

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2022

OR

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

For the transition period from _____ to _____

Commission file number 001-37605

LM FUNDING AMERICA, INC.
(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

1200 West Platt Street
Suite 100
Tampa, FL
(Address of principal executive offices)

47-3844457
(I.R.S. employer
identification no.)

33606
(Zip code)

Registrant's telephone number, including area code: 813-222-8996

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

Title of each class:	Trading symbol	Name of each exchange on which registered
Common Stock par value \$0.001 per share	LMFA	The Nasdaq Stock Market LLC

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

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

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

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

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

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

The registrant had 13,091,883 shares of Common Stock, par value \$0.001 per share, outstanding as of November 14, 2022.

LM FUNDING AMERICA, INC.

TABLE OF CONTENTS

	Page
PART I.	FINANCIAL INFORMATION 3
Item 1.	Financial Statements 3
	LM Funding America, Inc. and Subsidiaries Condensed Consolidated Balance Sheets September 30, 2022 (unaudited) and December 31, 2021 3
	LM Funding America, Inc. and Subsidiaries Condensed Consolidated Statements of Operations Three and Nine Months Ended September 30, 2022 and 2021 (unaudited) 4
	LM Funding America, Inc. and Subsidiaries Condensed Consolidated Statements of Cash Flows Nine Months Ended September 30, 2022 and 2021 (unaudited) 5
	LM Funding America, Inc. and Subsidiaries Condensed Consolidated Statements of Changes in Stockholders' Equity for the Three and Nine Months Ended September 30, 2022 and 2021 (unaudited) 6
	Notes to Unaudited Condensed Consolidated Financial Statements 7
Item 2.	Management's Discussion and Analysis of Financial Condition and Results of Operations 27
Item 3.	Quantitative and Qualitative Disclosures About Market Risk 34
Item 4.	Controls and Procedures 34
PART II.	OTHER INFORMATION
Item 1.	Legal Proceedings 36
Item 1A.	Risk Factors 36
Item 2.	Unregistered Sales of Equity Securities and Use of Proceeds 39
Item 3.	Defaults Upon Senior Securities 40
Item 4.	Mine Safety Disclosure 40
Item 5.	Other Information 40
Item 6.	Exhibits 41
	SIGNATURES 42

PART I. FINANCIAL INFORMATION

ITEM 1. Financial Statements

LM Funding America, Inc. and Subsidiaries Condensed Consolidated Balance Sheets

	September 30, 2022 (Unaudited)	December 31, 2021
ASSETS		
Cash	\$ 10,175,211	\$ 32,559,185
Finance receivables	20,709	28,193
Short-term investments - convertible debt securities (Note 7)	-	539,351
Marketable securities (Note 7)	24,220	2,132,051
Short-term investments - debt securities (Note 7)	2,619,292	2,000,000
Prepaid expenses and other assets	1,205,719	1,251,852
Note receivable from related party (Note 7)	2,785,000	-
Digital assets (Note 10)	616,257	-
Current assets	17,446,408	38,510,632
Fixed assets, net (Note 9)	21,975,960	17,914
Real estate assets owned	80,057	80,057
Operating lease - right of use assets (Note 4)	289,468	59,969
Long-term investments - equity securities (Note 7)	322,246	1,973,413
Investments in unconsolidated affiliates (Note 7)	17,362,125	4,676,130
Deposits on mining equipment and hosting services (Note 8)	10,467,721	16,775,100
Other assets	10,726	10,726
Long-term assets	50,508,303	23,593,309
Total assets	<u>\$ 67,954,711</u>	<u>\$ 62,103,941</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Accounts payable and accrued expenses	\$ 636,369	463,646
Note payable - short-term (Note 3)	-	114,688
Due to related parties (Note 2)	75,615	121,220
Current portion of lease liability (Note 5)	90,004	68,002
Income tax payable (Note 4)	1,167,856	326,178
Total current liabilities	1,969,844	1,093,734
Lease liability - long-term (Note 5)	203,211	-
Long-term liabilities	203,211	-
Total liabilities	2,173,055	1,093,734
Stockholders' equity:		
Preferred stock, par value \$.001; 150,000,000 shares authorized; no shares issued and outstanding as of September 30, 2022 and December 31, 2021, respectively	-	-
Common stock, par value \$.001; 350,000,000 shares authorized; 13,091,883 and 13,017,943 shares issued and outstanding as of September 30, 2022 and December 31, 2021, respectively	13,092	13,018
Additional paid-in capital	85,469,749	74,525,106
Accumulated deficit	(23,323,573)	(13,777,006)
Total stockholders' equity	62,159,268	60,761,118
Non-controlling interest	3,622,388	249,089
Total stockholders' equity	65,781,656	61,010,207
Total liabilities and stockholders' equity	<u>\$ 67,954,711</u>	<u>\$ 62,103,941</u>

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

LM Funding America, Inc. and Subsidiaries Condensed Consolidated Statements of Operations (unaudited)

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2022	2021	2022	2021
Revenues:				
Interest on delinquent association fees	\$ 57,585	\$ 129,439	\$ 270,993	\$ 269,556
Administrative and late fees	14,717	14,642	51,123	46,574
Recoveries in excess of cost - special product	20,171	14,000	73,526	61,052
Underwriting and other revenues	12,362	28,784	55,278	86,981
Rental revenue	40,788	36,759	120,240	103,264
Digital mining revenues, net	42,157	-	42,157	-
Total revenues	187,780	223,624	613,317	567,427
Operating costs and expenses:				
Digital mining cost of revenues (exclusive of depreciation and amortization shown below)	38,960	-	38,960	-
Staff costs and payroll	4,297,540	1,874,798	12,886,432	3,422,819
Professional fees	714,730	497,942	2,520,981	1,340,909
Settlement costs with associations	-	-	160	-
Selling, general and administrative	209,328	106,895	446,519	302,679
Provision for credit losses	-	-	500	(10,000)
Recovery of cost from related party receivable	-	(100,000)	-	(200,000)
Real estate management and disposal	22,558	29,878	76,453	77,646
Depreciation and amortization	38,617	4,482	43,718	9,476
Collection costs	5,037	(1,410)	(6,689)	3,339
Other operating expenses	124,405	5,801	273,798	17,415
Total operating expenses	5,451,175	2,418,386	16,280,832	4,964,283
Operating loss	(5,263,395)	(2,194,762)	(15,667,515)	(4,396,856)
Realized gain (loss) on securities	-	(173,282)	(349,920)	13,951,752
Realized gain on convertible debt securities	-	-	287,778	-
Unrealized loss on convertible debt security	-	(2,588,916)	-	(87,316)
Unrealized loss on marketable securities	(13,000)	(478,448)	(36,900)	(478,448)
Impairment loss on digital assets	(26,634)	(23,720)	(404,341)	(23,720)
Unrealized gain (loss) on investment and equity securities	(194,174)	(123,172)	11,034,828	1,024,714
Digital assets other income	-	-	5,658	-
Interest income	85,602	77,956	264,947	164,895
Interest expense	-	(3,939)	-	(653)
Dividend income	1,125	738	3,875	738
Gain on forgiveness of note payable	-	-	-	157,251
Income (loss) before income taxes	(5,410,476)	(5,507,545)	(4,861,590)	10,312,357
Income tax expense	(1,311,678)	(12,619)	(1,311,678)	(29,883)
Net income (loss)	(6,722,154)	(5,520,164)	(6,173,268)	10,282,474
Less: Net (income) loss attributable to non-controlling interest	59,298	33,953	(3,373,299)	(284,770)
Net income (loss) attributable to LM Funding America Inc.	<u>\$ (6,662,856)</u>	<u>\$ (5,486,211)</u>	<u>\$ (9,546,567)</u>	<u>\$ 9,997,704</u>
Earnings/(loss) per share:				
Basic income (loss) per common share - net income (loss) - attributable to LM Funding	\$ (0.51)	\$ (1.01)	\$ (0.73)	\$ 1.89
Diluted income (loss) per common share - net income (loss) - attributable to LM Funding	\$ (0.51)	\$ (1.01)	\$ (0.73)	\$ 1.88
Weighted average number of common shares outstanding:				
Basic	13,091,883	5,414,296	13,081,591	5,293,375
Diluted	13,091,883	5,421,606	13,081,591	5,305,418

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

LM Funding America, Inc. and Subsidiaries Condensed Consolidated Statements of Cash Flows
(unaudited)

	For the Nine Months Ended September 30,	
	2022	2021
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income (loss)	\$ (6,173,268)	\$ 10,282,474
Adjustments to reconcile net income (loss) to cash used in operating activities		
Depreciation and amortization	43,718	9,476
Right to use asset non cash lease expense	71,288	75,605
Stock compensation	988,498	-
Stock option expense	9,956,219	-
Debt forgiveness	-	(157,251)
Accrued investment income	(259,867)	(160,954)
Gain on deconsolidation of affiliate	-	(43,623)
Unrealized loss on convertible debt security	-	87,316
Unrealized loss on marketable securities	36,900	478,448
Impairment loss on digital assts	404,341	23,720
Unrealized gain on investment and equity securities	(11,034,828)	(1,024,714)
Realized (gain) loss on securities	349,920	(13,951,752)
Realized gain on convertible note securities	(287,778)	-
Investment in securities	-	(16,118,533)
Proceeds from securities	2,565,893	30,070,285
Investment in convertible note receivable	-	(5,000,000)
Convertible note receivable converted into marketable security	844,882	4,231,760
Investment in marketable Securities	(844,882)	(3,958,678)
Change in assets and liabilities		
Prepaid expenses and other assets	807,352	(8,326)
Accounts payable and accrued expenses	172,723	382,204
Advances (repayments) to related party	(45,605)	103,934
Mining of digital assets	(42,157)	-
Lease liability payments	(75,574)	(76,656)
Deferred taxes and taxes payable	841,678	29,883
Net cash provided by (used in) operating activities	(1,680,547)	5,274,618
CASH FLOWS FROM INVESTING ACTIVITIES:		
Net collections of finance receivables - original product	19,049	37,549
Net collections of finance receivables - special product	(11,565)	8,450
Payments for real estate assets owned	-	(68,568)
Capital expenditures	(15,380)	(4,207)
Deposits for mining equipment and hosting	(16,467,402)	(1,565,625)
Investments in digital assets	(978,441)	(1,419,958)
Loan to purchase securities	-	1,784,250
Investment in note receivable - related party	(2,785,000)	-
Investment in note receivable	(350,000)	-
Repayment of loan to purchase securities	-	(1,784,250)
Investment in unconsolidated affiliate	-	(5,738,000)
Net cash used in investing activities	(20,588,739)	(8,750,359)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Principal repayments	-	(28,534)
Insurance financing repayments	(114,688)	(134,485)
Exercise of warrants	-	9,544,623
Net cash provided by (used in) financing activities	(114,688)	9,381,604
NET INCREASE (DECREASE) IN CASH	(22,383,974)	5,905,863
CASH - BEGINNING OF YEAR	32,559,185	11,552,943
CASH - END OF YEAR	\$ 10,175,211	\$ 17,458,806
SUPPLEMENTAL DISCLOSURES OF NON-CASHFLOW INFORMATION		
Insurance financing	\$ -	\$ 210,260
ROU assets and operating lease obligation recognized	\$ 300,787	\$ -
Reclassification of mining equipment deposit to fixed assets, net	\$ 21,986,382	\$ -
SUPPLEMENTAL DISCLOSURES OF CASHFLOW INFORMATION		
Cash paid for interest	\$ -	\$ 1,892
Cash paid for income taxes	\$ 470,000	\$ -

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

LM Funding America, Inc. and Subsidiaries Condensed Consolidated Statements of Changes in Stockholders' Equity
For the Three and Nine Months Ended September 30, 2022 and 2021
(unaudited)

	Common Stock		Additional paid in capital	Accumulated Deficit	Non-Controlling Interest	Total Equity
	Shares	Amount				
Balance - December 31, 2020	3,083,760	\$ 3,084	\$ 29,996,257	\$ (18,536,224)	\$ 5,191	\$ 11,468,308
Stock issued for warrants exercised	2,330,536	2,330	9,542,293	-	-	9,544,623
Net income	-	-	-	4,376,433	171,866	4,548,299
Balance - March 31, 2021	<u>5,414,296</u>	<u>\$ 5,414</u>	<u>\$ 39,538,550</u>	<u>\$ (14,159,791)</u>	<u>\$ 177,057</u>	<u>\$ 25,561,230</u>
Net income	-	-	-	11,107,482	146,857	11,254,339
Balance - June 30, 2021	<u>5,414,296</u>	<u>\$ 5,414</u>	<u>\$ 39,538,550</u>	<u>\$ (3,052,309)</u>	<u>\$ 323,914</u>	<u>\$ 36,815,569</u>
Net loss	-	-	-	(5,486,211)	(33,953)	(5,520,164)
Balance - September 30, 2021	<u>5,414,296</u>	<u>\$ 5,414</u>	<u>\$ 39,538,550</u>	<u>\$ (8,538,520)</u>	<u>\$ 289,961</u>	<u>\$ 31,295,405</u>
Balance - December 31, 2021	13,017,943	\$ 13,018	\$ 74,525,106	\$ (13,777,006)	\$ 249,089	\$ 61,010,207
Stock issued for services	73,940	74	(74)	-	-	-
Stock compensation	-	-	329,500	-	-	329,500
Stock option expense	-	-	3,318,737	-	-	3,318,737
Net loss	-	-	-	(5,728,051)	(291,200)	(6,019,251)
Balance - March 31, 2022	<u>13,091,883</u>	<u>\$ 13,092</u>	<u>\$ 78,173,269</u>	<u>\$ (19,505,057)</u>	<u>\$ (42,111)</u>	<u>\$ 58,639,193</u>
Stock compensation	-	-	329,499	-	-	329,499
Stock option expense	-	-	3,318,742	-	-	3,318,742
Net income	-	-	-	2,844,340	3,723,797	6,568,137
Balance - June 30, 2022	<u>13,091,883</u>	<u>\$ 13,092</u>	<u>\$ 81,821,510</u>	<u>\$ (16,660,717)</u>	<u>\$ 3,681,686</u>	<u>\$ 68,855,571</u>
Stock compensation	-	-	329,499	-	-	329,499
Stock option expense	-	-	3,318,740	-	-	3,318,740
Net loss	-	-	-	(6,662,856)	(59,298)	(6,722,154)
Balance - September 30, 2022	<u>13,091,883</u>	<u>\$ 13,092</u>	<u>\$ 85,469,749</u>	<u>\$ (23,323,573)</u>	<u>\$ 3,622,388</u>	<u>\$ 65,781,656</u>

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

LM FUNDING AMERICA, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS FOR THE THREE AND NINE MONTHS ENDED September 30, 2022
(UNAUDITED)

Note 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Nature of Operations

LM Funding America, Inc. (“we”, “our”, “LMFA” or the “Company”) was formed as a Delaware corporation on April 20, 2015. LMFA was formed for the purpose of completing a public offering and related transactions in order to carry on the business of LM Funding, LLC and its subsidiaries (the “Predecessor”). LMFA is the sole member of LM Funding, LLC and operates and controls all of its businesses and affairs.

LM Funding, LLC, a Florida limited liability company organized in January 2008 under the terms of an Operating Agreement effective January 8, 2008 as amended, had two members: BRR Holding, LLC and CGR 63, LLC. The members contributed their equity interest to LMFA prior to the closing of its initial public offering.

The Company created two subsidiaries in 2020, LMFA Financing LLC on November 21, 2020 and LMFAO Sponsor LLC on October 29, 2020. LMFAO Sponsor LLC created a majority owned subsidiary LMF Acquisition Opportunities Inc. on October 29, 2020. LM Funding America Inc. organized another subsidiary, US Digital Mining and Hosting Co., LLC., on September 10, 2021. US Digital Mining and Hosting Co., LLC created a subsidiary US Digital Mining Texas, LLC on June 21, 2022.

The Company currently has two lines of business: a specialty finance business and our recently commenced cryptocurrency mining business.

With respect to our specialty finance business, the Company has historically engaged in the business of providing funding to nonprofit community associations primarily located in the state of Florida. We offer incorporated nonprofit community associations, which we refer to as “Associations,” a variety of financial products customized to each Association’s financial needs. Our original product offering consists of providing funding to Associations by purchasing their rights under delinquent accounts that are selected by the Associations arising from unpaid Association assessments. Historically, we provided funding against such delinquent accounts, which we refer to as “Accounts,” in exchange for a portion of the proceeds collected by the Associations from the account debtors on the Accounts. In addition to our original product offering, we have started purchasing Accounts on varying terms tailored to suit each Association’s financial needs, including under our New Neighbor Guaranty™ program.

On September 15, 2021, we announced our plan to operate in the Bitcoin mining ecosystem, and we commenced Bitcoin mining operations in late September 2022. This business operation deploys our computing power to mine Bitcoin and validate transactions on the Bitcoin network. We believe that developments in Bitcoin mining have created an opportunity for us to deploy capital and conduct large-scale mining operations in the United States. We conduct this business through a wholly owned subsidiary, US Digital Mining and Hosting Co, LLC, a Florida limited liability company (US Digital), which we formed in 2021 to develop and operate our cryptocurrency mining business.

Specialty Finance Business

In our specialty finance business, we purchase an Association’s right to receive a portion of the Association’s collected proceeds from owners that are not paying their assessments. After taking assignment of an Association’s right to receive a portion of the Association’s proceeds from the collection of delinquent assessments, we engage law firms to perform collection work on a deferred billing basis wherein the law firms receive payment upon collection from the account debtors or a predetermined contracted amount if payment from account debtors is less than legal fees and costs owed. Under this business model, we typically fund an amount equal to or less than the statutory minimum an Association could recover on a delinquent account for each Account, which we refer to as the “Super Lien Amount”. Upon collection of an Account, the law firm working on the Account, on behalf of the Association, generally distributes to us the funded amount, interest, and administrative late fees, with the law firm retaining legal fees and costs collected, and the Association retaining the balance of the collection. In connection with this line of business, we have developed proprietary software for servicing Accounts, which we believe enables law firms to service Accounts efficiently and profitably.

Under our New Neighbor Guaranty program, an Association will generally assign substantially all of its outstanding indebtedness and accruals on its delinquent units to us in exchange for payment by us of monthly dues on each delinquent unit. This simultaneously eliminates a substantial portion of the Association’s balance sheet bad debts and assists the Association to meet its budget by receiving guaranteed monthly payments on its delinquent units and relieving the Association from paying legal fees and costs to collect its bad debts. We believe that the combined features of the program enhance the value of the underlying real estate in an Association and the value of an Association’s delinquent receivables.

Because we acquire and collect on the delinquent receivables of Associations, the Account debtors are third parties about whom we have little or no information. Therefore, we cannot predict when any given Account will be paid off or how much it will yield. In assessing the risk of purchasing Accounts, we review the property values of the underlying units, the governing documents of the relevant Association, and the total number of delinquent receivables held by the Association.

Specialty Finance Products

Original Product

Our original product relies upon Florida statutory provisions that effectively protect the principal amount invested by us in each Account. In particular, Section 718.116(1), Florida Statutes, makes purchasers and sellers of a unit in an Association jointly and severally liable for all past due assessments, interest, late fees, legal fees, and costs payable to the Association. As discussed above, the Florida Statutes grants to Associations a so-called “super lien”, which is a category of lien that is given a statutorily higher priority than all other types of liens other than property tax liens. The amount of the Association’s priority over a first mortgage holder that takes title to a property through foreclosure (or deed in lieu), referred to as the Super Lien Amount, is limited to twelve months’ past due assessments or, if less, one percent (1.0%) of the original mortgage amount. Under our contracts with Associations for our original product, we pay Associations an amount up to the Super Lien Amount for the right to receive all collected interest and late fees on Accounts purchased from the Associations.

The Statutes specify that the rate of interest an association (or its assignor) may charge on delinquent assessments is equal to the rate set forth in the association’s declaration or bylaws. In Florida if a rate is not specified, the statutory rate is equal to 18% but may not exceed the maximum rate allowed by law. Similarly, the Florida Statutes also stipulate that administrative late fees cannot be charged on delinquent assessments unless so provided by the association’s declaration or bylaws and may not exceed the greater of \$25 or 5% of each delinquent assessment.

