONTINGENCIES		
Redeemable noncontrolling interests in equity of subsidiaries	2,179,000	-
STOCKHOLDERS’ EQUITY		
Series A Convertible Preferred Stock, $25 stated value per share, $0.001 par value – 1,000,000 shares authorized; 7,040 shares issued and outstanding at September 30, 2023 and December 31, 2022 (liquidation preference of $176,000 as of September 30, 2023 and December 31, 2022)	-	-
Series B Convertible Preferred Stock, $10 stated value per share, share, $0.001 par value – 500,000 shares authorized; 125,000 shares issued and outstanding at September 30, 2023 and December 31, 2022 (liquidation preference of $1,190,000 at September 30, 2023 and December 31, 2022)	-	-
Series D Cumulative Redeemable Perpetual Preferred Stock, $25 stated value per share, $0.001 par value – 2,000,000 shares authorized; shares authorized, 425,197 shares and 172,838 shares issued and outstanding at September 30, 2023 and December 31, 2022, respectively (liquidation preference of $10,630,000 and $4,321,000 as of September 30, 2023 and December 31, 2022, respectively)	-	-
Class A Common Stock, $0.001 par value – 500,000,000 shares authorized; 12,379,673 and 1,274,157 shares issued and outstanding at September 30, 2023 and December 31, 2022, respectively	12,000	1,000
Class B Common Stock, $0.001 par value – 25,000,000 shares authorized; 0 shares issued and outstanding at September 30, 2023 and December 31, 2022	-	-
Additional paid-in capital	589,279,000	565,904,000
Accumulated deficit	(467,088,000)	(329,078,000)
Accumulated other comprehensive loss	(2,102,000)	(1,100,000)
Treasury stock, at cost	(30,540,000)	(29,235,000)
TOTAL AULT ALLIANCE STOCKHOLDERS’ EQUITY	89,561,000	206,492,000
Non-controlling interest	29,498,000	17,496,000
TOTAL STOCKHOLDERS’ EQUITY	119,059,000	223,988,000
TOTAL LIABILITIES AND STOCKHOLDERS’ EQUITY	$ 378,456,000	$ 561,514,000

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

AULT ALLIANCE, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(Unaudited)

	For the Three Months Ended September 30, 2023	For the Three Months Ended September 30, 2022	For the Nine Months Ended September 30, 2023	For the Nine Months Ended September 30, 2022
Revenue	$ 28,164,000	$ 27,031,000	$ 54,594,000	$ 43,539,000
Revenue, cryptocurrency mining	7,558,000	3,874,000	23,273,000	11,398,000
Revenue, crane operations	12,490,000	-	37,726,000	-
Revenue, lending and trading activities	(249,000)	13,360,000	4,337,000	32,224,000
Total revenue	47,963,000	44,265,000	119,930,000	87,161,000
Cost of revenue, products	20,425,000	20,193,000	39,248,000	30,985,000
Cost of revenue, cryptocurrency mining	10,228,000	5,255,000	28,057,000	12,206,000
Cost of revenue, crane operations	7,642,000	-	22,671,000	-
Cost of revenue, lending and trading activities	-	-	1,180,000	-
Total cost of revenue	38,295,000	25,448,000	91,156,000	43,191,000
Gross profit	9,668,000	18,817,000	28,774,000	43,970,000
Operating expenses				
Research and development	1,769,000	521,000	5,415,000	1,945,000
Selling and marketing	8,034,000	7,428,000	26,405,000	20,888,000
General and administrative	17,760,000	15,362,000	59,540,000	44,357,000
Impairment of goodwill and intangible assets	-	-	35,570,000	-
Impairment of property and equipment	3,895,000	-	3,895,000	-
Impairment of deposit due to vendor bankruptcy filing	-	2,000,000	-	2,000,000
Impairment of mined cryptocurrency	113,000	515,000	376,000	2,930,000
Total operating expenses	31,571,000	25,826,000	131,201,000	72,120,000
Loss from operations	(21,903,000)	(7,009,000)	(102,427,000)	(28,150,000)
Other income (expense):				
Interest and other income	309,000	725,000	3,888,000	1,255,000
Interest expense	(4,414,000)	(2,367,000)	(30,537,000)	(32,063,000)
Loss on extinguishment of debt	(1,546,000)	-	(1,700,000)	-
Realized and unrealized (loss) gain on marketable securities	74,000	709,000	(170,000)	1,016,000
Loss from investment in unconsolidated entity	-	-	-	(924,000)
Impairment of equity securities	-	-	(9,555,000)	-
(Loss) gain on the sale of fixed assets	(33,000)	-	2,728,000	-
Change in fair value of warrant liability	(562,000)	(3,000)	2,655,000	(27,000)
Total other expense, net	(6,172,000)	(936,000)	(32,691,000)	(30,743,000)
Loss before income taxes	(28,075,000)	(7,945,000)	(135,118,000)	(58,893,000)
Income tax (benefit) provision	(565,000)	144,000	540,000	361,000
Net loss from continuing operations	(27,510,000)	(8,089,000)	(135,658,000)	(59,254,000)
Net (loss) income from discontinued operations	(929,000)	93,000	(5,862,000)	(3,614,000)
Net loss	(28,439,000)	(7,996,000)	(141,520,000)	(62,868,000)
Net loss attributable to non-controlling interest	6,668,000	725,000	10,420,000	1,061,000
Net loss attributable to Ault Alliance, Inc.	(21,771,000)	(7,271,000)	(131,100,000)	(61,807,000)
Preferred dividends	(413,000)	(190,000)	(963,000)	(239,000)
Net loss available to common stockholders	$ (22,184,000)	$ (7,461,000)	$ (132,063,000)	$ (62,046,000)
Basic and diluted net income (loss) per common share:				
Continuing operations	$ (3.80)	$ (7.71)	$ (47.66)	$ (77.70)
Discontinued operations	(0.17)	0.10	(2.21)	(4.81)
Net loss per common share	$ (3.97)	$ (7.61)	$ (49.87)	$ (82.51)
Weighted average basic and diluted common shares outstanding	5,587,000	980,000	2,648,000	752,000
Comprehensive loss				
Net loss available to common stockholders	$ (22,184,000)	$ (7,461,000)	$ (132,063,000)	$ (62,046,000)
Foreign currency translation adjustment	(651,000)	306,000	(1,001,000)	(1,452,000)
Other comprehensive loss	(651,000)	306,000	(1,001,000)	(1,452,000)
Total comprehensive loss	$ (22,835,000)	$ (7,155,000)	$ (133,064,000)	$ (63,498,000)

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

AULT ALLIANCE, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY
(Unaudited)
Three Months Ended September 30, 2023

	Series A, B & D Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Non-Controlling Interest	Treasury Stock	Total Stockholders' Equity
	Shares	Amount	Shares	Amount						
BALANCES, July 1, 2023	557,237	$ -	1,526,411	$ 2,000	$ 573,386,000	$ (444,371,000)	$ (1,450,000)	$ 23,853,000	$ (29,919,000)	$ 121,501,000
Stock-based compensation	-	-	-	-	959,000	-	-	1,622,000	-	2,581,000
Issuance of common stock for cash	-	-	10,707,601	11,000	20,404,000	-	-	-	-	20,415,000
Financing cost in connection with sales of common stock	-	-	-	-	(715,000)	-	-	-	-	(715,000)
Issuance of common stock for conversion of preferred stock liabilities	-	-	105,909	-	584,000	-	-	-	-	584,000
Common stock issued in connection with issuance of notes payable	-	-	39,752	-	162,000	-	-	-	-	162,000
Remeasurement of Ault Disruptive subsidiary temporary equity	-	-	-	-	-	(530,000)	-	-	-	(530,000)
Increase in ownership interest of subsidiary	-	-	-	-	-	-	-	(352,000)	-	(352,000)
Sale of subsidiary stock to non-controlling interests	-	-	-	-	-	-	-	343,000	-	343,000
Purchase of treasury stock - Ault Alpha LP ("Ault Alpha")	-	-	-	-	-	-	-	-	(621,000)	(621,000)
Net loss	-	-	-	-	-	(21,771,000)	-	-	-	(21,771,000)
Preferred dividends	-	-	-	-	-	(413,000)	-	-	-	(413,000)
Foreign currency translation adjustments	-	-	-	-	-	-	(651,000)	-	-	(651,000)
Net loss attributable to non-controlling interest	-	-	-	-	-	-	-	(6,668,000)	-	(6,668,000)
Distribution of securities of Imperalis Holding Corp., d/b/a TurnOnGreen, Inc. ("TurnOnGreen") to Ault Alliance stockholders ($1.44 per share)	-	-	-	-	(5,500,000)	-	-	10,700,000	-	5,200,000
Other	-	-	-	(1,000)	(1,000)	(3,000)	(1,000)	-	-	(6,000)
BALANCES, September 30, 2023	557,237	$ -	12,379,673	$ 12,000	$ 589,279,000	$ (467,088,000)	$ (2,102,000)	$ 29,498,000	$ (30,540,000)	$ 119,059,000

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

AULT ALLIANCE, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY
(Unaudited)
Three Months Ended September 30, 2022

	Series A, B & D Preferred Stock		Common Stock		Additional Paid-In	Accumulated	Other Comprehensive	Non-Controlling	Treasury	Total Stockholders'
	Shares	Amount	Shares	Amount	Capital	Deficit	Loss	Interest	Stock	Equity
BALANCES, July 1, 2022	278,658	$ -	1,081,469	$ 1,000	$ 550,036,000	$ (200,184,000)	$ (1,863,000)	$ 18,048,000	$ (20,639,000)	$ 345,399,000
Preferred stock issued	8,310	-	-	-	207,000	-	-	-	-	207,000
Preferred stock offering costs	-	-	-	-	(65,000)	-	-	-	-	(65,000)
Stock-based compensation	-	-	-	-	1,563,000	-	-	479,000	-	2,042,000
Issuance of Gresham Worldwide, Inc. common stock for acquisition of Giga-tronics Incorporated ("GIGA")	-	-	-	-	1,669,000	-	-	-	-	1,669,000
Issuance of common stock for cash	-	-	56,688	-	4,557,000	-	-	-	-	4,557,000
Financing cost in connection with sales of common stock	-	-	-	-	(79,000)	-	-	-	-	(79,000)
Increase in ownership interest of subsidiary	-	-	-	-	(132,000)	-	-	(1,539,000)	-	(1,671,000)
Non-controlling interest from GIGA acquisition	-	-	-	-	-	-	-	2,735,000	-	2,735,000
Purchase of treasury stock - Ault Alpha	-	-	-	-	-	-	-	-	(8,148,000)	(8,148,000)
Net loss	-	-	-	-	-	(7,271,000)	-	-	-	(7,271,000)
Preferred dividends	-	-	-	-	-	(190,000)	-	-	-	(190,000)
Foreign currency translation adjustments	-	-	-	-	-	-	306,000	-	-	306,000
Net loss attributable to non-controlling interest	-	-	-	-	-	-	-	(725,000)	-	(725,000)
Other	-	-	-	-	2,000	(2,000)	-	(2,000)	(1,000)	(3,000)
BALANCES, September 30, 2022	286,968	$ -	1,138,157	$ 1,000	$ 557,758,000	$ (207,647,000)	$ (1,557,000)	$ 18,996,000	$ (28,788,000)	$ 338,763,000

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

AULT ALLIANCE, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY
(Unaudited)
Nine Months Ended September 30, 2023

	Series A, B & D Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Other Comprehensive Loss	Non-Controlling Interest	Treasury Stock	Total Stockholders' Equity
	Shares	Amount	Shares	Amount						
BALANCES, January 1, 2023	304,878	$ -	1,274,157	$ 1,000	$ 565,904,000	$ (329,078,000)	$ (1,100,000)	$ 17,496,000	$ (29,235,000)	$ 223,988,000
Issuance of common stock for restricted stock awards	-	-	4,974	-	-	-	-	-	-	-
Preferred stock issued for cash	252,359	-	-	-	6,309,000	-	-	-	-	6,309,000
Preferred stock offering costs	-	-	-	-	(3,431,000)	-	-	-	-	(3,431,000)
Stock-based compensation					5,642,000	-	-	3,546,000	-	9,188,000
Issuance of common stock for cash	-	-	10,917,388	11,000	25,316,000	-	-	-	-	25,327,000
Financing cost in connection with sales of common stock	-	-	-	-	(847,000)	-	-	-	-	(847,000)
Issuance of common stock for conversion of preferred stock liabilities	-	-	143,402	-	912,000	-	-	-	-	912,000
Common stock issued in connection with issuance of notes payable	-	-	39,752	-	162,000	-	-	-	-	162,000
Remeasurement of Ault Disruptive subsidiary temporary equity	-	-	-	-	-	(5,945,000)	-	-	-	(5,945,000)
Increase in ownership interest of subsidiary	-	-	-	-	13,000	-	-	(1,597,000)	-	(1,584,000)
Non-controlling position at RiskOn International, Inc. ("ROI") subsidiary acquired	-	-	-	-	-	-	-	6,357,000	-	6,357,000
Sale of subsidiary stock to non-controlling interests	-	-	-	-	-	-	-	3,915,000	-	3,915,000
Distribution to Circle 8 Crane Services, LLC ("Circle 8") non-controlling interest	-	-	-	-	-	-	-	(500,000)	-	(500,000)
Purchase of treasury stock - Ault Alpha	-	-	-	-	-	-	-	-	(1,306,000)	(1,306,000)
Net loss	-	-	-	-	-	(131,100,000)	-	-	-	(131,100,000)
Preferred dividends		-	-	-	-	(963,000)	-	-	-	(963,000)
Foreign currency translation adjustments	-	-	-	-	-	-	(1,001,000)	-	-	(1,001,000)
Net loss attributable to non-controlling interest	-	-	-	-	-	-	-	(10,420,000)	-	(10,420,000)
Distribution of securities of TurnOnGreen to Ault Alliance stockholders ($2.02 per share)	-	-	-	-	(10,700,000)	-	-	10,700,000	-	-
Other	-	-	-	-	(1,000)	(2,000)	(1,000)	1,000	1,000	(2,000)
BALANCES, September 30, 2023	557,237	$ -	12,379,673	$ 12,000	$ 589,279,000	$ (467,088,000)	$ (2,102,000)	$ 29,498,000	$ (30,540,000)	$ 119,059,000

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

AULT ALLIANCE, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY
(Unaudited)
Nine Months Ended September 30, 2022

	Series A, B & D Preferred Stock		Common Stock		Additional Paid-In	Accumulated	Accumulated Other Comprehensive	Non-Controlling	Treasury	Total Stockholders'
	Shares	Amount	Shares	Amount	Capital	Deficit	Loss	Interest	Stock	Equity
BALANCES, January 1, 2022	132,040	$ -	281,149	$ -	$ 385,728,000	$ (145,600,000)	$ (106,000)	$ 1,613,000	$ (13,180,000)	$ 228,455,000
Issuance of common stock for restricted stock awards	-	-	1,473	-	-	-	-	-	-	-
Preferred stock issued for cash	154,928	-	-	-	3,873,000	-	-	-	-	3,873,000
Preferred stock offering costs	-	-	-	-	(602,000)	-	-	-	-	(602,000)
Stock-based compensation					5,190,000	-	-	556,000	-	5,746,000
Issuance of Gresham Worldwide, Inc. common stock for acquisition of GIGA	-	-	-	-	1,669,000	-	-	-	-	1,669,000
Issuance of common stock for cash	-	-	855,535	1,000	167,982,000	-	-	-	-	167,983,000
Financing cost in connection with sales of common stock	-	-	-	-	(4,103,000)	-	-	-	-	(4,103,000)
Increase in ownership interest of subsidiary	-	-	-	-	(1,980,000)	-	-	(1,921,000)	-	(3,901,000)
Non-controlling interest from AVLP acquisition	-	-	-	-	-	-	-	6,738,000	-	6,738,000
Non-controlling interest from SMC acquisition	-	-	-	-	-	-	-	10,336,000	-	10,336,000
Non-controlling interest from GIGA acquisition	-	-	-	-	-	-	-	2,735,000	-	2,735,000
Purchase of treasury stock - Ault Alpha	-	-	-	-	-	-	-	-	(15,607,000)	(15,607,000)
Net loss	-	-	-	-	-	(61,807,000)	-	-	-	(61,807,000)
Preferred dividends		-	-	-	-	(239,000)	-	-	-	(239,000)
Foreign currency translation adjustments	-	-	-	-	-	-	(1,452,000)	-	-	(1,452,000)
Net loss attributable to non-controlling interest	-	-	-	-	-	-	-	(1,061,000)	-	(1,061,000)
Other	-	-	-	-	1,000	(1,000)	1,000	-	(1,000)	-
BALANCES, September 30, 2022	286,968	$ -	1,138,157	$ 1,000	$ 557,758,000	$ (207,647,000)	$ (1,557,000)	$ 18,996,000	$ (28,788,000)	$ 338,763,000

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

AULT ALLIANCE, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)

	For the Nine Months Ended September 30, 2023	2022
Cash flows from operating activities:		
Net loss	$ (141,520,000)	$ (62,868,000)
Net loss from discontinued operations	(5,862,000)	(3,614,000)
Net loss from continuing operations	(135,658,000)	(59,254,000)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization	20,808,000	8,298,000
Amortization of debt discount	22,463,000	26,665,000
Amortization of right-of-use assets	2,142,000	1,193,000
Impairment of goodwill and intangible assets	35,570,000	-
Impairment of property and equipment	3,895,000	-
Stock-based compensation	9,188,000	5,746,000
Impairment of deposit due to vendor bankruptcy filing	-	2,000,000
Gain on the sale of fixed assets	(2,728,000)	-
Impairment of equity securities	11,555,000	-
Impairment of cryptocurrencies	376,000	2,930,000
Realized gain on the sale of cryptocurrencies	(404,000)	(829,000)
Revenue, cryptocurrency mining	(23,273,000)	(11,398,000)
Realized losses on sale of marketable securities	(33,140,000)	(19,194,000)
Unrealized (gains) losses on marketable securities	(2,554,000)	16,937,000
Unrealized losses on investments in common stock, related parties	3,752,000	5,676,000
Unrealized gains on equity securities	-	(32,949,000)
Income from cash held in trust	(2,561,000)	-
Loss from investment in unconsolidated entity	-	924,000
Loss on remeasurement of investment in unconsolidated entity	-	2,700,000
Provision for loan losses	1,180,000	-
Change in the fair value of warrant liability	(2,655,000)	(917,000)
Other	1,550,000	(766,000)
Changes in operating assets and liabilities:		
Proceeds from the sale of cryptocurrencies	21,330,000	8,952,000
Marketable equity securities	71,159,000	68,532,000
Accounts receivable	(5,582,000)	(3,022,000)
Inventories	(456,000)	(5,867,000)
Prepaid expenses and other current assets	(1,530,000)	1,599,000
Other assets	(3,969,000)	(2,944,000)
Accounts payable and accrued expenses	13,527,000	7,528,000
Lease liabilities	(2,511,000)	(1,334,000)
Net cash provided by operating activities from continuing operations	1,474,000	21,206,000
Net cash (used in) provided by operating activities from discontinued operations	(3,632,000)	683,000
Net cash (used in) provided by operating activities	(2,158,000)	21,889,000
Cash flows from investing activities:		
Purchase of property and equipment	(8,734,000)	(80,058,000)
Investment in promissory notes and other, related parties	-	(2,200,000)
Investments in common stock and warrants, related parties	-	(4,840,000)
Purchase of SMC, net of cash received	-	(8,239,000)
Purchase of GIGA, net of cash received	-	(3,687,000)
Cash received upon acquisition of AVLP	-	1,245,000
Acquisition of non-controlling interests	(1,584,000)	(3,901,000)
Purchase of marketable equity securities	-	(1,981,000)
Sales of marketable equity securities	-	11,748,000
Investments in loans receivable	(182,000)	(7,081,000)
Principal payments on loans receivable	-	10,525,000
Investments in equity securities	(10,702,000)	(22,449,000)
Proceeds from the sale of fixed assets	4,515,000	-
Other	(79,000)	-
Net cash used in investing activities from continuing operations	(16,766,000)	(110,918,000)
Net cash used in investing activities from discontinued operations	(6,103,000)	(4,442,000)
Net cash used in investing activities	(22,869,000)	(115,360,000)

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

AULT ALLIANCE, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (continued)
(Unaudited)

	For the Nine Months Ended September 30, 2023	2022
Cash flows from financing activities:		
Gross proceeds from sales of common stock	$ 25,327,000	$ 167,983,000
Financing cost in connection with sales of common stock	(847,000)	(4,103,000)
Proceeds from sales of preferred stock	6,309,000	3,873,000
Financing cost in connection with sales of preferred stock	(3,431,000)	(602,000)
Proceeds from subsidiaries' sale of stock to non-controlling interests	3,915,000	-
Distribution to Circle 8 non-controlling interest	(500,000)	-
Proceeds from notes payable	40,406,000	15,268,000
Repayment of margin accounts	(767,000)	(16,111,000)
Payments on notes payable	(58,068,000)	(67,698,000)
Payments of preferred dividends	(963,000)	(239,000)
Purchase of treasury stock	(1,306,000)	(15,607,000)
Proceeds from sales of convertible notes	9,169,000	-
Payments on convertible notes	(660,000)	-
Net cash provided by financing activities from continuing operations	18,584,000	82,764,000
Net cash provided by financing activities from discontinued operations	5,189,000	3,297,000
Net cash provided by financing activities	23,773,000	86,061,000
Effect of exchange rate changes on cash and cash equivalents	(311,000)	920,000
Net decrease in cash and cash equivalents and restricted cash	(1,565,000)	(6,490,000)
Cash and cash equivalents and restricted cash at beginning of period	14,055,000	21,233,000
Cash and cash equivalents and restricted cash at end of period	12,490,000	14,743,000
Less cash and cash equivalents and restricted cash of discontinued operations at end of period	(1,851,000)	(6,154,000)
Cash and cash equivalents and restricted cash of continuing operations at end of period	$ 10,639,000	$ 8,589,000
Supplemental disclosures of cash flow information:		
Cash paid during the period for interest – continuing operations	$ 3,990,000	$ 1,438,000
Cash paid during the period for interest – discontinued operations	$ 5,513,000	$ 3,764,000
Non-cash investing and financing activities:		
Settlement of accounts payable with digital currency	$ 20,000	$ 417,000
Conversion of investment in unconsolidated entity for acquisition of AVLP	$ -	$ 20,706,000
Conversion of convertible notes payable, related party into shares of common stock	$ 400,000	$ 400,000
Conversion of debt and equity securities to marketable securities	$ 23,703,000	$ 40,324,000
Conversion of loans receivable to marketable securities	$ 5,430,000	$ 3,650,000
Conversion of interest receivable to marketable securities	$ -	$ 250,000
Recognition of new operating lease right-of-use assets and lease liabilities	$ 3,952,000	$ 2,188,000
Remeasurement of Ault Disruptive temporary equity	$ 5,945,000	$ -
Preferred stock exchanged for notes payable	$ 9,224,000	$ -
Notes payable exchanged for convertible notes payable	$ 2,200,000	$ -
Notes payable exchanged for notes payable, related party	$ 11,645,000	$ -
Redeemable noncontrolling interests in equity of subsidiaries paid with cash and marketable securities held in trust account	$ 120,064,000	$ -
Dividend paid in TurnOnGreen common stock in additional paid-in capital	$ 10,700,000	$ -

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

1. DESCRIPTION OF BUSINESS

Ault Alliance, Inc., a Delaware corporation ("Ault Alliance" or the "Company") is a diversified holding company pursuing growth by acquiring undervalued businesses and disruptive technologies with a global impact. Through its wholly- and majority-owned subsidiaries and strategic investments, the Company owns and operates a data center at which it mines Bitcoin and offers colocation and hosting services for the emerging artificial intelligence ecosystems and other industries, and provides mission-critical products that support a diverse range of industries, including metaverse platform, oil exploration, crane services, defense/aerospace, industrial, automotive, medical/biopharma, consumer electronics, hotel operations and textiles. In addition, the Company extends credit to select entrepreneurial businesses through a licensed lending subsidiary.

Ault Alliance was founded by Milton "Todd" Ault, III, its Executive Chairman and is led by Milton "Todd" Ault, III, William B. Horne, its Chief Executive Officer and Vice Chairman and Henry Nisser, its President and General Counsel. Together, they constitute the Executive Committee, which manages the day-to-day operations of the Company. All major investment and capital allocation decisions are made for the Company by the Executive Committee. The Company has the following eight reportable segments:

- Energy and Infrastructure ("Energy") – crane operations, advanced textiles processing and oil exploration;
- Technology and Finance ("Fintech") – commercial lending, activist investing, stock trading, media, and digital learning;
- The Singing Machine Company, Inc. ("SMC") – consumer electronics;
- Sentinum, Inc. ("Sentinum") – cryptocurrency mining operations and colocation and hosting services for the emerging artificial intelligence ecosystems and other industries;
- GIGA – defense industry;
- TurnOnGreen – commercial electronics solutions;
- RiskOn International, Inc., formerly BitNile Metaverse, Inc. ("ROI") – immersive metaverse platform; and
- Ault Disruptive – a special purpose acquisition company.