In other states in which we have offered our original product, which are currently only in Washington, Colorado and Illinois, we rely on statutes that we believe are similar to the above-described Florida statutes in relevant respects.

New Neighbor Guaranty

In addition to our original product, we also offer an additional product, the New Neighbor Guaranty, wherein an Association assigns substantially all of its outstanding indebtedness and accruals on its delinquent units to us in exchange for payments in an amount equal to the regular ongoing monthly or quarterly assessments for delinquent units when those amounts would be due to the Association. We assume both the payment and collection obligations for these assigned Accounts under this product. This simultaneously eliminates an Association’s balance sheet bad debts and assists the Association to meet its budget by receiving guaranteed assessment payments on its delinquent units and relieving the Association from paying legal fees and costs to collect its bad debts. We believe that the combined features of the product enhance the value of the underlying real estate in an Association and the value of an Association’s delinquent receivables.

Before we implement the New Neighbor Guaranty program for an Association we are typically asked to conduct a review of its accounts receivable. After we have conducted the review, we inform the Association which Accounts we are willing to purchase and the terms of such purchase. Once we implement the New Neighbor Guaranty program, we begin making scheduled payments to the Association on the Accounts as if the Association had non-delinquent residents occupying the units underlying the Accounts. Our New Neighbor Guaranty contracts typically allow us to retain all collection proceeds on each Account other than special assessments and accelerated assessment balances. Thus, the Association foregoes the potential benefit of a larger future collection in exchange for the certainty of a steady stream of immediate payments on the Account.

Cryptocurrency Mining Business

During 2021, we committed to purchasing an aggregate of 5,046 Bitcoin S19J Pro Antminer cryptocurrency mining machines for an aggregate purchase price of \$31.6 million (the “Mining Machines”) from Bitmain. This contract allowed for a reduction in purchase price if Bitcoin price declined prior to shipment. As such, because the price of Bitcoin has declined since we entered into the purchase contract, we have received reductions against the total purchase price. We anticipate we will receive the remaining Mining Machines to be delivered in batches over an estimated delivery timeframe from October 2022 through November 2022. The purchase agreements between us and Bitmain relating to the Mining Machines (the “Bitmain Purchase Agreements”) required us to pay \$7.9 million or 25% of the total purchase price as a non-refundable deposit for the Mining Machines within 7 days of the date of the signing of the respective Bitmain Purchase Agreements, and additional 35% of the batch price at least 6 months prior to shipment of such batch, and the remaining 40% of each batch price one month prior to the shipment of the batch. We have received 4,212 Mining Machines as of September 30, 2022 under these purchase agreements. Due to the variable nature of the contract, we have been credited an aggregate total of approximately \$7.2 million toward the 40% purchase price that is normally paid upon the shipment of a batch.

On August 31, 2022, the Company committed to purchasing an additional 400 Bitcoin Miner S19J Pro machines from Bitmain for an aggregate purchase price of approximately \$1.3 million. The purchase agreement provides for delivery of the machines in November 2022. As required under the contract, the Company paid the full purchase price within 7 days of the date of the signing of the agreement and the payment is not refundable. This contract is also subject to variable pricing adjustments.

Additionally, on September 20, 2022, the Company committed to purchasing 200 Bitcoin Miner S19 XP machines from Bitmain for an aggregate purchase price of approximately \$1.3 million. Under the provisions of the contract, the machines are expected to be delivered in January 2023. As required under the contract, the Company paid a non-refundable deposit of \$265 thousand within 7 days of the date of the signing of the agreement. An additional 30% payment of the purchase price is due 4 months prior to shipment and the remaining 50% of the purchase price is due 15 days prior to shipment. This contract is also subject to variable pricing adjustments.

During the Nine Months ended September 30, 2022 the Company paid approximately \$12.7 million to Bitmain for deposits related to mining equipment and payments of \$635 thousand were made to various shipping vendors for transportation and customs costs related to the equipment. Since the inception of our contracts with Bitmain, we have paid an aggregate of approximately \$27.0 million to Bitmain and related vendors relating to the purchase of these machines through September 30, 2022, and expect to pay an additional \$1.0 million under the Bitmain contracts through the completion of the delivery of the machines.

In October 2021, we also entered into a sale and purchase agreement (the “Uptime Purchase Agreement”) with Uptime Armory LLC (“Uptime”) pursuant to which US Digital agreed to purchase, and Uptime agreed to supply to US Digital, an aggregate of 18 modified 40-foot cargo containers (“POD5ive containers”) that will be designed to hold and operate 280 S19 Pro Antminers manufactured by Bitmain. The purchase price of the POD5ive containers totals \$3.15 million, of which \$2.4 million or 75% was paid in 2021 as a non-refundable down payment and the remaining 25% was paid after Uptime delivered a “notice of completion” of the equipment. No containers have been delivered as of September 30, 2022.

On the same effective date, US Digital also entered into a hosting agreement with Uptime Hosting LLC (the “Hosting Agreement”) to host the Company’s 18 POD5ive containers at a secure location and provide power, maintenance and other services specified in the contract for 6 cents per kilowatt with a term of one year. Under the Hosting Agreement we paid a deposit of \$0.8 million in 2021 and were required to pay an additional deposit for each container three months prior to delivery at the hosting site of \$44 thousand and a final deposit for each container one month prior to arrival at the hosting site of \$44 thousand. The deposits paid for hosting services under the Hosting Agreement are refundable. On June 29, 2022, the Company and Uptime Hosting LLC entered into a Release and Termination Agreement in which the Hosting Agreement was terminated and Uptime Hosting LLC agreed to pay the \$0.8 million. The \$0.8 million deposit paid for hosting services under the Hosting Agreement is included within Prepaid expenses and other assets on the consolidated balance sheet as of September 30, 2022. However, the \$0.8 million deposit has not been returned, and on September 2, 2022, we filed in Florida circuit court a legal action against Uptime Hosting LLC in an action styled *US Digital Mining and Hosting Co, LLC v. Uptime Hosting, LLC* (Fla. 13th Cir. Ct. Sept. 2, 2022) for the return of the deposit and other damages, alleging breach of contract and violation of the Florida Deceptive and Unfair Trade Practices Act. Uptime Hosting LLC has answered the complaint with affirmative defenses and counterclaims for fraudulent inducement and rescission, which we believe are without merit. The Company has not accrued a loss contingency related to this matter based on management’s assessment of the collectability of the refundable deposit.

On November 8, 2022, we filed an action in Florida circuit court against Uptime Armory, LLC and Bit5ive, LLC in a case styled *US Digital Mining and Hosting Co. LLC v. Uptime Amory, LLC and Bit5ive, LLC* (Fla. 11th Cir. Ct., November 8, 2022). In that action, we alleged breach of contract and violation of the Florida Deceptive and Unfair Trade Practices Act and are seeking, among other things, damages of \$3.15 million for non-delivery of the 18 POD5ive containers. The defendants in this action have not yet answered the complaint.

On June 21, 2022, the Company entered into a Master Agreement, dated effective as of June 20, 2022, with Compute North LLC (“Compute North”) under which Compute North has agreed to host up to 4,200 of US Digital’s Bitcoin Miner S19J Pro machines (100 TH/s) and provide colocation, management and other services (the “Master Agreement”). The term of the Master Agreement is for 60 months, subject to earlier termination in specified circumstances. The Company paid a non-refundable co-location deposit of \$1.3 million on June 21, 2022 under the Master Agreement. Compute North filed for Chapter 11 bankruptcy on September 22, 2022. Compute North has not energized any of our 2,690 machines located at their site.

On September 6, 2022, the Company entered into hosting agreement (the “Core Hosting Agreement”) with Core Scientific Inc. (“Core”) pursuant to which Core agreed to host the Company’s 1,200 Bitcoin Miner S19J Pro machines at a secure location and provide power, maintenance and other services specified in the contract with a term of one year and thereafter automatically renews for the periods indicated in the Order. As required under the Core Hosting Agreement, the Company paid approximately \$942 thousand as a deposit on September 2, 2022.

During September 2022, 848 mining machines were placed into service and we commenced mining operations. These machines are located at one of the Core hosting locations.

Principles of Consolidation

The condensed consolidated financial statements include the accounts of LMFA and its wholly-owned subsidiaries: LM Funding, LLC; LMF October 2010 Fund, LLC; REO Management Holdings, LLC (including all 100% owned subsidiary limited liability companies); LM Funding of Colorado, LLC; LM Funding of Washington, LLC; LM Funding of Illinois, LLC; US Digital Mining Hosting Co., LLC; LMF SPE #2, LLC and various single purpose limited liability corporations owned by REO Management Holdings, LLC which own various properties. It also includes LMFA Sponsor LLC (a 69.5% owned subsidiary). All significant intercompany balances have been eliminated in consolidation.

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC"). Certain information and note disclosures normally included in the annual consolidated financial statements prepared in accordance with generally accepted accounting principles have been condensed or omitted pursuant to those rules and regulations, although the Company believes that the disclosures made are adequate to make the information not misleading. The interim condensed consolidated financial statements as of September 30, 2022 and for the Three and Nine Months ended September 30, 2022 and September 30, 2021, respectively are unaudited. In the opinion of management, the interim condensed consolidated financial statements include all adjustments, consisting only of normal recurring adjustments, necessary to provide a fair statement of the results for the interim periods. The accompanying consolidated balance sheet as of December 31, 2021, is derived from the audited consolidated financial statements presented in the Company's Annual Report on Form 10-K for fiscal year ended December 31, 2021.

Reclassifications

Certain prior period amounts on the balance sheet have been reclassified to conform to the current period presentation.

Revenue Recognition

We recognize revenue in accordance with generally accepted accounting principles as outlined in ASC 606, Revenue From Contracts with Customers, which requires that five steps be followed in evaluating revenue recognition: (i) identify the contract with the customer; (ii) identify the performance obligations in the contract; (iii) determine the transaction price; (iv) allocate the transaction price; and (v) recognize revenue when or as the entity satisfied a performance obligation.

With respect to its cryptocurrency mining operations, the Company has entered into contracts with digital asset mining pool operators to provide computing power to the mining pools. The contracts are terminable at any time by either party and the Company's enforceable right to compensation only begins when the Company starts providing computing power to the mining pool operator. In exchange for providing computing power, the Company is entitled to a fractional share of the fixed cryptocurrency award the mining pool operator receives (less pool fees to the mining pool operator), for successfully adding a block to the blockchain, plus a fractional share of the transaction fees attached to that blockchain. The Company's fractional share is based on the proportion of computing power the Company contributed to the mining pool operator to the total computing power contributed by all mining pool participants in solving the current algorithm. The transaction consideration the Company receives is noncash consideration, in the form of digital currency, which the Company measures at fair value on the date received which is not materially different than the fair value at contract inception or at the time the Company has earned the award from the mining pools.

Segment and Reporting Unit Information

Operating segments are defined as components of an entity for which discrete financial information is available that is regularly reviewed by the Chief Operating Decision Maker ("CODM") in deciding how to allocate resources to an individual segment and in assessing performance. The Chief Executive Officer and Chief Financial Officer of the Company are determined to comprise the CODM, as a group. The Company has two operating segments as of September 30, 2022, which we refer to as Specialty Finance and Mining Operations. Our corporate oversight function and other components that may earn revenues that are only incidental to the activities of the Company are aggregated and included in the "All Other" category. See Note 11, "Segment Information".

Digital Assets

When applicable, we account for all digital assets other than stablecoin as indefinite-lived intangible assets in accordance with ASC 350, *Intangibles—Goodwill and Other*. We have ownership of and control over our digital assets and use third-party custodial services to secure it. Digital assets that are purchased are initially recorded at cost and digital assets that are received in exchange for services provided are recognized at fair value as of the date received (refer to Revenue Recognition policy). Digital assets are subsequently remeasured on the consolidated balance sheet at cost, net of any impairment losses incurred since acquisition. We account for

stablecoin as financial assets in accordance with ASC 310, Receivables. The stablecoin are recorded at amortized cost, which approximates their fair value.

We determine the fair value of our digital assets that are accounted for as intangible assets in accordance with ASC 820, *Fair Value Measurement*, based on quoted prices on the active exchange(s) that we have determined is the principal market for such assets (Level 1 inputs). We perform an analysis each quarter to identify whether events or changes in circumstances indicate that it is more likely than not that our digital assets are impaired. If the current carrying value of a digital asset exceeds the fair value so determined, an impairment loss has occurred with respect to those digital assets in the amount equal to the difference between their carrying values and the price determined.

The impaired digital assets are written down to their fair value at the time of impairment and this new cost basis will not be adjusted upward for any subsequent increase in fair value. Gains are not recorded until realized upon sale, at which point they are presented separately from any impairment losses.

Digital currencies earned by the Company through its mining activities are included within operating activities on the accompanying consolidated statements of cash flows.

There is currently no specific guidance under GAAP or alternative accounting framework for the accounting for digital assets recognized as revenue or held, and management has exercised significant judgment in determining the appropriate accounting treatment. In the event authoritative guidance is enacted by the FASB, the Company may be required to change its policies, which could have an effect on the Company's consolidated financial position and results from operations.

Fixed Assets, Net

The Company capitalizes all acquisitions of fixed assets in excess of \$500. Fixed assets are stated at cost, net of accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful lives of the assets and commences once the assets are ready for their intended use. Fixed assets are comprised of furniture, computer, office equipment and mining machines with assigned useful lives of 3 to 5 years.

The Company operates in an emerging industry for which limited data is available to make estimates of the useful economic lives of mining machines. To the extent that any of the assumptions underlying management's estimate of useful life of its mining machines are subject to revision in a future reporting period, either as a result of changes in circumstances or through the availability of greater quantities of data, then the estimated useful life could change and have a prospective impact on depreciation expense and the carrying amounts of these assets.

Impairment of Long-Lived Assets

Management reviews long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to undiscounted future cash flows expected to be generated by the asset. If such assets are considered to be impaired, the impairment amount is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. There was no impairment of long-lived assets for the Three and Nine Months ended September 30, 2022 and 2021.

Investment in Securities

Investment in Securities includes investments in common stocks, note receivables, and convertible notes receivables. Investments in securities are reported at fair value with changes in unrecognized gains or losses included in other income on the income statement. The fair value of the BORQ convertible note receivable is based on its classification as a trading security. The Symbiont and Seastar Medical, Inc. notes receivable are reported at amortized costs less impairment.

Fair Value of Financial Instruments

FASB ASC 825-10, Financial Instruments, requires disclosure of fair value information about financial instruments, whether or not recognized in the balance sheet.

Investments in Unconsolidated Entities

We account for investments in less than 50% owned and more than 20% owned entities using the equity method of accounting. Because we have elected the fair value option for these securities, unrealized holding gains and losses during the period are included in earnings.

Income (Loss) Per Share

Basic income (loss) per share is calculated as net income (loss) to common stockholders divided by the weighted average number of common shares outstanding during the period (as adjusted to give effect to the Reverse Stock Split).

The Company issued approximately 74 thousand shares and 2.3 million shares at various times during the Nine Months ended September 30, 2022 and September 30, 2021, respectively, and has weighted averaged these new shares in calculating income (loss) per share for the relevant period.

Diluted income (loss) per share for the period equals basic loss per share as the effect of any convertible notes, stock based compensation awards or stock warrants would be anti-dilutive.

The anti-dilutive stock based compensation awards consisted of:

	As of September 30,	
	2022	2021
Stock Options	3,956,827	3,860
Stock Warrants	7,677,441	391,900

Note 2. Due to Related Party

Legal services for the Company associated with the collection of delinquent assessments from property owners are performed by a law firm, Business Law Group (“BLG”), which was owned solely by Bruce M. Rodgers, the Chief Executive Officer of LMFA, until and through the date of the Company’s initial public offering in 2015. Following the offering in 2015, Mr. Rodgers transferred his interest in BLG to other attorneys at the firm through a redemption of his interest in the firm, and BLG became under control of those lawyers. The law firm has historically performed collection work primarily on a deferred billing basis wherein the law firm receives payment for services rendered upon collection from the property owners or at amounts ultimately subject to negotiations with the Company.

Under the agreement, the Company paid BLG a fixed monthly fee of \$82,000 for services rendered. The Company paid BLG a minimum per unit fee of \$700 in any case where there is a collection event and BLG receives no payment from the property owner. This provision has been expanded to also include any unit where the Company has taken title to the unit or where the association has terminated its contract with either BLG or the Company.

On February 1, 2022, the Company consented to the assignment by BLG to the law firm BLG Association Law, PLLC (“BLGAL”) of the Services Agreement, dated April 15, 2015, previously entered into by the Company and Business Law Group, P.A. (the “Services Agreement”). The Services Agreement had set forth the terms under which Business Law Group, P.A. would act as the primary law firm used by the Company and its association clients for the servicing and collection of association accounts. The assignment of the Services Agreement was necessitated by the death of the principal attorney and owner of Business Law Group, P.A. In connection with the assignment, BLGAL agreed to amend the Services Agreement on February 1, 2022, to reduce the monthly compensation payable to the law firm from \$82,000 to \$53,000 (the “Amendment”). Bruce M. Rodgers, the chairman and CEO of the Company, is a 50% owner of BLGAL, and the assignment and Amendment was approved by the independent directors of the Company. A \$150 thousand termination fee was also paid to BLG in association with the assignment.

The Company had originally engaged BLG on behalf of many of its Association clients to service and collect the Accounts and to distribute the proceeds as required by Florida law and the provisions of the purchase agreements between LMF and the Associations. This engagement was subsequently assigned to BLGAL as described above. Ms. Gould who is one of our directors, worked as the General Manager of BLG and works as the General Manager of BLGAL .

Amounts collected from property owners and paid to BLG or BLGAL as applicable for the Three and Nine Months ended September 30, 2022 and 2021 were approximately \$159,000 and \$506,000 for 2022 and \$246,000 and \$738,000 for 2021, respectively. As of September 30, 2022 and December 31, 2021, receivables from property owners for charges ultimately payable to BLGAL or BLGAL were approximately \$563,000 and \$677,000, respectively.

Under the Services Agreement in effect during the Nine Months ended September 30, 2022 and 2021, the Company pays all costs (lien filing fees, process and serve costs) incurred in connection with the collection of amounts due from property owners. Any recovery of these collection costs is accounted for as a reduction in expense incurred. The Company incurred expenses related to these types of costs for the Three and Nine Months ended September 30, 2022 and 2021 in the amounts of approximately \$13,600 and \$48,000 for 2022 and \$26,000 and \$76,000 for 2021, respectively. Recoveries during the Three and Nine Months ended September 30, 2022 and 2021, related to those costs were approximately \$9,000 and \$55,000 for 2022 and \$27,000 and \$72,000 for 2021, respectively.

The Company also shares office space and related common expenses with BLGAL (and previously BLG). All shared expenses, including rent, are charged to BLG based on an estimate of actual usage. Any expenses of BLGAL and BLG paid by the Company that have not been reimbursed or settled against other amounts are reflected as due from related parties in the accompanying consolidated balance sheets. BLGAL and BLG, as applicable were charged a total of approximately \$15,000 and \$45,000 for the

office sub-lease during the Three and Nine Months ended September 30, 2022 and \$17,000 and \$51,000 for the Three and Nine Months ended September 30, 2021, respectively.

In 2017, the Company assessed the collectability of the amount due from BLG and concluded that even though BLG had repaid \$252,771 during 2017, it did not have the ability to repay the remaining balance at the end of 2017 and as such took a reserve of approximately \$1.4 million for the balance due as of December 31, 2017. In 2021 and 2020, the Company subsequently recouped \$200,000 and \$500,000, respectively, of this write-off. Additional recoveries of the reserve are not expected. No amounts were recouped in 2022.

Amounts payable to BLGAL and BLG, in aggregate as of September 30, 2022 and December 31, 2021 were approximately \$56,600 and \$121,200, respectively.

As of September 30, 2022, approximately \$19,000 was payable to LMAO related to reimbursement of professional fees paid by LMAO on behalf of LMFA. This amount is included within 'Due to related parties' on the consolidated balance sheets.