Reverse Stock Split

On May 15, 2023, pursuant to the authorization provided by the Company's stockholders at a special meeting of stockholders, the Company's board of directors approved an amendment to the Certificate of Incorporation to effectuate a reverse stock split of the Company's issued and outstanding common stock by a ratio of one-for-three hundred (the "Reverse Split"). The Reverse Split did not affect the number of authorized shares of common stock, preferred stock or their respective par value per share. As a result of the Reverse Split, each three hundred shares of common stock issued and outstanding prior to the Reverse Split were converted into one share of common stock. The Reverse Split became effective in the State of Delaware on May 17, 2023. All share amounts in these financial statements have been updated to reflect the Reverse Split.

2. LIQUIDITY AND FINANCIAL CONDITION

As of September 30, 2023, the Company had cash and cash equivalents of $8.7 million, negative working capital of $45.1 million and a history of net operating losses. The Company has financed its operations principally through issuances of convertible debt, promissory notes and equity securities. These factors create substantial doubt about the Company's ability to continue as a going concern for at least one year after the date that these condensed consolidated financial statements are issued.

The condensed consolidated financial statements do not include any adjustments that might be necessary if the Company is unable to continue as a going concern. Accordingly, the condensed consolidated financial statements have been prepared on a basis that assumes the Company will continue as a going concern and which contemplates the realization of assets and satisfaction of liabilities and commitments in the ordinary course of business.

In making this assessment management performed a comprehensive analysis of the Company's current circumstances, including its financial position, cash flow and cash usage forecasts, as well as obligations and debts. Although management has a long history of successful capital raises, the analysis used to determine the Company's ability as a going concern does not include cash sources beyond the Company's direct control that management expects to be available within the next 12 months.

Management expects that the Company's existing cash and cash equivalents, accounts receivable and marketable securities as of September 30, 2023, will not be sufficient to enable the Company to fund its anticipated level of operations through one year from the date these financial statements are issued. Management anticipates raising additional capital through the private and public sales of the Company's equity or debt securities and selling its marketable securities and digital currencies, or a combination thereof. Although management believes that such capital sources will be available, there can be no assurances that financing will be available to the Company when needed in order to allow the Company to continue its operations, or if available, on terms acceptable to the Company. If the Company does not raise sufficient capital in a timely manner, among other things, the Company may be forced to scale back its operations or cease operations altogether.

3. BASIS OF PRESENTATION AND SIGNIFICANT ACCOUNTING POLICIES

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with the instructions to Form 10-Q and Regulation S-X and do not include all the information and disclosures required by generally accepted accounting principles in the United States of America ("GAAP"). The Company has made estimates and judgments affecting the amounts reported in the Company's condensed consolidated financial statements and the accompanying notes. The actual results experienced by the Company may differ materially from the Company's estimates. The condensed consolidated financial information is unaudited but reflects all normal adjustments that are, in the opinion of management, necessary to provide a fair statement of results for the interim periods presented.

These condensed consolidated financial statements should be read in conjunction with the consolidated financial statements in the Company's amended Annual Report on Form 10-K/A for the year ended December 31, 2022 (the "2022 Annual Report"), filed with the Securities and Exchange Commission (the "SEC") on May 22, 2023. The condensed consolidated balance sheet as of December 31, 2022 was derived from the Company's audited 2022 financial statements contained in the above referenced 2022 Annual Report. Results of the three and nine months ended September 30, 2023, are not necessarily indicative of the results to be expected for the full year ending December 31, 2023.

Significant Accounting Policies

Other than as noted below, there have been no material changes to the Company's significant accounting policies previously disclosed in the 2022 Annual Report.

Revenue Recognition – Bitcoin Mining

The Company recognizes revenue from Bitcoin mining under Accounting Standards Codification ("ASC") 606, Revenue from Contracts with Customers ("ASC 606"). The core principle of ASC 606 is that a company should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the company expects to be entitled in exchange for those goods or services. The following five steps are applied to achieve that core principle:

- Step 1: Identify the contract with the customer;
- Step 2: Identify the performance obligations in the contract;
- Step 3: Determine the transaction price;
- Step 4: Allocate the transaction price to the performance obligations in the contract; and
- Step 5: Recognize revenue when the company satisfies a performance obligation.

The Company has entered into a digital asset mining pool by executing a contract with a mining pool operator to provide computing power to the mining pool. The Company's customer, as defined in ASC 606-10-20, is the mining pool operator with which the Company has agreed to the terms of service and user service agreement. The Company supplies computing power, in exchange for consideration, to the pool operator who in turn provides transaction verification services to third parties via a mining pool that includes other participants.

The Company's enforceable right to compensation begins only when, and lasts as long as, the Company provides computing power to the mining pool operator and is created as power is provided over time. The only consideration due to the Company relates to the provision of computing power. The contracts are terminable at any time by and at no cost to the Company, and by the pool operator. Providing computing power in digital asset transaction verification services is an output of the Company's ordinary activities. Providing such computing power is the only performance obligation in the Company's contracts with mining pool operators.

The transaction consideration the Company receives, if any, is non-cash consideration in the form of Bitcoin. Changes in the fair value of the non-cash consideration due to form of the consideration (changes in the market price of Bitcoin) are not included in the transaction price and are therefore not included in revenue. The mining pool operator charges fees to cover the costs of maintaining the pool and are deducted from amounts the Company may otherwise earn and are treated as a reduction to the consideration received. Fees fluctuate and historically have been approximately 0.3% per reward earned, on average.

In exchange for providing computing power, the Company is entitled to a Full-Pay-Per-Share payout of Bitcoin based on a contractual formula, which primarily calculates the hash rate provided by the Company to the mining pool as a percentage of total network hash rate, and other inputs. The Company is entitled to consideration even if a block is not successfully placed by the mining pool operator. The contract is in effect until terminated by either party.

All consideration pursuant to this arrangement is variable. It is not probable that a significant reversal of cumulative revenue will occur and the Company is able to calculate the payout based on the contractual formula, non-cash revenue is estimated and recognized based on the spot price of the Company's principal market for Bitcoin at the inception of each contract, which is determined to be daily. Non-cash consideration is measured at fair value at contract inception. Fair value of the crypto asset consideration is determined using the spot price of the Company's principal market for Bitcoin at the beginning of the contract period. This amount is estimated and recognized in revenue upon inception, which is when hash rate is provided.

There is no significant financing component in these transactions.

Expenses associated with running the cryptocurrency mining business, such as equipment depreciation and electricity costs, are recorded as a component of cost of revenues.

Preferred Stock Liabilities

The Company follows ASC 480-10, "Distinguishing Liabilities from Equity" in its evaluation of the accounting for the Preferred Shares (as defined in Note 17). ASC 480-10-25-14 requires liability accounting for certain financial instruments, including shares that embody an unconditional obligation to transfer a variable number of shares, provided that the monetary value of the obligation is based solely or predominantly on one of the following three characteristics:

- A fixed monetary amount known at inception;
- Variations in something other than the fair value of the issuer's shares; or
- Variations in the fair value of the issuer's equity shares, but the monetary value to the counterparty moves in the opposite direction as the value of the issuer's shares.

The number of shares delivered is determined on the basis of (1) the fixed monetary amount determined as the stated value and (2) the current stock price at settlement, so that the aggregate fair value of the shares delivered equals the monetary value of the obligation, which is fixed or predominantly fixed. Accordingly, the holder is not significantly exposed to gains and losses attributable to changes in the fair value of the Company's equity shares. Instead, the Company is using its own equity shares as currency to settle a monetary obligation.

Discontinued operations

The Company records discontinued operations when the disposal of a separately identified business unit constitutes a strategic shift in the Company's operations, as defined in ASC Topic 205-20, Discontinued Operations ("ASC Topic 205-20").

Reclassifications

Certain prior period amounts have been reclassified for comparative purposes to conform to the current-period financial statement presentation. These reclassifications had no effect on previously reported results of operations.

Recently Adopted Accounting Standards

In June 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2016-13, "Financial Instruments - Credit Losses," ("ASU No. 2016-13") to improve information on credit losses for financial assets and net investment in leases that are not accounted for at fair value through net income. ASU 2016-13 replaces the current incurred loss impairment methodology with a methodology that reflects expected credit losses. This guidance was effective for the Company beginning on January 1, 2023. The adoption of this guidance did not have a material impact on the Company's condensed consolidated financial statements.

In October 2021, the FASB issued ASU 2021-08, "Business Combinations (Topic 805), Accounting for Contract Assets and Contract Liabilities from Contracts with Customers," which requires contract assets and contract liabilities acquired in a business combination to be recognized and measured by the acquirer on the acquisition date in accordance with ASC 606, "Revenue from Contracts with Customers." The guidance will result in the acquirer recognizing contract assets and contract liabilities at the same amounts recorded by the acquiree. The guidance should be applied prospectively to acquisitions occurring on or after the effective date. The guidance is effective for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. The adoption of this guidance did not have a material impact on the Company's condensed consolidated financial statements.

4. ASSETS HELD FOR SALE AND DISCONTINUED OPERATIONS

Presentation of AGREE Operations

In September 2023, the Company committed to a plan for its wholly owned subsidiary AGREE to list for sale its four recently renovated Midwest hotels, the Hilton Garden Inn in Madison West, the Residence Inn in Madison West, the Courtyard in Madison West, and the Hilton Garden Inn in Rockford. The decision to sell the hotels follows the decision to also list the multifamily development site in St. Petersburg, Florida and is driven by the Company's desire to focus on its core businesses, Energy, Fintech and Sentinum. The Company's real estate properties, which include both hotels and land are currently listed for sale.

In connection with the planned sale of AGREE assets, the Company concluded that the net assets of AGREE met the criteria for classification as held for sale. In addition, the proposed sale represents a strategic shift that will have a significant effect on the Company's operations and financial results. As a result, the Company has presented the results of operations, cash flows and financial position of AGREE as discontinued operations in the accompanying consolidated financial statements and notes for all periods presented.

As of September 30, 2023, the Company expects the planned sale of AGREE assets to close within one year and, as a result, the Company has classified the total assets and total liabilities associated with AGREE as current in the consolidated balance sheets as of September 30, 2023.

The following table presents the assets and liabilities of AGREE operations:

	September 30, 2023	December 31, 2022
Cash and cash equivalents	$ 1,851,000	$ 2,550,000
Restricted cash	-	2,831,000
Accounts receivable	256,000	264,000
Inventories	51,000	44,000
Prepaid expenses and other current assets	262,000	270,000
Total current assets	2,420,000	5,959,000
Property and equipment, net	96,176,000	92,535,000
Total assets	98,596,000	98,494,000
Accounts payable and accrued expenses	2,097,000	2,631,000
Total current liabilities	2,097,000	2,631,000
Notes payable	67,115,000	61,633,000
Total liabilities	69,212,000	64,264,000
Net assets of discontinued operations	$ 29,384,000	$ 34,230,000

A disposal group classified as held for sale shall be measured at the lower of its carrying amount or fair value less costs to sell. No impairment was recognized up reclassification of the disposal group as held for sale.

The following table presents the results of AGREE operations:

	For the Three Months Ended September 30, 2023	For the Three Months Ended September 30, 2022	For the Nine Months Ended September 30, 2023	For the Nine Months Ended September 30, 2022
Revenue, hotel and real estate operations	$ 5,404,000	$ 5,513,000	$ 12,031,000	$ 12,809,000
Cost of revenue, hotel operations	3,278,000	3,230,000	9,086,000	8,350,000
Gross profit	2,126,000	2,283,000	2,945,000	4,459,000
General and administrative	1,076,000	585,000	3,294,000	4,309,000
Total operating expenses	1,076,000	585,000	3,294,000	4,309,000
Income (loss) from operations	1,050,000	1,698,000	(349,000)	150,000
Interest expense	(1,979,000)	(1,605,000)	(5,513,000)	(3,764,000)
Net (loss) income from discontinued operations	$ (929,000)	$ 93,000	$ (5,862,000)	$ (3,614,000)

5. REVENUE DISAGGREGATION

The following tables summarize disaggregated customer contract revenues and the source of the revenue for the three and nine months ended September 30, 2023 and 2022. Revenues from lending and trading activities included in consolidated revenues were primarily interest, dividend and other investment income, which are not considered to be revenues from contracts with customers under GAAP.

The Company's disaggregated revenues consisted of the following for the three months ended September 30, 2023 (excludes Ault Disruptive, as that segment has no revenue):

	GIGA	TurnOn Green	Fintech	Sentinum	SMC	ROI	Energy	Total
Primary Geographical Markets								
North America	$ 3,711,000	$ 1,075,000	$ -	$ 7,891,000	$ 15,931,000	$ 18,000	$ 12,929,000	$ 41,555,000
Europe	2,521,000	66,000	-	-	-	-	2,000	2,589,000
Middle East and other	4,043,000	25,000	-	-	-	-	-	4,068,000
Revenue from contracts with customers	10,275,000	1,166,000	-	7,891,000	15,931,000	18,000	12,931,000	48,212,000
Revenue, lending and trading activities (North America)	-	-	(249,000)	-	-	-	-	(249,000)
Total revenue	$ 10,275,000	$ 1,166,000	$ (249,000)	$ 7,891,000	$ 15,931,000	$ 18,000	$ 12,931,000	$ 47,963,000
Major Goods or Services								
Radio frequency/microwave filters	$ 2,201,000	$ -	$ -	$ -	$ -	$ -	$ -	$ 2,201,000
Power supply units & systems	2,316,000	1,074,000	-	-	-	-	-	3,390,000
Healthcare diagnostic systems	1,243,000	-	-	-	-	-	-	1,243,000
Defense systems	4,155,000	-	-	-	-	-	-	4,155,000
Digital currency mining	-	-	-	7,558,000	-	-	-	7,558,000
Karaoke machines and related consumer goods	-	-	-	-	15,931,000	-	-	15,931,000
Crane rental	-	-	-	-	-	-	12,490,000	12,490,000
Other	360,000	92,000	-	333,000	-	18,000	441,000	1,244,000
Revenue from contracts with customers	10,275,000	1,166,000	-	7,891,000	15,931,000	18,000	12,931,000	48,212,000
Revenue, lending and trading activities	-	-	(249,000)	-	-	-	-	(249,000)
Total revenue	$ 10,275,000	$ 1,166,000	$ (249,000)	$ 7,891,000	$ 15,931,000	$ 18,000	$ 12,931,000	$ 47,963,000
Timing of Revenue Recognition								
Goods transferred at a point in time	$ 5,391,000	$ 1,162,000	$ -	$ 7,891,000	$ 15,931,000	$ 18,000	$ 441,000	$ 30,834,000
Services transferred over time	4,884,000	4,000	-	-	-	-	12,490,000	17,378,000
Revenue from contracts with customers	$ 10,275,000	$ 1,166,000	$ -	$ 7,891,000	$ 15,931,000	$ 18,000	$ 12,931,000	$ 48,212,000

The Company’s disaggregated revenues consisted of the following for the nine months ended September 30, 2023 (excludes Ault Disruptive, as that segment has no revenue):

	GIGA	TurnOn Green	Fintech	Sentinum	SMC	ROI	Energy	Total
Primary Geographical Markets								
North America	$ 8,901,000	$ 2,401,000	$ -	$ 24,389,000	$ 21,939,000	$ 63,000	$ 38,604,000	$ 96,297,000
Europe	7,232,000	77,000	-	-	-	-	109,000	7,418,000
Middle East and other	11,590,000	288,000	-	-	-	-	-	11,878,000
Revenue from contracts with customers	27,723,000	2,766,000	-	24,389,000	21,939,000	63,000	38,713,000	115,593,000
Revenue, lending and trading activities (North America)	-	-	4,337,000	-	-	-	-	4,337,000
Total revenue	$ 27,723,000	$ 2,766,000	$ 4,337,000	$ 24,389,000	$ 21,939,000	$ 63,000	$ 38,713,000	$ 119,930,000
Major Goods or Services								
Radio frequency/microwave filters	$ 5,420,000	$ -	$ -	$ -	$ -	$ -	$ -	$ 5,420,000
Power supply units & systems	6,994,000	2,544,000	-	-	-	-	-	9,538,000
Healthcare diagnostic systems	3,481,000	-	-	-	-	-	-	3,481,000
Defense systems	10,719,000	-	-	-	-	-	-	10,719,000
Digital currency mining	-	-	-	23,273,000	-	-	-	23,273,000
Karaoke machines and related consumer goods	-	-	-	-	21,939,000	-	-	21,939,000
Crane rental	-	-	-	-	-	-	37,726,000	37,726,000
Other	1,109,000	222,000	-	1,116,000	-	63,000	987,000	3,497,000
Revenue from contracts with customers	27,723,000	2,766,000	-	24,389,000	21,939,000	63,000	38,713,000	115,593,000
Revenue, lending and trading activities	-	-	4,337,000	-	-	-	-	4,337,000
Total revenue	$ 27,723,000	$ 2,766,000	$ 4,337,000	$ 24,389,000	$ 21,939,000	$ 63,000	$ 38,713,000	$ 119,930,000
Timing of Revenue Recognition								
Goods transferred at a point in time	$ 15,517,000	$ 2,755,000	$ -	$ 24,389,000	$ 21,939,000	$ 63,000	$ 987,000	$ 65,650,000
Services transferred over time	12,206,000	11,000	-	-	-	-	37,726,000	49,943,000
Revenue from contracts with customers	$ 27,723,000	$ 2,766,000	$ -	$ 24,389,000	$ 21,939,000	$ 63,000	$ 38,713,000	$ 115,593,000

The Company’s disaggregated revenues consisted of the following for the three months ended September 30, 2022 (excludes Ault Disruptive, as that segment has no revenue):

	GIGA	TurnOn Green	Fintech	SMC	Sentinum	Total
Primary Geographical Markets						
North America	$ 2,472,000	$ 1,428,000	$ -	$ 16,138,000	$ 4,146,000	$ 24,184,000
Europe	2,288,000	32,000	201,000	306,000	-	2,827,000
Middle East and other	3,022,000	202,000	-	670,000	-	3,894,000
Revenue from contracts with customers	7,782,000	1,662,000	201,000	17,114,000	4,146,000	30,905,000
Revenue, lending and trading activities (North America)	-	-	13,360,000	-	-	13,360,000
Total revenue	$ 7,782,000	$ 1,662,000	$ 13,561,000	$ 17,114,000	$ 4,146,000	$ 44,265,000
Major Goods or Services						
Power supply units	$ 2,799,000	$ 1,480,000	$ -	$ -	$ -	$ 4,279,000
Digital currency mining, net	-	-	-	-	3,874,000	3,874,000
Karaoke machines and related	-	-	-	17,114,000	-	17,114,000
Other	4,983,000	182,000	201,000	-	272,000	5,638,000
Revenue from contracts with customers	7,782,000	1,662,000	201,000	17,114,000	4,146,000	30,905,000
Revenue, lending and trading activities	-	-	13,360,000	-	-	13,360,000
Total revenue	$ 7,782,000	$ 1,662,000	$ 13,561,000	$ 17,114,000	$ 4,146,000	$ 44,265,000
Timing of Revenue Recognition						
Goods transferred at a point in time	$ 5,821,000	$ 1,662,000	$ 201,000	$ 17,114,000	$ 4,146,000	$ 28,944,000
Services transferred over time	1,961,000	-	-	-	-	1,961,000
Revenue from contracts with customers	$ 7,782,000	$ 1,662,000	$ 201,000	$ 17,114,000	$ 4,146,000	$ 30,905,000

The Company's disaggregated revenues consisted of the following for the nine months ended September 30, 2022:

	GIGA	TurnOn Green	Fintech	SMC	Sentinum	Total
Primary Geographical Markets						
North America	$ 5,094,000	$ 3,262,000	$ 19,000	$ 16,138,000	$ 12,220,000	$ 36,733,000
Europe	7,007,000	79,000	201,000	306,000	-	7,593,000
Middle East and other	9,429,000	512,000	-	670,000	-	10,611,000
Revenue from contracts with customers	21,530,000	3,853,000	220,000	17,114,000	12,220,000	54,937,000
Revenue, lending and trading activities (North America)	-	-	32,224,000	-	-	32,224,000
Total revenue	$ 21,530,000	$ 3,853,000	$ 32,444,000	$ 17,114,000	$ 12,220,000	$ 87,161,000
Major Goods or Services						
Power supply units	$ 6,928,000	$ 3,592,000	$ -	$ -	$ -	$ 10,520,000
Healthcare diagnostic systems	2,285,000	-	-	-	-	2,285,000
Defense systems	6,842,000	-	-	-	-	6,842,000
Digital currency mining	-	-	-	-	11,398,000	11,398,000
Karaoke machines and related	-	-	-	17,114,000	-	17,114,000
Other	5,475,000	261,000	220,000	-	822,000	6,778,000
Revenue from contracts with customers	21,530,000	3,853,000	220,000	17,114,000	12,220,000	54,937,000
Revenue, lending and trading activities	-	-	32,224,000	-	-	32,224,000
Total revenue	$ 21,530,000	$ 3,853,000	$ 32,444,000	$ 17,114,000	$ 12,220,000	$ 87,161,000
Timing of Revenue Recognition						
Goods transferred at a point in time	$ 12,934,000	$ 3,853,000	$ 220,000	$ 17,114,000	$ 12,220,000	$ 46,341,000
Services transferred over time	8,596,000	-	-	-	-	8,596,000
Revenue from contracts with customers	$ 21,530,000	$ 3,853,000	$ 220,000	$ 17,114,000	$ 12,220,000	$ 54,937,000

6. FAIR VALUE OF FINANCIAL INSTRUMENTS

The following table sets forth the Company's financial instruments that were measured at fair value on a recurring basis by level within the fair value hierarchy:

	Fair Value Measurement at September 30, 2023			
	Total	Level 1	Level 2	Level 3
Assets:				
Investment in common stock of Alzamend Neuro, Inc. ("Alzamend") – a related party	$ 2,712,000	$ 2,712,000	$ -	$ -
Investments in marketable equity securities	72,000	72,000	-	-
Cash and marketable securities held in trust account	2,171,000	2,171,000	-	-
Total assets measured at fair value	$ 4,955,000	$ 4,955,000	$ -	$ -
Liabilities:				
Warrant and embedded conversion feature liabilities	$ 832,000	$ -	$ -	$ 832,000
Convertible promissory notes	18,054,000	-	-	18,054,000
Total liabilities measured at fair value	$ 18,886,000	$ -	$ -	$ 18,886,000

	Fair Value Measurement at December 31, 2022			
	Total	Level 1	Level 2	Level 3
Assets:				
Investment in common stock of Alzamend – a related party	$ 6,449,000	$ 6,449,000	$ -	$ -
Investments in marketable equity securities	6,590,000	6,590,000	-	-
Cash and marketable securities held in trust account	118,193,000	118,193,000	-	-
Investments in other equity securities	13,340,000	-	-	13,340,000
Total assets measured at fair value	$ 144,572,000	$ 131,232,000	$ -	$ 13,340,000
Liabilities:				
Warrant and embedded conversion feature liabilities	$ 2,967,000	$ -	$ -	$ 2,967,000
Convertible promissory notes	12,776,000	-	-	12,776,000
Total liabilities measured at fair value	$ 15,743,000	$ -	$ -	$ 15,743,000

The Company assesses the inputs used to measure fair value using the three-tier hierarchy based on the extent to which inputs used in measuring fair value are observable in the market. For investments where little or no public market exists, management's determination of fair value is based on the best available information which may incorporate management's own assumptions and involves a significant degree of judgment, taking into consideration various factors including earnings history, financial condition, recent sales prices of the issuer's securities and liquidity risks.

The following table summarizes the changes in investments in other equity securities measured and carried at fair value on a recurring basis with the use of significant unobservable inputs (Level 3) for the nine months ended September 30, 2023 (no changes during the three months ended September 30, 2023):

	Investments in other equity securities
Balance at January 1, 2023	$ 13,340,000
Conversion to Level 1 marketable securities	(13,340,000)
Balance at September 30, 2023	$ -

Equity Investments for Which Measurement Alternative Has Been Selected

As of September 30, 2023 and December 31, 2022, the Company held equity investments in other securities, which consisted of investments in preferred stock, valued at $26.0 million and $29.2 million, respectively, that were valued using a measurement alternative. These investments are included in other equity securities in the accompanying condensed consolidated balance sheets.

Measurement Alternative Impairment

The Company has made cumulative downward adjustments for impairments for equity securities that do not have readily determinable fair values as of September 30, 2023, totaling $11.6 million. Approximately $9.6 million of these adjustments have been reflected in other income (expense) and $2.0 million of these adjustments related to Fintech lending operations and have been recorded against revenue from lending and trading activities on the consolidated statement of operations and comprehensive loss.

7. MARKETABLE EQUITY SECURITIES

Marketable equity securities with readily determinable market prices consisted of the following as of September 30, 2023 and December 31, 2022:

	Marketable equity securities at September 30, 2023			
	Cost	Gross unrealized gains	Gross unrealized losses	Fair value
Common shares	$ 5,133,000	$ 26,000	$ (5,087,000)	$ 72,000

	Marketable equity securities at December 31, 2022			
	Cost	Gross unrealized gains	Gross unrealized losses	Fair value
Common shares	$ 10,271,000	$ 383,000	$ (4,064,000)	$ 6,590,000

The Company's investment in marketable equity securities is revalued on each balance sheet date.