Note 3. Debt and Other Financing Arrangements

	September 30, 2022	December 31, 2021
Financing agreement with FlatIron capital that was unsecured. Down payment of \$36,255 was required upfront and equal installment payments of \$19,114 were made over a 10 month period. The note matured on May 1, 2022. Annualized interest was 3.95%	\$ -	\$ 114,688
	<u>\$ -</u>	<u>\$ 114,688</u>

Note 4. Income Taxes

Prior to the Company's initial public offering in October 2015, the earnings of the Predecessor, which was a limited liability company taxed as a partnership, were taxable to its members. In connection with the contribution of membership interests to the Company (a C-Corporation formed in 2015), the net income or loss of the Company after the initial public offering is taxable to the Company and reflected in the accompanying consolidated financial statements.

The Company performs an evaluation of the realizability of its deferred tax assets on a quarterly basis. The Company considers all positive and negative evidence available in determining the potential of realizing deferred tax assets, including the scheduled reversal of temporary differences, recent and projected future taxable income and prudent and feasible tax planning strategies. The estimates and assumptions used by the Company in computing the income taxes reflected in the accompanying consolidated financial statements could differ from the actual results reflected in the income tax returns filed during the subsequent year. Adjustments are recorded based on filed returns when finalized or the related adjustments are identified.

During the twelve month period ended December 31, 2021, the Company generated positive pre-tax income of approximately \$5.3 million. The Company had estimated under the best information at that time that it could fully utilize its carryforward net operating ("NOL") tax losses from prior periods for 2021. However, once the 2021 tax return was finalized in October 2022, the NOLs available for use was limited under Internal Revenue Code Section 382 to \$93,000 but we were able to use a \$1.4 million capital loss carryforward. The usage of these NOLs will be limited to approximately \$93,000 each year going forward but can be carried forward for twenty years, after which the remaining amounts can be carried forward indefinitely with offsets limited to 80% of taxable income. As such this change in estimate resulted in a tax payable of \$1.3 million which is being reported in the nine month period ended September 30, 2022.

Under ASC 740-10-30-5, *Income Taxes*, deferred tax assets should be reduced by a valuation allowance if, based on the weight of available evidence, it is more-likely-than-not (i.e., a likelihood of more than 50%) that some portion or all of the deferred tax assets will not be realized. The Company considers all positive and negative evidence available in determining the potential realization of deferred tax assets including, primarily, the recent history of taxable earnings or losses. Based on operating losses reported by the Company during 2022, 2020 and 2019, the Company concluded there was not sufficient positive evidence to overcome this recent operating history. As a result, the Company believed that a valuation allowance was necessary based on the more-likely-than-not threshold noted above. The Company had recorded a valuation allowance of approximately \$3,227,000 as of September 30, 2022 and \$3,246,000 as of December 31, 2021.

Significant components of the tax expense (benefit) recognized in the accompanying consolidated statements of operations for the Three and Nine Months ended September 30, 2022 and September 30, 2021 are as follows:

	Three Months Ended	Three Months Ended	Nine Months Ended	Nine Months Ended
	September 30, 2022	September 30, 2021	September 30, 2022	September 30, 2021
Current tax benefit				
Federal	\$ 2,499,186	\$ (1,159,524)	\$ 1,135,644	\$ 2,078,774
State	458,158	(321,397)	176,034	348,622
Total current tax expense (benefit)	2,957,344	(1,480,921)	1,311,678	2,427,396
Deferred tax expense	(1,153,380)	12,619	(231,454)	34,614
Change in tax rates	423,630	-	211,815	-
Valuation allowance	(915,916)	1,480,921	19,639	(2,432,127)
Income tax expense	<u>\$ 1,311,678</u>	<u>\$ 12,619</u>	<u>\$ 1,311,678</u>	<u>\$ 29,883</u>

The reconciliation of the income tax computed at the combined federal and state statutory rate of (24.2%) and (27.0%) for the Three and Nine Months ended September 30, 2022 and (0.2%) and 0.3% for the Three and Nine Months ended September 30, 2021 to the income tax benefit is as follows:

	Three Months Ended		Three Months Ended		Nine Months Ended		Nine Months Ended	
	September 30, 2022		September 30, 2021		September 30, 2022		September 30, 2021	
Benefit on net loss	\$ (488,094)	9.0%	\$ (1,469,827)	26.7%	\$ (1,219,660)	25.1%	\$ 2,458,947	23.8%
Section 382 adjustment	2,299,884	(42.5)%	-	-	2,299,884	(47.3)%	-	-
Non deductible expenses	(7,826)	0.1%	1,525	-	-	-	3,063	0.0%
Valuation Allowance	(915,916)	17.0%	1,480,921	(26.9)%	19,639	(0.4)%	(2,432,127)	(23.5)%
Tax rate change	423,630	(7.8)%	-	-	211,815	(4.4)%	-	-
Tax benefit/effective rate	<u>\$ 1,311,678</u>	<u>(24.2)%</u>	<u>\$ 12,619</u>	<u>(0.20)%</u>	<u>\$ 1,311,678</u>	<u>(27.0)%</u>	<u>\$ 29,883</u>	<u>0.3%</u>

The significant components of the Company's deferred tax liabilities and assets as of September 30, 2022 and December 31, 2021 are as follows:

	As of September 30, 2022	As of December 31, 2021
Deferred tax liabilities:		
Right to Use asset	\$ 73,366	\$ -
State income taxes	62,950	-
Subsidiary	203,213	-
Loss from partnership	14,985	-
Collection costs	65,098	-
Unrealized gain on securities	2,787,425	-
Deferred vendor stock compensation	-	261,323
Total deferred tax liabilities	3,207,037	261,323
Deferred tax assets:		
Loss carryforwards	2,078,549	2,101,401
Step up in basis at contribution to C-Corp	437,712	461,078
Stock option expense	3,237,074	669,959
Step up in basis - purchase of non-controlling interest	41,819	42,529
Allowance for credit losses	1,770	16,539
Right to Use assets	74,315	-
Digital asset impairment loss	107,535	-
Unrealized loss on securities	455,091	216,284
Total deferred tax asset	6,433,865	3,507,790
Valuation allowance	(3,226,828)	(3,246,467)
Net deferred tax asset (liability)	<u>\$ -</u>	<u>\$ -</u>

During the Nine Months ended September 30, 2022, the Company generated a pre-tax loss of approximately \$4.9 million which in conjunction with the change in estimate mentioned above resulted in an increase of the deferred tax assets of approximately \$2.9 million. The Company's deferred tax liabilities increased by \$2.9 million due primarily to an unrealized gain that generated a \$2.8 million deferred tax liability. The net deferred tax assets of \$3.2 million was fully reserved by an increase in the valuation allowance. During the Nine Months ended September 30, 2021, the Company offset \$2.4 million of its tax expense with \$2.2 million of its valuation allowance.

Note 5. Commitments and Contingencies

Leases

The Company leases certain office space, construction and office equipment, vehicles and temporary housing generally under non-cancelable operating leases. Leases with an initial term of one year or less are not recorded on the balance sheet, and the Company generally recognizes lease expense for these leases on a straight-line basis over the lease term. As of September 30, 2022, the Company's operating leases have remaining lease terms ranging from less than one year to three years, some of which include options to renew the leases. The exercise of lease renewal options is generally at the Company's sole discretion. The Company's leases do not contain any material residual value guarantees or material restrictive covenants.

The Company determines if an arrangement is a lease at inception. Operating lease ROU assets and current and long-term operating lease liabilities are separately stated on the consolidated balance sheet as of September 30, 2022. ROU assets represent the Company's right to use an underlying asset for the lease term and lease liabilities represent the Company's obligation to make lease payments arising from the lease. ROU assets and lease liabilities are recognized at the commencement date based on the present value of lease payments over the lease term. The present value of future lease payments are discounted using either the implicit rate in the lease, if known, or the Company's incremental borrowing rate for the specific lease as of the lease commencement date. The ROU asset is also adjusted for any prepayments made or incentives received. The lease terms include options to extend or terminate the lease only to the extent it is reasonably certain any of those options will be exercised. Lease expense is recognized on a straight-line basis over the lease term. The Company accounts for lease components (e.g., fixed payments) separate from the non-lease components (e.g., common-area maintenance costs). The Company does not have any material financing leases.

The Company's office lease began July 15, 2019 and was due to expire on July 31, 2022. During the Three Months ended March 31, 2022 the Company exercised its option to extend its office lease to July 31, 2025. Due to the lease extension, the Company remeasured the lease liability and ROU asset associated with the lease. The Company accounted for the lease extension as a lease modification under ASC 842. At the effective date of modification, the Company recorded an adjustment to the right-of-use asset and lease liability in the amount of \$300,787 based on the net present value of lease payments discounted using an estimated borrowing rate of 7.5%.

The Company shares this space and the related costs associated with this operating lease with a related party (see Note 2) that also performs legal services associated with the collection of delinquent assessments. The related party has a sub-lease for approximately \$4,900 per month plus operating expenses.

Net rent expense recognized for the Three and Nine Months ended September 30, 2022 and 2021 was approximately \$28,300 and \$80,300 for 2022 and \$23,700 and \$71,200 for 2021, respectively.

The following table presents supplemental balance sheet information related to operating leases as of September 30, 2022 and December 31, 2021:

	Balance Sheet Line Item	September 30, 2022	December 31, 2021
Assets			
ROU assets	Right of use asset, net	\$ 289,468	\$ 59,969
Total lease assets		<u>\$ 289,468</u>	<u>\$ 59,969</u>
Liabilities			
Current lease liabilities		\$	\$
	Lease liability	90,004	68,002
Long-term lease liabilities	Lease liability	203,211	-
Total lease liabilities		<u>\$ 293,215</u>	<u>\$ 68,002</u>
Weighted-average remaining lease term (in years)		2.9	0.6
Weighted-average discount rate		7.50 %	6.55 %

The following table presents supplemental cash flow information and non-cash activity related to operating leases for the Nine Months ended September 30, 2022 and 2021:

	For the Nine Months Ended September 30,	
	2022	2021
Operating cash flow information		
Cash paid for amounts included in the measurement of lease liabilities	\$ (75,574)	\$ (76,656)
Non-cashflow information		
ROU assets and operating lease obligation recognized	\$ 300,787	\$ -

The following table presents maturities of operating lease liabilities on an undiscounted basis as of September 30, 2022:

	Operating Leases
2022 (excluding the nine months ended September 30, 2022)	\$ 28,344
2023	108,039
2024	113,794
2025	77,733
(less: imputed interest)	(34,695)
	<u>\$ 293,215</u>

Legal Proceedings

Except as described below, we are not currently a party to material pending or known threatened litigation proceedings. However, we frequently become party to litigation in the ordinary course of business, including either the prosecution or defense of claims arising from contracts by and between us and client Associations. Regardless of the outcome, litigation can have an adverse impact on us because of prosecution, defense, and settlement costs, diversion of management resources and other factors.

The Company accrues for contingent obligations, including estimated legal costs, when the obligation is probable and the amount is reasonably estimable. As facts concerning contingencies become known, the Company reassesses its position and makes appropriate adjustments to the consolidated financial statements. Estimates that are particularly sensitive to future changes include those related to tax, legal, and other regulatory matters.

On March 9, 2022, legal counsel to a purported stockholder of the Company threatened to file a direct and derivative complaint alleging breaches of fiduciary duty by the Company's officers and directors, primarily with respect to (i) the Amended and Restated Employment Agreements entered into by the Company with each of Mr. Rodgers and Mr. Russell in October 2021; (ii) the approval of actions taken at our 2021 annual meeting of stockholders in December 2021; (iii) payments made to Business Law Group, P.A. in

exchange for services provided pursuant to the Services Agreement between the Company and Business Law Group; and (iv) strategic advisory agreements entered into by us in connection with our planned cryptocurrency mining business. On May 20, 2022, the Company and the purported stockholder agreed to a settlement of the stockholder's alleged claims under which the Company is required to seek a new independent director to replace Joel Rodgers within six months of the settlement date, engage a compensation consultant to review certain sections of the Company's executive employment agreements within ninety days of the settlement date, make changes in response to the consultant's recommendation within six months of the settlement date and pay the attorney fees and other related legal costs incurred by the counterparty in an amount of \$275,000. The settlement payment is included within "Professional Fees" within our consolidated statements of operations for the Nine Months ended September 30, 2022.

In October 2021, we entered into a sale and purchase agreement (the "Uptime Purchase Agreement") with Uptime Armory LLC ("Uptime") pursuant to which US Digital agreed to purchase, and Uptime agreed to supply to US Digital, an aggregate of 18 modified 40-foot cargo containers ("POD5ive containers") that will be designed to hold and operate 280 S19 Pro Antminers manufactured by Bitmain. The purchase price of the POD5ive containers totals \$3.15 million, of which \$2.4 million or 75% was paid in 2021 as a non-refundable down payment and the remaining 25% was paid after Uptime delivered a "notice of completion" of the equipment. No containers have been delivered as of September 30, 2022.

In October 2021, US Digital also entered into the Hosting Agreement to host the Company's 18 POD5ive containers at a secure location and provide power, maintenance and other services specified in the contract for 6 cents per kilowatt with a term of one year. Under the Hosting Agreement we paid a deposit of \$0.8 million in 2021 and were required to pay an additional deposit for each container three months prior to delivery at the hosting site of \$44 thousand and a final deposit for each container one month prior to arrival at the hosting site of \$44 thousand. The deposits paid for hosting services under the Hosting Agreement are refundable. On June 29, 2022, the Company and Uptime Hosting LLC entered into a Release and Termination Agreement in which the Hosting Agreement was terminated and Uptime Hosting LLC agreed to pay the \$0.8 million. The \$0.8 million deposit paid for hosting services under the Hosting Agreement is included within Prepaid expenses and other assets on the consolidated balance sheet as of September 30, 2022. However, the \$0.8 million deposit has not been returned, and on September 2, 2022, we filed in Florida circuit court a legal action against Uptime Hosting LLC in an action styled *US Digital Mining and Hosting Co, LLC v. Uptime Hosting, LLC* (Fla. 13th Cir. Ct. Sept. 2, 2022) for the return of the deposit and other damages, alleging breach of contract and violation of the Florida Deceptive and Unfair Trade Practices Act. Uptime Hosting LLC has answered the complaint with affirmative defenses and counterclaims for fraudulent inducement and rescission, which we believe are without merit. The Company has not accrued a loss contingency related to this matter based on management's assessment of the collectability of the refundable deposit.

On November 8, 2022, we filed an action in Florida circuit court against Uptime Armory, LLC and Bit5ive, LLC in a case styled *US Digital Mining and Hosting Co, LLC v. Uptime Amory, LLC and Bit5ive, LLC* (Fla. 11th Cir. Ct., November 8, 2022). In that action, we alleged breach of contract and violation of the Florida Deceptive and Unfair Trade Practices Act and are seeking, among other things, damages of \$3.15 million for non-delivery of the 18 POD5ive containers. The defendants in this action have not yet answered the complaint.

Note 6. Stockholders' Equity

Stock Options

The 2015 Omnibus Incentive Plan provides for the issuance of stock options, stock appreciation rights, performance shares, performance units, restricted stock, restricted stock units, shares of our common stock, dividend equivalent units, incentive cash awards or other awards based on our common stock. Awards may be granted alone or in addition to, in tandem with, or (subject to the 2015 Omnibus Incentive Plan's prohibitions on repricing) in substitution for any other award (or any other award granted under another plan of ours or of any of our affiliates).

The following is a summary of the stock option plan activity during the Nine Months ended September 30, 2022 and 2021:

	2022		2021	
	Number of Options	Weighted Average Exercise Price	Number of Options	Weighted Average Exercise Price
Options Outstanding at Beginning of the year	3,956,827	\$ 6.22	3,860	\$ 302.55
Granted	-	-	-	-
Exercised	-	-	-	-
Adjustment	-	-	-	-
Forfeited	-	-	-	-
Options Outstanding at September 30,	<u>3,956,827</u>	<u>\$ 6.22</u>	<u>3,860</u>	<u>\$ 302.55</u>
Options Exercisable at September 30,	<u>37,794</u>	<u>\$ 34.60</u>	<u>3,860</u>	<u>\$ 302.55</u>

Stock compensation expense recognized for the Three and Nine Months ended September 30, 2022 was approximately \$ 3.6 million and \$10.9 million, respectively, and \$nil for the Three and Nine Months ended September 30, 2021. There was \$6.9 million of unrecognized compensation cost associated with unvested stock options as of September 30, 2022.

The aggregate intrinsic value of the outstanding common stock options as of each of September 30, 2022 and December 31, 2021 was approximately \$0 and \$0, respectively.

Stock Issuance

In the year ended December 31, 2021, the Company issued 73,940 shares to management as part of their employment contracts of which \$229,500 was expensed. The shares were physically issued in February 2022.

The Company issued 200,000 shares on November 4, 2021 pursuant to an agreement that is for one year with two vendors who provide consulting in the blockchain and crypto currency field. The total fair value of the stock at the time of issuance was approximately \$1,318,000 of which we expensed approximately \$329,500 and approximately \$988,500 during the Three and Nine Months ended September 30, 2022, respectively.

Warrants

The following is a summary of the warrant activity during the Nine Months ended September 30, 2022 and 2021:

	2022		2021	
	Number of Warrants	Weighted Average Exercise Price	Number of Warrants	Weighted Average Exercise Price
Warrants outstanding at beginning of the year	7,702,441	\$ 5.00	2,718,012	\$ 4.20
Granted	-	-	-	-
Exercised	-	-	(2,326,112)	4.08
Terminated	(25,000)	4.50	-	-
Warrants outstanding and exercisable at September 30,	<u>7,677,441</u>	<u>\$ 5.00</u>	<u>391,900</u>	<u>\$ 4.35</u>

During the Nine Months ended September 30, 2022, 25,000 warrants expired. During the Nine Months ended September 30, 2021, the Company received approximately \$9.5 million upon the exercise by warrant holders of warrants for approximately 2.3 million shares. There was also a cashless warrant exercise for approximately 129,800 shares on January 29, 2021. The aggregate intrinsic value of the outstanding common stock warrants as of September 30, 2022 and December 31, 2021 was approximately \$0 and \$177,000, respectively.

Note 7. Investments

Short-term Investments – convertible debt securities

The Company entered into an agreement with BORQS Technologies Inc. (“Borqs”) (Nasdaq: BRQS) in February 2021 under which the Company agreed to purchase Senior Secured Convertible Promissory Notes (“Notes”) of Borqs up to an aggregate principal amount of \$5 million. The Company’s purchase of the Notes was a part of a larger transaction in which an aggregate of \$20 million in Notes were sold by Borqs in a private transaction to several institutional and individual investors, including the Company. The Notes become due in February 2023, have an annual interest rate of 8%, are convertible into ordinary shares of Borqs at a 10% discount from the market price, and have 90% warrant coverage (with the warrants exercisable at 110% of the conversion price. The Company received 2,922,078 warrants which had a nominal value on the grant date. One-third of the Notes (\$1,666,667) were funded by the Company at the execution of definitive agreements for the transaction, and two-thirds of the Notes (\$3,333,333) were purchased and funded upon the satisfaction of certain conditions, including effectiveness of a registration statement that was deemed effective on May 3, 2021 and the Company completed this funding on May 6, 2021. In June 2021, the Company exercised a cashless exercise of the Borqs warrants and received 5,956,544 common shares of Borqs. The Company subsequently sold those Borqs common shares in June 2021 and recognized \$8.5 million in proceeds, all of which was recognized as a realized gain on securities in 2021.

During the three months ended September 30, 2021, the Company converted \$4,100,000 of the Borqs convertible note plus accrued interest of \$131,760 into 5,960,829 shares. As of September 30, 2021 the Company considered the fair value of the Borq convertible note to be equal to the fair value of the stock on September 30, 2021 or \$0.592 per share times the number of shares that it could be converted into based on a conversion price of \$0.6534 or 1,422,091 shares which had a fair value of \$841,878. The re-measurement resulted in an unrealized loss of \$87,316 included within “Unrealized loss on convertible debt security” for the Three and Nine months ended September 30, 2021. The Company classified the 5,960,829 shares as marketable securities and subsequently sold 587,530 shares in the nine months ending September 30, 2021 and 477,405 shares were sold during the fourth quarter of 2021.