8. DIGITAL CURRENCIES

The following table presents the activities of the digital currencies (included in prepaid expenses and other current assets) for the nine months ended September 30, 2023 and 2022:

	Digital Currencies
Balance at January 1, 2023	$ 554,000
Additions of mined digital currencies	21,103,000
Payments to vendors	(20,000)
Impairment of mined cryptocurrency	(376,000)
Sale of digital currencies	(21,330,000)
Realized gain on sale of digital currencies	404,000
Balance at September 30, 2023	$ 335,000

	Digital Currencies
Balance at January 1, 2022	$ 2,165,000
Additions of mined digital currencies	11,398,000
Payments to vendors	(418,000)
Impairment of mined cryptocurrency	(2,930,000)
Sale of digital currencies	(8,952,000)
Realized gain on sale of digital currencies	829,000
Balance at September 30, 2022	$ 2,092,000

9. PROPERTY AND EQUIPMENT, NET

At September 30, 2023 and December 31, 2022, property and equipment consisted of:

	September 30, 2023	December 31, 2022
Building and improvements	$ 11,796,000	$ 10,428,000
Bitcoin mining equipment	50,640,000	42,438,000
Crane rental equipment	34,341,000	32,453,000
Land	2,692,000	2,567,000
Computer, software and related equipment	23,517,000	23,168,000
Aircraft	15,983,000	15,983,000
Vehicles	4,797,000	3,314,000
Office furniture and equipment	682,000	610,000
Oil and natural gas properties, unproved properties	3,878,000	972,000
	148,326,000	131,933,000
Accumulated depreciation and amortization	(25,726,000)	(5,882,000)
Property and equipment placed in service, net	122,600,000	126,051,000
Construction in progress AVLP equipment	9,444,000	9,400,000
Deposits on cryptocurrency machines	-	11,328,000
Property and equipment, net	$ 132,044,000	$ 146,779,000

Summary of depreciation expense:

	For the Three Months Ended September 30, 2023	2022	For the Nine Months Ended September 30, 2023	2022
Depreciation expense	$ 7,805,000	$ 2,779,000	$ 20,047,000	$ 7,742,000

10. INTANGIBLE ASSETS, NET

At September 30, 2023 and December 31, 2022, intangible assets consisted of:

	Useful Life		September 30, 2023		December 31, 2022
Definite-lived intangible assets:					
Developed technology	3-8 years	$	7,984,000	$	24,584,000
Customer list	8-10 years		5,755,000		5,865,000
Trade names	5-10 years		3,916,000		4,316,000
Domain name and other intangible assets	5 years		580,000		630,000
			18,235,000		35,395,000
Accumulated amortization			(2,753,000)		(2,102,000)
Total definite-lived intangible assets		$	15,482,000	$	33,786,000
Indefinite-lived intangible assets:					
Trade name and trademark	Indefinite life		1,498,000		1,493,000
Total intangible assets, net		$	16,980,000	$	34,786,000

Certain of the Company's trade names and trademarks were determined to have an indefinite life. The remaining definite-lived intangible assets are primarily being amortized on a straight-line basis over their estimated useful lives.

	For the Three Months Ended September 30,				For the Nine Months Ended September 30,			
		2023		2022		2023		2022
Amortization expense	$	254,000	$	223,000	$	761,000	$	381,000

As of September 30, 2023, intangible assets subject to amortization have an average remaining useful life of 9.5 years. The following table presents estimated amortization expense for each of the succeeding five calendar years and thereafter.

2023	$	507,000
2024		2,026,000
2025		1,926,000
2026		1,826,000
2027		1,826,000
Thereafter		7,371,000
	$	15,482,000

Impairment of AVLP Intangible Assets

Due to indicators of impairment, AVLP intangible assets were tested for impairment as of June 30, 2023. Based on internally developed forecasts of undiscounted expected future cash flows, it was determined that the carrying amount of the assets were not recoverable and, based on an assessment of the fair value of the assets, impairment of $17.0 million was recognized as a non-cash impairment charge during the nine months ended September 30, 2023.

The tradenames and patents/developed technology intangible assets were valued using the relief-from-royalty method. The relief-from-royalty method is one of the methods under the income approach whereby estimates of a company's earnings attributable to the intangible asset are based on the royalty rate the company would have paid for the use of the asset if it did not own it. Royalty payments are estimated by applying royalty rates of 18% for patents and developed technology and 0.25% for trademarks. The resulting net annual royalty payments are then discounted to present value using a discount factor of 25.7%.

11. GOODWILL

The following table summarizes the changes in the Company's goodwill for the nine months ended September 30, 2023:

		Goodwill
Balance as of January 1, 2023	$	27,902,000
Acquisition of ROI		17,000
Impairment of goodwill		(18,570,000)
Effect of exchange rate changes		(376,000)
Balance as of September 30, 2023	$	8,973,000

Impairment of AVLP Goodwill

The Company tests the recorded amount of goodwill for impairment on an annual basis on December 31 or more frequently if there are indicators that the carrying amount of the goodwill exceeds its carried value. The Company performed a goodwill impairment test as of June 30, 2023 related to AVLP as there were indicators of impairment related to certain unforeseen business developments and changes in financial projections.

The valuation of the AVLP reporting unit was determined using a market and income approach methodology of valuation. The income approach was based on the projected cash flows discounted to their present value using discount rates that, in the Company's judgment, consider the timing and risk of the forecasted cash flows using internally developed forecasts and assumptions. Under the income approach, the discount rate used is the average estimated value of a market participant's cost of capital and debt, derived using customary market metrics. The analysis included assumptions regarding AVLP's revenue forecast and discount rates of 26.7% using a weighted average cost of capital analysis. The market approach utilized the guideline public company method.

The results of the quantitative test indicated that the fair value of the AVLP reporting unit did not exceed its carrying amounts, including goodwill, in excess of the carrying value of the goodwill. As a result, the entire $18.6 million carrying amount of AVLP's goodwill was recognized as a non-cash impairment charge during the nine months ended September 30, 2023.

12. CONSOLIDATED VARIABLE INTEREST ENTITY - SMC

During the quarter ended September 30, 2023, the Company's voting interest in SMC was less than 50%. As a result, the Company assessed its interest in SMC under the Variable Interest Entity Model. As a result of that assessment, the Company consolidates SMC as a variable interest entity (a "VIE") due to the Company's significant level of influence and control of SMC, the size of its investment, and its ability to participate in policy making decisions. As a result, the Company is considered the primary beneficiary of the VIE.

13. BUSINESS COMBINATION

ROI Acquisition

On March 6, 2023, the Company closed a Share Exchange Agreement (the "Agreement") with ROI and sold to ROI all of the outstanding shares of capital stock of the Company's subsidiary, BitNile.com, Inc. ("BitNile.com") as well as RiskOn360, Inc. (formerly Ault Iconic, Inc.) and the securities of Earnity, Inc. ("Earnity") beneficially owned by BitNile.com as of the date of the Agreement (the "Transaction"). As consideration for the acquisition, ROI issued shares of preferred stock convertible into common stock of ROI representing approximately 73.2% of ROI's outstanding common stock. Pending approval of the transaction by the Nasdaq Stock Market and ROI's shareholders, the preferred stock combined are subject to a 19.99% beneficial ownership limitation. The Transaction benefits the Company as ROI is a publicly traded company and provides BitNile.com access to capital markets as the primary focus for ROI to fund the expected growth of the ROI metaverse platform.

The holders of preferred stock will be entitled to receive dividends at a rate of 5% of the stated value of the preferred stock.

The Company consolidates ROI as a VIE due to its significant level of influence and control of ROI, the size of its investment, and its ability to participate in policy making decisions. The Company is considered the primary beneficiary of the VIE.

Ault Alliance investment in ROI	Amount
Common stock	$ 287,000

The total purchase price to acquire ROI has been allocated to the assets acquired and assumed liabilities based upon preliminary estimated fair values, with any excess purchase price allocated to goodwill. The goodwill resulting from this acquisition is not tax deductible. The fair value of the acquired assets and assumed liabilities as of the date of acquisition are based on preliminary estimates provided, in part, by a third-party valuation expert. The estimates are subject to change upon the finalization of appraisals and other valuation analyses, which are expected to be completed no later than one year from the date of acquisition. Although the completion of the valuation activities may result in asset and liability fair values that are different from the preliminary estimates included herein, it is not expected that those differences would alter the understanding of the impact of the Transaction on the consolidated financial position and results of operations of the Company.

The preliminary purchase price allocation is as follows:

	Preliminary Allocation
Fair value of Company interest	$ 287,000
Fair value of non-controlling interest	6,357,000
Total consideration	$ 6,644,000
Identifiable net assets acquired:	
Cash	$ 67,000
Investment in equity securities	8,076,000
Prepaid expenses and other current assets	172,000
Property and equipment, net	4,109,000
Right-of-use assets	339,000
Accounts payable and accrued expenses	(5,790,000)
Lease liabilities	(346,000)
Net assets acquired	6,627,000
Goodwill	$ 17,000

14. INVESTMENTS – RELATED PARTIES

Investments in Alzamend and Ault & Company, Inc. (“Ault & Company”) at September 30, 2023 and December 31, 2022, were comprised of the following:

Investment in Promissory Notes, Related Parties – Ault & Company

	Interest rate	Due Date	September 30, 2023	December 31, 2022
Investment in promissory note of Ault & Company	8%	December 31, 2023	$ 2,500,000	$ 2,500,000
Accrued interest receivable, Ault & Company			518,000	368,000
Total investment in promissory note, related party			$ 3,018,000	$ 2,868,000

Summary of interest income, related party, recorded within interest and other income on the condensed consolidated statement of operations:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2023	2022	2023	2022
Interest income, related party	$ 50,000	$ 50,000	$ 150,000	$ 150,000

Investment in Common Stock, Related Parties – Alzamend

	Investments in common stock, related parties at September 30, 2023		
	Cost	Gross unrealized losses	Fair value
Common shares	$ 24,688,000	$ (21,976,000)	$ 2,712,000

	Investments in common stock, related parties at December 31, 2022		
	Cost	Gross unrealized losses	Fair value
Common shares	$ 24,673,000	$ (18,224,000)	$ 6,449,000

The following table summarizes the changes in the Company's investments in Alzamend common stock during the three months ended September 30, 2023 and 2022:

	For the Three Months Ended September 30,	
	2023	2022
Balance at July 1	$ 5,836,000	$ 8,845,000
Investment in common stock of Alzamend	-	177,000
Unrealized gain (loss) in common stock of Alzamend	(3,124,000)	3,372,000
Balance at September 30	$ 2,712,000	$ 12,394,000

The following table summarizes the changes in the Company's investments in Alzamend common stock during the nine months ended September 30, 2023 and 2022:

	For the Nine Months Ended September 30,	
	2023	2022
Balance at January 1	$ 6,449,000	$ 13,230,000
Investment in common stock of Alzamend	15,000	4,840,000
Unrealized loss in common stock of Alzamend	(3,752,000)	(5,676,000)
Balance at September 30	$ 2,712,000	$ 12,394,000

Unrealized loss in common stock of Alzamend is recorded within revenue from lending and trading activities on the condensed consolidated statements of operations.

15. ACCOUNTS PAYABLE AND ACCRUED EXPENSES

Other current liabilities at September 30, 2023 and December 31, 2022 consisted of:

	September 30, 2023	December 31, 2022
Accounts payable	$ 36,883,000	$ 20,027,000
Accrued payroll and payroll taxes	12,420,000	9,789,000
Financial instrument liabilities	863,000	651,000
Interest payable	3,946,000	3,207,000
Accrued legal	4,390,000	3,168,000
Accrued lender profit participation rights	2,497,000	6,000,000
Related party advances	68,000	352,000
Other accrued expenses	27,146,000	17,586,000
	$ 88,213,000	$ 60,780,000

16. DIVIDEND PAYABLE IN TURNONGREEN COMMON STOCK

During the nine months ended September 30, 2023, the Company, in connection with a planned distribution of its holdings of TurnOnGreen, distributed to its stockholders 115.1 million shares of TurnOnGreen common stock and warrants to purchase 115.1 million shares of TurnOnGreen common stock, which resulted in an adjustment to additional paid in capital and increase to non-controlling interest of $10.7 million based on the recorded value of the Company's holdings in TurnOnGreen at the record dates of the distributions.

17. PREFERRED STOCK LIABILITY

March 28, 2023 Security Purchase Agreement

On March 28, 2023, the Company entered into a Securities Purchase Agreement (the "Purchase Agreement") with certain institutional investors (the "Investors"), pursuant to which the Company sold, in a private placement (the "Offering"), an aggregate of 100,000 shares of its preferred stock, with each such share having a stated value of $100.00 and consisting of (i) 83,000 shares of Series E Convertible Preferred Stock (the "Series E Preferred Stock"), (ii) 1,000 shares of Series F Convertible Preferred Stock (the "Series F Preferred Stock") and (iii) 16,000 shares of Series G Convertible Preferred Stock (the "Series G Preferred Stock" and collectively, the "Preferred Shares"). The Preferred Shares are convertible into shares of the Company's common stock at the option of the holders and, in certain circumstances, by the Company.

The purchase price of the Series E Preferred Stock and the Series F Preferred Stock was paid for by the Investors' canceling outstanding secured promissory notes in the principal amount of $8.4 million, whereas the purchase price of the shares of Series G Preferred Stock consisted primarily of accrued but unpaid interest on these notes. The Company recorded a loss on extinguishment of debt of $0.1 million related to the transaction. The Preferred Shares have been classified as a liability as they embody an unconditional obligation to transfer a variable number of shares, based on a fixed monetary amount known at inception. The Company elected the fair value option to record the Preferred Shares with changes in fair value recorded through earnings.

During the nine months ended September 30, 2023, the Investors converted 1,000 shares of Series F Preferred Stock and 6,756 shares of Series G Preferred Stock into an aggregate of 143,402 shares of the Company's common stock. During the nine months ended September 30, 2023, the Company recorded a loss of $0.3 million on the conversions of Series F Preferred Stock and Series G Preferred Stock.

Exchange of Preferred Shares for Secured Debt and Assignment of Secured Note

In August 2023, the Company and the Investors entered into an Exchange Agreement (the "Exchange Agreement") pursuant to which the Investors exchanged 83,000 shares of Series E Convertible Stock and 9,244 shares of Series G Convertible Stock as well as their demand notes (the "Demand Notes") with each Demand Note having a principal outstanding amount of approximately $0.8 million for two new 10% Secured OID Promissory Notes (the "Exchange Notes"), each with a principal face amount of $5.3 million, for an aggregate of amount owed of $10.5 million (the "Principal Amount"). The Company recorded a loss on extinguishment of debt of $1.5 million related to the transaction based on the difference between the carrying amount of the preferred stock liability and the value of the Exchange Notes.

Concurrent with the Exchange Agreement, the Company assigned the Exchange Notes to Ault & Company. As consideration for Ault & Company assuming the Exchange Notes from the Company, the Company issued a 10% demand promissory note in the principal face amount of $10.5 million to Ault & Company. The Company and Milton "Todd" Ault, III, the Company's Executive Chairman, entered into guaranty agreements with the Investors guaranteeing Ault & Company's repayment of the Exchange Notes.

Certificates of Elimination of Series E Preferred Stock, Series F Preferred Stock, and the Series G Preferred Stock

On August 17, 2023, the Company filed certificates of elimination with respect to the Company's Series E Preferred Stock, Series F Preferred Stock and Series G Preferred Stock.

18. REDEEMABLE NONCONTROLLING INTERESTS IN EQUITY OF SUBSIDIARY LIABILITY

The Company records redeemable noncontrolling interests in equity of subsidiaries to reflect the economic interests of the common stockholders in Ault Disruptive. As of September 30, 2023, the carrying amount of the redeemable noncontrolling interest in equity of subsidiaries was recorded at its redemption value of $2.2 million. In June 2023, approximately 11.3 million shares of Ault Disruptive common stock were redeemed at a redemption price of $10.61 per share, for an aggregate redemption amount of $120.0 million.

The following table summarizes the changes in the Company's redeemable noncontrolling interests in equity of subsidiaries during the nine months ended September 30, 2023:

Redeemable noncontrolling interests in equity of subsidiaries as of December 31, 2022	$	117,993,000
Redemption of ADRT common stock		(120,064,000)
Remeasurement of carrying value to redemption value		4,250,000
Redeemable noncontrolling interests in equity of subsidiaries as of September 30, 2023	$	2,179,000

19. NOTES PAYABLE

Notes payable at September 30, 2023 and December 31, 2022, were comprised of the following:

	Collateral	Guarantors	Interest rate	Due date	September 30, 2023	December 31, 2022
Circle 8 revolving credit facility	Circle 8 cranes	-	8.4%	December 16, 2025	$ 16,960,000	$ 14,724,000
8.5% secured promissory notes	Deposit accounts, 19,389 Antminers, BNI Montana assets, Circle 8 membership interests, Florida property, Michigan property, aircraft	Ault & Company, Ault Lending, Sentinum, Alliance Cloud Services, Inc., Ault Aviation, LLC, Third Avenue Apartments LLC, BNI Montana, LLC, Milton C. Ault, III	8.5%	May 7, 2024	22,749,000	17,389,000
16% promissory notes	-	Ault & Company, Sentinum, Ault Lending, Milton C. Ault, III	16.0%	December 16, 2023	2,662,000	17,456,000
Circle 8 equipment financing notes	Circle 8 equipment	-	7.2%	Various dates from March 15, 2024 to November 15, 2026	7,375,000	10,677,000
3% secured promissory notes	-	-	3.0%	N/A	-	5,672,000
8% demand loans	-	-	8.0%	Upon demand	1,800,000	-
Short-term bank credit facilities	-	-	5.7%	Renews monthly	2,056,000	1,702,000
XBTO note payable	2,482 Antminers	-	12.5%	December 30, 2023	1,087,000	2,749,000
10% secured promissory notes	-	-	10.0%	N/A	-	8,789,000
SMC line of credit	SMC assets	-	8.0%	October 14, 2025	-	1,761,000
Other ($0.4 million in default)	-	-			400,000	858,000
Total notes payable	-	-			$ 55,089,000	$ 81,777,000
Less:	-	-				
Unamortized debt discounts	-	-			(3,623,000)	(12,325,000)
Total notes payable, net	-	-			$ 51,466,000	$ 69,452,000
Less: current portion	-	-			(30,255,000)	(39,621,000)
Notes payable – long-term portion	-	-			$ 21,211,000	$ 29,831,000

Notes Payable Maturities

The contractual maturities of the Company's notes payable, assuming the exercise of all extensions that are exercisable solely at the Company's option, as of September 30, 2023 were:

Year		
2023	$	12,546,000
2024		23,405,000
2025		18,697,000
2026		441,000
	$	55,089,000

Interest Expense

	For the Three Months Ended September 30,				For the Nine Months Ended September 30,			
	2023		**2022**		**2023**		**2022**	
Contractual interest expense	$	3,262,000	$	2,263,000	$	5,002,000	$	4,373,000
Forbearance fees		518,000		-		7,319,000		1,203,000
Amortization of debt discount		634,000		104,000		18,216,000		26,487,000
Total interest expense	$	4,414,000	$	2,367,000	$	30,537,000	$	32,063,000

Amendment to 8.5% Secured Promissory Notes

On July 19, 2023, the Company and certain of its subsidiaries entered into an amendment agreement with the institutional investors and increased the principal balance of the secured promissory notes by an additional $8.8 million. The net proceeds to the Company from the amendment agreement were $7.5 million.

10% Secured Promissory Notes

The 10% secured promissory notes were retired in March 2023 and converted into the Preferred Shares, as described in Note 17 – Preferred Stock Liability.

20. NOTES PAYABLE, RELATED PARTY

Notes payable, related party at September 30, 2023 and December 31, 2022, were comprised of the following:

	Interest rate	**Due date**	**September 30, 2023**		**December 31, 2022**	
Loan agreement	9.5%	Upon demand	$	4,580,000	$	-
12% demand promissory note	12.0%	Upon demand		1,100,000		-
10% demand promissory note	10.0%	Upon demand		10,545,000		-
Total notes payable, related party			$	16,225,000	$	-

Ault & Company Loan Agreement

On June 8, 2023, the Company entered into a loan agreement with Ault & Company as lender. The loan agreement provides for an unsecured, non-revolving credit facility in an aggregate principal amount of up to $10 million. All loans under the loan agreement are due within five business days after request by Ault & Company. Ault & Company is not obligated to make any further advances under the loan agreement after December 8, 2023. Advances under the loan agreement bear interest at the rate of 9.5% per annum and may be repaid at any time without penalty or premium. As of September 30, 2023, $4.6 million has been advanced under the loan agreement.

In August 2023, Ault & Company assumed $11.6 million of secured promissory notes previously issued by the Company for which the Company has issued term notes to Ault & Company in the same amount. One term note has a principal amount of $1.1 million and bears interest at 12% and the second term note has a principal amount of $10.5 million and bears interest at 10%.

Summary of interest expense, related party, recorded within interest expense on the condensed consolidated statement of operations:

	For the Three Months Ended September 30, 2023	For the Three Months Ended September 30, 2022	For the Nine Months Ended September 30, 2023	For the Nine Months Ended September 30, 2022
Interest expense, related party	$ 287,000	$ -	$ 292,000	$ -

21. CONVERTIBLE NOTES

Convertible notes payable at September 30, 2023 and December 31, 2022, were comprised of the following:

	Conversion price per share	Interest rate	Due date	September 30, 2023	December 31, 2022
Convertible promissory note	$4.00	4%	May 10, 2024	$ -	$ 660,000
Convertible promissory note - OID only	90% of 5-day VWAP	OID Only	September 28, 2024	2,200,000	-
AVLP convertible promissory notes	$0.35 (AVLP stock)	7%	August 22, 2025	9,911,000	9,911,000
GIGA senior secured convertible notes - in default	$0.25 (GIGA stock)	18%	October 11, 2023	2,317,000	-
ROI senior secured convertible notes	$3.28 (ROI stock)	OID Only	April 27, 2024	6,875,000	-
Fair value of embedded conversion options				528,000	2,316,000
Total convertible notes payable				$ 21,831,000	$ 12,887,000
Less: unamortized debt discounts				(3,777,000)	(111,000)
Total convertible notes payable, net of financing cost, long term				$ 18,054,000	$ 12,776,000
Less: current portion				(8,601,000)	(1,325,000)
Convertible notes payable, net of financing cost – long-term portion				$ 9,453,000	$ 11,451,000

The contractual maturities of the Company's convertible notes payable, assuming the exercise of all extensions that are exercisable solely at the Company's option, as of September 30, 2023 were:

Year	Principal
2023	$ 2,317,000
2024	9,075,000
2025	10,439,000
	$ 21,831,000

Significant inputs associated with the embedded conversion options include:

	September 30, 2023	December 31, 2022	At Inception
Contractual term in years	0.6 – 2.0	2.7	1.0
Volatility	75% – 140%	82%	111%
Dividend yield	0%	0%	0%
Risk-free interest rate	4.6% – 5.3%	4.0%	3.5%

Activity related to the embedded conversion option derivative liabilities for the nine months ended September 30, 2023 was as follows:

Balance as of December 31, 2022	$ 2,316,000
Fair value of embedded conversion options issued	1,652,000
Change in fair value	(3,440,000)
Ending balance as of September 30, 2023	$ 528,000

22. COMMITMENTS AND CONTINGENCIES

Contingencies

Litigation Matters

The Company is involved in litigation arising from other matters in the ordinary course of business. The Company is regularly subject to claims, suits, regulatory and government investigations, and other proceedings involving labor and employment, commercial disputes, and other matters. Such claims, suits, regulatory and government investigations, and other proceedings could result in fines, civil penalties, or other adverse consequences.

Certain of these outstanding matters include speculative, substantial or indeterminate monetary amounts. The Company records a liability when it believes that it is probable that a loss has been incurred and the amount can be reasonably estimated. If the Company determines that a loss is reasonably possible and the loss or range of loss can be estimated, the Company discloses the reasonably possible loss. The Company evaluates developments in its legal matters that could affect the amount of liability that has been previously accrued, and the matters and related reasonably possible losses disclosed, and makes adjustments as appropriate. Significant judgment is required to determine both likelihood of there being and the estimated amount of a loss related to such matters.

With respect to the Company’s other outstanding matters, based on the Company’s current knowledge, the Company believes that the amount or range of reasonably possible loss will not, either individually or in aggregate, have a material adverse effect on the Company’s business, consolidated financial position, results of operations, or cash flows. However, the outcome of such matters is inherently unpredictable and subject to significant uncertainties.

As of September 30, 2023, the Company had accrued $4.4 million as a loss contingency related to litigation matters.

23. STOCKHOLDERS’ EQUITY

2023 Issuances

2022 Common ATM Offering

On February 25, 2022, the Company entered into an At-The-Market issuance sales agreement with Ascendiant Capital Markets, LLC (“Ascendiant Capital”) to sell shares of common stock having an aggregate offering price of up to $200 million from time to time, through an “at the market offering” program (the “2022 Common ATM Offering”). During the three months ended March 31, 2023, the Company sold an aggregate of 0.1 million shares of common stock pursuant to the 2022 Common ATM Offering for gross proceeds of $4.2 million. Effective March 17, 2023, the 2022 Common ATM Offering was terminated.

2022 Preferred ATM Offering

On June 14, 2022, the Company entered into an At-The-Market sales agreement with Ascendiant Capital under which it may sell, from time to time, shares of its Series D Preferred Stock for aggregate gross proceeds of up to $46.4 million (the “2022 Preferred ATM Offering”). During the nine months ended September 30, 2023, the Company sold an aggregate of 252,359 shares of Series D Preferred Stock pursuant to the 2022 Preferred ATM Offering for net proceeds of $2.9 million. Effective June 16, 2023, the 2022 Preferred ATM Offering was terminated.

2023 ATM Offering – Common Stock

On June 9, 2023, the Company entered into an At-The-Market issuance sales agreement with Ascendiant Capital to sell shares of common stock having an aggregate offering price of up to $10 million from time to time, through an "at the market offering" program (the "2023 Common ATM Offering"). On July 13, 2023 and September 8, 2023, the sales agreement was amended increasing the size of the 2023 ATM Offering to $20 million and $50 million, respectively. During the nine months ended September 30, 2023, the Company sold an aggregate of 10.8 million shares of common stock pursuant to the 2023 Common ATM Offering for gross proceeds of $21.2 million.

Issuance of Common Stock Upon Conversion of Preferred Stock

During the nine months ended September 30, 2023, the Investors converted 1,000 shares of Series F Preferred Stock and 6,756 shares of Series G Preferred Stock into an aggregate of 143,402 shares of the Company's common stock. A loss on extinguishment of $0.3 million was recognized on the issuance of common stock based on the fair value of the Company's common stock at the date of the conversions.

Issuance of Common Stock for Restricted Stock Awards

During the nine months ended September 30, 2023, the Company issued 4,974 shares of common stock upon vesting of restricted stock awards.

Proceeds from Subsidiaries' Sale of Stock to Non-Controlling Interests

During the nine months ended September 30, 2023, SMC and ROI sold an aggregate of $2.3 million of common stock pursuant to their respective at-the-market issuance sales agreements.

24. INCOME TAXES

The Company calculates its interim income tax provision in accordance with ASC Topic 270, Interim Reporting, and ASC Topic 740, Income Taxes. The Company's effective tax rate ("ETR") from continuing operations was (2.0%) and 1.8% for the three months ended September 30, 2023 and 2022, respectively, and 0.4% and 0.6% for the nine months ended September 30, 2023 and 2022, respectively. The Company recorded income tax (benefit) provision of ($0.6) million and $0.1 million for the three months ended September 30, 2023 and 2022, respectively, and $0.5 million and $0.4 million for the nine months ended September 30, 2023 and 2022, respectively. The difference between the ETR and federal statutory rate of 21% is primarily attributable to items recorded for GAAP but permanently disallowed for U.S. federal income tax purposes and changes in valuation allowance.

25. NET LOSS PER SHARE

Net loss per share is computed by dividing the net loss to common stockholders by the weighted average number of common shares outstanding. The calculation of the basic and diluted earnings per share is the same for all periods presented as the effect of the potential common stock equivalents is anti-dilutive due to the Company's net loss position for all periods presented. Anti-dilutive securities, which are convertible into or exercisable for the Company's common stock, consisted of the following at September 30, 2023 and 2022:

	September 30,	
	2023	**2022**
Stock options	19,000	21,000
Restricted stock grants	-	7,000
Warrants	52,000	62,000
Convertible notes	-	1,000
Total	71,000	91,000

26. SEGMENT AND CUSTOMERS INFORMATION

The Company had the following reportable segments as of September 30, 2023 and six as of September 30, 2022; see Note 1 for a brief description of the Company's business.

The following data presents the revenues, expenditures and other operating data of the Company and its operating segments for the three and nine months ended September 30, 2023:

	Nine Months Ended September 30, 2023									
	GIGA	TurnOn Green	Fintech	Sentinum	Ault Disruptive	SMC	Energy	ROI	Holding Co.	Total
Revenue	$ 27,723,000	$ 2,766,000	$ -	$ 1,116,000	$ -	$ 21,939,000	$ 987,000	$ 63,000	$ -	$ 54,594,000
Revenue, cryptocurrency mining	-	-	-	23,273,000	-	-	-	-	-	23,273,000
Revenue, lending and trading activities	-	-	4,337,000	-	-	-	-	-	-	4,337,000
Revenue, crane operations	-	-	-	-	-	-	37,726,000	-	-	37,726,000
Total revenues	$ 27,723,000	$ 2,766,000	$ 4,337,000	$ 24,389,000	$ -	$ 21,939,000	$ 38,713,000	$ 63,000	$ -	$ 119,930,000
Depreciation and amortization expense	$ 852,000	$ 68,000	$ -	$ 14,362,000	$ -	$ 779,000	$ 3,053,000	$ 152,000	$ 1,542,000	$ 20,808,000
Income (loss) from operations	$ (5,620,000)	$ (4,067,000)	$ 1,091,000	$ (4,363,000)	$ (1,052,000)	$ (4,598,000)	$ (30,216,000)	$ (33,590,000)	$ (20,012,000)	$ (102,427,000)
Capital expenditures for the nine months ended September 30, 2023	$ 410,000	$ 131,000	$ -	$ 1,426,000	$ -	$ 383,000	$ 12,471,000	$ 407,000	$ 2,906,000	$ 18,134,000
Segment identifiable assets as of September 30, 2023	$ 36,917,000	$ 5,461,000	$ 24,727,000	$ 63,327,000	$ 2,465,000	$ 36,653,000	$ 73,447,000	$ 10,939,000	$ 25,924,000	279,860,000
Assets of discontinued operations										98,596,000
Total identifiable assets as of September 30, 2023										$ 378,456,000

	Three Months Ended September 30, 2023									
	GIGA	TurnOn Green	Fintech	Sentinum	Ault Disruptive	SMC	Energy	ROI	Holding Co.	Total
Revenue	$ 10,275,000	$ 1,166,000	$ -	$ 333,000	$ -	$ 15,931,000	$ 441,000	$ 18,000	$ -	$ 28,164,000
Revenue, cryptocurrency mining	-	-	-	7,558,000	-	-	-	-	-	7,558,000
Revenue, lending and trading activities	-	-	(249,000)	-	-	-	-	-	-	(249,000)
Revenue, crane operations	-	-	-	-	-	-	12,490,000	-	-	12,490,000
Total revenues	$ 10,275,000	$ 1,166,000	$ (249,000)	$ 7,891,000	$ -	$ 15,931,000	$ 12,931,000	$ 18,000	$ -	$ 47,963,000
Depreciation and amortization expense	$ 286,000	$ 24,000	$ -	$ 5,792,000	$ -	$ 338,000	$ 1,073,000	$ 32,000	$ 514,000	$ 8,059,000
Income (loss) from operations	$ (503,000)	$ (1,498,000)	$ (1,039,000)	$ (2,661,000)	$ (214,000)	$ 181,000	$ 2,505,000	$ (13,315,000)	$ (5,359,000)	$ (21,903,000)
Capital expenditures for the three months ended September 30, 2023	$ 275,000	$ 121,000	$ -	$ 261,000	$ -	$ 199,000	$ 11,135,000	$ -	$ 314,000	$ 12,305,000
Identifiable assets as of September 30, 2023	$ 36,917,000	$ 5,461,000	$ 24,727,000	$ 63,327,000	$ 2,465,000	$ 36,653,000	$ 73,447,000	$ 10,939,000	$ 25,924,000	279,860,000
Assets of discontinued operations										98,596,000
Total identifiable assets as of September 30, 2023										$ 378,456,000

Segment information for the three and nine months ended September 30, 2022:

	Nine Months Ended September 30, 2022							
	GIGA	TurnOn Green	Fintech	Sentinum	Ault Disruptive	SMC	Holding Company	Total
Revenue	$ 21,530,000	$ 3,853,000	$ 220,000	$ 822,000	$ -	$ 17,114,000	$ -	$ 43,539,000
Revenue, cryptocurrency mining	-	-	-	11,398,000	-	-	-	11,398,000
Revenue, lending and trading activities	-	-	32,224,000	-	-	-	-	32,224,000
Total revenues	$ 21,530,000	$ 3,853,000	$ 32,444,000	$ 12,220,000	$ -	$ 17,114,000	$ -	$ 87,161,000
Depreciation and amortization expense	$ 1,259,000	$ 403,000	$ 240,000	$ 6,949,000	$ -	$ 166,000	$ 474,000	$ 9,491,000
Income (loss) from operations	$ (1,881,000)	$ (2,577,000)	$ 4,212,000	$ (8,139,000)	$ (1,100,000)	$ 597,000	$ (19,262,000)	$ (28,150,000)
Capital expenditures for the nine months ended September 30, 2022	$ 612,000	$ 176,000	$ 1,739,000	$ 77,299,000	$ -	$ 66,000	$ 166,000	$ 80,058,000

	Three Months Ended September 30, 2022							
	GIGA	TurnOn Green	Fintech	Sentinum	Ault Disruptive	SMC	Holding Company	Total
Revenue	$ 7,781,000	$ 1,662,000	$ 201,000	$ 273,000	$ -	$ 17,114,000	$ -	$ 27,031,000
Revenue, cryptocurrency mining	-	-	-	3,874,000	-	-	-	3,874,000
Revenue, lending and trading activities	-	-	13,360,000	-	-	-	-	13,360,000
Total revenues	$ 7,781,000	$ 1,662,000	$ 13,561,000	$ 4,147,000	$ -	$ 17,114,000	$ -	$ 44,265,000
Depreciation and amortization expense	$ 740,000	$ 393,000	$ 172,000	$ 2,809,000	$ -	$ 166,000	$ (264,000)	$ 4,016,000
Income (loss) from operations	$ (661,000)	$ (957,000)	$ 3,786,000	$ (4,322,000)	$ (314,000)	$ 597,000	$ (5,138,000)	$ (7,009,000)
Capital expenditures for the three months ended September 30, 2022	$ 327,000	$ 51,000	$ 890,000	$ 5,915,000	$ -	$ 66,000	$ 47,000	$ 7,296,000

27. CONCENTRATIONS OF CREDIT AND REVENUE RISK

The following table summarizes accounts receivable that are concentrated with certain large customers as of September 30, 2023 and December 31, 2022:

	September 30, 2023	December 31, 2022
Customer A	*	13%
Customer B	18%	14%

The following table provides the percentage of total revenues attributable to customers from which 10% or more of total revenues are derived:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2023	2022	2023	2022
Customer V (Mining Pool Operator)	*	*	10%	*
Customer W (Mining Pool Operator)	13%	*	*	*
Customer X	12%	17%	*	*
Customer Y	*	11%	*	*
Customer Z	*	*	*	10%

** Less than 10%*

28. SUBSEQUENT EVENTS

2023 Common ATM Offering

During the period between October 1, 2023 through November 17, 2023, the Company sold an aggregate of 54.2 million shares of common stock pursuant to the 2023 Common ATM Offering for gross proceeds of $10.0 million.

Note Conversions

In October 2023, an investor converted $0.5 million in principal of a convertible note into 2.1 million shares of the Company's common stock.

Senior Secured Convertible Note, Related Party

On October 13, 2023 (the "Closing Date"), the Company entered into a note purchase agreement with Ault & Company, pursuant to which the Company sold to the Purchaser (i) a senior secured convertible promissory note in the principal face amount of $17,519,832 (the "Note") and warrants (the "Warrants") to purchase shares of the Company's common stock for a total purchase price of up to $17,519,832 (the "Transaction").

The purchase price was comprised of the following: (i) cancellation of $4.6 million of cash loaned by Ault & Company to the Company since June 8, 2023 pursuant to the loan agreement; (ii) cancellation of $11.6 million of term loans made by the Company to Ault & Company in exchange for Ault & Company assuming liability for the payment of $11.6 million of secured notes; and (iii) the retirement of $1.25 million stated value of 125,000 shares of the Company's Series B Convertible Preferred Stock (representing all shares issued and outstanding of that series) being transferred from Ault & Company to the Company.

The Note has a principal face amount of $17,519,832 and has a maturity date of October 12, 2028 (the "Maturity Date"). The Note bears interest at the rate of 10% per annum. Interest is payable, at the Purchaser's option, in cash or shares of Common Stock at the applicable Conversion Price (as defined below). Accrued interest is payable on the Maturity Date, provided, however, that Ault & Company has the option, on not less than 10 calendar days' notice to the Company, to require payment of accrued but unpaid interest on a monthly basis in arrears.

The Note is convertible into shares of common stock at a conversion price equal to the greater of (i) $0.10 per share (the "Floor Price"), and (ii) the lesser of (A) $0.2952 or (B) 105% of the volume weighted average price of the common stock during the ten trading days immediately prior to the date of conversion (the "Conversion Price"). The Conversion Price is subject to adjustment in the event of an issuance of common stock at a price per share lower than the Conversion Price then in effect, as well as upon customary stock splits, stock dividends, combinations or similar events. The Floor Price shall not be adjusted for stock dividends, stock splits, stock combinations and other similar transactions.

The Warrants grant Ault & Company the right to purchase 47,685,988 shares of common stock. The Warrants have a five-year term, expiring on the fifth anniversary of the Closing Date, and become exercisable on the first business day after the six-month anniversary of the Closing Date. The exercise price of the Warrants is $0.1837, which is subject to adjustment in the event of customary stock splits, stock dividends, combinations or similar events.

In addition, the Company and various subsidiaries of the Company granted Ault & Company a senior security interest in substantially all of their assets as collateral for the repayment of the Note, which is subordinated to the security interest granted to the holders of the outstanding secured promissory notes.

Series C Preferred Purchase Agreement, Related Party

On November 6, 2023, the Company entered into a securities purchase agreement (the "SPA") with Ault & Company, pursuant to which the Company agreed to sell to Ault & Company up to 50,000 shares of Series C convertible preferred stock and warrants to purchase up to 370 million shares of common stock for a total purchase price of up to $50 million, of which up to $17.5 million of the Note may be tendered for cancellation. The consummation of the transactions contemplated by the SPA, specifically the conversion of the Series C convertible preferred stock and the exercise of the warrants in an aggregate number in excess of 19.99% on the execution date of the Agreement, are subject to various customary closing conditions as well as regulatory and stockholder approval. In addition to customary closing conditions, the closing of the financing is also conditioned upon the receipt by Ault & Company of financing to consummate the transaction. The SPA contains customary termination provisions for Ault & Company under certain circumstances, and the Agreement shall automatically terminate if the closing has not occurred prior to December 29, 2023, although such date may be extended by Ault & Company for a period of 90 days as set forth in the SPA.

Series D Preferred Purchase Agreement, Related Party

On November 15, 2023, the Company purchased from ROI 603.44 shares of ROI's newly designated Series D Convertible Preferred Stock for a total purchase price of $15.1 million. The purchase price was paid by the cancellation of $15.1 million of cash advances made by the Company to ROI between January 1, 2023 and November 9, 2023. The preferred shares each have a stated value of $25,000 per share and each preferred share is convertible into a number of shares of ROI's common stock determined by dividing the stated value by $0.51, or an aggregate of 29.6 million shares of ROI common stock, subject to adjustment in the event of an issuance of ROI common stock at a price per share lower than the conversion price, as well as upon customary stock splits, stock dividends, combinations or similar events. The preferred shares holders are entitled to receive dividends at a rate of 10% per annum from issuance until November 14, 2033.

In addition, for as long as at least 25% of the Preferred Shares remain outstanding, ROI must obtain from the Company consent with respect to certain corporate events, including reclassifications, fundamental transactions, stock redemptions or repurchases, increases in the number of directors, and declarations or payment of dividends, and further ROI is subject to certain negative covenants, including covenants against issuing additional shares of capital stock or derivative securities, incurring indebtedness, engaging in related party transactions, selling of properties having a value of over $50,000, altering the number of directors, and discontinuing the business of any subsidiary, subject to certain exceptions and limitations.

Payment of Related Party Advances

On October 5, 2023, William B. Horne, the Company's Chief Executive Officer, loaned the Company $262,500, including a $12,500 original issue discount. On October 12, 2023, the loan was repaid.

On October 10, 2023, ROI repaid $52,000 of advances payable to Mr. Horne, the Company's Chief Executive Officer and director of ROI.

Eco Pack Acquisition

On November 10, 2023, the Company's wholly owned subsidiary, Eco Pack Technologies, Inc., completed the acquisition of an 80% ownership interest in Eco Pack Technologies Limited, a company incorporated in England and Wales. As of the closing date, the total consideration paid amounted to $0.8 million. Additionally, the Company is committed to providing approximately $2.5 million in further funding over the next two years.

Deficiency Letter from the NYSE American

On November 13, 2023, the Company received a deficiency letter (the "Letter") from the NYSE American LLC (the "NYSE American" or the "Exchange") indicating that the Company is not in compliance with the Exchange's continued listing standard set forth in Section 1003(f)(v) of the NYSE American Company Guide (the "Company Guide") because the shares of common stock of the Company (the "Common Stock") for a substantial period of time have been selling at a low price per share, which the Exchange determined to be a 30-trading day average price of less than $0.20 per share. The Letter has no immediate effect on the listing or trading of the Company's Common Stock and the Common Stock will continue to trade on the NYSE American under the symbol "AULT". Additionally, the Letter does not result in the immediate delisting of the Common Stock from the NYSE American.

Pursuant to Section 1003(f)(v) of the Company Guide, the NYSE American staff determined that the Company's continued listing is predicated on it demonstrating sustained price improvement within a reasonable period of time or effecting a reverse stock split of its common stock, which the staff determined to be no later than May 13, 2024. The Company intends to regain compliance with the NYSE American's continued listing standards by undertaking a measure or measures that are in the best interests of the Company and its stockholders.

The Company intends to closely monitor the price of its common stock and consider available options if the Common Stock does not trade at a consistent level likely to result in the Company regaining compliance by May 13, 2024. The Company's receipt of the Letter does not affect the Company's business, operations or reporting requirements with the Securities and Exchange Commission. The Company is actively engaged in discussions with the Exchange and is developing plans to regain compliance with the NYSE American's continued listing standards within the cure period.

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

In this quarterly report, the "Company," "AAI," "we," "us" and "our" refer to Ault Alliance, Inc., a Delaware corporation. AAI is a diversified holding company pursuing growth by acquiring undervalued businesses and disruptive technologies with a global impact. Through our wholly and majority owned subsidiaries and strategic investments, we own and operate a data center at which we mine Bitcoin and offer colocation and hosting services for the emerging artificial intelligence ecosystems and other industries, and provide mission-critical products that support a diverse range of industries, including metaverse platform, oil exploration, crane services, defense/aerospace, industrial, automotive, medical/biopharma, consumer electronics, hotel operations and textiles. In addition, we own and operate hotels and extend credit to select entrepreneurial businesses through a licensed lending subsidiary.

Recent Events and Developments

On January 23, 2023, we filed a Certificate of Elimination with the Secretary of State of the State of Delaware with respect to our Series C convertible redeemable preferred stock ("Series C Preferred Stock") which, effective upon filing, eliminated the Series C Preferred Stock.

On February 8, 2023, we entered into a Share Exchange Agreement (the "Agreement") with ROI and the other signatories thereto. The Agreement provides that, subject to the terms and conditions set forth therein, ROI will acquire all of the outstanding shares of capital stock of our then subsidiary, BitNile.com, Inc. ("BitNile.com"), of which we owned approximately 86%, and the remaining 14% was owned by minority shareholders (the "Minority Shareholders"), as well as Ault Iconic, (formerly Ault Media Group) and the securities of Earnity beneficially owned by BitNile.com (which represented approximately 19.9% of the outstanding equity securities of Earnity as of the date of the Agreement), in exchange for the following: (i) 8,637.5 shares of newly designated Series B Convertible Preferred Stock of ROI to be issued to our company (the "Series B Preferred"), and (ii) 1,362.5 shares of newly designated Series C Convertible Preferred Stock of ROI to be issued to the to the Minority Shareholders (the "Series C Preferred," and together with the Series B Preferred, the "Preferred Stock"). The Series B Preferred and the Series C Preferred each have a stated value of $10,000 per share (the "Stated Value"), for a combined stated value of the Preferred Stock to be issued by ROI of $100 million, and subject to adjustment, are convertible into an aggregate of 13.3 million shares of common stock of ROI (the "ROI Common Stock"). ROI received approval of the Series A Convertible Preferred Stock transaction by its's shareholders and the Nasdaq Stock Market to exceed the 19.9% beneficial ownership limitation.

Pursuant to the Certificates of Designations of the Rights, Preferences and Limitations of the Series B Preferred and the Series C Preferred (collectively, the "Preferred Stock Certificates"), each share of Preferred Stock will be convertible into a number of shares of ROI Common Stock determined by dividing the Stated Value by $7.50 (the "Conversion Price"), or 1,333 shares of ROI Common Stock. The Conversion Price will be subject to certain adjustments, including potential downward adjustment if ROI closes a qualified financing resulting in at least $25 million in gross proceeds at a price per share that is lower than the Conversion Price then in effect. The holders of Preferred Stock will be entitled to receive dividends at a rate of 5% of the Stated Value per annum from issuance until February 7, 2033 (the "Dividend Term"). During the first two years of the Dividend Term, dividends will be payable in additional shares of Preferred Stock rather than cash, and thereafter dividends will be payable in either additional shares of Preferred Stock or cash as each holder may elect. If ROI fails to make a dividend payment as required by the Preferred Stock Certificates, the dividend rate will be increased to 12% for as long as such default remains ongoing and uncured. Each share of Preferred Stock will also have an $11,000 liquidation preference in the event of a liquidation, change of control event, dissolution or winding up of ROI, and will rank senior to all other capital stock of ROI with respect thereto, except that the Series B Preferred and Series C Preferred shall rank pari passu. Each share of Series B Preferred was originally entitled to vote with the ROI Common Stock at a rate of 10 votes per share of Common Stock into which the Series B Preferred is convertible, but that provision was subsequently eliminated. Other than certain rights granted to the Company relating to amendments or waiver of various negative covenants, the terms, rights, preferences and limitations of the Preferred Stock Certificates are essentially identical. The Agreement closed on March 6, 2023.

On March 28, 2023, we entered into a securities purchase agreement (the "Purchase Agreement") with certain sophisticated investors (the "Investors"), pursuant to which we agreed to issue and sell, in a private placement, an aggregate of 100,000 shares of our preferred stock, with each such share having a stated value of $100.00 and consisting of (i) 83,000 shares of Series E Convertible Preferred Stock (the "Series E Preferred Stock"), (ii) 1,000 shares of Series F Convertible Preferred Stock (the "Series F Preferred Stock") and (iii) 16,000 shares of Series G Convertible Preferred Stock (the "Series G Preferred Stock" and collectively, the "Preferred Shares").

Each share of Series E Preferred Stock and Series F Preferred Stock had a purchase price of $100.00, equal to each such share's stated value. The purchase price of the Series E Preferred Stock and the Series F Preferred Stock was paid for by the Investors' canceling outstanding secured promissory notes in the principal amount of $8.4 million, whereas the purchase price of the shares of Series G Preferred Stock consisted of accrued but unpaid interest on these notes, as well as for other good and valuable consideration. Each Preferred Share is convertible into shares of our common stock at a conversion price equal to 85% of the closing sale price of our common stock on the trading day prior to the date of conversion, subject to a floor price of $0.10. The Preferred Shares are convertible at the option of the holder at any time following our receipt of stockholder approval of the Reverse Split (as defined below). The private placement closed on March 30, 2023.

On April 6, 2023, we issued a term note with a principal amount of $1.1 million, bearing an interest rate of 12% (the "Term Note"). The Term Note was issued at a discount, with net proceeds to us amounting to $1.0 million. The Term Note was scheduled to mature on June 5, 2023. We exercised the option to extend the maturity date by one month, by paying a $30,000 extension fee. Ault & Company guaranteed repayment of the Term Note.

On May 1, 2023, we entered into a securities purchase agreement (the "Series C Agreement") with Ault & Company, pursuant to which we agreed to sell to Ault & Company up to 40,000 shares of Series C convertible preferred stock and warrants to purchase up to 1.3 million shares of common stock for a total purchase price of up to $40 million. The consummation of the transactions contemplated by the Series C Agreement are subject to various customary closing conditions and the receipt of certain third party consents. In addition to customary closing conditions, the closing of the transaction is also conditioned upon the receipt by Ault & Company of financing in an amount sufficient to consummate the transaction, in whole or in part. The Series C Agreement contains customary termination provisions for Ault & Company under certain circumstances, and the Series C Agreement shall automatically terminate if the closing has not occurred prior to May 31, 2023, although such date may be extended by Ault & Company for a period of 90 days as set forth in the Series C Agreement.

Our stockholders approved, at a special meeting of our stockholders called for such purpose, an amendment (the "Amendment") to our certificate of incorporation to authorize a reverse split of our common stock (the "Reverse Split"). The Investors agreed in the Purchase Agreement to not transfer, offer, sell, contract to sell, hypothecate, pledge or otherwise dispose of the Preferred Shares until after the Reverse Split. Pursuant to the certificate of designation of the Series E Preferred Stock, the shares of Series E Preferred Stock have the right to vote on such Amendment on an as converted to common stock basis. In addition, pursuant to the certificate of designation of the Series F Preferred Stock, the shares of Series F Preferred Stock have the right to vote on such Amendment. Each Investor has separately agreed to vote the shares of the Series E Preferred Stock in favor of the Amendment and that the shares of the Series F Preferred Stock shall automatically be voted in a manner that "mirrors" the proportions on which the shares of our common stock and Series E Preferred Stock are voted on the Amendment. The Amendment requires the approval of the majority of the votes associated with our outstanding capital stock entitled to vote on the proposal. Because the Series F Preferred Stock will automatically and without further action of the purchaser be voted in a manner that "mirrors" the proportions on which the shares of common stock and Series E Preferred Stock are voted on the Reverse Split, abstentions by common stockholders will not have any effect on the votes cast by the holders of the Series F Preferred Stock. The Series G Preferred Stock does not carry any voting rights, except as required by law or expressly provided by its certificate of designation.