The remaining 4,895,894 shares were sold during the first quarter of 2022 which resulted in a realized loss of \$395 thousand which is reflected in ‘Realized gain on securities’ in the consolidated statements of operations within the Nine Months ended September 30, 2022. The remaining principal amount of the Notes plus accrued interest through the date of conversion (\$965,096) was converted into common shares of Borqs at a conversion price of \$0.25 per share or 3,863,200 shares. A gain of \$287,778 was recognized on the conversion of the convertible debt to common shares and is included within “Realized gain on convertible debt securities” in the consolidated statements of operations for the Nine Months ended September 30, 2022. Subsequent to the conversion, the 3,863,200 shares were sold which resulted in a realized gain of \$45 thousand which is included within ‘Realized gain on securities’ in the consolidated statements of operations for the Nine Months ended September 30, 2022.

Short-term investments in convertible debt securities consist of the following:

	September 30, 2022	December 31, 2021	September 30, 2021
Convertible note	\$ -	\$ 539,351	\$ 841,878
End of period	\$ -	\$ 539,351	\$ 841,878

	September 30, 2022	September 30, 2021
Beginning of year	\$ 539,351	\$ -
Investment in convertible debt security	-	5,000,000
Accrued interest income on convertible debt security	17,753	160,954
Unrealized loss on convertible debt security	-	(87,316)
Convertible debt and interest converted into marketable shares	(844,882)	(4,231,760)
Realized gain on conversion into marketable shares	287,778	-
End of period	<u>\$ -</u>	<u>\$ 841,878</u>

In December 2020, the Company entered into a Loan Agreement (the “Investor Loan Agreement”) with a private investor (“Investor”) pursuant to which the Investor agreed to provide consulting services and make one or more non-recourse loans to the Company in a principal amount of up to the purchase price of the Borqs loan receivables purchased by the Company. The Investor Loan Agreement

does not provide a fixed rate of interest, and the Company and Investor agreed to split the net proceeds from the Company sales of the settlement shares, with the Company receiving one-third of the net proceeds after a return of Investor's principal and the Investor receiving return of principal plus two-thirds of the net proceeds thereafter.

As part of that transaction in which funding began in January 2021 the Company recognized a \$5.7 million gain on the Borqs loan receivables loan transaction in which we acquired \$18.2 million of Borqs debt for \$15.5 million and converted the debt into Borqs common stock and subsequently sold such shares for \$32.6 million, provided \$11.3 million to the Investor and realized a \$5.7 million gain. That transaction was completed by September 30, 2021.

Note Receivable – related party

On February 1, 2022, LMAO issued an unsecured promissory note to LMFAO Sponsor LLC, pursuant to which LMAO may borrow up to an aggregate principal amount of \$500,000 to be used for a portion of LMAO's expenses. On July 28, 2022 (effective as of June 30, 2022), the aggregate principal limit was increased to \$1,750,000. The loan was non-interest bearing, unsecured and due at the earlier of the 24 month anniversary of LMAO's initial public offering or the closing of its initial business combination.

As of September 30, 2022, LMAO had drawn down \$1,750,000 under the promissory note with LMFAO Sponsor LLC to pay for offering expenses.

On July 29, 2022, LMAO issued a press release announcing that its board of directors elected to extend the date by which LMAO has to consummate a business combination from July 29, 2022 to October 29, 2022 (the "Extension"), as permitted under LMAO's Amended and Restated Certificate of Incorporation. In connection with the Extension, LMFAO Sponsor deposited an aggregate of \$1,035,000 (representing \$0.10 per public share of LMAO) into LMAO's trust account on July 29, 2022. This deposit was made in respect of a non-interest bearing loan to LMAO (the "Extension Loan").

In connection with the closing of the LMAO Business Combination, on October 28, 2022, Sponsor and Seastar Medical Holding Corporation amended, restated, and consolidated (i) the original Promissory Note, dated July 29, 2022, issued by LMAO to Sponsor in the principal amount of \$1,035,000 and (ii) the original Amended and Restated Promissory Note, effective June 30, 2022, issued by LMAO to Sponsor in the principal amount of \$1,750,000 (collectively, the "Original Sponsor Notes"), by entering into one consolidated amended and restated promissory note with an aggregate principal amount of \$2,785,000 (the "Amended Sponsor Note"). The amendment extends the maturity date of the Original Sponsor Notes to October 30, 2023. Refer to Note 11.

Short-term investments – debt securities

The Company entered into a secured promissory note and loan agreement with Symbiont.IO, Inc. ("Symbiont") on December 1, 2021 under which the Company agreed to lend Symbiont an aggregate principal amount of up to \$3 million, of which \$2 million was drawn. The outstanding principal amount under the note will bear interest at a rate of 16% per annum. The outstanding principal, plus any accrued and unpaid interest, becomes due and payable on December 1, 2022. The Symbiont note is secured by a first priority perfected security interest in the assets of Symbiont. Concurrently with the execution of the Symbiont note, the Company and Symbiont entered into a First Refusal and Purchase Option Agreement, dated December 1, 2021 (the "ROFR Agreement"), to provide the Company with certain rights relating to the potential purchase of the capital stock or assets of Symbiont. Pursuant to the terms of the ROFR Agreement, in the event that Symbiont expects to accept a third-party offer that would result in a sale of Symbiont, then the Company will have the first right and option to purchase, upon the same terms and conditions as the third-party offer, the assets or capital stock of Symbiont, subject to certain terms and exclusions as described in the ROFR Agreement. The Company's rights under the ROFR Agreement are assignable to third parties. The ROFR Agreement will expire on December 1, 2022. Upon the occurrence of any event of default, the Company may, under its sole and absolute discretion, elect to convert the total outstanding principal and accrued but unpaid interest into shares of common stock of Symbiont at a conversion price per share equal to \$3.0642 (subject to adjustment for any stock splits, reverse stock splits and similar changes in the capital stock of Symbiont). As of September 30, 2022 and December 31, 2021, there was \$267 thousand and \$27 thousand of accrued interest on the Symbiont loan included in Short-term investments – debt securities.

As part of a \$2 million loan to Symbiont in December 2021, the Company received 700,000 warrants. Each warrant is immediately exercisable at a purchase price of \$3.0642 per share of Common Stock, subject to adjustment in certain circumstances, and will expire on December 1, 2026. The Company determined the warrants to have a nominal value at inception and as of September 30, 2022 due to lack of marketability.

On September 9, 2022, the Company entered into a Credit Agreement with SeaStar Medical pursuant to which the Company agreed to make advances to SeaStar Medical of up to \$700,000 for general corporate purposes at an interest rate equal to 15% per annum. All advances made to SeaStar Medical under the Credit Agreement and accrued interest are due and payable to LMFA on the maturity date. The maturity date of the loan is the earlier of (a) October 25, 2022, (b) the consummation of the Business Combination with LMAO, and (c) the termination of the Merger Agreement with LMAO. As of September 30, 2022, SeaStar Medical has borrowed

\$350,000 under the Credit Agreement. As of September 30, 2022 and December 31, 2021, there was \$3 thousand and nil of accrued interest on the Seastar Medical loan included in Short-term investments – debt securities.

	September 30, 2022	December 31, 2021	September 30, 2021
Symbiont.IO note receivable	\$ 2,266,521	\$ 2,027,178	\$ -
Seastar Medical note receivable	\$ 352,771	\$ -	\$ -
End of period	<u>\$ 2,619,292</u>	<u>\$ 2,027,178</u>	<u>\$ -</u>

	September 30, 2022	September 30, 2021
Beginning of year	\$ 2,027,178	\$ -
Investment in Seastar Medical note receivable	350,000	-
Accrued interest income on debt securities	242,114	-
Unrealized loss	-	-
End of period	<u>\$ 2,619,292</u>	<u>\$ -</u>

Marketable Securities

Our marketable equity securities are publicly traded stocks measured at fair value using quoted prices for identical assets in active markets and classified as Level 1 within the fair value hierarchy. Marketable equity securities as of September 30, 2022 and December 31, 2021 are as follows:

	Cost	Cost of Shares Sold	Gross Unrealized Gain (Loss)	Fair Value
Marketable equity securities, September 30, 2022	\$ 2,976,933	\$ (2,915,813)	\$ (36,900)	\$ 24,220
Marketable equity securities, December 31, 2021	\$ 4,766,349	\$ (1,246,708)	\$ (1,387,590)	\$ 2,132,051

During the Three and Nine Months ended September 30, 2022, the Company sold 0 shares and 8,759,094 shares, respectively, of Borqs shares for approximately nil and \$2.3 million, respectively. The Company realized a net gain (loss) of nil and (\$350) thousand related to the sale of securities for the Three and Nine Months ended September 30, 2022, respectively. The net gain (loss) is included within "Realized gain (loss) on securities" within our consolidated statements of operations.

Long-term Investments

In connection with LMF Acquisition Opportunities Inc ("LMAO") initial public offering in January 2021, the Company's affiliate LMFA Sponsor LLC purchased an aggregate 5,738,000 private placement warrants from LMAO ("Private Placement Warrants") at a price of \$1.00 per whole warrant. Each Private Placement Warrant is exercisable for one share of LMAO's Class A common stock at a price of \$11.50 per share, and as such meets the definition of a derivative as outlined within ASC 815, *Derivatives and Hedging*. The Private Placement Warrants are recorded at fair value and are classified in long-term "Investments" on the consolidated balance sheet. The fair value of the Private Placement Warrants is classified as level 3 in the fair value hierarchy as the calculation is dependent upon company specific adjustments to the observable trading price of LMAO's public warrants for lack of marketability and related risk of forfeiture should no business combination occur. Subsequent changes in fair value will be recorded in the income statement during the period of the change. As of September 30, 2022 and 2021, our re-measurement resulted in an unrealized loss of approximately \$194 thousand and \$1,651 thousand for the Three and Nine Months ended September 30, 2022 and approximately \$184 thousand unrealized

loss and \$3,626 thousand unrealized loss for the Three and Nine Months ended September 30, 2021. The unrealized loss is included within "Unrealized gain (loss) on investment and equity securities" within our consolidated statements of operations.

Long-term investments consist of the following:

	September 30, 2022	December 31, 2021	September 30, 2021
LMF Acquisition Opportunities Inc. warrants	\$ 322,246	\$ 1,973,413	\$ 2,111,584
End of period	<u>\$ 322,246</u>	<u>\$ 1,973,413</u>	<u>\$ 2,111,584</u>
	September 30, 2022		September 30, 2021
Beginning of year	\$ 1,973,413		\$ -
Investments in affiliate	-		5,738,000
Unrealized gain (loss) on investment in affiliate	(1,651,167)		(3,626,416)
End of period	<u>\$ 322,246</u>		<u>\$ 2,111,584</u>

Investment in Unconsolidated Affiliates

LMF Acquisition Opportunities Inc.

The Company is the sponsor of LMF Acquisition Opportunities, Inc. ("LMAO"), a special purpose acquisition company that completed an initial public offering in January 2021. Prior to LMAO's initial public offering, LMFA Sponsor LLC ("Sponsor"), a 70% owned subsidiary of the Company, organized and initially capitalized LMAO by a \$25,000 purchase of Class B shares par value \$0.0001 per share, of LMAO. At the time of the initial public offering of LMAO, Sponsor purchased Private Placement Warrants that allow it to purchase 5,738,000 shares of Class A common stock at an exercise price of \$11.50. The Class B shares and Private Placement Warrants were issued to and are held by Sponsor. The shares of Class B common stock of LMAO held by Sponsor will automatically convert into shares of LMAO's Class A common stock on a one-for-one basis at the time of LMAO's initial business combination and are subject to certain transfer restrictions.

The registration statement for LMAO's initial public offering (the "LMAO IPO") was declared effective on January 25, 2021 and on January 28, 2021, LMAO consummated the LMAO IPO with the sale of 10,350,000 units (the "Units" and, with respect to the shares of Class A common stock included in the Units sold, the "Public Shares"), at \$10.00 per Unit, generating gross proceeds of \$103,500,000. The Units trade on the NASDAQ Capital Market under the ticker symbol "LMAOU". After the securities comprising the units began separate trading on March 18, 2021, the shares of Class A common stock and warrants were listed on NASDAQ under the symbols "LMAO" and "LMAOW," respectively. Simultaneously with the closing of the LMAO IPO, LMAO consummated the sale of the Private Placement Warrants at a price of \$1.00 per Private Placement Warrant in a private placement to Sponsor generating gross proceeds of \$5,738,000.

As a result of the LMAO IPO, we ceased having a controlling financial interest in LMAO as of January 28, 2021. Additionally, as our retained investment in LMAO qualifies for equity-method accounting, we were required to remeasure our retained interest in LMAO at fair value and include any resulting adjustments as part of a gain or loss recognized on deconsolidation. The fair value calculation related to our retained interest in LMAO is dependent upon company-specific adjustments applied to the observable trading price of LMAO's Class A common stock.

The Company's investment in LMAO is held through a 69.5% equity interest in Sponsor. The LMAO IPO closed on January 28, 2021 and proceeds from LMAO's IPO totaled \$103.5 million. If LMAO does not complete a business combination within 18 months from the closing of LMAO's IPO, the proceeds from the sale of the Private Placement Warrants (after LMAO IPO transaction costs) will be used to fund the redemption of the shares sold in the LMAO IPO (subject to the requirements of applicable law), and the private warrants will expire without value. The Sponsor holds approximately 20% of the total common shares (Class A and Class B) in LMAO along with the 5,738,000 Private Placement Warrants. The Sponsor is managed by the Company. The Company has determined that as a result of the LMAO IPO, we ceased having a controlling financial interest in LMAO as of January 25, 2021. The Company, therefore, accounts for its interest in LMAO under the equity method of accounting. Additionally, as our retained investment in LMAO qualifies for equity-method accounting, we were required to remeasure our retained interest at fair value and include any resulting adjustments as part of a gain or loss recognized on deconsolidation. The fair value calculation related to our retained interest in LMAO is dependent upon company-specific adjustments applied to both the observable trading price of LMAO's Class A common stock and the related risk of forfeiture should LMAO not consummate a business combination.

On April 21, 2022, LMAO entered into an Agreement and Plan of Merger with LMF Merger Sub, Inc., a Delaware corporation and direct, wholly owned subsidiary of LMAO, and SeaStar Medical, Inc., a Delaware corporation.

Due to the progression of the pending merger with SeaStar Medical, Inc. the Company recalculated the fair value of our interest in LMAO which included a reassessment of the risk of forfeiture. Based on the work performed, we concluded that the risk of forfeiture has decreased and the value of our retained interest has increased. As a result of the remeasurement of our retained interest in LMAO, we recognized an unrealized gain on securities of \$12.7 million and \$4.6 million for the Nine Months ended September 30, 2022 and 2021, within "Unrealized gain (loss) on investment and equity securities" within our consolidated statements of operations.

	September 30, 2022	December 31, 2021	September 30, 2021
LMF Acquisition Opportunities Inc. common stock	\$ 17,362,125	\$ 4,676,130	\$ 4,676,130
End of period	<u>\$ 17,362,125</u>	<u>\$ 4,676,130</u>	<u>\$ 4,676,130</u>

	September 30, 2022	September 30, 2021
Beginning of year	\$ 4,676,130	\$ 25,000
Unrealized gain on investment in affiliate	12,685,995	4,651,130
End of period	<u>\$ 17,362,125</u>	<u>\$ 4,676,130</u>

The net unrealized gain (loss) on securities from the Company's investment in LMAO's Class B shares and warrants totaled a (\$194) thousand loss and \$11.0 million gain, respectively for the Three and Nine Months ended September 30, 2022 and (\$123) thousand loss and \$1.0 million gain for the Three and Nine Months ended September 30, 2021.

Note 8. Deposits on Mining Equipment and Hosting Services

As further described in Note 1, the Company has entered into a series of mining machine purchase agreements, hosting and colocation service agreements in association with our cryptocurrency mining operations which required deposits to be paid in advance of the respective asset or service being received.

The Company classifies deposit payments within Deposits on mining equipment and hosting services in the consolidated balance sheet. As mining machines are received, the respective cost of the mining machines plus the related shipping and customs fees are reclassified from Deposits on mining equipment and hosting services to Fixed assets, net in the consolidated balance sheet. Refer to Note 9. As of September 30, 2022 and December 31, 2021, the Company has a total of approximately \$10.5 and \$16.8 million, respectively, classified as Deposits on mining equipment and hosting services and approximately \$22.0 million and \$0, respectively, of mining machines classified as Fixed assets, net in the consolidated balance sheet under these payment arrangements.

Note 9. Fixed Assets, net

The components of fixed assets as of September 30, 2022 and December 31, 2021 are as follows:

	Useful Life (Years)	September 30, 2022	December 31, 2021
Mining machines	5	\$ 21,986,382	-
Furniture, computer and office equipment	3-5	216,312	199,786
Gross fixed assets		22,202,694	199,786
Less: accumulated depreciation		(226,734)	(181,872)
Fixed assets, net		<u>\$ 21,975,960</u>	<u>\$ 17,914</u>

As of September 30, 2022, 4,212 mining machines have been received, of which 848 were placed into service at a Core Scientific location in late September 2022. There are 2,690 machines at a Compute North location with 674 machines awaiting deployment to a Core Scientific location. Depreciation has not commenced on those machines not yet in service.

The Company's depreciation expense recognized for the Three and Nine Months ended September 30, 2022 and 2021 was approximately \$38,600 and \$43,700 for 2022 and \$4,500 and \$9,500 for 2021, respectively.

Note 10. Digital Assets

Digital assets consist of the following:

	September 30, 2022	December 31, 2021	September 30, 2021
Bitcoin	\$ 616,257	\$ -	\$ 898,042
Ether	\$ -	\$ -	\$ 498,196
End of period	<u>\$ 616,257</u>	<u>\$ -</u>	<u>\$ 1,396,238</u>

	September 30, 2022	September 30, 2021
Beginning of Year	\$ -	\$ -
Purchase of digital assets	1,478,441	1,419,958
Production of digital assets	42,157	-
GUSD Earned on digital assets	5,658	-
Sale of digital assets	(505,658)	-
Impairment loss	(404,341)	(23,720)
End of Period	<u>\$ 616,257</u>	<u>\$ 1,396,238</u>

During the Three and Nine months ended September 30, 2021, the Company purchased and received an aggregate of 21 Bitcoin and 170 Ether for approximately \$1,420 thousand. During the Three and Nine months ended September 30, 2021, we recorded \$24 thousand of impairment losses on such digital assets. As of September 30, 2021, the carrying value of our digital assets held was \$1,396 thousand.

During the Three and Nine Months ended September 30, 2022, the Company purchased and received an aggregate of 9.5 and 31 Bitcoin for approximately \$192 thousand and \$978 thousand, respectively. The Company also received approximately 2.2 Bitcoin, in exchange for services provided (Refer to Note 1 for revenue recognition policy). Bitcoin received for services provided were recognized at an amount equal to their fair value on the date received of approximately \$42 thousand. During the Three and Nine Months ended September 30, 2022, we recorded approximately \$27 thousand and \$404 thousand of impairment losses on such digital assets. As of September 30, 2022, the carrying value of our digital assets held was approximately \$616 thousand which reflects the cumulative impairment. The impairment loss was included within "Impairment loss on digital assets" within the consolidated statements of operations.

During the Three and Nine Months ended September 30, 2022, the Company purchased and received an aggregate of \$0 and \$500 thousand, respectively, in Gemini Dollars (GUSD). GUSD earns additional Gemini dollars, of which we earned approximately nil and \$6 thousand GUSD during the Three and Nine Months ended September 30, 2022 which was recorded as "Digital assets other income" in the consolidated statements of operation. During the Three and Nine Months ended September 30, 2022, the Company did not record any impairment losses on GUSD. The Company sold all of the GUSD during the Nine Months ended September 30, 2022 for approximately \$506 thousand, which was equal to its carrying value.

Note 11. Segment Information

The Company applies ASC 280, Segment Reporting, in determining its reportable segments. The Company has two reportable segments: Specialty Finance and Mining Operations. The guidance requires that segment disclosures present the measure(s) used by the CODM to decide how to allocate resources and for purposes of assessing such segments' performance. The Company's CODM uses revenue, income from operations and income before taxes of our reporting segments to assess the performance of the business of our reportable operating segments.

No operating segments have been aggregated to form the reportable segments. The corporate oversight function, and other components that may earn revenues that are only incidental to the activities of the Company are aggregated and included in the "All Other"

category.

The Specialty Finance segment generates revenue from providing funding to nonprofit community associations. The Mining Operations segment generates revenue from the Bitcoin the Company earns through its mining activities.