On June 8, 2023, we entered into a loan agreement with Ault & Company as lender. The loan agreement provides for an unsecured, non-revolving credit facility in an aggregate principal amount of up to $10 million. All loans under the loan agreement are due within five business days after request by Ault & Company and Ault & Company is not obligated to make any further advances under the loan agreement after December 8, 2023. Advances under the loan agreement bear interest at the rate of 9.5% per annum and may be repaid at any time without penalty or premium. As of the date of this report, $4.7 million has been advanced under the loan agreement and not repaid.

On June 9, 2023, we entered into an At-the-Market Issuance Sales Agreement with Ascendiant Capital Markets, LLC, as sales agent ("Ascendiant Capital") to sell shares of our common stock having an aggregate offering price of up to $10,000,000 (the "Shares") from time to time, through an "at the market offering" (the "2023 Common ATM Offering"). On July 12, 2023, we and Ascendiant Capital entered into an amendment to the At-The-Market issuance sales agreement to increase the size of the 2023 Common ATM Offering from $10.0 million to $20.0 million. Through August 14, 2023, we have sold an aggregate of 3.8 million shares of common stock pursuant to the 2023 Common ATM Offering for gross proceeds of $16.1 million.

On June 26, 2023, we established a record date for our initial distribution of TurnOnGreen securities. Stockholders as of this date were entitled to 40 shares of TurnOnGreen common stock, along with warrants to purchase 40 shares of TurnOnGreen common stock (the "TurnOnGreen Securities") for every share of our common stock they held on the record date. The initial distribution was finalized in July 2023. We distributed 58.7 million TurnOnGreen Securities in the first distribution.

On July 24, 2023, we established a record date for our second partial distribution of TurnOnGreen Securities. Stockholders as of this date were entitled to 15 shares of TurnOnGreen Securities for every share of the Company's common stock they held on the record date. The second distribution was finalized on August 7, 2023, whereby we relinquished control of voting interests of TurnOnGreen. We distributed 56.4 million TurnOnGreen Securities in the second distribution.

On July 19, 2023 we along with certain of our subsidiaries entered into a First Amendment and Joinder to Loan and Guarantee Agreement (the "Amendment") with the institutional investors pursuant to which the (i) Loan and Guarantee Agreement, dated November 7, 2022, entered into between us and the institutional investors (the "Loan Agreement") and (ii) Security Agreement, dated November 7, 2022, entered into between the institutional investors and Sentinum (the "Security Agreement") was amended. Pursuant to the Amendment, we borrowed an additional $8.8 million. The net proceeds of the additional loan amount were $7.5 million.

Effective August 3, 2023, we and the Investors entered into an Exchange Agreement (the "Exchange Agreement") pursuant to which the Investors exchanged all of their Preferred Shares as well as their demand notes (the "Demand Notes") issued to the Investors by us on or about May 20, 2023, with each Demand Note having a principal outstanding amount of approximately $0.8 million for two new 10% Secured OID Promissory Notes (the "Exchange Notes"), each with a principal face amount of $5.3 million, for an aggregate of amount owed of $10.5 million (the "Principal Amount"). We and Milton "Todd" Ault, III, our Executive Chairman, entered into guaranty agreements with the Investors guaranteeing repayment by Ault & Company, Inc., a related party ("Ault & Company") of the Exchange Notes.

Effective as of August 3, 2023, we assigned the Exchange Notes to Ault & Company. As consideration for Ault & Company assuming the Exchange Notes from us, we issued a 10% demand promissory note in the principal face amount of $10.5 million (the "First A&C Demand Note") to Ault & Company.

Effective as of August 10, 2023, we assigned the Term Note to Ault & Company. As consideration for Ault & Company assuming the Term Note from us, we issued a 12% demand promissory note in the principal face amount of $1.1 million (the "Second Demand Note") to Ault & Company.

On October 13, 2023 (the "Closing Date"), we entered into a note purchase agreement with Ault & Company, pursuant to which we sold to the Purchaser (i) a senior secured convertible promissory note in the principal face amount of $17.5 million (the "Note") and warrants (the "Warrants") to purchase shares of our common stock for a total purchase price of up to $17.5 million (the "Transaction").

The purchase price was comprised of the following: (i) cancellation of $4.6 million of cash loaned by Ault & Company to us since June 8, 2023 pursuant to the loan agreement; (ii) cancellation of $11.6 million of term loans made by us to Ault & Company in exchange for Ault & Company assuming liability for the payment of $11.6 million of secured notes; and (iii) the retirement of $1.25 million stated value of 125,000 shares of our Series B Convertible Preferred Stock (representing all shares issued and outstanding of that series) being transferred from Ault & Company to us.

The Note has a principal face amount of $17.5 million and has a maturity date of October 12, 2028 (the "Maturity Date"). The Note bears interest at the rate of 10% per annum. Interest is payable, at the Purchaser's option, in cash or shares of Common Stock at the applicable Conversion Price (as defined below). Accrued interest is payable on the Maturity Date, provided, however, that Ault & Company has the option, on not less than 10 calendar days' notice to us, to require payment of accrued but unpaid interest on a monthly basis in arrears.

The Note is convertible into shares of common stock at a conversion price equal to the greater of (i) $0.10 per share (the "Floor Price"), and (ii) the lesser of (A) $0.2952 or (B) 105% of the volume weighted average price of the common stock during the ten trading days immediately prior to the date of conversion (the "Conversion Price"). The Conversion Price is subject to adjustment in the event of an issuance of common stock at a price per share lower than the Conversion Price then in effect, as well as upon customary stock splits, stock dividends, combinations or similar events. The Floor Price shall not be adjusted for stock dividends, stock splits, stock combinations and other similar transactions.

The Warrants grant Ault & Company the right to purchase 47,685,988 shares of common stock. The Warrants have a five-year term, expiring on the fifth anniversary of the Closing Date, and become exercisable on the first business day after the six-month anniversary of the Closing Date. The exercise price of the Warrants is $0.1837, which is subject to adjustment in the event of customary stock splits, stock dividends, combinations or similar events.

In addition, we and various of our subsidiaries granted Ault & Company a senior security interest in substantially all of our assets as collateral for the repayment of the Note, which is subordinated to the security interest granted to the holders of the outstanding secured promissory notes.

On November 6, 2023, we entered into a securities purchase agreement (the "SPA") with Ault & Company, pursuant to which we agreed to sell to Ault & Company up to 50,000 shares of Series C convertible preferred stock and warrants to purchase up to 370 million shares of common stock for a total purchase price of up to $50 million, of which up to $17.5 million of the Note may be tendered for cancellation. The consummation of the transactions contemplated by the SPA, specifically the conversion of the Series C convertible preferred stock and the exercise of the warrants in an aggregate number in excess of 19.99% on the execution date of the Agreement, are subject to various customary closing conditions as well as regulatory and stockholder approval. In addition to customary closing conditions, the closing of the financing is also conditioned upon the receipt by Ault & Company of financing to consummate the transaction. The SPA contains customary termination provisions for Ault & Company under certain circumstances, and the Agreement shall automatically terminate if the closing has not occurred prior to December 29, 2023, although such date may be extended by Ault & Company for a period of 90 days as set forth in the SPA.

On November 15, 2023, we purchased from ROI 603.44 shares of ROI's newly designated Series D Convertible Preferred Stock for a total purchase price of $15.1 million. The purchase price was paid by the cancellation of $15.1 million of cash advances made by us to ROI between January 1, 2023 and November 9, 2023. The preferred shares each have a stated value of $25,000 per share and each preferred share is convertible into a number of shares of ROI's common stock determined by dividing the stated value by $0.51, or an aggregate of 29.6 million shares of ROI common stock, subject to adjustment in the event of an issuance of ROI common stock at a price per share lower than the conversion price, as well as upon customary stock splits, stock dividends, combinations or similar events. The preferred shares holders are entitled to receive dividends at a rate of 10% per annum from issuance until November 14, 2033. In addition, for as long as at least 25% of the Preferred Shares remain outstanding, ROI must obtain our consent with respect to certain corporate events, including reclassifications, fundamental transactions, stock redemptions or repurchases, increases in the number of directors, and declarations or payment of dividends, and further ROI is subject to certain negative covenants, including covenants against issuing additional shares of capital stock or derivative securities, incurring indebtedness, engaging in related party transactions, selling of properties having a value of over $50,000, altering the number of directors, and discontinuing the business of any subsidiary, subject to certain exceptions and limitations.

Presentation of AGREE as Discontinued Operations

In September 2023, we committed to a plan for our wholly owned subsidiary AGREE to list for sale its four recently renovated Midwest hotels, the Hilton Garden Inn in Madison West, the Residence Inn in Madison West, the Courtyard in Madison West, and the Hilton Garden Inn in Rockford. The decision to sell the hotels follows the decision to also list the multifamily development site in St. Petersburg, Florida and is driven by our desire to focus on our core businesses, Energy, Fintech and Sentinum. We plan to use the proceeds from the sales of the hotel properties to pay off debt and commit more capital to our core businesses. Our real estate properties, which include both hotels and land are currently listed for sale.

In connection with the planned sale of AGREE assets, we concluded that the net assets of AGREE met the criteria for classification as held for sale. In addition, the proposed sale represents a strategic shift that will have a major effect on our operations and financial results. As a result, we have presented the results of operations, cash flows and financial position of AGREE as discontinued operations in the accompanying consolidated financial statements and notes for all periods presented.

General

As a holding company, our business objective is designed to increase stockholder value. Under the strategy we have adopted, we are focused on managing and financially supporting our existing subsidiaries and partner companies, with the goal of pursuing monetization opportunities and maximizing the value returned to stockholders. We have, are and will consider initiatives including, among others: public offerings, the sale of individual partner companies, the sale of certain or all partner company interests in secondary market transactions, or a combination thereof, as well as other opportunities to maximize stockholder value. We anticipate returning value to stockholders after satisfying our debt obligations and working capital needs.

From time to time, we engage in discussions with other companies interested in our subsidiaries or partner companies, either in response to inquiries or as part of a process we initiate. To the extent we believe that a subsidiary or partner company's further growth and development can best be supported by a different ownership structure or if we otherwise believe it is in our stockholders' best interests, we will seek to sell some or all of our position in the subsidiary or partner company. These sales may take the form of privately negotiated sales of stock or assets, mergers and acquisitions, public offerings of the subsidiary or partner company's securities and, in the case of publicly traded partner companies, sales of their securities in the open market. Our plans may include taking subsidiaries or partner companies public through rights offerings and directed share subscription programs. We will continue to consider these (or similar) initiatives and the sale of certain subsidiary or partner company interests in secondary market transactions to maximize value for our stockholders.

In recent years, we have provided capital and relevant expertise to fuel the growth of businesses in metaverse platform, oil exploration, crane services, defense/aerospace, industrial, automotive, medical/biopharma, consumer electronics, hotel operations and textiles. We have provided capital to subsidiaries as well as partner companies in which we have an equity interest or may be actively involved, influencing development through board representation and management support.

We are a Delaware corporation with our corporate office located at 11411 Southern Highlands Pkwy, Suite 240, Las Vegas, NV 89141. Our phone number is 949-444-5464 and our website address is www.ault.com.

Results of Operations

Results of Operations for the Three Months Ended September 30, 2023 and 2022

The following table summarizes the results of our operations for the three months ended September 30, 2023 and 2022.

	For the Three Months Ended September 30, 2023	2022
Revenue	$ 28,164,000	$ 27,031,000
Revenue, cryptocurrency mining	7,558,000	3,874,000
Revenue, crane operations	12,490,000	-
Revenue, lending and trading activities	(249,000)	13,360,000
Total revenue	47,963,000	44,265,000
Cost of revenue, products	20,425,000	20,193,000
Cost of revenue, cryptocurrency mining	10,228,000	5,255,000
Cost of revenue, crane operations	7,642,000	-
Total cost of revenue	38,295,000	25,448,000
Gross profit	9,668,000	18,817,000
Total operating expenses	31,571,000	25,826,000
Loss from operations	(21,903,000)	(7,009,000)
Other income (expense):		
Interest and other income	309,000	725,000
Interest expense	(4,414,000)	(2,367,000)
Loss on extinguishment of debt	(1,546,000)	-
Realized and unrealized gain on marketable securities	74,000	709,000
Loss on the sale of fixed assets	(33,000)	-
Change in fair value of warrant liability	(562,000)	(3,000)
Total other expense, net	(6,172,000)	(936,000)
Loss before income taxes	(28,075,000)	(7,945,000)
Income tax (benefit) provision	(565,000)	144,000
Net loss from continuing operations	(27,510,000)	(8,089,000)
Net income (loss) from discontinued operations	(929,000)	93,000
Net loss	(28,439,000)	(7,996,000)
Net loss attributable to non-controlling interest	6,668,000	725,000
Net loss attributable to Ault Alliance, Inc.	(21,771,000)	(7,271,000)
Preferred dividends	(413,000)	(190,000)
Net loss available to common stockholders	$ (22,184,000)	$ (7,461,000)
Comprehensive loss		
Net loss available to common stockholders	$ (22,184,000)	$ (7,461,000)
Other comprehensive loss		
Foreign currency translation adjustment	(651,000)	306,000
Other comprehensive loss	(651,000)	306,000
Total comprehensive loss	$ (22,835,000)	$ (7,155,000)

Revenues

Revenues by segment for the three months ended September 30, 2023 and 2022 were as follows:

	For the Three Months Ended September 30, 2023	2022	Increase (Decrease)	%
GIGA	$ 10,275,000	$ 7,781,000	$ 2,493,000	32%
TurnOnGreen	1,166,000	1,662,000	(496,000)	-30%
SMC	15,931,000	17,114,000	(1,183,000)	-7%
Sentinum				
Revenue, cryptocurrency mining	7,558,000	3,874,000	3,684,000	95%
Revenue, commercial real estate leases	333,000	273,000	61,000	22%
Fintech:				
Revenue, lending and trading activities	(249,000)	13,360,000	(13,609,000)	-102%
Other	18,000	201,000	(183,000)	-91%
Energy	12,931,000	-	12,931,000	—
Total revenue	$ 47,963,000	$ 44,265,000	$ 3,698,000	8%

GIGA

GIGA revenues were up $2.5 million for the three months ended September 30, 2023, including $0.4 million growth attributable to our acquisition of Giga-tronics Incorporated on September 8, 2022. Continued conflicts and tensions worldwide are driving defense-related investments in force protection technologies at GIGA across the United States, U.K., Europe, Asia, and the Middle East. Additionally, demand for key electronics solutions, particularly for customers in medicine and telecommunications, accelerated in the three months ended September 30, 2023.

TurnOnGreen

TurnOnGreen revenues were down $0.5 million for the three months ended September 30, 2023, compared to the three months ended September 30, 2022 due to the cancellation of large projects that contributed to revenue in 2022.

SMC

SMC revenues decreased by $1.2 million primarily due to timing of shipments to a large customer.

Sentinum

Revenues from Sentinum's cryptocurrency mining operations increased $3.7 million as we increased our cryptocurrency mining activities from the prior period, and further increased by a 32% increase in the average Bitcoin price, partially offset an 84% increase in the average Bitcoin mining difficulty level in the current year period.

Fintech

Revenues from our lending and trading activities were negative $0.2 million. Revenue from lending and trading activities for the three months ended September 30, 2023 included an approximate $3.0 million unrealized losses from our investment in Alzamend, partially offset by realized gains from our investment portfolio for the three months ended September 30, 2023. During the three months ended September 30, 2022, Ault Lending generated income from appreciation of investments in marketable securities as well as shares of common stock underlying equity securities issued to Ault Lending in certain financing transactions. Ault Lending also generates revenue through origination fees charged to borrowers and interest generated from each loan.

Revenues from our trading activities for the three months ended September 30, 2023 included net losses on equity securities, including unrealized gains and losses from market price changes. These gains and losses have caused, and will continue to cause, significant volatility in our periodic earnings.

Energy

Energy revenues increased by $12.9 million for the three months ended September 30, 2023, due to the acquisition of the Circle 8 crane operations in December 2022.

Gross Margins

Gross margins decreased to 20% for the three months ended September 30, 2023, compared to 43% for the three months ended September 30, 2022. Our gross margins of 21% recognized during the three months ended September 30, 2023 were negatively impacted by unfavorable margins from our lending and trading activities and negative margins from our Sentinum cryptocurrency mining segment due to the significant increase in Bitcoin mining difficulty level. Excluding the effects of margin from our lending and trading activities and cryptocurrency mining operations, our adjusted gross margins for the three months ended September 30, 2023 and 2022 would have been 31% and 25%, respectively.

Research and Development

Research and development expenses increased by $1.2 million for the three months ended September 30, 2023, due to expenditures related to development work on ROI's BitNile metaverse platform.

Selling and Marketing

Selling and marketing expenses were $8.0 million for the three months ended September 30, 2023, compared to $7.4 million for the three months ended September 30, 2022, an increase of $0.6 million, or 8%. The increase was primarily the result of higher advertising and promotion costs related to ROI's BitNile metaverse platform, partially offset by a decline in employee related costs and consulting expenses.

General and Administrative

General and administrative expenses were $17.8 million for the three months ended September 30, 2023, compared to $15.4 million for the three months ended September 30, 2022, an increase of $2.4 million, or 16%. General and administrative expenses increased from the comparative prior period, mainly due to increases from new acquisitions:

- general and administrative costs of $2.2 million from ROI, which was acquired in March 2023;
- general and administrative costs of $2.0 million from Circle 8, which was acquired in December 2022; and
- general and administrative costs of $0.7 million from GIGA, which was acquired in September 2022.

The increases above were partially offset by a $2.4 million decrease performance bonus related to realized gains on trading activities.

Impairment of Property and Equipment

During the three months ended September 30, 2023, we recognized an impairment charge of $3.9 million related to property and equipment at ROI's Agora and Bitstream Bitcoin mining operations as they have been unable to commence Bitcoin mining operations, either for themselves or from others through hosting arrangements.

Impairment of Deposit Due to Vendor Bankruptcy Filing

During the three months ended September 30, 2022, Compute North Holdings, Inc. (along with its affiliated debtors, collectively, "Compute North"), filed for chapter 11 bankruptcy protection. We had a deposit of approximately $2.0 million with Compute North for services yet to be performed by Compute North. We assessed this financial exposure and recorded an impairment of the deposit totaling $2.0 million during the three months ended September 30, 2022.

Impairment of Mined Cryptocurrency

Impairment of mined cryptocurrency for the three months ended September 30, 2023 and 2022 was $0.1 million and $0.5 million, respectively. Impairment losses are attributable to the volatility of the Bitcoin market as market price of Bitcoin drops below our carrying value within the respective periods. The impairment of mined cryptocurrency for the three months ended September 30, 2023 is lower than the comparable prior year period as the average amount of digital currency held decreased during the three months ended September 30, 2023 as we generally sold our mined digital currency the next business day.

Other Expense, Net

Other expense, net was $6.2 million for the three months ended September 30, 2023, compared to $0.9 million for the three months ended September 30, 2022.

Interest and other income was $0.3 million for the three months ended September 30, 2023, compared to $0.7 million for the three months ended September 30, 2022. The decrease in interest and other income is primarily due to the decline in ADRT's cash and marketable securities held in the trust account as a result of redemptions that occurred in June 2023.

Interest expense was $4.4 million for the three months ended September 30, 2023, compared to $2.4 million for the three months ended September 30, 2022. Interest expense increased due to higher levels of borrowing during the three months ended September 30, 2023 as compared to the three months ended September 30, 2023. Interest expense for the three months ended September 30, 2023 included contractual interest of $3.3 million, amortization of debt discount of $0.6 million, and forbearance and extension fees of $0.5 million. Interest expense for the three months ended September 30, 2022 consisted primarily of contractual interest.

The $1.5 million loss on extinguishment of debt for the three months ended September 30, 2023 related to the August 2023 exchange of preferred stock liabilities for secured notes. The preferred stock liabilities were remeasured from their fair value prior to the exchange to the fair value of the secured notes at the date of the exchange.

Income Tax (Benefit) Provision

Benefit from income taxes was $0.6 million during the three months ended September 30, 2023 compared to a provision of $0.1 million during the three months ended September 30, 2022. The effective income tax benefit rate was 2.0% for the three months ended September 30, 2023 as compared to a provision of 1.8% for the three months ended September 30, 2022.

Results of Operations for the Nine Months Ended September 30, 2023 and 2022

The following table summarizes the results of our operations for the nine months ended September 30, 2023 and 2022.

	For the Nine Months Ended September 30, 2023	2022
Revenue	$ 54,594,000	$ 43,539,000
Revenue, cryptocurrency mining	23,273,000	11,398,000
Revenue, crane operations	37,726,000	-
Revenue, lending and trading activities	4,337,000	32,224,000
Total revenue	119,930,000	87,161,000
Cost of revenue, products	39,248,000	30,985,000
Cost of revenue, cryptocurrency mining	28,057,000	12,206,000
Cost of revenue, crane operations	22,671,000	-
Cost of revenue, lending and trading activities	1,180,000	-
Total cost of revenue	91,156,000	43,191,000
Gross profit	28,774,000	43,970,000
Total operating expenses	131,201,000	72,120,000
Loss from operations	(102,427,000)	(28,150,000)
Other income (expense):		
Interest and other income	3,888,000	1,255,000
Interest expense	(30,537,000)	(32,063,000)
Loss on extinguishment of debt	(1,700,000)	-
Realized and unrealized (loss) gain on marketable securities	(170,000)	1,016,000
Loss from investment in unconsolidated entity	-	(924,000)
Impairment of equity securities	(9,555,000)	-
(Loss) gain on the sale of fixed assets	2,728,000	-
Change in fair value of warrant liability	2,655,000	(27,000)
Total other expense, net	(32,691,000)	(30,743,000)
Loss before income taxes	(135,118,000)	(58,893,000)
Income tax provision	540,000	361,000
Net loss from continuing operations	(135,658,000)	(59,254,000)
Net income (loss) from discontinued operations	(5,862,000)	(3,614,000)
Net loss	(141,520,000)	(62,868,000)
Net loss attributable to non-controlling interest	10,420,000	1,061,000
Net loss attributable to Ault Alliance, Inc.	(131,100,000)	(61,807,000)
Preferred dividends	(963,000)	(239,000)
Net loss available to common stockholders	$ (132,063,000)	$ (62,046,000)
Comprehensive loss		
Net loss available to common stockholders	$ (132,063,000)	$ (62,046,000)
Other comprehensive loss		
Foreign currency translation adjustment	(1,001,000)	(1,452,000)
Other comprehensive loss	(1,001,000)	(1,452,000)
Total comprehensive loss	$ (133,064,000)	$ (63,498,000)

Revenues

Revenues by segment for the nine months ended September 30, 2023 and 2022 were as follows:

	For the Nine Months Ended September 30, 2023	2022	Increase (Decrease)	%
GIGA	$ 27,723,000	$ 21,530,000	$ 6,193,000	29%
TurnOnGreen	2,766,000	3,853,000	(1,087,000)	-28%
SMC	21,939,000	17,114,000	4,825,000	28%
Sentinum				
Revenue, cryptocurrency mining	23,273,000	11,398,000	11,875,000	104%
Revenue, commercial real estate leases	1,116,000	822,000	294,000	36%
Fintech:				
Revenue, lending and trading activities	4,337,000	32,224,000	(27,887,000)	-87%
Other	63,000	220,000	(157,000)	-71%
Energy	38,713,000	-	38,713,000	—
Total revenue	$ 119,930,000	$ 87,161,000	$ 32,769,000	38%

GIGA

The $6.2 million increase in our GIGA segment revenue for the nine months ended September 30, 2023 included $1.6 million attributable to our acquisition of Giga-tronics Incorporated on September 8, 2022. Continued conflicts and tensions worldwide are driving defense-related investments in force protection technologies at GIGA across the United States, UK, Europe, Asia, and the Middle East. Additionally, demand for key electronics solutions, particularly for customers in medicine and telecommunications, accelerated in the nine months ended September 30, 2023.

TurnOnGreen

TurnOnGreen revenues were down $1.1 million for the nine months ended September 30, 2023, compared to the nine months ended September 30, 2022 due to the cancellation of large projects that contributed to revenue in 2022.

SMC

SMC revenues increased by $4.8 million primarily due to the acquisition of SMC in June 2022.

Sentinum

Revenues from Sentinum's cryptocurrency mining operations increased $11.9 million as we increased our cryptocurrency mining activities from the prior period, partially offset by 17% lower average Bitcoin prices and a 66% increase in average Bitcoin mining difficulty level in the current year period.

Fintech

Revenues from our lending and trading activities were $4.3 million due to realized gains for the nine months ended September 30, 2023 from our investment portfolio. During the nine months ended September 30, 2022, Ault Lending generated income from realized gains from investments in marketable securities as well as shares of common stock underlying equity securities issued to Ault Lending in certain financing transactions. Revenue from lending and trading activities for the nine months ended September 30, 2023 included an approximate $3.6 million unrealized loss from our investment in Alzamend. Ault Lending also generates revenue through origination fees charged to borrowers and interest generated from each loan.

Revenues from our trading activities for the nine months ended September 30, 2023 included net losses on equity securities, including unrealized gains and losses from market price changes. These gains and losses have caused, and will continue to cause, significant volatility in our periodic earnings.

Energy

Energy revenues increased by $38.7 million for the nine months ended September 30, 2023, due to the acquisition of the Circle 8 crane operations in December 2022.

Gross Margins

Gross margins decreased to 24% for the nine months ended September 30, 2023, compared to 50% for the nine months ended September 30, 2022. Our gross margins of 24% recognized during the nine months ended September 30, 2023 were impacted by negative margins from our Sentinum cryptocurrency mining segment due to the decline in the price of Bitcoin coupled with an increase in Bitcoin mining difficulty level, offset by favorable margins from our lending and trading activities as compared to other segments. Excluding the effects of margin from our lending and trading activities and cryptocurrency mining operations, our adjusted gross margins for the nine months ended September 30, 2023 and 2022 would have been 32% and 29%, respectively.

Research and Development

Research and development expenses increased by $3.5 million for the nine months ended September 30, 2023, primarily due to expenditures related to development work on ROI's BitNile metaverse platform.

Selling and Marketing

Selling and marketing expenses were $26.4 million for the nine months ended September 30, 2023, compared to $20.9 million for the nine months ended September 30, 2022, an increase of $5.5 million, or 26%. The increase was the result of $6.4 million higher advertising and promotion costs related to ROI's BitNile metaverse platform, partially offset by a $2.6 million decline in employee related costs and consulting expenses. The increase is also attributable to $1.5 million increases in sales and marketing costs from SMC, which was acquired in June 2022.

General and Administrative

General and administrative expenses were $59.5 million for the nine months ended September 30, 2023, compared to $44.4 million for the nine months ended September 30, 2022, an increase of $15.2 million, or 34%. General and administrative expenses increased from the comparative prior period, mainly due to increases from new acquisitions:

- general and administrative costs of $8.4 million from Circle 8, which was acquired in December 2022;
- general and administrative costs of $5.3 million from SMC, which was acquired in June 2022;
- general and administrative costs of $5.3 million from ROI, which was acquired in March 2023;
- general and administrative costs of $4.3 million from GIGA, which was acquired in September 2022; and
- general and administrative costs of $1.2 million from AVLP, which was acquired in June 2022.

The increases above were partially offset by the following decreases in general and administrative expenses:

- $6.5 million lower performance bonus related to realized gains on trading activities; and
- $2.4 million lower corporate legal fees.

Impairment of AVLP Goodwill and Intangible Assets

Goodwill

We test the recorded amount of goodwill for impairment on an annual basis on December 31 or more frequently if there are indicators that the carrying amount of the goodwill exceeds its carried value. We performed a goodwill impairment test as of June 30, 2023 related to AVLP as there were indicators of impairment related to certain unforeseen business developments and changes in financial projections.

The valuation of the AVLP reporting unit was determined using a market and income approach methodology of valuation.

The income approach was based on the projected cash flows discounted to their present value using discount rates, that in the Company's judgment, consider the timing and risk of the forecasted cash flows using internally developed forecasts and assumptions. Under the income approach, the discount rate used is the average estimated value of a market participant's cost of capital and debt, derived using customary market metrics. The analysis included assumptions regarding AVLP's revenue forecast and discount rates of 26.7% using a weighted average cost of capital analysis. The market approach utilized the guideline public company method.

The results of the quantitative test indicated the fair value of the AVLP reporting unit did not exceed its carrying amounts, including goodwill, in excess of the carrying value of the goodwill. As a result, the entire $18.6 million carrying amount of AVLP's goodwill was recognized as a non-cash impairment charge during the nine months ended September 30, 2023.

Intangible Assets

Due to indicators of impairment, AVLP intangible assets were tested for impairment as of June 30, 2023. Based on internally developed forecasts of undiscounted expected future cash flows, it was determined that the carrying amount of the assets were not recoverable and, based on an assessment of the fair value of the assets, impairment of $17.0 million was recognized as a non-cash impairment charge during the nine months ended September 30, 2023.

The tradenames and patents/developed technology intangible assets were valued using the relief-from-royalty method. The relief-from-royalty method is one of the methods under the income approach wherein estimates of a company's earnings attributable to the intangible asset are based on the royalty rate the company would have paid for the use of the asset if it did not own it. Royalty payments are estimated by applying royalty rates of 18% for patents and developed technology and 0.25% for trademarks. The resulting net annual royalty payments are then discounted to present value using a discount factor of 25.7%.

Impairment of Property and Equipment

During the nine months ended September 30, 2023, we recognized an impairment charge of $3.9 million related to property and equipment at ROI's Agora and Bitstream Bitcoin mining operations as they have been unable to commence Bitcoin mining operations, either for themselves or from others through hosting arrangements.

Impairment of Deposit Due to Vendor Bankruptcy Filing

During the nine months ended September 30, 2022, Compute North filed for chapter 11 bankruptcy protection. We had a deposit of approximately $2.0 million with Compute North for services yet to be performed by Compute North. We assessed this financial exposure and recorded an impairment of the deposit totaling $2.0 million during the nine months ended September 30, 2022.

Impairment of Mined Cryptocurrency

Impairment of mined cryptocurrency for the nine months ended September 30, 2023 and 2022 was $0.4 million and $2.9 million, respectively. Impairment losses are attributable to the volatility of the Bitcoin market as market price of Bitcoin drops below our carrying value within the respective periods. The impairment of mined cryptocurrency for the nine months ended September 30, 2023 is lower than the comparable prior year period as the average amount of digital currency held decreased during the first half of 2023 as we generally sold our mined digital currency the next business day.

Other Expense, Net

Other expense, net was $32.7 million for the nine months ended September 30, 2023, compared to $30.7 million for the nine months ended September 30, 2022.

Interest and other income was $3.9 million for the nine months ended September 30, 2023, compared to $1.3 million for the nine months ended September 30, 2022. The increase in interest and other income is primarily due to higher interest rates resulting in higher income from ADRT's cash and marketable securities held in the trust account as a result of redemptions that occurred in June 2023.

Interest expense was $30.5 million for the nine months ended September 30, 2023, compared to $32.1 million for the nine months ended September 30, 2022. Interest expense for the nine months ended September 30, 2023 included amortization of debt discount of $18.2 million, forbearance and extension fees of $7.3 million and contractual interest of $5.0 million. Interest expense for the nine months ended September 30, 2022 related primarily to amortization of debt discount of $26.4 million, contractual interest of $4.4 million, and forbearance and extension fees of $1.2 million.

The $1.5 million loss on extinguishment of debt for the nine months ended September 30, 2023 related to the August 2023 exchange of preferred stock liabilities for secured notes. The preferred stock liabilities were remeasured from their fair value prior to the exchange to the fair value of the secured notes at the date of the exchange.

Loss from investment in unconsolidated entity was $0 for the nine months ended September 30, 2023, compared to $0.9 million for the nine months ended September 30, 2022, representing our share of losses from our equity method investment in AVLP prior to the June 1, 2022 acquisition.

Cumulative downward adjustments for impairments for our equity securities without readily determinable fair values held at September 30, 2023 were $9.6 million.

Income Tax Provision

Provision for income taxes was $0.5 million during the three months ended September 30, 2023 compared to a provision of $0.4 million during the nine months ended September 30, 2022. The effective income tax provision rate was 0.4% for the nine months ended September 30, 2023 as compared to a provision of 0.6% for the nine months ended September 30, 2022.

Liquidity and Capital Resources

On September 30, 2023, excluding cash and cash equivalents from discontinued operations, we had cash and cash equivalents of $8.7 million (excluding restricted cash of $1.9 million), compared to cash and cash equivalents of $7.9 million (excluding restricted cash of $0.7 million) at December 31, 2022. The increase in cash and cash equivalents was primarily due to cash provided by operating activities and cash provided by financing activities related to the sale of common and preferred stock, as well as proceeds from convertible notes partially offset by the payment of debt, purchases of property and equipment and investments in equity securities.

Net cash used in operating activities totaled $2.2 million for the nine months ended September 30, 2023, compared to net cash provided by operating activities of $21.9 million for the nine months ended September 30, 2022. Cash used in operating activities for the nine months ended September 30, 2023 included $71.2 million net cash provided by marketable securities from trading activities related to the operations of Ault Lending and $21.3 million proceeds from the sale of cryptocurrencies from our Sentinum Bitcoin mining operations, offset by operating losses and changes in working capital. Net cash used in operating activities for the nine months ended September 30, 2023 included $3.6 million cash used in operating activities from discontinued operations.

Net cash used in investing activities was $22.9 million for the nine months ended September 30, 2023, compared to $115.4 million for the nine months ended September 30, 2022, which included $80.1 million of capital expenditures, primarily for Bitcoin mining equipment. Net cash used in investing activities for the nine months ended September 30, 2023 was primarily related to $8.7 million capital expenditures and the $10.7 million purchase of equity securities, partially offset by proceeds from the sale of fixed assets of $4.5 million. Net cash used in investing activities for the nine months ended September 30, 2023 included $6.1 million cash used in investing activities from discontinued operations.

Net cash provided by financing activities was $23.8 million for the nine months ended September 30, 2023, compared to net cash provided by financing activities of $86.1 million for the nine months ended September 30, 2022, and primarily reflects the following transactions:

- *2022 Common ATM Offering* – During the nine months ended September 30, 2023, we sold an aggregate of 0.1 million shares of common stock pursuant to the 2022 Common ATM Offering for gross proceeds of $4.2 million and effective March 17, 2023, the 2022 Common ATM Offering was terminated;

- *2022 Preferred ATM Offering* – During the nine months ended September 30, 2023, we sold an aggregate of 162,175 shares of Series D Preferred Stock pursuant to the 2022 Preferred ATM Offering for net proceeds of $3.0 million and effective June 16, 2023, the 2022 Preferred ATM Offering was terminated;

- *2023 Common ATM Offering* –On June 9, 2023, we entered into the 2023 Common ATM Offering with Ascendiant Capital. During the nine months ended September 30, 2023, we sold an aggregate of 10.8 million shares of common stock pursuant to the 2023 Common ATM Offering for gross proceeds of $21.2 million;

- $58.1 million payments on notes payable, partially offset by $40.6 million proceeds from notes payable; and
- $9.2 million proceeds from convertible notes payable, partially offset by $0.7 million payments on convertible notes payable.

Net provided by financing activities for the nine months ended September 30, 2023 included $5.2 million cash provided by financing activities from discontinued operations.

Financing Transactions Subsequent to September 30, 2023

Financing transactions subsequent to September 30, 2023 included the following:

2023 Common ATM Offering

During the period between October 1, 2023 through November 17, 2023, we sold an aggregate of 54.2 million shares of common stock pursuant to the 2023 Common ATM Offering for gross proceeds of $10.0 million.

Senior Secured Convertible Note, Related Party

On October 13, 2023 (the "Closing Date"), we entered into a note purchase agreement with Ault & Company, pursuant to which we sold to the Purchaser (i) a senior secured convertible promissory note in the principal face amount of $17.5 million (the "Note") and warrants (the "Warrants") to purchase shares of our common stock for a total purchase price of up to $17.5 million (the "Transaction").

The purchase price was comprised of the following: (i) cancellation of $4.6 million of cash loaned by Ault & Company to us since June 8, 2023 pursuant to the loan agreement; (ii) cancellation of $11.6 million of term loans made by us to Ault & Company in exchange for Ault & Company assuming liability for the payment of $11.6 million of secured notes; and (iii) the retirement of $1.25 million stated value of 125,000 shares of our Series B Convertible Preferred Stock (representing all shares issued and outstanding of that series) being transferred from Ault & Company to us.

The Note has a principal face amount of $17.5 million and has a maturity date of October 12, 2028 (the "Maturity Date"). The Note bears interest at the rate of 10% per annum. Interest is payable, at the Purchaser's option, in cash or shares of Common Stock at the applicable Conversion Price (as defined below). Accrued interest is payable on the Maturity Date, provided, however, that Ault & Company has the option, on not less than 10 calendar days' notice to us, to require payment of accrued but unpaid interest on a monthly basis in arrears.

The Note is convertible into shares of common stock at a conversion price equal to the greater of (i) $0.10 per share (the "Floor Price"), and (ii) the lesser of (A) $0.2952 or (B) 105% of the volume weighted average price of the common stock during the ten trading days immediately prior to the date of conversion (the "Conversion Price"). The Conversion Price is subject to adjustment in the event of an issuance of common stock at a price per share lower than the Conversion Price then in effect, as well as upon customary stock splits, stock dividends, combinations or similar events. The Floor Price shall not be adjusted for stock dividends, stock splits, stock combinations and other similar transactions.

The Warrants grant Ault & Company the right to purchase 47,685,988 shares of common stock. The Warrants have a five-year term, expiring on the fifth anniversary of the Closing Date, and become exercisable on the first business day after the six-month anniversary of the Closing Date. The exercise price of the Warrants is $0.1837, which is subject to adjustment in the event of customary stock splits, stock dividends, combinations or similar events.

In addition, we and various of our subsidiaries granted Ault & Company a senior security interest in substantially all of our assets as collateral for the repayment of the Note, which is subordinated to the security interest granted to the holders of the outstanding secured promissory notes.

Series C Preferred Purchase Agreement, Related Party

On November 6, 2023, we entered into a securities purchase agreement (the "SPA") with Ault & Company, pursuant to which we agreed to sell to Ault & Company up to 50,000 shares of Series C convertible preferred stock and warrants to purchase up to 370 million shares of common stock for a total purchase price of up to $50 million, of which up to $17.5 million of the Note may be tendered for cancellation. The consummation of the transactions contemplated by the SPA, specifically the conversion of the Series C convertible preferred stock and the exercise of the warrants in an aggregate number in excess of 19.99% on the execution date of the Agreement, are subject to various customary closing conditions as well as regulatory and stockholder approval. In addition to customary closing conditions, the closing of the financing is also conditioned upon the receipt by Ault & Company of financing to consummate the transaction. The SPA contains customary termination provisions for Ault & Company under certain circumstances, and the Agreement shall automatically terminate if the closing has not occurred prior to December 29, 2023, although such date may be extended by Ault & Company for a period of 90 days as set forth in the SPA.

Series D Preferred Purchase Agreement, Related Party

On November 15, 2023, we purchased from ROI 603.44 shares of ROI's newly designated Series D Convertible Preferred Stock for a total purchase price of $15.1 million. The purchase price was paid by the cancellation of $15.1 million of cash advances made by us to ROI between January 1, 2023 and November 9, 2023. The preferred shares each have a stated value of $25,000 per share and each preferred share is convertible into a number of shares of ROI's common stock determined by dividing the stated value by $0.51, or an aggregate of 29.6 million shares of ROI common stock, subject to adjustment in the event of an issuance of ROI common stock at a price per share lower than the conversion price, as well as upon customary stock splits, stock dividends, combinations or similar events. The preferred shares holders are entitled to receive dividends at a rate of 10% per annum from issuance until November 14, 2033. In addition, for as long as at least 25% of the Preferred Shares remain outstanding, ROI must obtain our consent with respect to certain corporate events, including reclassifications, fundamental transactions, stock redemptions or repurchases, increases in the number of directors, and declarations or payment of dividends, and further ROI is subject to certain negative covenants, including covenants against issuing additional shares of capital stock or derivative securities, incurring indebtedness, engaging in related party transactions, selling of properties having a value of over $50,000, altering the number of directors, and discontinuing the business of any subsidiary, subject to certain exceptions and limitations.

Critical Accounting Policies

Variable Interest Entities

The accounting guidance requires an enterprise to perform an analysis to determine whether the enterprise's variable interest or interests give it a controlling financial interest in a variable interest entity; to require ongoing reassessments of whether an enterprise is the primary beneficiary of a Variable Interest Entity ("VIE"); to eliminate the solely quantitative approach previously required for determining the primary beneficiary of a VIE; to add an additional reconsideration event for determining whether an entity is a VIE when any changes in facts and circumstances occur such that holders of the equity investment at risk, as a group, lose the power from voting rights or similar rights of those investments to direct the activities of the entity that most significantly impact the entity's economic performance; and to require enhanced disclosures that will provide readers of financial statements with more transparent information about an enterprise's involvement in a VIE.

For VIEs, the Company assesses whether it is the primary beneficiary as prescribed by the accounting guidance on the consolidation of a VIE.

The Company evaluates its business relationships with related parties to identify potential VIEs under ASC 810, Consolidation. The Company consolidates VIEs in which it is considered to be the primary beneficiary. Entities are considered to be the primary beneficiary if they have both of the following characteristics: (i) the power to direct the activities that, when taken together, most significantly impact the VIE's performance; and (ii) the obligation to absorb losses and right to receive the returns from the VIE that would be significant to the VIE. The Company's judgment with respect to its level of influence or control of an entity involves the consideration of various factors including the form of its ownership interest, its representation in the entity's governance, the size of its investment, estimates of future cash flows, its ability to participate in policy making decisions and the rights of the other investors to participate in the decision making process and to replace the Company as manager and/or liquidate the joint venture, if applicable.

Business Combination

We allocate the purchase price of an acquired business to the tangible and intangible assets acquired and liabilities assumed based upon their estimated fair values on the acquisition date. Any excess of the purchase price over the fair value of the net assets acquired is recorded as goodwill. Acquired customer relations, technology, trade names and know how are recognized at fair value. The purchase price allocation process requires management to make significant estimates and assumptions, especially at the acquisition date with respect to intangible assets. Direct transaction costs associated with the business combination are expensed as incurred. The allocation of the consideration transferred in certain cases may be subject to revision based on the final determination of fair values during the measurement period, which may be up to one year from the acquisition date. We include the results of operations of the business that we have acquired in our consolidated results prospectively from the date of acquisition.

If the business combination is achieved in stages, the acquisition date carrying value of the acquirer's previously held equity interest in the acquire is re-measured to fair value at the acquisition date; any gains or losses arising from such re-measurement are recognized in profit or loss.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not applicable for a smaller reporting company.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We have established disclosure controls and procedures designed to ensure that information required to be disclosed in the reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in SEC rules and forms and is accumulated and communicated to management, including the principal executive officer and principal financial officer, to allow timely decisions regarding required disclosure.

Our principal executive officer and principal financial officer, with the assistance of other members of the Company's management, have evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this quarterly report. Based upon our evaluation, each of our principal executive officer and principal financial officer has concluded that the Company's internal control over financial reporting was not effective as of the end of the period covered by this Quarterly Report on Form 10-Q because the Company has not yet completed its remediation of the material weakness previously identified and disclosed in the Company's Annual Report on Form 10-K for the year ended December 31, 2022, the end of its most recent fiscal year.

Management has identified the following material weaknesses:

1. We do not have sufficient resources in our accounting department, which restricts our ability to gather, analyze and properly review information related to financial reporting, including applying complex accounting principles relating to consolidation accounting, fair value estimates and analysis of financial instruments for proper classification in the consolidated financial statements, in a timely manner;

2. Due to our size and nature, segregation of all conflicting duties may not always be possible and may not be economically feasible. However, to the extent possible, the initiation of transactions, the custody of assets and the recording of transactions should be performed by separate individuals. Management evaluated the impact of our failure to have segregation of duties during our assessment of our disclosure controls and procedures and concluded that the control deficiency that resulted represented a material weakness;

3. Our primary user access controls (i.e., provisioning, de-provisioning, privileged access and user access reviews) to ensure appropriate authorization and segregation of duties that would adequately restrict user and privileged access to the financially relevant systems and data to appropriate personnel were not designed and/or implemented effectively. We did not design and/or implement sufficient controls for program change management to certain financially relevant systems affecting our processes; and

4. The Company did not design and/or implement user access controls to ensure appropriate segregation of duties or program change management controls for certain financially relevant systems impacting the Company's processes around revenue recognition and digital assets to ensure that IT program and data changes affecting the Company's (i) financial IT applications, (ii) digital currency mining equipment, and (iii) underlying accounting records, are identified, tested, authorized and implemented appropriately to validate that data produced by its relevant IT system(s) were complete and accurate. Automated process-level controls and manual controls that are dependent upon the information derived from such financially relevant systems were also determined to be ineffective as a result of such deficiency. In addition, the Company has not effectively designed a manual key control to detect material misstatements in revenue.

Planned Remediation

Management continues to work to improve its controls related to our material weaknesses, specifically relating to user access and change management surrounding our IT systems and applications. Management will continue to implement measures to remediate material weaknesses, such that these controls are designed, implemented, and operating effectively. The remediation actions include: (i) enhancing design and documentation related to both user access and change management processes and control activities; and (ii) developing and communicating additional policies and procedures to govern the area of IT change management. In order to achieve the timely implementation of the above, management has commenced the following actions and will continue to assess additional opportunities for remediation on an ongoing basis:

- Engaging a third-party specialist to assist management with improving the Company's overall control environment, focusing on change management and access controls;
- Implementing new applications and systems that are aligned with management's focus on creating strong internal controls; and
- Continuing to increase headcount across the Company, with a particular focus on hiring individuals with strong Sarbanes Oxley and internal control backgrounds.

We are currently working to improve and simplify our internal processes and implement enhanced controls, as discussed above, to address the material weaknesses in our internal control over financial reporting and to remedy the ineffectiveness of our disclosure controls and procedures. These material weaknesses will not be considered to be remediated until the applicable remediated controls are operating for a sufficient period of time and management has concluded, through testing, that these controls are operating effectively.

Despite the existence of these material weaknesses, we believe that the condensed consolidated financial statements included in the period covered by this Quarterly Report on Form 10-Q fairly present, in all material respects, our financial condition, results of operations and cash flows for the periods presented in conformity with U.S. generally accepted accounting principles.

Changes in Internal Controls over Financial Reporting.

Except as detailed above, during the fiscal quarter ended September 30, 2023, there were no significant changes in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) that have materially affected or are reasonably likely to materially affect our internal control over financial reporting.

PART II — OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

Litigation Matters

The Company is involved in litigation arising from other matters in the ordinary course of business. We are regularly subject to claims, suits, regulatory and government investigations, and other proceedings involving labor and employment, commercial disputes, and other matters. Such claims, suits, regulatory and government investigations, and other proceedings could result in fines, civil penalties, or other adverse consequences.

Certain of these outstanding matters include speculative, substantial or indeterminate monetary amounts. We record a liability when we believe that it is probable that a loss has been incurred and the amount can be reasonably estimated. If we determine that a loss is reasonably possible and the loss or range of loss can be estimated, we disclose the reasonably possible loss. We evaluate developments in our legal matters that could affect the amount of liability that has been previously accrued, and the matters and related reasonably possible losses disclosed, and make adjustments as appropriate. Significant judgment is required to determine both likelihood of there being and the estimated amount of a loss related to such matters.

With respect to our other outstanding matters, based on our current knowledge, we believe that the amount or range of reasonably possible loss will not, either individually or in aggregate, have a material adverse effect on our business, consolidated financial position, results of operations, or cash flows. However, the outcome of such matters is inherently unpredictable and subject to significant uncertainties.

ITEM 1A. RISK FACTORS

There are no updates or changes to the risk factors set forth in our amended Annual Report on Form 10-K/A for the year ended December 31, 2022.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

From July 1, 2023 through September 30, 2023, Ault Alpha LP purchased 147,000 shares of common stock. Ault Alpha LP may be deemed to be an "affiliated purchaser" as defined in Rule 10b-18(a)(3) under the Securities Exchange Act of 1934, as amended. The purchases were made through open market transactions.

	Total Number of Shares Purchased	Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares That May Yet Be Purchased Under Plans or Programs
July 1, 2023 – July 31, 2023	147,000	$ 4.22		
August 1, 2023 – August 31, 2023	-	$ -		
September 1, 2023 – September 30, 2023	-	$ -		
Total	147,000	$ 4.22	-	-

From July 1, 2023 through September 30, 2023, Ault Alpha LP purchased 9,500 shares of series D preferred stock. Ault Alpha LP may be deemed to be an "affiliated purchaser" as defined in Rule 10b-18(a)(3) under the Securities Exchange Act of 1934, as amended. The purchases were made through open market transactions.

	Total Number of Shares Purchased	Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares That May Yet Be Purchased Under Plans or Programs
July 1, 2023 – July 31, 2023	9,500	$ 15.50		
August 1, 2023 – August 31, 2023	-	$ -		
September 1, 2023 – September 30, 2023	-	$ -		
Total	9,500	$ 15.50	-	-

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

On November 15, 2023, we filed the certificate of designation of the Series C convertible preferred stock to be issued pursuant to the SPA entered into with Ault & Company on November 6, 2023. As of the date of this filing, no shares of Series C convertible preferred stock have been issued.

ITEM 6. EXHIBITS

Exhibit Number	Description
3.1	Form of Certificate of Determination of Preferences, Rights and Limitations of Series B Convertible Preferred Stock, dated March 3, 2017. Incorporated by reference to the Current Report on Form 8-K filed on March 9, 2017 as Exhibit 3.1 thereto.
3.2	Certificate of Incorporation, dated September 22, 2017. Incorporated herein by reference to the Current Report on Form 8-K filed on December 29, 2017 as Exhibit 3.1 thereto.
3.3	Certificate of Designations of Rights and Preferences of 10% Series A Cumulative Redeemable Perpetual Preferred Stock, dated September 13, 2018. Incorporated herein by reference to the Current Report on Form 8-K filed on September 14, 2018 as Exhibit 3.1 thereto.
3.4	Certificate of Amendment to Certificate of Incorporation, dated January 2, 2019. Incorporated by reference to the Current Report on Form 8-K filed on January 3, 2019 as Exhibit 3.1 thereto.
3.5	Certificate of Amendment to Certificate of Incorporation (1-for-20 Reverse Stock Split of Common Stock), dated March 14, 2019. Incorporated herein by reference to the Current Report on Form 8-K filed on March 14, 2019 as Exhibit 3.1 thereto.
3.6	Certificate of Elimination of the Series C convertible redeemable preferred stock of Ault Alliance, Inc. Incorporated herein by reference to the Current Report on Form 8-K filed on January 27, 2023 as Exhibit 3.1 thereto.
3.7	Certificate of Ownership and Merger. Incorporated by reference to the Current Report on Form 8-K filed on January 19, 2021 as Exhibit 3.1 thereto.
3.8	Amended and Restated Bylaws, effective as of November 2, 2021. Incorporated by reference to the Current Report on Form 8-K filed on November 3, 2021 as Exhibit 3.1 thereto.