	Three Months Ended September 30, 2022			Total
	Specialty Finance	Mining Operations	All Other	
Revenue, net	\$ 145,623	\$ 42,157	\$ -	\$ 187,780
Depreciation and Amortization	1,191	36,697	729	38,617
Operating Income (loss)	(290,899)	(122,005)	(4,850,491)	(5,263,395)
Unrealized loss on marketable securities	-	-	(13,000)	(13,000)
Impairment loss on digital assets	-	(870)	(25,764)	(26,634)
Unrealized loss on investment and equity securities	-	-	(194,174)	(194,174)
Interest income	-	-	85,602	85,602
Dividend income	-	-	1,125	1,125
Income (loss) before income taxes	(290,899)	(122,875)	(4,996,702)	(5,410,476)
Fixed Asset Additions	1,612	3,354,895	-	3,356,507

	Nine Months Ended September 30, 2022			Total
	Specialty Finance	Mining Operations	All Other	
Revenue, net	\$ 571,160	\$ 42,157	\$ -	\$ 613,317
Depreciation and Amortization	4,746	36,697	2,275	43,718
Operating income (loss)	(926,114)	(161,418)	(14,579,983)	(15,667,515)
Realized loss on securities	-	-	(349,920)	(349,920)
Realized gain on convertible debt securities	-	-	287,778	287,778
Unrealized loss on marketable securities	-	-	(36,900)	(36,900)
Impairment loss on digital assets	-	(870)	(403,471)	(404,341)
Unrealized gain on investment and equity securities	-	-	11,034,828	11,034,828
Digital assets other income	-	-	5,658	5,658
Interest income	-	-	264,947	264,947
Dividend income	-	-	3,875	3,875
Income (loss) before income taxes	(926,114)	(162,288)	(3,773,188)	(4,861,590)
Fixed Asset Additions	1,612	21,994,846	6,916	22,003,374

	Three Months Ended September 30, 2021			Total
	Specialty Finance	Mining Operations	All Other	
Revenue, net	\$ 223,624	\$ -	\$ -	\$ 223,624
Depreciation and Amortization	4,308	-	174	4,482
Operating Income (loss)	(132,774)	-	(2,061,988)	(2,194,762)
Realized loss on securities	-	-	(173,282)	(173,282)
Unrealized loss on convertible debt security	-	-	(2,588,916)	(2,588,916)
Unrealized loss on marketable securities	-	-	(478,448)	(478,448)
Impairment loss on digital assets	-	-	(23,720)	(23,720)
Unrealized loss on investment and equity securities	-	-	(123,172)	(123,172)
Interest expense	-	-	(3,939)	(3,939)
Interest income	-	-	77,956	77,956
Dividend income	-	-	738	738
Income (loss) before income taxes	(132,774)	-	(5,374,771)	(5,507,545)
Fixed Asset Additions	1,022	-	-	1,022

	Nine Months Ended September 30, 2021			Total
	Specialty Finance	Mining Operations	All Other	
Revenue, net	\$ 567,427	\$ -	\$ -	\$ 567,427
Depreciation and Amortization	9,264	-	212	9,476
Operating Income (loss)	(555,807)	-	(3,841,049)	(4,396,856)
Realized gain (loss) on securities	-	-	13,951,752	13,951,752
Unrealized gain (loss) on convertible debt security	-	-	(87,316)	(87,316)
Unrealized loss on marketable securities	-	-	(478,448)	(478,448)
Impairment loss on digital assets	-	-	(23,720)	(23,720)
Unrealized gain on investment and equity securities	-	-	1,024,714	1,024,714
Interest income	-	-	164,895	164,895
Dividend income	-	-	738	738
Forgiveness of Debt	-	-	157,251	157,251
Income (loss) before income taxes	(555,807)	-	10,868,164	10,312,357
Fixed Asset Additions	2,118	-	2,089	4,207

Note 12. Subsequent Events

On October 3, 2022, the Company and Core entered into an agreement to host an additional 1,552 mining machines in which the Company is required to pay total deposits of approximately \$1.2 million of which \$0.2 million was paid on October 5, 2022 and the remaining amounts will be paid in November 2022. On October 5, 2022, the Company and Core entered into an additional agreement to host an additional 200 mining machines in which the Company is required to pay total deposits of approximately \$0.2 million which was paid on November 15, 2022.

On October 28, 2022, LMAO through the Sponsor, consummated the previously announced business combination transaction (the “LMAO Business Combination”) contemplated by that certain Agreement and Plan of Merger (the “Merger Agreement”), dated April 21, 2022, by and among LMAO, LMF Merger Sub, Inc., a Delaware corporation and direct wholly owned subsidiary of LMAO (“Merger Sub”), and SeaStar Medical, Inc., a Delaware corporation (“SeaStar Medical”). Pursuant to the Merger Agreement, upon the closing of the Business Combination, SeaStar Medical was merged with and into Merger Sub, with SeaStar Medical continuing as the surviving entity in the merger as a wholly-owned subsidiary of LMAO and with LMAO changing its name in connection with the merger to SeaStar Medical Holdings Corporation (“SMHC”).

In connection with the closing of the LMAO Business Combination, on October 28, 2022, Sponsor and SMHC amended, restated, and consolidated (i) the original Promissory Note, dated July 29, 2022, issued by LMAO to Sponsor in the principal amount of \$1,035,000 and (ii) the original Amended and Restated Promissory Note, effective June 30, 2022, issued by LMAO to Sponsor in the principal amount of \$1,750,000 (collectively, the “Original Sponsor Notes”), by entering into one consolidated amended and restated promissory note with an aggregate principal amount of \$2,785,000 (the “Amended Sponsor Note”).

Additionally, on October 28, 2022, LMFA and SeaStar Medical amended and restated the original Promissory Note, dated September 9, 2022, issued by SeaStar Medical to LMFA in the principal amount of \$700,000 (the “Original LMFA Note”), by entering into an amended and restated promissory note (the “Amended LMFA Note”).

The Amended Sponsor Note and the Amended LMFA Note (collectively, the “Notes”) extend the maturity date of the Original Sponsor Notes and Original LMFA Note, respectively, from the closing date of the Business Combination to October 30, 2023, subject to mandatory prepayments equal to a specified percentage of funds raised by SMHC prior to maturity. The Notes both bear interest at a per annum rate equal to Seven Percent (7.0%), simple interest, and pursuant to Security Agreements entered into by the parties (the “Security Agreements”), are secured by all of the assets of SMHC and SeaStar Medical (excluding certain intellectual property rights).

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

This Management's Discussion and Analysis should be read in conjunction with the Condensed Consolidated Financial Statements and Notes for the Nine Months ended September 30, 2022, and with the Annual Report on Form 10-K for the year ended December 31, 2021

Forward-Looking Statements

This Quarterly Report on Form 10-Q contains certain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. All statements other than statements of historical facts included in this Quarterly Report on Form 10-Q, including, without limitation, statements regarding our future financial position, business strategy, budgets, projected revenues, projected costs, and plans and objectives of management for future operations, are forward-looking statements. Forward-looking statements generally can be identified by the use of forward-looking terminology such as "may," "will," "expects," "intends," "plans," "projects," "estimates," "anticipates," "believes," or the negative thereof or any variation thereon or similar terminology or expressions.

We have based these forward-looking statements on our current expectations and projections about future events. These forward-looking statements are not guarantees and are subject to known and unknown risks, uncertainties, and assumptions about us that may cause our actual results, levels of activity, performance, or achievements to be materially different from any future results, levels of activity, performance, or achievements expressed or implied by such forward-looking statements. Important factors which could materially affect our results and our future performance include, without limitation:

- *our ability to retain the listing of our securities on the Nasdaq Capital market,*
- *our ability to obtain funds to purchase receivables,*
- *the early stage of our cryptocurrency mining business and our lack of operating history in such business,*
- *volatility surrounding the value of Bitcoin and other cryptocurrencies,*
- *the uncertainty surrounding the cryptocurrency mining business in general,*
- *bankruptcy or financial problems of our hosting vendors in our mining business,*
- *reliance to date on a single model of Bitcoin miner,*
- *the ability to scale our mining business,*
- *our ability to purchase defaulted consumer Association receivables at appropriate prices,*
- *competition to acquire such receivables,*
- *our dependence upon third party law firms to service our accounts,*
- *our ability to manage growth or declines in the our business,*
- *changes in government regulations that affect our ability to collect sufficient amounts on our defaulted consumer Association receivables,*
- *the impact of class action suits and other litigation on our business or operations,*
- *our ability to keep our software systems updated to operate our business,*
- *our ability to employ and retain qualified employees,*
- *our ability to establish and maintain internal accounting controls,*
- *changes in the credit or capital markets,*
- *changes in interest rates,*
- *deterioration in economic conditions,*
- *the spread of the novel coronavirus (COVID-19), its impact on the economy generally and, more specifically, the specialty finance industries,*
- *negative press regarding the debt collection industry which may have a negative impact on a debtor's willingness to pay the debt we acquire, and*

•other factors set forth under “Item 1A. Risk Factors” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2021 and Item 1A of this Quarterly Report on Form 10-Q.

Except as required by law, we assume no duty to update or revise any forward-looking statements.

Overview

LM Funding America, Inc. (“we”, “our”, “LMFA” or the “Company”) currently has two lines of business: a specialty finance business and our recently commenced cryptocurrency mining business.

With respect to our specialty finance business, the Company has historically engaged in the business of providing funding to nonprofit community associations primarily located in the state of Florida. We offer incorporated nonprofit community associations, which we refer to as “Associations,” a variety of financial products customized to each Association’s financial needs. Our original product offering consists of providing funding to Associations by purchasing their rights under delinquent accounts that are selected by the Associations arising from unpaid Association assessments. Historically, we provided funding against such delinquent accounts, which we refer to as “Accounts,” in exchange for a portion of the proceeds collected by the Associations from the account debtors on the Accounts. In addition to our original product offering, we have started purchasing Accounts on varying terms tailored to suit each Association’s financial needs, including under our New Neighbor Guaranty™ program.

On September 15, 2021, we announced our plan to operate in the Bitcoin mining ecosystem, and we commenced Bitcoin mining operations in September 2022. This business operation deploys our computing power to mine Bitcoin and validate transactions on the Bitcoin network. We believe that developments in Bitcoin mining have created an opportunity for us to deploy capital and conduct large-scale mining operations in the United States. We conduct this business through a wholly owned subsidiary, US Digital Mining and Hosting Co, LLC, a Florida limited liability company (US Digital), which we formed in 2021 to develop and operate our cryptocurrency mining business.

Specialty Finance Business

In our specialty finance business, we purchase an Association’s right to receive a portion of the Association’s collected proceeds from owners that are not paying their assessments. After taking assignment of an Association’s right to receive a portion of the Association’s proceeds from the collection of delinquent assessments, we engage law firms to perform collection work on a deferred billing basis wherein the law firms receive payment upon collection from the account debtors or a predetermined contracted amount if payment from account debtors is less than legal fees and costs owed. Under this business model, we typically fund an amount equal to or less than the statutory minimum an Association could recover on a delinquent account for each Account, which we refer to as the “Super Lien Amount”. Upon collection of an Account, the law firm working on the Account, on behalf of the Association, generally distributes to us the funded amount, interest, and administrative late fees, with the law firm retaining legal fees and costs collected, and the Association retaining the balance of the collection. In connection with this line of business, we have developed proprietary software for servicing Accounts, which we believe enables law firms to service Accounts efficiently and profitably.

Under our New Neighbor Guaranty program, an Association will generally assign substantially all of its outstanding indebtedness and accruals on its delinquent units to us in exchange for payment by us of monthly dues on each delinquent unit. This simultaneously eliminates a substantial portion of the Association’s balance sheet bad debts and assists the Association to meet its budget by receiving guaranteed monthly payments on its delinquent units and relieving the Association from paying legal fees and costs to collect its bad debts. We believe that the combined features of the program enhance the value of the underlying real estate in an Association and the value of an Association’s delinquent receivables.

Because we acquire and collect on the delinquent receivables of Associations, the Account debtors are third parties about whom we have little or no information. Therefore, we cannot predict when any given Account will be paid off or how much it will yield. In assessing the risk of purchasing Accounts, we review the property values of the underlying units, the governing documents of the relevant Association, and the total number of delinquent receivables held by the Association.

Cryptocurrency Mining Business

Cryptocurrency Mining Business

During 2021, we committed to purchasing an aggregate of 5,046 Bitcoin S19J Pro Antminer cryptocurrency mining machines for an aggregate purchase price of \$31.6 million (the “Mining Machines”) from Bitmain. This contract allowed for a reduction in purchase price if Bitcoin price declined prior to shipment. As such, because the price of Bitcoin has declined since we entered into the purchase contract, we have received reductions against the total purchase price. We anticipate we will receive the remaining Mining Machines to be delivered in batches over an estimated delivery timeframe from October 2022 through November 2022. The purchase agreements between us and Bitmain relating to the Mining Machines (the “Bitmain Purchase Agreements”) required us to pay \$7.9 million or 25% of the total purchase price as a non-refundable deposit for the Mining Machines within 7 days of the date of the

signing of the respective Bitmain Purchase Agreements, and additional 35% of the batch price at least 6 months prior to shipment of such batch, and the remaining 40% of each batch price one month prior to the shipment of the batch. We have received 4,212 Mining Machines as of September 30, 2022 under these purchase agreements. Due to the variable nature of the contract, we have been credited an aggregate total of approximately \$7.2 million toward the 40% purchase price that is normally paid upon the shipment of a batch.

On August 31, 2022, the Company committed to purchasing an additional 400 Bitcoin Miner S19J Pro machines from Bitmain for an aggregate purchase price of approximately \$1.3 million. The purchase agreement provides for delivery of the machines in November 2022. As required under the contract, the Company paid the full purchase price within 7 days of the date of the signing of the agreement and the payment is not refundable. This contract is also subject to variable pricing adjustments.

Additionally, on September 20, 2022, the Company committed to purchasing 200 Bitcoin Miner S19 XP machines from Bitmain for an aggregate purchase price of approximately \$1.3 million. Under the provisions of the contract, the machines are expected to be delivered in January 2023. As required under the contract, the Company paid a non-refundable deposit of \$265 thousand within 7 days of the date of the signing of the agreement. An additional 30% payment of the purchase price is due 4 months prior to shipment and the remaining 50% of the purchase price is due 15 days prior to shipment. This contract is also subject to variable pricing adjustments.

During the Nine Months ended September 30, 2022 the Company paid approximately \$12.7 million to Bitmain for deposits related to mining equipment and payments of \$635 thousand were made to various shipping vendors for transportation and customs costs related to the equipment. Since the inception of our contracts with Bitmain, we have paid an aggregate of approximately \$27.0 million to Bitmain and related vendors relating to the purchase of these machines through September 30, 2022, and expect to pay an additional \$1.0 million under the Bitmain contracts through the completion of the delivery of the machines.

In October 2021, we also entered into a sale and purchase agreement (the “Uptime Purchase Agreement”) with Uptime Armory LLC (“Uptime”) pursuant to which US Digital agreed to purchase, and Uptime agreed to supply to US Digital, an aggregate of 18 modified 40-foot cargo containers (“POD5ive containers”) that will be designed to hold and operate 280 S19 Pro Antminers manufactured by Bitmain. The purchase price of the POD5ive containers totals \$3.15 million, of which \$2.4 million or 75% was paid in 2021 as a non-refundable down payment and the remaining 25% was paid after Uptime delivered a “notice of completion” of the equipment. No containers have been delivered as of September 30, 2022.

On the same effective date, US Digital also entered into a hosting agreement with Uptime Hosting LLC (the “Hosting Agreement”) to host the Company’s 18 POD5ive containers at a secure location and provide power, maintenance and other services specified in the contract for 6 cents per kilowatt with a term of one year. Under the Hosting Agreement we paid a deposit of \$0.8 million in 2021 and were required to pay an additional deposit for each container three months prior to delivery at the hosting site of \$44 thousand and a final deposit for each container one month prior to arrival at the hosting site of \$44 thousand. The deposits paid for hosting services under the Hosting Agreement are refundable. On June 29, 2022, the Company and Uptime Hosting LLC entered into a Release and Termination Agreement in which the Hosting Agreement was terminated and Uptime Hosting LLC agreed to pay the \$0.8 million. The \$0.8 million deposit paid for hosting services under the Hosting Agreement is included within Prepaid expenses and other assets on the consolidated balance sheet as of September 30, 2022. However, the \$0.8 million deposit has not been returned, and on September 2, 2022, we filed in Florida circuit court a legal action against Uptime Hosting LLC in an action styled *US Digital Mining and Hosting Co, LLC v. Uptime Hosting, LLC* (Fla. 13th Cir. Ct. Sept. 2, 2022) for the return of the deposit and other damages, alleging breach of contract and violation of the Florida Deceptive and Unfair Trade Practices Act. Uptime Hosting LLC has answered the complaint with affirmative defenses and counterclaims for fraudulent inducement and rescission, which we believe are without merit. The Company has not accrued a loss contingency related to this matter based on management’s assessment of the collectability of the refundable deposit.

On November 8, 2022, we filed an action in Florida circuit court against Uptime Armory, LLC and Bit5ive, LLC in a case styled *US Digital Mining and Hosting Co, LLC v. Uptime Amory, LLC and Bit5ive, LLC* (Fla. 11th Cir. Ct., November 8, 2022). In that action, we alleged breach of contract and violation of the Florida Deceptive and Unfair Trade Practices Act and are seeking, among other things, damages of \$3.15 million for non-delivery of the 18 POD5ive containers. The defendants in this action have not yet answered the complaint.

On June 21, 2022, the Company entered into a Master Agreement, dated effective as of June 20, 2022, with Compute North LLC (“Compute North”) under which Compute North has agreed to host up to 4,200 of US Digital’s Bitcoin Miner S19J Pro machines (100 TH/s) and provide colocation, management and other services (the “Master Agreement”). The term of the Master Agreement is for 60 months, subject to earlier termination in specified circumstances. The Company paid a non-refundable co-location deposit of \$1.3 million on June 21, 2022 under the Master Agreement. Compute North filed for Chapter 11 bankruptcy on September 22, 2022. Compute North has not energized any of our 2,690 machines located at their site.

On September 6, 2022, the Company entered into hosting agreement (the “Core Hosting Agreement”) with Core Scientific Inc. (“Core”) pursuant to which Core agreed to host the Company’s 1,200 Bitcoin Miner S19J Pro machines at a secure location and provide power, maintenance and other services specified in the contract with a term of one year and thereafter automatically renews

for the periods indicated in the Order. As required under the Core Hosting Agreement, the Company paid approximately \$942 thousand as a deposit on September 2, 2022. During September 2022, 848 mining machines were placed into service and we commenced mining operations. These machines are located at one of the Core hosting locations.

Recent Developments

COVID-19 Update

Although COVID-19 is currently not material to our results of operations, there is uncertainty relating to the potential future impact on our business. While our employees currently have the ability and are encouraged to work remotely, such measures have and may continue to have an impact on employee attendance or productivity, which, along with the possibility of employees' illness, may adversely affect our operations. The extent to which COVID-19 impacts our operations, or our ability to obtain financing should we require it, will depend on future developments which are uncertain and cannot be predicted, including new information which may emerge concerning the severity of COVID-19 re-emerge and the actions taken by governments and private businesses to contain COVID-19 to treat its impact, among others. If the disruptions posed by COVID-19 continue for an extended period of time, financial markets may not be available to the Company for raising capital in order to fund future growth. Should the Company not be able to obtain financing when required, in the amounts necessary or under terms which are economically feasible, we may be required to reduce planned future growth and/or the scope of our operations.

Corporate History and Reorganization

The Company was originally organized in January 2008 as a Florida limited liability company under the name LM Funding, LLC. Prior to our initial public offering in 2015, all of our business was conducted through LM Funding, LLC and its subsidiaries. Immediately prior to our initial public offering in October 2015, the members of the LM Funding, LLC contributed all of their membership interests to LM Funding America, Inc., a Delaware corporation incorporated on April 20, 2015 ("LMFA"), in exchange for shares of the common stock of LMFA. Immediately after such contribution and exchange, the former members of LM Funding, LLC became the holders of 100% of the issued and outstanding common stock of LMFA, thereby making LM Funding, LLC a wholly-owned subsidiary of LMFA.

The Company organized two new subsidiaries in 2020: LMFA Financing LLC, a Florida limited liability company, on November 21, 2020, and LMFAO Sponsor LLC, a Florida limited liability company, on October 29, 2020. LMFAO Sponsor LLC organized a subsidiary, LMF Acquisition Opportunities Inc., on October 29, 2020. LM Funding America Inc. organized a subsidiary, US Digital Mining and Hosting Co., LLC., on September 10, 2021.

Results of Operations

The Three Months Ended September 30, 2022 compared with the Three Months Ended September 30, 2021

Revenues

During the Three Months ended September 30, 2022, total revenues decreased by \$36 thousand, to \$188 thousand from \$224 thousand in the Three Months ended September 30, 2021.

Interest on delinquent association fees decreased by \$71 thousand to \$58 thousand for the Three Months ended September 30, 2022 from \$129 thousand Three Months ended September 30, 2021. Underwriting and origination fees for the Three Months ended September 30, 2022 decreased \$17 thousand to \$12 thousand from \$29 thousand for the Three Months ended September 30, 2021. Rental revenues increased in the Three Months ended September 30, 2022 by \$4 thousand to \$41 thousand from \$37 thousand for the Three Months ended September 30, 2021.

Digital mining revenues increased to \$42 thousand for the Three Months ended September 30, 2022 from nil for the Three Months ended September 30, 2021, due to the commencement of our digital mining operations in late September 2022.

Operating Expenses

During the Three Months ended September 30, 2022, operating expenses increased approximately \$3.0 million, to \$5.5 million from approximately \$2.4 million for the Three Months ended September 30, 2021. The increase in operating expenses can be attributed to various factors, including \$3.6 million increase in stock compensation, \$217 thousand increase in professional fees, \$102 thousand increase in selling, general and administrative expense and other operating expense increase of \$119 thousand, offset in part by a decrease in staff costs and payroll of \$1.2 million. The increase in depreciation and amortization expense of \$34 thousand and digital mining cost of revenues of \$39 thousand is related to the commencement of mining operations in late September. The cost of mining includes the cost of hosting site.

Professional fees, excluding fees from the BLG service agreement, for the Three Months ended September 30, 2022 were approximately \$556 thousand compared with approximately \$252 thousand for the Three Months ended September 30, 2021, due primarily to ordinary legal fees and consulting fees related to our digital mining operations. In the ordinary course of our specialty finance business, we are involved in numerous legal proceedings and expenses associated with acquisitions and corporate initiatives. We regularly initiate collection lawsuits, using our network of third-party law firms, against debtors. In addition, debtors occasionally initiate litigation against us.

Legal fees to BLG for the Three Months ended September 30, 2022 were \$159 thousand compared to \$246 thousand for the Three Months ended September 30, 2021. This decrease is primarily due to the lower service fee charge from BLG. See Note 2. Due to Related Party for further discussion regarding the service agreements with BLG.

Other Income/(Loss)

Unrealized gain (loss) on investment and equity securities - the Company's investment in LMAO changed due to the LMAO IPO on January 28, 2021. This resulted in LMAO's deconsolidation from the Company and any changes in fair value will be recorded in the income statement during the period of the change. The Company recognized an unrealized loss on securities of \$194 thousand for the Three Months ended September 30, 2022 as compared to an unrealized loss of \$123 thousand for the Three Months ended September 30, 2021 from the revaluation of LMAO's Class B common stock and Private Placement Warrants.

Unrealized gain (loss) on marketable securities - the company incurred an unrealized loss on marketable securities of \$13 thousand for the Three Months ended September 30, 2022 as compared to an unrealized loss on securities of \$478 thousand for the Three Months ended September 30, 2021.

Impairment of digital assets - the company incurred an impairment of digital assets of \$27 thousand for the Three Months ended September 30, 2022 as compared to \$24 thousand for the Three Months ended September 30, 2021.

Interest (Income) Expense

During the Three Months ended September 30, 2022, the Company generated net interest income of \$86 thousand as compared to \$74 thousand of interest income for the Three Months ended September 30, 2021 due to differences in the rates of return and the amount of outstanding interest-bearing investments.

Income Tax Expense

During the Three Months ended September 30, 2022, the Company generated a \$5.4 million net loss before income taxes. However, due to a change in estimate from the twelve months ended December 31, 2021 that resulted in a limitation on the use of its net operating loss carryforwards, the Company's income tax due was \$1.3 million. The Company recognized a net income tax expense of \$1.3 million for the Three Months ended September 30, 2022. The Company recognized \$12.6 thousand of income tax expense for the Three Months ended September 30, 2021.

Net Income (Loss)

During the Three Months ended September 30, 2022, net loss was approximately (\$6.7) million as compared to net loss of (\$5.5) million for the Three Months ended September 30, 2021.

Net Income (Loss) Attributable to Non-Controlling Interest

The Company owns 69.5% of Sponsor. As such, there is (\$59) thousand net loss for the Three Months ended September 30, 2022 attributable to the Non-Controlling Interest as compared to (\$34) thousand net loss for the Three Months ended September 30, 2021.

Net Income (Loss) Attributable to LM Funding America, Inc.

During the Three Months ended September 30, 2022, net loss was approximately (\$6.7) million as compared to net loss of approximately (\$5.5) million for the Three Months ended September 30, 2021.

Results of Operations

The Nine Months Ended September 30, 2022 compared with the Nine Months Ended September 30, 2021

Revenues

During the Nine Months ended September 30, 2022, total revenues increased by \$46 thousand, to \$613 thousand from \$567 thousand in the Nine Months ended September 30, 2021.

Interest on delinquent association fees increased by \$1 thousand to \$271 thousand for the Nine Months ended September 30, 2022 from \$270 thousand for the Nine Months ended September 30, 2021. Underwriting and origination fees for the Nine Months ended September 30, 2022 decreased \$32 thousand to \$55 thousand from \$87 thousand for the Nine Months ended September 30, 2021. Rental revenues increased in the Nine Months ended September 30, 2022 by \$17 thousand to \$120 thousand from \$103 thousand for the Nine Months ended September 30, 2021.

Digital mining revenues increased to \$42 thousand for the Nine Months ended September 30, 2022 from nil for the Nine Months ended September 30, 2021, due to the commencement of our digital mining operations in late September 2022.

Operating Expenses

During the Nine Months ended September 30, 2022, operating expenses increased approximately \$11,317 thousand, to \$16,281 thousand from \$4,964 thousand for the Nine Months ended September 30, 2021. The increase in operating expenses can be attributed to various factors, including \$10,945 thousand increase in stock compensation, \$1,180 thousand increase in professional fees and other operating expense increase of \$256 thousand offset in part by a \$1,481 thousand decrease in compensation costs excluding stock-based compensation.

Professional fees, excluding fees from the BLG service agreement, for the Nine Months ended September 30, 2022 were approximately \$1,865 thousand compared with approximately \$603 thousand for the Nine Months ended September 30, 2021 due primarily to ordinary legal fees and costs associated with the settlement of a shareholder legal claim and consulting costs related to our digital mining business. In the ordinary course of our specialty finance business, we are involved in numerous legal proceedings and expenses associated with acquisitions and corporate initiatives. We regularly initiate collection lawsuits, using our network of third party law firms, against debtors. In addition, debtors occasionally initiate litigation against us. This included an expense of \$275 thousand during the Nine Months ended September 30, 2022 related to the settlement of a legal claim. See Note 5 Commitments and Contingencies for discussion of the claim.

Legal fees for BLG for the Nine Months ended September 30, 2022 were \$656 thousand compared to \$738 thousand for the Nine Months ended September 30, 2021. Legal fees for the Nine Months ended September 30, 2022 include a \$150 thousand termination fee offset by a reduction in the service fee. See Note 2. Due to Related Party for further discussion regarding the service agreements with BLG.

Other Income (Loss)

Realized loss on marketable securities - the Company recognized a \$350 thousand realized loss on marketable securities for the Nine Months ended September 30, 2022 as compared to a \$13,952 thousand gain for the Nine Months ended September 30, 2021, which was primarily due to a \$5.7 million gain on a transaction with Borqs in which the Company acquired debt of Borqs and converted the debt into Borqs common stock and subsequently sold such shares at a gain and an \$8.5 million gain related to the exercise of Borqs warrants for common shares in Borqs which were subsequently sold.

Realized gain on convertible debt securities - the company incurred a realized gain on convertible debt securities of \$288 thousand for the Nine Months ended September 30, 2022 as compared to nil for the Nine Months ended September 30, 2021.

Unrealized gain (loss) on investment and equity securities - The Company's investment in LMAO changed due to the LMAO IPO on January 28, 2021. This resulted in LMAO's deconsolidation from the Company and any changes in fair value will be recorded in the income statement during the period of the change. The Company recognized an unrealized gain on securities of \$11.0 million for the Nine Months ended September 30, 2022 as compared to an unrealized gain of \$1.0 million for the Nine Months ended September 30, 2021 from the revaluation of LMAO's Class B common stock and Private Placement Warrants. The change was driven primarily by the impact of LMAO's pending merger with Seastar Medical, Inc. on the valuation of LMAO's common shares.

Unrealized gain (loss) on marketable securities - the company incurred an unrealized loss on marketable securities of \$37 thousand for the Nine Months ended September 30, 2022 as compared to an unrealized loss on securities of \$478 thousand for the Nine Months ended September 30, 2021.

Impairment of digital assets - during the Nine Months ended September 30, 2022, the Company purchased and received an aggregate of 31 Bitcoin for approximately \$978 thousand and also received approximately 2.2 Bitcoin, in exchange for digital mining services provided which were valued at approximately \$42 thousand. During the Nine Months ended September 30, 2022, we recorded approximately \$404 thousand of impairment losses on such digital assets as compared to an impairment loss of \$24 thousand for the Nine Months ended September 30, 2021.

Interest (Income) Expense

During the Nine Months ended September 30, 2022, the Company earned net interest income of \$265 thousand as compared to \$164 thousand of interest income for the Nine Months ended September 30, 2021 due to differences in the rates of return and the amount of outstanding interest-bearing investments.

Income Tax Expense

During the Nine Months ended September 30, 2022, the Company generated a \$4.9 million net loss before income taxes. However, due to a change in estimate from the twelve months ended December 31, 2021 that resulted in a limitation on the use of its net operating loss carryforwards, the Company's income tax due was \$1.3 million. The Company recognized a net income tax expense of \$1.3 million for the Nine Months ended September 30, 2022. The Company recognized \$29.9 thousand of income tax expense for the Nine Months ended September 30, 2021.

Net Income (Loss)

During the Nine Months ended September 30, 2022, the net loss was (\$6.2) million as compared to net income of \$10.3 million for the Nine Months ended September 30, 2021.

Net Income Attributable to Non-Controlling Interest

The Company owns 69.5% of Sponsor. As such, there is \$3,373 thousand net income for the Nine Months ended September 30, 2022 attributable to the Non-Controlling Interest as compared to \$285 thousand net income for the Nine Months ended September 30, 2021.

Net Income (Loss) Attributable to LM Funding America, Inc.

During the Nine Months ended September 30, 2022, the net loss was approximately (\$9.5) million as compared to net income of \$10.0 million for the Nine Months ended September 30, 2021.

Liquidity and Capital Resources

General

As of September 30, 2022, we had cash and cash equivalents of \$10.2 million compared with \$32.6 million at December 31, 2021. The Company also had \$24 thousand of marketable securities as of September 30, 2022 compared with \$2.1 million at December 31, 2021.

Cash from Operations

Net cash used by operations was \$1.7 million during the Nine Months ended September 30, 2022 compared with net cash provided by operations of \$5.3 million during the Nine Months ended September 30, 2021. This change in cash provided by operating activities was primarily driven by a \$14.0 million realized gain on securities from the Borqs Note transactions during the Nine Months ended September 30, 2021.

Cash from Investing Activities

For the Nine Months ended September 30, 2022 net cash used in investing activities was \$20.6 million as compared to net cash used in investing activities of \$8.8 million for the Nine Months ended September 30, 2021. During the Nine Months ended September 30, 2022, the Company invested \$16.5 million in deposits for mining equipment, \$978 thousand for digital assets, \$350 thousand for a note receivable and \$2.8 million in related party notes receivable as compared to \$1.6 million in deposits for mining equipment, an investment of \$1.4 million for digital assets and an investment of \$5.7 million in LMF Acquisition Opportunities Inc (a special purpose acquisition corporation) during the Nine Months ended September 30, 2021. The Company reclassified approximately \$22.0 million from Deposits on mining equipment and hosting services to Fixed assets, net in the consolidated balance sheet due to the receipt of 4,212 mining machines during the Nine Months ended September 30, 2022.

Cash from Financing Activities

Net cash used in financing activities was \$0.1 million for the Nine Months ended September 30, 2022 compared to \$9.4 million provided by financing activities for the Nine Months ended September 30, 2021. At September 30, 2022, the Company paid \$115 thousand in repayments of debt. During the Nine Months ended September 30, 2021 the Company received \$9.5 million from the exercise of warrants and paid \$163 thousand in repayments of debt.

Shareholders' Equity

During the Nine Months ended September 30, 2021, holders of our warrants exercised such warrants for approximately 2.3 million shares of common stock for an aggregate of \$9.5 million.

Debt

Debt of the Company consisted of the following at September 30, 2022 and December 31, 2021:

	September 30, 2022	December 31, 2021
Financing agreement with FlatIron capital that was unsecured. Down payment of \$36,255 was required upfront and equal installment payments of \$19,114 were made over a 10 month period. The note matured on May 1, 2022. Annualized interest was 3.95%	\$ -	\$ 114,688
	<u>\$ -</u>	<u>\$ 114,688</u>

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

As a smaller reporting company, we are not required to make disclosures under this item.

Item 4. Controls and Procedures

(a) Evaluation of disclosure controls and procedures.

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures pursuant to Rule 13a-15 under the Securities Exchange Act of 1934, as amended, as of the end of the period covered by this Quarterly Report on Form 10-Q. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Management, with the participation of our Chief Executive Officer and Chief Financial Officer, performed an evaluation of the effectiveness of our disclosure controls and procedures as of September 30, 2022. Based on that evaluation, our management, including our Chief Executive Officer and Chief Financial Officer, concluded that our disclosure controls and procedures were not effective as of September 30, 2022 due to the following material weakness in internal control over financial reporting that existed as of December 31, 2021 and that continued to exist through September 30, 2022:

The Company did not effectively segregate certain accounting duties nor have a proper multi-level review process due to the small size of its accounting staff.

A material weakness is a deficiency, or a combination of control deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our annual or interim consolidated financial statements will not be prevented or detected on a timely basis. Notwithstanding the determination that there was a material weakness as identified in this Quarterly Report, we believe that our consolidated financial statements contained in this Quarterly Report fairly present our financial position, results of operations and cash flows for the years covered hereby in all material respects.

We expect to be dependent upon our Chief Financial Officer who is knowledgeable and experienced in the application of U.S. Generally Accepted Accounting Principles to maintain our disclosure controls and procedures and the preparation of our financial statements for the foreseeable future. We plan on increasing the size of our accounting staff at the appropriate time for our business and its size to ameliorate our concern that we do not effectively segregate certain accounting duties, which we believe would resolve the material weakness in disclosure controls and procedures, but there can be no assurances as to the timing of any such action or that we will be able to do so.

Management has been implementing and continues to implement measures designed to ensure that control deficiencies contributing to the material weakness are remediated, such that these controls are designed, implemented, and operating effectively. To date, the remediation actions include the following:

- appointment of additional qualified staff;
- implementation of additional monitoring of controls to improve documentation of internal control procedures; and
- expanding the management and governance over IT system controls,

While these actions and planned actions are subject to ongoing management evaluation and will require validation and testing of the design and operating effectiveness of internal controls over a sustained period, we are committed to continuous improvement and will continue to diligently review our internal control over financial reporting.

(b) Changes in internal control over financial reporting.

Other than remediation actions related to the material weaknesses in our internal controls described above, there has been no change in our internal control over financial reporting (as that term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the quarter ended September 30, 2022 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

Legal Proceedings are set forth under Note 5 "Commitments and Contingencies" included in Part I, Item 1 of this Quarterly Report on Form 10-Q and are incorporated herein by reference.

Item 1A. Risk Factors

There have been no material changes from the risk factors previously disclosed in the section entitled "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2021, except as follows:

We will be exposed to risks and potential unexpected costs related to disruptions or other failures in the supply chain for cryptocurrency hardware and difficulties in obtaining new hardware.

Manufacture, assembly and delivery of certain components and products for mining operations could be complex and long processes, in the course of which various problems could arise, including disruptions or delays in the supply chain, product quality control issues, as well other external factors, over which we have no control.

Our mining operations can only be successful and ultimately profitable if the costs associated with Bitcoin mining, including hardware costs, are lower than the price of Bitcoin itself. In the course of the normal operation of our cryptocurrency mining facilities, our miners and other critical equipment and materials related to datacenter construction and maintenance, such as containers, switch gears, transformers and cables, will experience ordinary wear and tear and may also face more significant malfunctions caused by a number of extraneous factors beyond our control. Declines in the condition of our miners and other hardware will require us, over time, to repair or replace those miners. Additionally, as the technology evolves, we may be required to acquire newer models of miners to remain competitive in the market. Any upgrading process may require substantial capital investment, and we may face challenges in doing so on a timely and cost-effective basis.

Our mining business will be subject to limitations inherent within the supply chain of certain of our components, including competitive, governmental, and legal limitations, and other events. For example, we expect that we will significantly rely on foreign imports to obtain certain equipment and materials. Any global trade disruption, introductions of tariffs, trade barriers and bilateral trade frictions, together with any potential downturns in the global economy resulting therefrom, could adversely affect our necessary supply chains. Our third-party manufacturers, suppliers and subcontractors may also experience disruptions by worker absenteeism, quarantines, restrictions on employees' ability to work, office and factory closures, disruptions to ports and other shipping infrastructure, border closures, or other travel or health-related restrictions, such as those that were triggered by the COVID-19 pandemic, for example. Depending on the magnitude of such effects on our supply chain, shipments of parts for our miners, or any new miners that we order, may be delayed or may be more expensive than anticipated.

Furthermore, the global supply chain for cryptocurrency miners is currently heavily dependent on China. In September 2021, China declared all transactions in and mining of cryptocurrencies, including Bitcoin, illegal. China has also in the past limited the shipment of products in and out of its borders, which could negatively impact our ability to receive mining equipment from China-based suppliers. Further, Chinese-origin merchandise is currently subject to an additional duty rate of 25% *ad valorem*. Should it be determined that cryptocurrency mining equipment purchased from and delivered by Bitmain under the Bitmain Service Agreements are of Chinese origin, we may be required to pay the additional ad valorem duty, penalties and interest in order to receive such equipment. Should additional disruptions to the China-based global supply chain for cryptocurrency hardware occur, we may not be able to obtain adequate equipment from the supplier on a timely basis or the cost to obtain such equipment may be greater than anticipated. Such events could have a material adverse effect on our business, prospects, financial condition, and operating results.

Bankruptcy of our hosting vendors, including the recent bankruptcy filing by Compute North or the possibility of bankruptcy by Core Scientific, could lead to interruption of service and could adversely affect our business and results of operations.

We have entered into several agreements for colocation, management and other services with vendors ("hosting vendors") whereby our mining machines are installed, operated and maintained at third-party locations. In the event that any of our hosting vendors declare bankruptcy, the hosting vendors may be unable to fulfill all or some of their obligations under the contract, may operate at a reduced capacity or may be unable to continue operating their facilities entirely. Any disruption in the hosting vendors ability to operate, or any reduction or change in the services available to be provided to us by the hosting vendor, could negatively impact our ability to mine and receive revenue. In the event that the hosting company is unable to continue operations or is unable to provide services at the level necessary to support our business for a prolonged period we may find it necessary to relocate our mining machines to another facility. Relocation costs could be material and we may be unable to recover damages from the hosting vendor for such costs incurred, which would negatively impact our results of operations.

In September 2022, Compute North filed for Chapter 11 in the U.S. Bankruptcy Court for the Southern District of Texas. As of September 30, 2022, Compute North's facilities has not provided any power to our 2,690 miners, and our overall future hosting capacity with Compute North, pursuant to signed Order Forms, is for approximately 4,200 machines. The Company is reviewing its relationship with Compute North and communicating with Compute North regarding this matter. However, there can be no assurance that Compute North's bankruptcy proceeds will not negatively impact the Company's existing and planned mining operations.