3.9	Certificate of Ownership and Merger, as filed with the Secretary of State of the State of Delaware on December 1, 2021. Incorporated by reference to the Current Report on Form 8-K filed on December 13, 2021 as Exhibit 3.1 thereto.
3.10	Certificate of Designation, Preferences and Rights relating to the 13.00% Series D Cumulative Redeemable Perpetual Preferred Stock, dated May 25, 2022. Incorporated by reference to the Registration Statement on Form 8-A filed on May 26, 2022 as Exhibit 3.6 thereto.
3.11	Certificate of Increase of the Designated Number of Shares of 13.00% Series D Cumulative Redeemable Perpetual Preferred Stock, dated June 10, 2022. Incorporated by reference to the Current Report on Form 8-K filed on June 14, 2022 as Exhibit 3.1 thereto.
3.12	Certificate of Correction to the Certificate of Designation, Rights and Preferences of 13.00% Series D Cumulative Redeemable Perpetual Preferred Stock, dated June 16, 2022. Incorporated by reference to the Current Report on Form 8-K filed on June 17, 2022 as Exhibit 3.1 thereto.
3.13	Certificate of Amendment to Certificate of Incorporation (1-for-300 Reverse Stock Split of Common Stock), dated May 15, 2023. Incorporated herein by reference to the Current Report on Form 8-K filed on May 16, 2023 as Exhibit 3.1 thereto.
3.14	Certificate of Elimination of the Series E convertible redeemable preferred stock of Ault Alliance, Inc. Incorporated herein by reference to the Current Report on Form 8-K filed on August 18, 2023 as Exhibit 3.1 thereto.
3.15	Certificate of Elimination of the Series F convertible redeemable preferred stock of Ault Alliance, Inc. Incorporated herein by reference to the Current Report on Form 8-K filed on August 18, 2023 as Exhibit 3.2 thereto.
3.16	Certificate of Elimination of the Series G convertible redeemable preferred stock of Ault Alliance, Inc. Incorporated herein by reference to the Current Report on Form 8-K filed on August 18, 2023 as Exhibit 3.3 thereto.
3.17	Certificate of Elimination of the Series C convertible preferred stock of Ault Alliance, Inc. Incorporated herein by reference to the Current Report on Form 8-K filed on October 12, 2023 as Exhibit 3.1 thereto.
3.18	Certificate of Designation of Preferences, Rights and Limitations of Series C Cumulative Preferred Stock, filed November 15, 2023.
10.1	Amendment to At-The-Market Issuance Sales Agreement, dated July 12, 2023, with Ascendiant Capital Markets, LLC. Incorporated by reference to the Current Report on Form 8-K filed on July 13, 2023 as Exhibit 10.1 thereto.
10.2	Form of First Amendment and Joinder to Loan and Guarantee Agreement. Incorporated by reference to the Current Report on Form 8-K filed on July 20, 2023 as Exhibit 10.1 thereto.
10.3	Form of Montana Security Agreement. Incorporated by reference to the Current Report on Form 8-K filed on July 20, 2023 as Exhibit 10.2 thereto.
10.4	Form of the Circle 8 Pledge. Incorporated by reference to the Current Report on Form 8-K filed on July 20, 2023 as Exhibit 10.3 thereto.
10.5	Form of the Florida Mortgage Amendment. Incorporated by reference to the Current Report on Form 8-K filed on July 20, 2023 as Exhibit 10.4 thereto.
10.6	Form of the Michigan Mortgage Amendment. Incorporated by reference to the Current Report on Form 8-K filed on July 20, 2023 as Exhibit 10.5 thereto.
10.7	Form of Exchange Agreement. Incorporated by reference to the Current Report on Form 8-K filed on August 3, 2023 as Exhibit 10.1 thereto.
10.8	Form of Exchange Note. Incorporated by reference to the Current Report on Form 8-K filed on August 3, 2023 as Exhibit 4.1 thereto.
10.9	Form of Amended and Restated Assignment. Incorporated by reference to the Current Report on Form 8-K/A filed on August 16, 2023 as Exhibit 10.2 thereto.
10.10	Form of Guaranty. Incorporated by reference to the Current Report on Form 8-K filed on August 3, 2023 as Exhibit 10.3 thereto.
10.11	Form of Investor Agreement. Incorporated by reference to the Current Report on Form 8-K filed on September 1, 2023 as Exhibit 10.1 thereto.
10.12	Form of 7.00% Senior Note due 2024. Incorporated by reference to the Current Report on Form 8-K filed on September 1, 2023 as Exhibit 4.1 thereto.

10.13	Form of 8.50% Senior Note due 2026. Incorporated by reference to the Current Report on Form 8-K filed on September 1, 2023 as Exhibit 4.2 thereto.
10.14	Form of 10.50% Senior Note due 2028. Incorporated by reference to the Current Report on Form 8-K filed on September 1, 2023 as Exhibit 4.3 thereto.
10.15	Amendment to At-The-Market Issuance Sales Agreement, dated September 7, 2023, with Ascendiant Capital Markets, LLC. Incorporated by reference to the Current Report on Form 8-K filed on September 8, 2023 as Exhibit 10.1 thereto.
10.16	Form of Term Note. Incorporated by reference to the Current Report on Form 8-K filed on September 11, 2023 as Exhibit 4.1 thereto.
10.17	Form of Guaranty. Incorporated by reference to the Current Report on Form 8-K filed on September 11, 2023 as Exhibit 10.1 thereto.
10.18	Securities Exchange Agreement, dated September 27, 2023, by and between the Company and the Investor. Incorporated by reference to the Current Report on Form 8-K filed on September 28, 2023 as Exhibit 10.1 thereto.
10.19	Form of Note. Incorporated by reference to the Current Report on Form 8-K filed on September 28, 2023 as Exhibit 4.1 thereto.
31.1*	Certification of Chief Executive Officer required by Rule 13a-14(a) or Rule 15d-14(a).
31.2*	Certification of Chief Financial Officer required by Rule 13a-14(a) or Rule 15d-14(a).
32.1**	Certification of Chief Executive and Chief Financial Officer required by Rule 13a-14(b) or Rule 15d-14(b) and Section 1350 of Chapter 63 of Title 18 of the United States Code.
101.INS*	Inline 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*	Inline XBRL Taxonomy Extension Schema Document.
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document.
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

* Filed herewith.

** Furnished herewith.

SIGNATURES

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

Dated: November 20, 2023

AULT ALLIANCE, INC.

By: /s/ William B. Horne
William B. Horne
Chief Executive Officer
(Principal Executive Officer)

By: /s/ Kenneth S. Cragun
Kenneth S. Cragun
Chief Financial Officer
(Principal Accounting Officer)

Exhibit 3.18

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF DESIGNATION OF "AULT ALLIANCE, INC.", FILED IN THIS OFFICE ON THE FIFTEENTH DAY OF NOVEMBER, A.D. 2023, AT 5:38 O`CLOCK P.M.

Jeffrey W. Bullock, Secretary of State

6551776 8100
SR# 20233988486

Authentication: 204606135
Date: 11-16-23

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Dela
Secretary of
Division of Corp
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FILED 05:38 PM 1
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AULT ALLIANCE, INC.

CERTIFICATE OF DESIGNATION OF PREFERENCES, RIGHTS AND LIMITATIONS

OF

SERIES C CONVERTIBLE PREFERRED STOCK

PURSUANT TO SECTION 151 OF THE DELAWARE GENERAL CORPORATION LAW

The undersigned, William B. Horne, does hereby certify that:

1. He is the Chief Executive Officer of Ault Alliance, Inc., a Delaware corporation (the "**Corporation**").

2. The Corporation is authorized to issue 25,000,000 shares of preferred stock, par value $0.001 per share, 3,600,000 shares of which have been previously designated.

3. The following resolutions were duly adopted by the Board of Directors of the Corporation (the "**Board**"):

WHEREAS, the Certificate of Incorporation of the Corporation, as amended (the "**Certificate of Incorporation**"), provides for a class of its authorized stock known as preferred stock, consisting of 25,000,000 shares, $0.001 par value per share, issuable from time to time in one or more series;

WHEREAS, the Board is authorized by resolution to provide for the issuance of preferred stock in one or more series, and to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, privileges, preferences and relative participating, optional or other rights, if any, of the shares of each such series and the qualifications, limitations or restrictions thereof; and

WHEREAS, it is the desire of the Board, pursuant to its authority as described above, to fix the rights, preferences, restrictions and other matters relating to a series of the preferred stock, which shall consist of 50,000 shares of preferred stock which the Corporation has the authority to issue.

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby provide for the issuance of a series of preferred stock to be designated "Series C Convertible Preferred Stock" and does hereby fix and determine the designation, powers, privileges, preferences and relative participating, optional or other rights, if any, of the shares of each such series and the qualifications, limitations or restrictions thereof as follows:

Section 1. **Definitions**. For the purposes hereof, the following terms shall have the following meanings:

"**Affiliate**" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act.

"**Alternate Consideration**" shall have the meaning set forth in Section 7(d).

"**Business Day**" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"**Buy-In**" shall have the meaning set forth in Section 6(c)(iv).

"**Certificate of Designation**" means this Certificate of Designation of Preferences, Rights and Limitations of the Series C Convertible Preferred Stock.

"**Change of Control Transaction**" means the occurrence after the date hereof of any of (a) an acquisition by an individual or legal entity or "group" (as described in Rule 13d-5(b)(1) promulgated under the Exchange Act) of effective control (whether through legal or beneficial ownership of capital stock of the Corporation, by contract or otherwise) of in excess of 50% of the voting securities of the Corporation (other than by means of the issuance, sale, conversion or exercise of Series C Preferred Stock), (b) the Corporation merges into or consolidates with any other Person, or any Person merges into or consolidates with the Corporation and, after giving effect to such transaction, the stockholders of the Corporation immediately prior to such transaction own less than 50% of the aggregate voting power of the Corporation or the successor entity of such transaction, (c) the Corporation (and all of its Subsidiaries, taken as a whole) sells or transfers all or substantially all of its assets to another Person and the stockholders of the Corporation immediately prior to such transaction own less than 50% of the aggregate voting power of the acquiring entity immediately after the transaction, (d) a replacement at one time or within a one year period of more than one-half of the members of the Board which is not approved by a majority of those individuals who are members of the Board on the Original Issue Date (or by those individuals who are serving as members of the Board on any date whose nomination to the Board was approved by a majority of the members of the Board who are members on the Original Issue Date), or (e) the execution by the Corporation of an agreement to which the Corporation is a party or by which it is bound, providing for any of the events set forth in clauses (a) through (d) above, provided, however, that no transaction with an Affiliate of the Corporation shall be deemed a Change of Control Transaction.

"**Closing**" means the closing of the purchase and sale of the Series C Preferred Stock pursuant to Section 2.1 of the Purchase Agreement.

"**Closing Date**" means the Trading Day on which all of the Transaction Documents have been executed and delivered by the applicable parties thereto and all conditions precedent to (i) each Holder's obligations to pay the Purchase Price and (ii) the Corporation's obligations to deliver the Series C Preferred Stock have been satisfied or waived.

"**Commission**" means the United States Securities and Exchange Commission.

"**Common Stock**" means the Corporation's common stock, $0.001 par value per share, and stock of any other class of securities into which such securities may hereafter be reclassified, converted or changed.

"**Common Stock Equivalents**" means any securities of the Corporation or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

"**Conversion Amount**" means the Stated Value at issue.

"**Conversion Date**" shall have the meaning set forth in Section 6(a).

"**Conversion Price**" shall have the meaning set forth in Section 6(b).

"**Conversion Shares**" means, collectively, the shares of Common Stock issuable upon conversion of the shares of Series C Preferred Stock in accordance with the terms hereof.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"**Fundamental Transaction**" shall have the meaning set forth in Section 7(d).

"**GAAP**" means United States generally accepted accounting principles.

"**Holder**" shall have the meaning given such term in Section 2.

"**Liquidation**" shall have the meaning set forth in Section 5.

"**Notice of Conversion**" shall have the meaning set forth in Section 6(a).

"**Original Issue Date**" means the date of the first issuance of any shares of the Series C Preferred Stock regardless of the number of transfers of any particular shares of Series C Preferred Stock and regardless of the number of certificates which may be issued to evidence such Series C Preferred Stock.

"**Person**" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"**PIK Dividend**" means a dividend accrued on each share of Series C Preferred Stock and paid in shares (including fractional shares) of Common Stock.

"**PIK Dividend Shares**" means the shares (including fractional shares) of Common Stock paid and issued in connection with a PIK Dividend.

"**Purchase Agreement**" means the Securities Purchase Agreement, dated as of November 6, 2023, among the Corporation and the original Holder, as amended, modified or supplemented from time to time in accordance with its terms.

"**Purchase Price**" means the aggregate dollar amount to be paid for the Series C Preferred Stock pursuant to the Purchase Agreement.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"**Series C Preferred Stock**" shall have the meaning set forth in Section 2.

"**Share Delivery Date**" shall have the meaning set forth in Section 6(c).

"**Stated Value**" shall have the meaning set forth in Section 2.

"**Subsidiary**" means any subsidiary of the Corporation as set forth on Schedule 3.1(a) of the Purchase Agreement and shall, where applicable, also include any direct or indirect subsidiary of the Corporation formed or acquired after the date of the Purchase Agreement.

"**Successor Entity**" shall have the meaning set forth in Section 7(d).

"**Trading Day**" means a day on which the principal Trading Market is open for business.

"**Trading Market**" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, or the New York Stock Exchange (or any successors to any of the foregoing).

"**Transaction Documents**" means this Certificate of Designation, the Series C Preferred Stock Certificate of Designation, the Purchase Agreement, all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated pursuant to the Purchase Agreement, in each case as amended, modified or supplemented from time to time in accordance with its terms.

"**Transfer Agent**" means Computershare, and any successor transfer agent of the Corporation.

Section 2. Designation, Amount and Par Value. The series of preferred stock shall be designated as "Series C Convertible Preferred Stock" (the "**Series C Preferred Stock**") and the number of shares of such series shall be 50,000 (which shall not be subject to increase without the written consent of the holder (each, a "**Holder**" and collectively, the "**Holders**") of a majority of the then outstanding shares of the Series C Preferred Stock). Each share of Series C Preferred Stock shall have a par value of $0.001 per share and a stated value equal to $1,000.00 (the "**Stated Value**").

Section 3. Dividends.

(a) Dividend Rate. Holders of shares of the Series C Preferred Stock are entitled to receive, when and as declared by the Board, out of funds legally available for the payment of dividends, other than as set forth in Section 3(d) below, cumulative cash dividends at an annual rate of 9.5%, which is initially equivalent to $95 per annum per share, based on the Stated Value per share preference, payable quarterly in arrears on the original Stated Value together with any accrued but unpaid dividends. (the "**Dividend Rate**"). The Dividend Rate shall accrue from, and including, the Issuance Date to, but not including the 10-year anniversary of the Issuance Date.

(b) Dividend Amount. With respect to each share of Series C Preferred Stock from time to time outstanding (including, for the avoidance of doubt, the PIK Dividend Shares), from the Dividend Payment Date of such share, dividends shall accrue on each share of Series C Preferred Stock, in an amount for each share of Series C Preferred Stock, equal to the Dividend Rate times the Stated Value (compounded as provided for immediately below, including with respect to any accrued and unpaid dividends) (such per share amount, as applicable, the "**Dividend Amount**") during each quarterly period following the applicable Dividend Record Date. All Dividend Amounts paid in cash or elected to be paid as PIK Dividends shall be compounded as applicable. PIK Dividends shall be paid by delivering to each record holder of Preferred Shares a number of shares of Common Stock ("**PIK Dividend Shares**") determined by dividing (x) the total aggregate dollar amount of dividends accrued and unpaid with respect to Preferred Shares owned by such record holder on the record date for the applicable Dividend Payment Date (rounded to the nearest whole cent) by (y) the then applicable Conversion Price. In order to deliver PIK Dividend Shares in lieu of cash on a Dividend Payment Date, the Corporation must deliver, on or before the fifteenth (15^{th}) calendar day immediately prior to such date, written notice to each Holder of Preferred Shares stating that the Corporation wishes to do so (a "**PIK Stock Dividend Notice**"); in the event that the Corporation does not deliver a PIK Stock

Dividend Notice on or before such fifteenth (15th) day, the Corporation will be deemed to have elected to pay the related dividend in cash.

(c) Dividend Payment Date; Dividend Record Date. Dividends on the Series C Preferred Stock shall accrue daily and be cumulative until paid from, and including, the date of the Issuance Date and shall be payable monthly on the fifth (5th) day following the last day of each fiscal quarter (each such payment date, a "**Dividend Payment Date**," and each such quarterly period, a "**Dividend Period**"); provided that if any Dividend Payment Date is not a Business Day, then the dividend that would otherwise have been payable on that Dividend Payment Date may be paid on the next succeeding Business Day, and no interest, additional dividends or other sums will accrue on the amount so payable for the period from and after that Dividend Payment Date to that next succeeding Business Day. The first dividend on the Series C Preferred Stock is scheduled to be paid on the fifth day of the next calendar quarter after the Issuance Date in the quarterly amount of $23.75 per share, which for the first Dividend Period shall be appropriately pro-rated, to the persons who are the holders of record of the Series C Preferred Stock at the close of business on the corresponding record date. Any dividend payable on the Series C Preferred Stock, including dividends payable for any partial Dividend Period, will be computed on the basis of a 360-day year consisting of four 90-day quarters. Dividends will be payable to holders of record as they appear in the Corporation's stock records for the Series C Preferred Stock at the close of business on the applicable record date, which shall be the last day of the calendar quarter, whether or not a Business Day, in which the applicable Dividend Payment Date falls (each, a "**Dividend Record Date**").

(d) PIK Dividend. For the first two (2) years following the Issuance Date, the Dividend Amount may at the Corporation's election, be paid in cash or PIK Dividend Shares. Thereafter, the Dividend Amount shall be paid in cash, subject to Section 3(e) of this Certificate. The Dividend Amount shall be automatically declared and the applicable Dividend Amount automatically paid to the Holder as set forth above. For the avoidance of doubt, unless otherwise expressly set forth herein, with respect to PIK Dividend Shares, the Dividend Payment Date of such shares shall be the Issuance Date of such shares for all purposes hereunder. All Dividend Amounts payable with respect to the Holders of Series C Preferred Stock shall be paid, whether in cash or in PIK Dividend Shares pursuant to this Section 3(d), pro rata to each Holder of shares of Series C Preferred Stock based upon the aggregate accrued but unpaid dividends on the shares held by each such Holder. PIK Dividend Shares issued on the applicable Dividend Payment Date shall have an aggregate Dividend Amount on such Dividend Payment Date equal to the total Dividend Amount accrued on such shares as of such Dividend Payment Date minus any portion thereof paid in cash pursuant hereto. Notwithstanding anything contained herein to the contrary, the Corporation shall take all actions necessary for all PIK Dividend Shares to be duly authorized and validly issued, fully paid and nonassessable, and issued free and clear of all liens, mortgages, security interests, pledges, deposits, restrictions or other encumbrances, on each Dividend Payment Date. The Corporation shall update its books and records to reflect the issuance of any PIK Dividend Shares promptly following each Dividend Payment Date, and at the request of any Holder of shares of Series C Preferred Stock, shall deliver to such Holder a copy of such books and records reflecting the issuance of such PIK Dividend Shares; provided, however, that the failure of the Corporation to comply with the terms of this sentence shall not in any way affect the issuance of such PIK Dividend Shares in accordance with the terms hereof.

(e) Limiting Documents. No dividends on shares of Series C Preferred Stock shall be authorized by the Board or paid or set apart for payment by the Corporation at any time when the payment thereof would be unlawful under the laws of the State of Delaware or when the terms and provisions of any agreement of the Corporation, including any agreement relating to the Corporation's indebtedness (the "**Limiting Documents**"), prohibit the authorization, payment or setting apart for payment thereof or provide that the authorization, payment or setting apart for payment thereof would constitute a breach of the Limiting Documents or a default under the Limiting Documents, or if the authorization, payment or setting apart for payment shall be restricted or prohibited by law.

(f) Dividend Accrual. Notwithstanding the foregoing, dividends on the Series C Preferred Stock will accrue regardless of whether (i) the Corporation has earnings; (ii) there are funds legally available for the payment of such dividends; or (iii) such dividends are declared by the Board. No interest, or sum in lieu of interest, will be payable in respect of any dividend payment or payments on the Series C Preferred Stock which may be in arrears, and holders of the Series C Preferred Stock will not be entitled to any dividends in excess of full cumulative dividends described above. Any dividend payment made on the Series C Preferred Stock shall first be credited against the earliest accumulated but unpaid dividend due with respect to those shares.

(g) Dividends on Junior Stock or Parity Stock. Unless full cumulative dividends on the Series C Preferred Stock have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for payment for all past Dividend Periods, no dividends (other than in shares of the Corporation's Common Stock, par value $0.001 per share (the "**Common Stock**"), or in shares of any series of Preferred Stock outstanding or that the Corporation may issue ranking junior to the Series C Preferred Stock as to dividends and upon liquidation) shall be declared or paid or set aside for payment upon shares of any capital stock of the Corporation other than the Series C Preferred Stock and the Series C Preferred Stock issued pursuant to the Purchase Agreement. This Section 3(g) shall not apply to spin-offs or dividends of the common stock of any Subsidiary.

(h) Pro Rata Dividends. When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) upon the Series C Preferred Stock and the shares of any other series of Preferred Stock that the Corporation may issue ranking on parity as to dividends with the Series C Preferred Stock, all dividends declared upon the Series C Preferred Stock and any other series of Preferred Stock ranking on parity that the Corporation may issue as to dividends with the Series C Preferred Stock shall be declared pro rata so that the amount of dividends declared per share of Series C Preferred Stock and such other series of Preferred Stock that the Corporation may issue shall in all cases bear to each other the same ratio that accrued dividends per share on the Series C Preferred Stock and such other series of Preferred Stock that the Corporation may issue (which shall not include any accrual in respect of unpaid dividends for prior Dividend Periods if such Preferred Stock does not have a cumulative dividend) bear to each other. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Series C Preferred Stock which may be in arrears. For avoidance of doubt, the Series C Preferred Stock ranks on parity with the Series C Preferred Stock.

(i) Payment of Accrued and Unpaid Dividends. Holders of Series C Preferred Stock shall not be entitled to any dividend in excess of all accumulated accrued and unpaid dividends on the Series C Preferred Stock as described in this Section 3. Any dividend payment made on the Series C Preferred Stock shall first be credited against the earliest accumulated accrued and unpaid dividend due with respect to such shares which remains payable at the time of such payment. Provided, however, if a Person is a Holder of the Series C Preferred Stock as of the record date for any spin-off or dividend of the common stock of any Subsidiary, other than White River Energy Corp or Wolf Energy Services Inc., the Holder shall be entitled to such stock dividend on an as converted basis.

(j) Dividend Default. Whenever dividends on any shares of Series C Preferred Stock are in arrears for one or more Dividend Periods, whether or not consecutive (a "**Dividend Default**"), and provided the Holders of Series C Preferred Stock are required to pay any penalties or damages as a result of any contractual provisions in effect on any existing securities of the Holder as of the Original Issue Date:

(i) the Dividend Rate shall be increased to 12% per annum (equivalent to $120 per annum per share) (as increased, the "**Penalty Rate**"), commencing on the first day after the Dividend Payment Date on which a Dividend Default occurs and for each subsequent Dividend Payment Date thereafter until such time as the Corporation has paid all accumulated accrued and unpaid dividends on the Series C Preferred Stock in full, at which time the Dividend Rate shall revert to the rate of 9.5% of the Stated Value per share (the "**Stated Rate**");

(ii) on the next Dividend Payment Date following the Dividend Payment Date on which a Dividend Default occurs, and continuing until such time as the Corporation has paid all accumulated accrued and unpaid dividends on the Series C Preferred Stock in full, the Corporation shall pay all dividends on the Series C Preferred Stock, including all accumulated accrued and unpaid dividends, on each Dividend Payment Date either in cash or, if not paid in cash, by issuing to the holders thereof shares of Series C Preferred Stock if the Common Stock is then subject to a National Market Listing (as hereinafter defined), or if not, shares of freely tradeable Common Stock with a value equal to the amount of dividends being paid, calculated based on the Fair Market Value of the Common Stock calculated as of the Trading Day immediately prior to the next Payment Date referenced above, plus cash in lieu of any fractional share of Common Stock; and

(iii) to the extent that the Corporation determines a shelf registration statement to cover resales of Common Stock or Series C Preferred Stock is required in connection with the issuance of, or for resales of, such Common Stock or Series C Preferred Stock issued as payment of a dividend, the Corporation will use its commercially reasonable efforts to file and maintain the effectiveness of such a shelf registration statement until such time as all shares of such stock have been resold thereunder or such shares are eligible for resale pursuant to Rule 144(b)(1) under the Securities Act of 1933, as amended.

For purposes hereof, a "National Market Listing" shall mean that the Common Stock is listed on the New York Stock Exchange ("**NYSE**"), the NYSE American LLC (the "**NYSE American**") or Nasdaq Stock Market ("**Nasdaq**"), or listed on an exchange that is a successor to the NYSE, the NYSE American or Nasdaq.