Because our miners are designed specifically to mine Bitcoin and may not be readily adaptable to mining other cryptocurrencies, a sustained decline in Bitcoin's value could adversely affect our business and results of operations.

We have invested substantial capital in acquiring miners using ASIC chips designed specifically to mine Bitcoin and other cryptocurrencies using the SHA-256 algorithm as efficiently and as rapidly as possible on our assumption that we will be able to use them to mine Bitcoin and generate revenue from our operations. Therefore, our Mining operations focus exclusively on mining Bitcoin, and our Mining revenue is based on the value of Bitcoin we mine. Accordingly, if the value of Bitcoin declines and fails to recover, for example, because of the development and acceptance of competing blockchain platforms or technologies, including competing cryptocurrencies which our miners may not be able to mine, the revenue we generate from our mining operations will likewise decline. Moreover, because our miners use these highly specialized ASIC chips, we may not be able to successfully repurpose them in a timely manner, if at all, if we decide to switch to mining a different cryptocurrency (or to another purpose altogether) following a sustained decline in Bitcoin's value or if Bitcoin is replaced by another cryptocurrency not using the SHA-256 algorithm. This would result in a material adverse effect on our business and could potentially impact our ability to continue as a going concern.

Our reliance primarily on a single model of miner may subject our operations to increased risk of design flaws.

The performance and reliability of our miners and our technology is critical to our reputation and our operations. Because we currently only use Bitmain Antminer type miners, if there are issues with those machines, such as a design flaw in the ASIC chips they employ, our entire system could be affected. Any system error or failure may significantly delay response times or even cause our system to fail. Any disruption in our ability to continue mining could result in lower yields and harm our reputation and business. Any exploitable weakness, flaw, or error common to Bitmain miners could affect all our miners; therefore, if a defect or other flaw exists and is exploited, our entire miner fleet could be adversely impacted. Any interruption, delay or system failure could result in financial losses, a decrease in the trading price of our common stock and damage to our reputation.

We may not be able to realize the benefits of forks.

The Bitcoin blockchain is subject to modification based on a consensus of the users on its network. When a significant minority of users on the network agree to a modification that is not compatible with the prior network protocol, a "fork" of the network results, with one prong running the pre-modified protocol and the other running the modified protocol. The effect of such a fork would be the existence of two "versions" of the blockchain running in parallel that are not interchangeable, which requires exchange-type transaction to convert between the two forks. Additionally, it may be unclear following a fork which of the two protocols represents the original and which is the new protocol. Different metrics adopted by industry participants to determine which is the original asset include: referring to the wishes of the core developers of a cryptocurrency; determining based on the blockchain with the greatest amount of hash rate contributed by miners or validators; or by reference to the "length" of blockchain (i.e., the time between the first transaction recorded in the blockchain's distributed ledger, and the date of the most recent transaction). Accordingly, we may not be able to realize the economic benefit of a fork, either immediately or ever, which could adversely affect an investment in our securities.

Bitcoins and other digital assets we mine or hold for our own account may be subject to loss, theft or restriction on access.

The loss or destruction of private keys required to access our bitcoins may be irreversible. Our loss of access to our private keys or our experience of a data loss relating to our bitcoins could adversely affect an investment in us.

Bitcoins may only be controlled by the possessor of both the unique public and private keys relating to the local or online digital

wallet in which they are held. We publish the public key relating to digital wallets in use when we verify the receipt or transfers of bitcoins to and from our wallets and disseminate such information into the network on an anonymous basis, but we safeguard the private keys relating to such digital wallets. Digital asset exchanges, such as Gemini, where we hold our bitcoin, engage in similar practices. To the extent such private keys are lost, destroyed or otherwise compromised, we will be unable to access our bitcoins and such private keys may not be capable of being restored by any network. Any loss of private keys relating to digital wallets used to store our bitcoins whether by us or digital asset exchanges where we hold our bitcoin, could have a material adverse effect on our business, prospects or operations and potentially the value of any bitcoin we mine or otherwise acquire or hold for our own account.

If we fail to grow our hash rate, we may be unable to compete, and our results of operations could suffer.

Generally, a Bitcoin miner's chance of solving a block on the Bitcoin blockchain and earning a Bitcoin reward is a function of the miner's hash rate (i.e., the amount of computing power devoted to supporting the Bitcoin blockchain), relative to the global network hash rate. As demand for Bitcoin has increased, the global network hash rate has increased, and as more adoption of Bitcoin occurs, we expect the demand for Bitcoin will increase, drawing more mining companies into the industry and further increasing the global network hash rate. As new and more powerful miners are deployed, the global network hash rate will continue to increase, meaning a miner's chance of earning Bitcoin rewards will decline unless it deploys additional hash rate at pace with the industry. Accordingly, to compete in this highly competitive industry, we believe we will need to continue to acquire new miners, both to replace those lost to ordinary wear-and-tear and other damage, and to increase our hash rate to keep up with a growing global network hash rate.

We plan to grow our hash rate by acquiring newer, more effective and energy-efficient miners. These new miners are highly specialized servers that are very difficult to produce at scale. As a result, there are limited producers capable of producing large numbers of sufficiently effective miners, and, as demand for new miners has increased in response to increased Bitcoin prices, we have observed the price of these new miners has increased. If we can't acquire sufficient numbers of new miners or access sufficient capital to fund our acquisitions, our results of operations and financial condition, which could adversely affect investments in our securities.

Bitcoin is subject to halving, and our mining operations may generate less revenue as a result.

Halving is a process designed to control the overall supply and reduce the risk of inflation in cryptocurrencies using a Proof-of-Work consensus algorithm. At a predetermined block, the mining reward is cut in half, hence the term "halving". While Bitcoin prices have historically increased around these halving events, there is no guarantee that the price change will be favorable or would compensate for the reduction in mining rewards. If a corresponding and proportionate increase in the price of the Bitcoin does not follow future halving events, the revenue we earn from our Mining operations would see a decrease, which could have a material adverse effect on our results of operations and financial condition.

Transaction fees may decrease demand for Bitcoin and prevent expansion.

As the number of Bitcoins currency rewards awarded for solving a block in a blockchain has decreased, transaction fees have increasingly been used to incentivize miners to continue to contribute to the Bitcoin network. However, high Bitcoin transaction fees may slow the adoption of Bitcoin as a means of payment, which may decrease demand for Bitcoin and future prices of Bitcoin may suffer as a result. If Bitcoin prices are not sufficiently high, our Mining revenue may not exceed our associated costs, and our results of operations and financial condition may suffer. Further, because the price of shares of our common stock may be linked to the price of Bitcoin, if demand for Bitcoin decreases, causing future Bitcoin prices to decrease, the market price of our securities may be materially and adversely affected, limiting our ability to raise additional capital to fund our strategic growth plans.

Cryptocurrencies face significant scaling obstacles that can lead to high fees or slow transaction settlement times.

Cryptocurrencies face significant scaling obstacles that can lead to high fees or slow transaction settlement times, and attempts to increase the volume of transactions may not be effective. Scaling cryptocurrencies is essential to the widespread acceptance of cryptocurrencies as a means of payment, including Bitcoin. Many cryptocurrency networks face significant scaling challenges. For example, cryptocurrencies are limited with respect to how many transactions can occur per second. Participants in the cryptocurrency

ecosystem debate potential approaches to increasing the average number of transactions per second that the network can handle and have implemented mechanisms or are researching ways to increase scale, such as increasing the allowable sizes of blocks, and therefore the number of transactions per block, and sharding (a horizontal partition of data in a database or search engine), which would not require every single transaction to be included in every single miner's or validator's block. However, there is no guarantee that any of the mechanisms in place or being explored for increasing the scale of settlement of cryptocurrency transactions will be effective.

If adoption of Bitcoin (and cryptocurrencies, generally) as a means of payment does not occur on the schedule or scale we anticipate, the demand for Bitcoin may stagnate or decrease, which could adversely affect future Bitcoin prices, and our results of operations and financial condition, which could have a material adverse effect on the market price for our securities.

Our reliance on a third-party mining pool service provider for our mining revenue payouts may adversely affect an investment in us.

We currently rely on open access mining pools that support cryptocurrencies including bitcoin, to receive our mining rewards and fees from the network. Our pools have the sole discretion to modify the terms of our agreement at any time, and, therefore, our future rights and relationship with our pools may change. In general, mining pools allow miners to combine their computing and processing power, increasing their chances of solving a block and getting paid by the bitcoin network. The rewards, distributed proportionally to our contribution to the pool's overall mining power, are distributed by the pool operator. Should our pools' operator systems suffer downtime due to a cyber-attack, software malfunction or other similar issues, it will negatively impact our ability to mine and receive revenue. Furthermore, while we receive daily reports from our pools detailing the total processing power provided to the pools and the proportion of that total processing power, we provided to determine the distribution of rewards to us, we are dependent on the accuracy of our pool's record keeping. Therefore, we have little means of recourse against our pools' operators if we determine the proportion of the reward paid out to us by the mining pool operator is incorrect, other than leaving the pools. If we are unable to consistently obtain accurate proportionate rewards from our pools, we may experience reduced rewards for our efforts, which would have an adverse effect on our business and operations.

We may not have adequate sources of recovery if our digital assets are lost, stolen or destroyed.

We rely on Gemini to facilitate the custody of our bitcoins. If our bitcoins are lost, stolen or destroyed under circumstances rendering a party, including Gemini, liable to us, the responsible party may not have the financial resources sufficient to satisfy our claim. For example, as to a particular event of loss, the only source of recovery for us might be limited, to the extent identifiable, to other responsible third parties (e.g., a thief or terrorist), any of which may not have the financial resources (including liability insurance coverage) to satisfy a valid claim of ours. Gemini maintains certain commercial crime and specie insurance for digital assets they custody which insures against the theft of digital assets that results from a direct security breach or hack of Gemini's systems, a fraudulent transfer initiated by Gemini, or theft by a Gemini employee.

Bitcoins held by us are not subject to FDIC or SIPC protections.

We do not hold our bitcoins with a banking institution or a member of the Federal Deposit Insurance Corporation ("FDIC") or the Securities Investor Protection Corporation ("SIPC"), and, therefore, our bitcoins are not subject to the protections enjoyed by depositors with FDIC or SIPC member institutions. As a result, we may suffer a loss with respect to our bitcoins that is not covered by insurance, and we may not be able to recover any of our carried value in these bitcoins if they are lost or stolen or suffer significant and sustained reduction in conversion spot price. If we are not otherwise able to recover damages from a malicious actor in connection with these losses, our business and results of operations may suffer, which may have a material negative impact on our stock price.

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

(a) Sales of Unregistered Securities.

None.

(b) Use of Proceeds.

None.

(c) Repurchase of Securities.

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

None.

Item 5. Other Information

On November 9, 2022, the Company's Board of Directors approved and adopted an amendment to the Company's Restated By-Laws (the "Amendment") to reduce the number of shares that are required to be present at a meeting of the Company's stockholders for purposes of establishing a quorum. Prior to the Amendment, the presence (in person or by proxy) of a majority of the shares outstanding was required to establish a quorum for the transaction of business. Now, as approved in the Amendment, a quorum is established by one-third of the stock issued and outstanding and entitled to vote. A copy of the Amendment is attached as Exhibit 3.1 to this Quarterly Report on Form 10-Q, and the Restated By-Laws of the Company incorporating such amendment is attached as Exhibit 3.2 to this Quarterly Report on Form 10-Q.

Item 6. Exhibits

The following documents are filed as a part of this report or are incorporated herein by reference.

EXHIBIT NUMBER	DESCRIPTION
3.1*	Amendment to Restated By-Laws of LM Funding America, Inc. (effective as of November 9, 2022)
3.2*	Restated By-Laws of LM Funding America, Inc. (effective as of November 9, 2022)
4.1	Certificate of Incorporation of LM Funding America, Inc., as amended (incorporated by reference to Exhibit 4.1 to Form S-8 filed on January 24, 2022)
10.1	Amended and Restated Promissory Note, dated July 28, 2022, issued by LMF Acquisition Opportunities, Inc. to LMFAO Sponsor, LLC (incorporated by reference to Exhibit 10.1 to Form 8-K filed on August 3, 2022)
10.2	Sale and Purchase Agreement, dated August 31, 2022, between LM Funding America, Inc. and BITMAIN Technologies Limited (incorporated by reference to Exhibit 10.1 to Form 8-K filed on September 8, 2022)
10.3	Master Services Agreement, entered into September 6, 2022 but effective as of August 29, 2022, between Core Scientific, Inc. and U.S. Digital Mining and Hosting Co. LLC (incorporated by reference to Exhibit 10.2 to Form 8-K filed on September 8, 2022)
10.4	Consolidated Amended and Restated Promissory Note, dated October 28, 2022, issued by SeaStar Medical Holding Corporation to LMFAO Sponsor, LLC (incorporated by reference to Exhibit 10.1 to Form 8-K filed on November 3, 2022)
10.5	Amended and Restated Promissory Note, dated October 28, 2022, issued by SeaStar Medical, Inc. to LM Funding America, Inc. (incorporated by referent to Exhibit 10.2 to Form 8-K filed on November 3, 2022)
10.6	Security Agreement, dated October 28, 2022, among SeaStar Medical Holding Corporation, SeaStar Medical, Inc., and LMFAO Sponsor, LLC (incorporated by reference to Exhibit 10.3 to Form 8-K filed on November 3, 2022)
10.7	Security Agreement, dated October 28, 2022, among SeaStar Medical, Inc., SeaStar Medical, Inc., and LM Funding America, Inc. (incorporated by reference to Exhibit 10.4 to Form 8-K filed on November 3, 2022)
31.1*	Rule 13a – 14(a) Certification of the Principal Executive Officer
31.2*	Rule 13a – 14(a) Certification of the Principal Financial Officer
32.1*	Written Statement of the Principal Executive Officer and Principal Financial Officer, Pursuant to 18 U.S.C. § 1350
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

* Filed herewith.

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:

LM FUNDING AMERICA, INC.

Date: November 17, 2022

By: /s/ Bruce M. Rodgers

Bruce M. Rodgers

Chief Executive Officer and Chairman of the Board

(Principal Executive Officer)

Date: November 17, 2022

By: /s/ Richard Russell

Richard Russell

Chief Financial Officer

(Principal Accounting Officer)

AMENDMENT TO THE RESTATED BY-LAWS OF LM FUNDING AMERICA, INC.

THIS AMENDMENT TO THE RESTATED BY-LAWS OF LM FUNDING AMERICA, INC. (this "Amendment") is made effective as of November 9, 2022 (the "Effective Date"), and amends the Restated By-Laws, effective December 10, 2021 (the "Bylaws"), of LM Funding America, Inc., a Delaware corporation (the "Company").

WHEREAS, pursuant to Article VIII of the Bylaws, the Bylaws may be amended, altered or repealed and new Bylaws may be adopted at any meeting of the Board of Directors (the "Board") by the affirmative vote of the majority of the total number of directors then in office.

WHEREAS, the Board desires to amend the Bylaws in accordance with the terms and conditions set forth herein.

1. Amendment to Article II, Section 6. Section 6 of Article II of the Bylaws is amended and restated in its entirety as follows:

"Section 6. Quorum. The holders of 33-1/3% of the outstanding shares of capital stock entitled to vote, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders, except as otherwise provided by statute or by the Certificate of Incorporation. Abstentions and broker non-votes are counted as present and entitled to vote for purposes of determining a quorum. If a quorum is not present, either (i) the person presiding over the meeting or (ii) the holders of a majority of the shares present in person or represented by proxy at the meeting, and entitled to vote at the meeting, may adjourn the meeting to another time and/or place. When a specified item of business requires a vote by a class or series (if the Corporation shall then have outstanding shares of more than one class or series) voting as a class, the holders of a majority of the shares of such class or series shall constitute a quorum (as to such class or series) for the transaction of such item of business."

2. Full Force and Effect. This Amendment shall become effective upon the approval of the Board. Except as expressly set forth herein, all other provisions of the Bylaws shall remain in full force and effect.

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**CERTIFICATE OF THE CHIEF EXECUTIVE OFFICER OF
LM FUNDING AMERICA, INC.**

The undersigned certifies:

4867-9350-1240.3

1. That the undersigned is the duly elected and acting Chief Executive Officer of LM Funding America, Inc., a Delaware corporation (the "Company"); and

2. That the foregoing Amendment to the Restated By-Laws of the Company constitutes the entire amendment to the Restated By-Laws of the Company as duly adopted by unanimous written consent, effective as of November 9, 2022, of the Board of Directors of the Company.

IN WITNESS WHEREOF, I have hereunto set my hand as of November 9, 2022.

/s/ Bruce Rodgers
Bruce Rodgers, Chief Executive Officer

**RESTATED BY-LAWS
OF
LM FUNDING AMERICA, INC.
a Delaware Corporation
as restated on November 9, 2022**

ARTICLE I

OFFICES

Section 1. Registered Office. The address of the registered office of LM Funding America, Inc. (the "Corporation") in the State of Delaware is The Corporation Trust Center, 1209 Orange Street in the City of Wilmington, County of New Castle, Zip Code 19801. The name of its registered agent at such address is The Corporation Trust Company. The registered office and/or registered agent of the Corporation may be changed from time to time by action of the Board of Directors.

Section 2. Other Offices. The Corporation may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 1. Place and Time of Meetings. An annual meeting of the stockholders shall be held each year for the purpose of electing directors and conducting such other proper business as may come before the meeting. Unless otherwise directed by the Board of Directors, annual meetings of stockholders shall be held on a date not later than the end of the sixth (6th) calendar month after the conclusion of the Corporation's fiscal year, unless a legal holiday, then on the first preceding regular business day. At the annual meeting, stockholders shall elect directors and conduct such other business as properly may be brought before the meeting pursuant to Article II, Section 11 hereof.

Section 2. Special Meetings. Special meetings of stockholders may be called for any purpose and may be held at such time and place, within or without the State of Delaware, as shall be stated in a notice of meeting or in a duly executed waiver of notice thereof. Such meetings may be called only by the Chairman of the Board of Directors, the Chief Executive Officer or the Secretary pursuant to a resolution adopted by a majority of the directors then in office, or by stockholders holding at least a majority of the issued and outstanding voting stock of the Corporation. The only matters that may be considered at any special meeting of the stockholders are the matters specified in the notice of the meeting.

Section 3. Place of Meetings. The Board of Directors may designate any place, either within or without the State of Delaware, as the place of meeting for any annual meeting or for any special meeting of the stockholders. If no designation is made, the place of meeting shall be the principal executive office of the Corporation.

Section 4. Notice. Whenever stockholders are required or permitted to take action at a meeting, written or printed notice stating the place, date, time, and, in the case of special meetings, the purpose or purposes, of such meeting, shall be given to each stockholder entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting. All such notices shall be delivered, either personally or by mail, by or at the direction of the Board of Directors, the Chairman of the Board of Directors, the Chief Executive Officer or the Secretary, and if mailed, such notice shall be deemed to be delivered and deposited in the United States mail, postage prepaid, addressed to the stockholder at his, her or its address as the same appears on the records of the Corporation. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when

4889-9362-9190.2

the person attends for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

Section 5. Stockholders List. The officer having charge of the stock ledger of the Corporation shall make, at least ten (10) days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at such meeting arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or the principal executive office of the Corporation. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 6. Quorum. The holders of 33-1/3% of the outstanding shares of capital stock entitled to vote, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders, except as otherwise provided by statute or by the Certificate of Incorporation. Abstentions and broker non-votes are counted as present and entitled to vote for purposes of determining a quorum. If a quorum is not present, either (i) the person presiding over the meeting or (ii) the holders of a majority of the shares present in person or represented by proxy at the meeting, and entitled to vote at the meeting, may adjourn the meeting to another time and/or place. When a specified item of business requires a vote by a class or series (if the Corporation shall then have outstanding shares of more than one class or series) voting as a class, the holders of a majority of the shares of such class or series shall constitute a quorum (as to such class or series) for the transaction of such item of business.