Following any Dividend Default that has been cured by the Corporation as provided above in Section 3(h)(i), if the Corporation subsequently fails to pay cash dividends on the Series C Preferred Stock in full for any Dividend Period, such subsequent failure shall constitute a separate Dividend Default, and the foregoing provisions of this Section 3(h) shall immediately apply until such subsequent Dividend Default is cured as so provided.

Notwithstanding anything in this Certificate to the contrary, cash dividends on any shares of Series C Preferred Stock will be payable solely in shares of Series C Preferred Stock unless and until the Corporation has, in the judgment of the Board, sufficient cash available to permit the declaration and payment of such dividends in accordance with the Corporation's Certificate of Incorporation and Bylaws and applicable laws.

Section 4. Voting Rights.

(a) Quorum and Voting Power. For purposes of determining the presence of a quorum at any meeting of the stockholders of the Corporation at which the shares of Series C Preferred Stock are entitled to vote and the voting power of the shares of Series C Preferred Stock, each Holder of outstanding shares of Series C Preferred Stock shall be entitled to a number of votes equal to the number of shares of Common Stock into which such shares of Series C Preferred Stock are then convertible, disregarding, for such purposes, any limitations on conversion set forth herein, provided, however, that solely for purposes of this Section 4(a), the Voting Floor Price shall not be lower than the closing sale price of the Common Stock on the Trading Day immediately preceding the execution date of the Purchase Agreement. For purposes of this Section 4(a), the term "**Voting Floor Price**" shall mean the Company's closing sale price on the Trading Day immediately preceding the execution date of the Purchase Agreement. The Voting Floor Price shall be adjusted for stock dividends, stock splits, stock combinations and other similar transactions.

(b) Voting Generally. Each Holder shall be entitled to vote with holders of outstanding shares of Common Stock, voting together as a single class, with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration (whether at a meeting of stockholders of the Corporation, by written action of stockholders in lieu of a meeting or otherwise), except as provided by law or by the provisions of Section 5(b) below. In any such vote, (i) in the case of the election of directors, the Series C Preferred Stock shall be voted on an "as converted" basis together with the Common Stock, and (ii) in all other cases, the Series C Preferred Stock shall be voted on an "as converted" basis together with the Common Stock, subject to the provisions of the DGCL. Each holder of outstanding shares of Series C Preferred Stock shall be entitled to notice of all stockholder meetings (or requests for written consent) in accordance with the Corporation's bylaws.

(c) Board Membership. Provided that stockholder approval shall have been obtained as provided in the Purchase Agreement ("**Stockholder Approval**"), the Holder may designate a number of directors (the "**Series C Directors**") to the Corporation's Board of Directors equal to a percentage determined by the number of beneficially owned (determined on an "as converted" basis) divided by the sum of the number of shares of Common Stock outstanding plus the number of Conversion Shares determined on an 'as converted' basis. As by way of example only, if the number of shares of Series C Preferred Stock owned by the Holder represents 20% of the outstanding shares of Common Stock and Preferred Shares (as determined on an as converted basis), the Holder shall, through its ownership of shares of Series C Preferred Stock, have the right to designate one director of a five member board. The Holder's applicable percentage right to designate a number of directors shall initially be determined on the date that Stockholder Approval is obtained and cannot be decreased unless the Holder converts or sells all or a portion of its shares of Series C Preferred Stock, in which case the number of directors that the Holder may designate will be re-calculated. The right to designate a director is a contractual right granted to the Holder and not to a subsequent owner of shares of Series C Preferred Stock. In the event that a vacancy is created on the Board at any time due to the death, disability, retirement, resignation or removal of a Series C Director, then the Holders (voting as a separate class by majority vote with each share of Series C Preferred stock entitled to one vote) shall have the right to designate an individual to fill such vacancy. In the event that the Holders shall fail to designate in writing a representative to fill the vacant Series C Director seat on the Board, such Board seat shall remain vacant until such time as the Holders elect an individual to fill such seat in accordance with this Section 4(c), and during any period where such seat remains vacant, the Board nonetheless shall be deemed duly constituted.

For so long as the Holders shall continue to hold any shares of Series C Preferred Stock, any Series C Director elected as provided in the preceding paragraph may be removed without cause by, and only by, the affirmative vote of the Holder, given either at a special meeting of such shareholders duly called for that purpose or pursuant to a written consent of the Holder. The holders of record of the shares of Common Stock and of any other class or series of voting stock (including the Series C Preferred Stock), exclusively and voting together as a single class, shall be entitled to elect the balance of the total number of directors of the Corporation. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding voting power of the shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. Except as otherwise provided in this Section 4(c), a vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Section 4(c).

(d) Protective Provisions. Without limiting the foregoing, as long as any shares of Series C Preferred Stock are outstanding, the Corporation shall not, without the prior written consent of the Majority Holders, (i) alter or change adversely the powers, preferences or rights given to the Series C Preferred Stock or alter or amend this Certificate of Designations, (ii) amend its Certificate of Incorporation or other charter documents in any manner that adversely affects any rights of the Holders of Series C Preferred Stock, (iii) increase or decrease the number of authorized shares of Series C Preferred Stock, (iv) whether or not prohibited by the terms of the Series C Preferred Stock, circumvent a right or preference of the Series C Preferred Stock, or (v) enter into any agreement with respect to any of the foregoing. Holders shall be entitled to written notice of all stockholder meetings or written consents (and copies of proxy materials and other information sent to stockholder) with respect to which they would be entitled to vote, which notice shall be provided pursuant to the Corporation's Bylaws and the DGCL.

Section 5. Liquidation Preference.

(a) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation (a

"**Liquidation**"), the assets of the Corporation available for distribution to its shareholders whether from capital, surplus or earnings, shall be distributed as follows:

(i) The Holders of Series C Preferred Stock shall be entitled to receive, prior and in preference to any distribution to the Holders of the Common Stock or any other class of the Corporation's capital stock, whether now existing or hereafter created, for each share of Series C Preferred Stock held by such Holders, an amount equal to the Stated Value. If upon any Liquidation, the assets of the Corporation available for distribution to its stockholders are insufficient to pay all Holders of Series C Preferred Stock the full preference amount to which they shall be entitled, the Holders of Series C Preferred Stock shall share pro rata in any distribution of assets in accordance with their applicable full preference amounts;

(ii) After distribution of the amounts set forth in Section 5(a)(i) hereof to the Holders of the Series C Preferred Stock, the remaining assets of the Corporation available for distribution, if any, to the stockholders of the Corporation shall be distributed to the holders of outstanding Common Stock and to all Holders of Series C Preferred Stock, on a pro rata basis, as if such Holders of Series C Preferred Stock had converted all outstanding shares of such Series C Preferred Stock into Common Stock pursuant to Section 6 hereof immediately prior to the Liquidation or Change of Control Transaction, based upon their respective holdings.

(b) Unless otherwise approved by the prior written consent of all Holders of Series C Preferred Stock, for purposes of this Section 5, any transaction constituting a Change of Control Transaction shall be treated as and deemed to be a Liquidation.

(c) Unless otherwise approved by the prior written consent of a majority of the Holders, voting as a separate class, upon consummation of a Change of Control Transaction, the Corporation shall pay or cause to be paid to the Holders of Series C Preferred Stock an amount equal to the amount they would be entitled to receive pursuant to Section 5(a) hereof as if the Corporation, on the date of consummation of such Change of Control Transaction, had assets available for distribution equal to the aggregate amount payable to the Corporation and all stockholders thereof in connection with such Change of Control Transaction. The amount payable pursuant to this Section 5(c) shall be payable in accordance with and in order of the priorities set forth in Section 5(a) immediately following the closing of the Change of Control Transaction.

Section 6. Conversion.

(a) Conversions at Option of Holder. Each share of Series C Preferred Stock shall be convertible, at any time and from time to time, at the option of the Holder thereof, into that number of shares of Common Stock determined by dividing the Stated Value of such share of Series C Preferred Stock by the Conversion Price. Holders shall effect conversions by delivering to the Corporation and the Holder Representative a conversion notice in the form attached hereto as **Annex A** (a "**Notice of Conversion**"). Each Notice of Conversion shall specify the number of shares of Series C Preferred Stock to be converted, the number of shares of Series C Preferred Stock owned prior to the conversion at issue, the number of shares of Series C Preferred Stock owned subsequent to the conversion at issue and the date on which such conversion is to be effected, which date may not be prior to the date the applicable Holder delivers such Notice of Conversion to the Corporation (such date, the "**Conversion Date**"). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be as of the close of business on the Business Day that such Notice of Conversion is delivered to the Corporation, or if such day is not a Business Day or if the Notice of Conversion is delivered after regular business hours, the next Business Day. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. From and after the Conversion Date, until presented for transfer or exchange, certificates that previously represented shares of Series C Preferred Stock shall represent, in lieu of the number of shares of Series C Preferred Stock previously represented by such certificate, the number of shares of Series C Preferred Stock, if any, previously represented by such certificate that were not converted pursuant to the Notice of Conversion, plus the number of shares of Conversion Shares into which the shares of Series C Preferred Stock previously represented by such certificate were converted. To effect conversions of shares of Series C Preferred Stock, a Holder shall not be required to surrender the certificate(s), if any, representing the shares of Series C Preferred Stock to the Corporation unless all of the shares of Series C Preferred Stock represented thereby are so converted, in which case such Holder shall deliver the certificate representing such shares of Series C Preferred Stock promptly following the Conversion Date at issue. Shares of Series C Preferred Stock converted into Common Stock shall be canceled and shall not be reissued.

(b) Conversion Price. The Series C Preferred Stock shall be convertible at the Holder's option into shares of Common Stock at a conversion price equal to the greater of (i) $0.10 per share (the "**Floor Price**"), which Floor Price shall not be adjusted for stock dividends, stock splits, stock combinations and other similar transactions and (ii) the lesser of a 5% premium to the Volume Weighted Average Price during the ten trading days immediately prior to (A) the Trading Day immediately preceding the execution date of the Purchase Agreement, or (B) the date of conversion into shares of Common Stock (the "**Conversion Price**").

(c) Mechanics of Conversion.

(i) *Delivery of Conversion Shares Upon Conversion*. Not later than the earlier of (i) three (3) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined below) after each Conversion Date (the "**Share Delivery Date**"), the Corporation shall deliver, or cause to be delivered, to the converting Holder the number of Conversion Shares being acquired upon the conversion of the Series C Preferred Stock, which Conversion Shares shall be free of restrictive legends and trading restrictions so long as either (A) there is an effective registration statement to cover the resale of the Conversion Shares or (B) if the Conversion Shares may be resold under Rule 144. The Corporation shall use its reasonable best efforts to deliver the Conversion Shares required to be delivered by the Corporation under this Section 6 electronically through the Depository Trust Company or another established clearing corporation performing similar functions. As used herein, "**Standard Settlement Period**" means the standard settlement period, expressed in a number of Trading Days, on the Corporation's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Conversion.

(ii) *Failure to Deliver Conversion Shares*. If, in the case of any Notice of Conversion, such Conversion Shares are not delivered to or as directed by the applicable Holder by the Share Delivery Date, the Holder shall be entitled to elect by written notice to the Corporation at any time on or before its receipt of such Conversion Shares, to rescind such Conversion, in which event the Corporation shall promptly return to the Holder any original Series C Preferred Stock certificate delivered to the Corporation and the Holder shall promptly return to the Corporation the Conversion Shares issued to such Holder pursuant to the rescinded Notice of Conversion.

(iii) *Obligation Absolute; Partial Liquidated Damages*. The Corporation's obligation to issue and deliver the Conversion Shares upon conversion of Series C Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by such Holder or any other Person, and irrespective of any other circumstance, which might otherwise limit such obligation of the Corporation to such Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Corporation of any such action that the Corporation may have against such Holder. In the event a Holder shall elect to convert any or all of the Stated Value of its Series C Preferred Stock, the Corporation may not refuse conversion based on any claim that such Holder or anyone associated or affiliated with such Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to Holder, restraining and/or enjoining conversion of all or part of the Series C Preferred Stock of such Holder shall have been sought and obtained, and the Corporation posts a surety bond for the benefit of such Holder in the amount of 100% of the Stated Value of the Series C Preferred Stock which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to such Holder to the extent it obtains judgment. In the absence of such injunction, the Corporation shall issue Conversion Shares and, if applicable, cash, upon a properly noticed conversion. If the Corporation fails to deliver to a Holder such Conversion Shares pursuant to Section 6(c)(i) by the Share Delivery Date applicable to such conversion, the Corporation shall pay to such Holder, in cash, as liquidated damages and not as a penalty, for each $5,000 of Stated Value of Series C Preferred Stock being converted, $25 per Trading Day (increasing to $50 per Trading Day on the third Trading Day after the Share Delivery Date) for each Trading Day after the Share Delivery Date until such Conversion Shares are delivered or Holder rescinds such conversion. Nothing herein shall limit a Holder's right to pursue actual damages for the Corporation's failure to deliver Conversion Shares within the period specified herein and such Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit a Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

(iv) *Compensation for Buy-In on Failure to Timely Deliver Conversion Shares Upon Conversion*. In addition to any other rights available to the Holder, if the Corporation fails for any reason to deliver to a Holder the applicable Conversion Shares by the Share Delivery Date pursuant to Section 6(c)(i), and if after such Share Delivery Date such Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by such Holder of the Conversion Shares which such Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "**Buy-In**"), then the Corporation shall (A) pay in cash to such Holder (in addition to any other remedies available to or elected by such Holder) the amount, if any, by which (x) such Holder's total purchase price (including any brokerage commissions) for the Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that such Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) at the option of such Holder, either reissue (if surrendered) the shares of Series C Preferred Stock equal to the number of shares of Series C Preferred Stock submitted for conversion (in which case, such conversion shall be deemed rescinded) or deliver to such Holder the number of shares of

Common Stock that would have been issued if the Corporation had timely complied with its delivery requirements under Section 6(c)(i). For example, if a Holder purchases shares of Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted conversion of shares of Series C Preferred Stock with respect to which the actual sale price of the Conversion Shares (including any brokerage commissions) giving rise to such purchase obligation was a total of $10,000 under clause (A) of the immediately preceding sentence, the Corporation shall be required to pay such Holder $1,000. The Holder shall provide the Corporation written notice indicating the amounts payable to such Holder in respect of the Buy-In and, upon request of the Corporation, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to timely deliver the Conversion Shares upon conversion of the shares of Series C Preferred Stock as required pursuant to the terms hereof.

(v) *Reservation of Shares Issuable Upon Conversion*. Until no shares of Series C Preferred Stock remain outstanding, the Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Series C Preferred Stock as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and the other holders of the Series C Preferred Stock), not less than the aggregate number of shares of the Common Stock as shall (subject to the terms and conditions set forth in the Purchase Agreement) be issuable (taking into account any adjustments under Section 7) upon the conversion of the then outstanding shares of Series C Preferred Stock. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and non-assessable.

(vi) *Fractional Shares*. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Series C Preferred Stock. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such conversion, the Corporation shall at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Conversion Price or round up to the next whole share. Notwithstanding anything to the contrary contained herein, but consistent with the provisions of this subsection with respect to fractional Conversion Shares, nothing shall prevent any Holder from converting fractional shares of Series C Preferred Stock.

(vii) *Transfer Taxes and Expenses*. The issuance of Conversion Shares on conversion of the Series C Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holders of such shares of Series C Preferred Stock and the Corporation shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid. The Corporation shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Conversion Shares.

Section 7. Certain Adjustments.

(a) Stock Dividends and Stock Splits. If the Corporation, at any time while the Series C Preferred Stock is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions that is payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Corporation upon conversion of, or payment of a dividend on, the Series C Preferred Stock), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 7(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification. Notwithstanding the foregoing in no event shall the Conversion Price be less than the Floor Price.

(b) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 7(a) above, if at any time the Corporation grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of Common Stock or any class thereof (the "**Purchase Rights**"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of such Holder's Series C Preferred Stock immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

(c) Distributions. During such time as the Series C Preferred Stock is outstanding, if the Corporation declares or makes any dividend or other distribution of its assets (or rights to acquire its assets) to holders of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "**Distribution**"), then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of the Series C Preferred Stock immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution.

(d) Fundamental Transaction. If, at any time while the Series C Preferred Stock is outstanding, (i) the Corporation, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Corporation with or into another Person (other than for a transaction the sole purpose of which is changing the name or the domicile of the Corporation), (ii) the Corporation (and all of its Subsidiaries, taken as a whole), directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of at least 50% of the outstanding Common Stock, or (iv) the Corporation, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, (each a "**Fundamental Transaction**"), then, upon any subsequent conversion of the Series C Preferred Stock, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction, the number of shares of Common Stock of the successor or acquiring corporation or of the Corporation, if it is the surviving corporation, and any additional consideration (the "**Alternate Consideration**") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which the Series C Preferred Stock is convertible immediately prior to such Fundamental Transaction. For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of the Series C Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders' right to convert such preferred stock into Alternate Consideration. The Corporation shall cause any successor entity in a Fundamental Transaction in which the Corporation is not the survivor (the "**Successor Entity**") to assume in writing all of the obligations of the Corporation under this Certificate of Designation and the other Transaction Documents in accordance with the provisions of this Section 7(d) pursuant to written agreements in customary form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for the Series C Preferred Stock a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to the Series C Preferred Stock which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of the Series C Preferred Stock (without regard to any limitations on the conversion of the Series C Preferred Stock) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of the Series C Preferred Stock immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designation and the other Transaction Documents referring to the "Corporation" shall refer instead to the Successor Entity), and may exercise every right and power of the Corporation and shall assume all of the obligations of the Corporation under this Certificate of Designation and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Corporation herein.

(e) Subsequent Equity Sales. If, at any time while shares of Series C Preferred Stock are outstanding, the Corporation or any subsidiary, as applicable, sells or grants any option to purchase or sells or grants any right to reprice outstanding securities, or otherwise disposes of or issues (or announces any sale, grant or any option to purchase or other disposition), any Common Stock or any Common Stock Equivalent, entitling any Person to acquire shares of Common Stock at an effective price per share that is lower than the then Conversion Price (such lower price, the "**Base Conversion Price**" and such issuances, collectively, a "**Dilutive Issuance**") (if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive shares of Common Stock at an effective price per share that is lower than the Conversion Price, such issuance shall be deemed to have occurred for less than the Conversion Price on such date of the Dilutive Issuance), then the Conversion Price shall be reduced to equal the Base Conversion Price. Such adjustment shall be made whenever such Common Stock or Common Stock Equivalents are issued. Notwithstanding the foregoing, no adjustment will be made under this Section 7 in respect of an Exempt Issuance (as hereafter defined). The Corporation shall notify the Holder in writing, no later than the Trading Day following the issuance of any Common Stock or Common Stock Equivalents subject to this Section 7, indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the "**Dilutive Issuance Notice**"). For purposes of clarification, whether or not the Corporation provides a Dilutive Issuance Notice, upon the occurrence of any Dilutive Issuance, the Holder is entitled to receive a number of Conversion Shares based upon the Base Conversion Price on or after the date of such Dilutive Issuance, regardless of whether the Holder accurately refers to the Base Conversion Price in the Notice of Conversion.

For the purposes hereof, an "**Exempt Issuance**" shall mean the issuance of (i) shares of Common Stock, restricted stock units or stock options (and Common Stock issued upon exercise of such securities) to employees, officers, consultants, advisors or directors of the Corporation in consideration of services to the Corporation pursuant to any stock or option plan duly adopted for such purpose by a majority of the members of the Board or a majority of the members of a committee of directors established for such purpose, not to exceed ten percent (10%) of the shares of Common Stock issued and outstanding on the Effective Date (as defined in the Purchase Agreement), (ii) the Securities (as defined in the Purchase Agreement) issued hereunder and any Common Stock or other securities issued upon the conversion, exercise, or exchange of any Securities issued hereunder and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of the Purchase Agreement, provided that such securities have not been amended since the date of the Purchase Agreement to increase the number of such securities or to decrease the exercise, exchange or conversion price of such securities; (iii) shares of Common Stock issued upon any anti-dilution adjustment to Common Stock and Common Stock Equivalents held by current unaffiliated security holders as of the date of the Purchase Agreement; (iv) securities issued to any underwriter, placement agent or other registered broker-dealer as reasonable commissions or fees in connection with any financing transactions; (v) securities issued pursuant to any merger, acquisition, asset purchase or similar transaction approved by the Board or a duly authorized committee thereof, provided that any such issuance shall only be to a Person or Persons (or to the equity holders of a Person or Persons) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Corporation and shall have received the express prior written consent of the Purchaser, but shall not include a transaction in which the Corporation is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities; and (vi) securities issued pursuant to any purchase money equipment loan, capital leasing arrangement or debt financing from a commercial bank or similar financial institution.

(f) Calculations. All calculations under this Section 7 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 7, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

(g) Notice to Holders.

(i) *Adjustment to Conversion Price*. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 7, the Corporation shall promptly deliver to each Holder by facsimile or email a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

(ii) *Notice to Allow Conversion by Holder*. If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation (and all of its Subsidiaries, taken as a whole), or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, then, in each case, the Corporation shall cause to be filed at each office or agency maintained for the purpose of conversion of the Series C Preferred Stock, and shall cause to be delivered by email to each Holder at its last email address as it shall appear upon the stock books of the Corporation, at least ten (10) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Corporation or any of the Subsidiaries, the Corporation shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to convert the Conversion Amount of the Series C Preferred Stock (or any part hereof) during the 10-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 8. **Ranking**. The shares of Series C Preferred Stock shall rank senior to the Corporation's classes of preferred stock, including the Series B Convertible Preferred Stock, the Series A Cumulative Redeemable Perpetual Preferred Stock, the Series D Cumulative Redeemable Perpetual Preferred Stock, the Series E Preferred Stock, the Series F Preferred Stock and the Series G Preferred Stock with respect to the preferences as to dividends, redemption, or distribution of assets and payments upon the liquidation, dissolution and winding up of the Corporation.

Section 9. **Miscellaneous**.

(a) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Conversion, shall be in writing and delivered personally, by facsimile or email attachment, or sent by a nationally recognized overnight courier service, addressed to the Corporation, at11411 Southern Highlands Parkway, Suite 240, Las Vegas, NV 89141, Attention: William B. Horne, Chief Executive Officer, email address: Will@ault.com, or such other email address or address as the Corporation may specify for such purposes by notice to the Holders delivered in accordance with this Section 9. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by email attachment, or sent by a nationally recognized overnight courier service addressed to each Holder at the email address or address of such Holder appearing on the books of the Corporation, or if no such email address or address appears on the books of the Corporation, at the principal place of business of such Holder, as set forth in the Purchase Agreement. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the time of transmission, if such notice or communication is delivered via email attachment at the email address set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the time of transmission, if such notice or communication is delivered via email attachment at the email address set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

(b) Lost or Mutilated Preferred Stock Certificate. If a Holder's Series C Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Series C Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership hereof reasonably satisfactory to the Corporation (which shall not include the posting of any bond).

(c) Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances.

(d) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

(e) Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

(f) Status of Converted Preferred Stock. Shares of Series C Preferred Stock may only be issued pursuant to the Purchase Agreement. If any shares of Series C Preferred Stock shall be converted or reacquired by the Corporation, such shares may not be reissued and shall automatically be retired and cancelled and shall resume the status of authorized but unissued shares of preferred stock.

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IN WITNESS WHEREOF, the undersigned has executed this Certificate this 15th day of November, 2023.

AULT ALLIANCE, INC.

/s/William B. Horne

Name: William B. Horne
Title: Chief Executive Officer

ANNEX A

NOTICE OF CONVERSION

The undersigned hereby elects to convert the number of shares of Series C Convertible Preferred Stock indicated below into shares of common stock, par value $0.001 per share (the "**Common Stock**"), of Ault Alliance, Inc., a Delaware corporation (the "**Corporation**"), according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto. No fee will be charged to the Holders for any conversion, except for any such transfer taxes.

Conversion calculations:

Date to Effect Conversion: ____
Number of shares of Series C Preferred Stock owned prior to Conversion: ________________
Number of shares of Series C Preferred Stock to be Converted: ______________________
Stated Value of shares of Series C Preferred Stock to be Converted: ___________________
Number of shares of Common Stock to be Issued: ________________________
Applicable Conversion Price:_______________________________________
Number of shares of Series C Preferred Stock subsequent to Conversion: ______________
Address for Delivery: ____________________
Or
DWAC Instructions:
Broker no: ________
Account no: __________

HOLDER
By: ____
Name:
Title:

EXHIBIT 31.1

CERTIFICATION

I, William B. Horne, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Ault Alliance, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: November 20, 2023

/s/ William B. Horne

Name: William B. Horne
Title: Chief Executive Officer
(Principal Executive Officer)

EXHIBIT 31.2

CERTIFICATION

I, Kenneth S. Cragun, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Ault Alliance, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: November 20, 2023

/s/ Kenneth S. Cragun

Name: Kenneth S. Cragun
Title: Chief Financial Officer
(Principal Accounting Officer)

EXHIBIT 32.1

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

In connection with the quarterly report of Ault Alliance, Inc. (the "Company") on Form 10-Q for the period ended September 30, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned certify, pursuant to 18 U.S.C. Section 1350, as adopted 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 the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Date: November 20, 2023

By: /s/ William B. Horne
Name: William B. Horne
Title: Chief Executive Officer
(Principal Executive Officer)

Date: November 20, 2023

By: /s/ Kenneth S. Cragun
Name: Kenneth S. Cragun
Title: Chief Financial Officer
(Principal Accounting Officer)