Section 7. Adjourned Meetings. When a meeting is adjourned to another time and/or place, notice need not be given of the adjourned meeting if the time and/or place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty days (30), or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 8. Vote Required. When a quorum is present, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders, unless (i) by express provisions of an

applicable law or of the Certificate of Incorporation a different vote is required, in which case such express provision shall govern and control the decision of such question, or (ii) the subject matter is the election of directors, in which case Section 2 of Article III hereof shall govern and control the approval of such subject matter, or the amendment of any provision listed in Article VIII, in which case Article VIII hereof shall govern and control the approval of such subject matter.

Section 9. Voting Rights. Except as otherwise provided by the General Corporation Law of the State of Delaware (the "DGCL") or by the Certificate of Incorporation of the Corporation or any amendments thereto and subject to Section 3 of Article VI hereof, every stockholder shall at every meeting of the stockholders be entitled to one (1) vote in person or by proxy for each share of common stock held by such stockholder.

Section 10. Proxies. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for him or her by proxy, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally. Any proxy is suspended when the person executing the proxy is present at a meeting of stockholders and elects to vote, except that when such proxy is coupled with an interest and the fact of the interest appears on the face of the proxy, the agent named in the proxy shall have all voting and other rights referred to in the proxy, notwithstanding the presence of the person executing the proxy. At each meeting of the stockholders, and before any voting commences, all proxies filed at or before the meeting shall be submitted to and examined by the Secretary or a person designated by the Secretary, and no shares may be represented or voted under a proxy that has been found to be invalid or irregular.

4889-9362-9190.2

Section 11. Business Brought Before a Meeting.

(a) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (1) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (2) brought before the meeting by or at the direction of the Board of Directors, or (3) properly brought before the meeting by a stockholder who (i) was a stockholder of record at the time of giving of notice provided for in this By-Law and at the time of the meeting, (ii) is entitled to vote at the meeting and (iii) complies with the notice procedures and form requirements set forth in this By-Law as to such business; clause (3) shall be the exclusive means for a stockholder to submit business (other than matters properly brought under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and included in the Corporation's notice of meeting) before a meeting of stockholders.

(b) For business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive

offices of the Corporation not earlier than the close of business on the 120th day and not later than the close of business on the 90th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 30 days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to the date of such annual meeting and not later than the close of business on the later of the 90th day prior to the date of such annual meeting or, if the first public announcement of the date of such annual meeting is less than 100 days prior to the date of such annual meeting, the 10th day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

(c) To be in proper form, a stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting (1) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, if any, (ii) (A) the class or series and number of shares of the Corporation which are, directly or indirectly, owned beneficially and of record by such stockholder and such beneficial owner, (B) any option, warrant, convertible security, stock appreciation right or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise (a "Derivative Instrument") directly or indirectly owned beneficially by such stockholder and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation, (C) any proxy, contract, arrangement, understanding or relationship pursuant to which such stockholder has a right to vote any shares of any security of the Company, (D) any short interest in any security of the Company (for purposes of this By-Law a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (E) any rights to dividends on the shares of the Corporation owned beneficially by such stockholder that are separated or separable from the underlying shares of the Corporation, (F) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder is a general partner or, directly or indirectly, beneficially owns an interest in a general partner and (G) any performance-related fees (other than an asset-based fee) that such stockholder is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice, including, without limitation, any such interests held by members of such stockholder's immediate family sharing the same household (which information shall be supplemented by such stockholder and beneficial owner, if any, not later than 10 days after the record date for the meeting to disclose such ownership as of the record date), and (iii) any other information relating to such stockholder and beneficial owner, if any, that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a

4889-9362-9190.2

contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder; (2) as to the proposal the stockholder proposes to bring before the meeting (i) a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest of such stockholder and beneficial owner, if any, in such business and (ii) a description of all agreements, arrangements and understandings between such stockholder and beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder. Notwithstanding anything in these By-Laws to the contrary, no business shall be conducted at a meeting except in accordance with the procedures set forth in this Section 11 of Article II. The presiding officer of a meeting shall, if the facts warrant, determine that the business was not properly brought before the meeting in accordance with the provisions of this Section 11 of Article II; and if he or she should so determine, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

(d) Notwithstanding the foregoing provisions of this By-Law, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this By-Law; provided, however, that any references in these By-Laws to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the requirements applicable to proposals as to any other business to be considered pursuant to Section 11(a)(3) of this By-Law. Nothing in this By-Law shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (ii) of the holders of any series of preferred stock if and to the extent provided for under law, the Certificate of Incorporation or these By-Laws.

Section 12. Abstentions and Broker Non-Votes. With respect to the election of directors, abstentions and broker non-votes shall not be counted either as votes for or against the election of any director but shall be counted to determine whether a quorum is present. With respect to any other matter, except as otherwise required by law, an abstention shall be counted as a vote against such matter, a broker non-vote shall not be counted either as a vote for or against such matter, and both shall be counted to determine whether a quorum is present.

Section 13. No Written Consent. Subject to the rights of the holders of any series of preferred stock, from and after the date on which the common stock of the Corporation is initially registered pursuant to the Exchange Act, any action required or permitted to be taken by the stockholders of the Corporation must be effected at an annual or special meeting of stockholders of the Corporation and may not be effected in lieu thereof by any consent in writing by such stockholders unless the action to be effected by written consent of the stockholders and the taking of such action by written consent have been approved in advance by a resolution adopted by the Board of Directors.

ARTICLE III

DIRECTORS

Section 1. General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to such powers as are herein and in the Certificate of Incorporation expressly conferred upon it, the Board of Directors shall have and may exercise all the powers of the Corporation, subject to the provisions of the laws of Delaware, the Certificate of Incorporation and these By-Laws.

Section 2. Number, Election and Term of Office. The number of directors which shall constitute the Board of Directors shall be such as from time to time shall be fixed by the Board of Directors in the manner as provided in these By-Laws but in no event shall such number of directors be less than one (1) nor more than fifteen (15). The directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote in the election of directors; provided, that, whenever the holders of any class or series of capital stock of the Corporation are entitled to elect one or more directors pursuant to the provisions of the Certificate of Incorporation of the Corporation (including, but not limited to, for purposes of these By-Laws, pursuant to any duly authorized certificate of designation), such directors shall be elected by a plurality of the votes of such class or series present in person or represented by proxy at the meeting and entitled to vote in the election of such directors. The directors shall be elected in this manner at the annual meeting of the stockholders, except as provided in Section 4 of this Article III. Each director elected shall hold office until a successor is duly elected and qualified or until his or her earlier death, resignation or removal as hereinafter provided.

4889-9362-9190.2

Section 3. Removal and Resignation. A director may be removed with or without cause by the holders of a majority of the outstanding shares entitled to vote generally in the election of directors, voting together as a single class; provided, however, that if the holders of any class or series of capital stock are entitled to elect one or more directors pursuant to the provisions of the Certificate of Incorporation of the Corporation, such director or directors so elected may be removed without cause only by the vote of the holders of a plurality of the votes of such class or series present in person or represented by proxy at the meeting and entitled to vote in the removal of such directors. Any director may resign at any time upon written notice to the Corporation.

Section 4. Vacancies. Vacancies and newly created directorships resulting from any increase in the total number of directors established by the Board of Directors pursuant to Section 2 of this Article III may be filled only by the affirmative vote of the majority of the total number of directors then in office, though less than a quorum, or by a sole remaining director. Any director elected to fill a vacancy resulting from an increase in the number of directors shall hold office for a term expiring at the succeeding annual meeting of stockholders and until such director's successor shall have been duly elected and qualified. A director elected to fill a vacancy not resulting from an increase in the number of directors shall have the same remaining term as that of his or her predecessor. Each director so chosen shall hold office until a successor is duly elected and qualified or until his or her earlier death, resignation or removal as herein provided. Whenever holders of any class or classes of capital stock or series thereof are entitled by the provisions of the Certificate of Incorporation to elect one or more directors, vacancies of directorships pertaining to such class or classes or series may only be filled by the affirmative vote of the majority of the total number of directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected. If no such directors or director remains, then the vacancy or vacancies of directorships pertaining to such class or classes or series shall be filled by the affirmative vote of the majority of the total number of directors then in office, or by a sole remaining director.

Section 5. Nominations.

(a) Only persons who are nominated in accordance with the procedures set forth in these By-Laws shall be eligible to serve as directors. Nominations of persons for election to the Board of Directors of the Corporation may be made at a meeting of stockholders (1) pursuant to the Corporation's notice of the meeting, (2) by or at the direction of the Board of Directors or (3) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who (i) was a stockholder of record at the time of giving of notice provided for in this By-Law and at the time of the meeting, (ii) is entitled to vote at the meeting and (iii) complies with the notice procedures and form requirements set forth in this By-Law as to such nomination; clause (3) shall be the exclusive means for a stockholder to make nominations at meeting of stockholders.

(b) In order for a stockholder to nominate a person for election to the Board of Directors of the Corporation at a meeting of stockholders, such stockholder shall have delivered timely notice of such stockholder's intent to make such nomination in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation (i) in the case of an annual meeting, not earlier than the close of business on the 120th day and not later than the close of business on the 90th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to the date of such annual meeting and not later than the close of business on the later of the 90th day prior to the date of such annual meeting or, if the first public announcement of the date of such annual meeting is less than 100 days prior to the date of such annual meeting, the 10th day following the day on which public announcement of the date of such meeting is first made by the Corporation, and (ii) in the case of a special meeting at which directors are to be elected, not later than the close of business on the 10th day following the earlier of the day on which notice of the date of the meeting was mailed or public disclosure of the meeting was made. In no event shall any adjournment or postponement of a meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

(c) To be in proper form, a stockholder's notice to the Secretary shall set forth (i) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made, the information described in Section 11(c)(1) of Article II, and (ii) as to each person whom the stockholder proposes to nominate for election to the Board of Directors (A) all information relating to such person that would be required to be disclosed in a proxy

statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected) and (B) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or

among such stockholder and beneficial owner, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K of the Exchange Act if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant. No person shall be eligible to serve as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 5 of Article III. The presiding officer of the meeting shall, if the facts warrant, determine that a nomination was not made in accordance with the procedures prescribed by this Section 5 of Article III, and if he or she should so determine, he or she shall so declare to the meeting and the defective nomination shall be disregarded. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee.

(d) Notwithstanding the foregoing provisions of this By-Law, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this By-Law; provided, however, that any references in these By-Laws to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the requirements applicable to nominations to be considered pursuant to Section 5(a)(3) of this By-Law. Nothing in this By-Law shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (ii) of the holders of any series of preferred stock if and to the extent provided for under law, the Certificate of Incorporation or these By-Laws.

Section 6. Annual Meetings. An annual meeting of the Board of Directors may be held without other notice at such time and at such place as shall, from time to time, be determined by resolution of the Board of Directors.

Section 7. Other Meetings and Notice. Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by the Board of Directors. Special meetings of the Board of Directors may be called by the Chairman of the Board of Directors or, upon the written request of at least a majority of the directors then in office, by the Secretary of the Corporation on at least 24 hours notice to each director, either personally, by telephone, by mail or by electronic transmission.

Section 8. Chairman of the Board; Quorum; Required Vote and Adjournment. The Board of Directors shall elect, by the affirmative vote of the majority of the total number of directors then in office, a Chairman of the Board, who shall preside at all meetings of the stockholders and the Board of Directors at which he or she is present. If the Chairman of the Board is not present at a meeting of the stockholders or the Board of Directors, the Chief Executive Officer (if the Chief Executive Officer is a director and is not also the Chairman of the Board) shall preside at such

meeting, and, if the Chief Executive Officer is not present at such meeting, a majority of the directors present at such meeting shall elect one of their members to so preside. A majority of the total number of directors then in office shall constitute a quorum for the transaction of business. Unless by express provision of an applicable law, the Corporation's Certificate of Incorporation or these By-Laws a different vote is required, the vote of a majority of directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

4889-9362-9190.2

Section 9. Committees. The Board of Directors may, by resolution passed by a majority of the total number of directors then in office, designate one or more committees, each committee to consist of one or more of the directors of the Corporation, which to the extent provided in such resolution or these By-Laws shall have, and may exercise, the powers of the Board of Directors in the management and affairs of the Corporation, except as otherwise limited by law. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

Section 10. Committee Rules. Each committee of the Board of Directors may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may otherwise be provided by a resolution of the Board of Directors designating such committee. Unless otherwise provided in such a resolution, the presence of at least a majority of the members of the committee shall be necessary to constitute a quorum. Unless otherwise provided in such a resolution, in the event that a member and that member's alternate, if alternates are designated by the Board of Directors as provided in Section 9 of this Article III, of such committee is or are absent or disqualified, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member.

Section 11. Communications Equipment. Members of the Board of Directors or any committee thereof may participate in and act at any meeting of such board or committee through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear and speak with each other, and participation in the meeting pursuant to this Section 11 of Article III shall constitute presence in person at the meeting.

Section 12. Waiver of Notice and Presumption of Assent. Any member of the Board of Directors or any committee thereof who is present at a meeting shall be conclusively presumed to have waived notice of such meeting except when such member attends for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Such member shall be conclusively presumed to have assented to any action taken unless his or her dissent shall be entered in the minutes of the meeting or unless his or her written dissent to such action shall be filed with the person acting as

the Secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to any member who voted in favor of such action.

Section 13. Action by Written Consent. Unless otherwise restricted by the Certificate of Incorporation, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the board or committee.

ARTICLE IV

OFFICERS

Section 1. Number. The officers of the Corporation shall be appointed by the Board of Directors and may consist of a Chairman of the Board, Chief Executive Officer, President, one or more Executive Vice Presidents or Vice-Presidents, a Chief Operating Officer, a Chief Financial Officer, a Secretary, a Treasurer and such other officers and assistant officers as may be deemed necessary or desirable by the Board of Directors. Any number of offices may be held by the same person. In its discretion, the Board of Directors may choose not to fill any office for any period as it may deem advisable; provided, however, that there shall always be at least (i) a chairman of the board, a vice-chairman of the board, a president or a vice president and (ii) a treasurer, a secretary, an assistant treasurer or an assistant secretary.

4889-9362-9190.2

Section 2. Election and Term of Office. The officers of the Corporation shall be appointed annually by the Board of Directors at its first meeting held after each annual meeting of stockholders or as soon thereafter as convenient. Vacancies may be filled or new offices created and filled at any meeting of the Board of Directors. Each officer shall hold office until a successor is duly elected and qualified or until his or her earlier death, resignation or removal as hereinafter provided.

Section 3. Removal. Any officer or agent appointed by the Board of Directors may be removed by the Board of Directors at its discretion, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 4. Vacancies. Any vacancy occurring in any office because of death, resignation, removal, disqualification or otherwise may be filled by the Board of Directors.

Section 5. Compensation. Compensation of all officers shall be fixed by the Board of Directors (or a committee thereof), and no officer shall be prevented from receiving such compensation by virtue of his or her also being a director of the Corporation.

Section 6. Chairman of the Board. The Chairman of the Board shall preside at all meetings of the Board of Directors and stockholders and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or provided in these By-Laws. The Chairman of the Board is authorized to execute bonds, mortgages and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation.

Section 7. Chief Executive Officer. The Chief Executive Officer shall have the powers and perform the duties incident to that position. Subject to the powers of the Board of Directors, he or she shall be in the general and active charge of the entire business and affairs of the Corporation, and shall be its chief policy-making officer. The Chief Executive Officer is authorized to execute bonds, mortgages and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation. The Chief Executive Officer shall, in the absence or disability of the Chairman of the Board, act with all of the powers, perform all duties and be subject to all the restrictions of the Chairman of the Board. The Chief Executive Officer shall have such other powers and perform such other duties as may be prescribed by the Chairman of the Board or the Board of Directors or as may be provided in these By-Laws.

Section 8. The President. The President of the Corporation shall, subject to the powers of the Board of Directors, the Chairman of the Board and the Chief Executive Officer, have general charge of the business, affairs and property of the Corporation, and control over its officers, agents and employees; and shall see that all orders and resolutions of the Board of Directors and the Chief Executive Officer are carried into effect. The President shall, in the absence or disability of the Chief Executive Officer, act with all of the powers and be subject to all the restrictions of the Chief Executive Officer. The President is authorized to execute bonds, mortgages and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation. The President shall have such other powers and perform such other duties as may be prescribed by the Chairman of the Board, the Chief Executive Officer or the Board of Directors or as may be provided in these By-Laws.

Section 9. Chief Operating Officer. The Chief Operating Officer of the Corporation shall, subject to the powers of the Board of Directors, the Chairman of the Board, the Chief Executive Officer and the President, have general and active management of the business of the Corporation; and shall see that all orders and resolutions of the Board of Directors are carried into effect. The Chief Operating Officer shall have such other powers and perform such other duties as may be prescribed by the Chairman of the Board, the Chief Executive Officer, the President or the Board of Directors or as may be provided in these By-Laws.

4889-9362-9190.2

Section 10. Chief Financial Officer. The Chief Financial Officer of the Corporation shall, under the direction of the Chairman of the Board, the Chief Executive Officer and the President, be responsible for all financial and accounting matters and for the direction of the offices of Treasurer and controller. The Chief Financial Officer shall have such other powers and perform such other duties as may be prescribed by the Chairman of the Board, the Chief Executive Officer, the President or the Board of Directors or as may be provided in these By-Laws.

Section 11. Vice-Presidents. The Vice-President, or if there shall be more than one, the Vice-Presidents in the order determined by the Board of Directors, the Chairman of the Board or

the Chief Executive Officer shall, in the absence or disability of the President, act with all of the powers and be subject to all the restrictions of the President. The Vice-Presidents shall also perform such other duties and have such other powers as the Board of Directors, the Chairman of the Board, the Chief Executive Officer, the President or these By-Laws may, from time to time, prescribe. The Vice-Presidents may also be designated as Executive Vice-Presidents or Senior Vice-Presidents, as the Board of Directors may, from time to time, prescribe.

Section 12. The Secretary and Assistant Secretaries. The Secretary shall attend all meetings of the Board of Directors, all meetings of the committees thereof and all meetings of the stockholders and record all the proceedings of the meetings in a book or books to be kept for that purpose or shall ensure that his or her designee attends each such meeting to act in such capacity. Under the Chairman of the Board's supervision, the Secretary shall give, or cause to be given, all notices required to be given by these By-Laws or by law; shall have such powers and perform such duties as the Board of Directors, the Chairman of the Board, the Chief Executive Officer, the President or these By-Laws may, from time to time, prescribe; and shall have custody of the corporate seal of the Corporation. The Secretary, or an Assistant Secretary, shall have authority to affix the corporate seal to any instrument requiring it, and when so affixed, it may be attested by his or her signature or by the signature of such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his or her signature. The Assistant Secretary, or if there be more than one, any of the assistant secretaries in the order determined by the Board of Directors, shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board of Directors, the Chairman of the Board, the Chief Executive Officer, the President or the Secretary may, from time to time, prescribe.

Section 13. The Treasurer and Assistant Treasurer. The Treasurer shall have the custody of the corporate funds and securities; shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation; shall deposit all monies and other valuable effects in the name and to the credit of the Corporation as may be ordered by the Chairman of the Board, the Chief Executive Officer, the Chief Financial Officer or the Board of Directors; shall cause the funds of the Corporation to be disbursed when such disbursements have been duly authorized, taking proper vouchers for such disbursements; and shall render to the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer and the Board of Directors, at its regular meeting or when the Board of Directors so requires, an account of the Corporation; shall have such powers and perform such duties as the Board of Directors, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer or these By-Laws may, from time to time, prescribe. The Assistant Treasurer, or if there are more than one, the Assistant Treasurers in the order determined by the Board of Directors shall, in the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer. The Assistant Treasurers shall perform such other duties and have such other powers as the Board of Directors, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, Treasurer or these By-Laws may, from time to time, prescribe.

Section 14. Other Officers, Assistant Officers and Agents. Officers, assistant officers and agents, if any, other than those whose duties are provided for in these By-Laws, shall have such authority and perform such duties as may from time to time be prescribed by resolution of the Board of Directors.

Section 15. Absence or Disability of Officers. In the case of the absence or disability of any officer of the Corporation and of any person hereby authorized to act in such officer's place during such officer's absence or disability, the Board of Directors may by resolution delegate the powers and duties of such officer to any other officer or to any director, or to any other person selected by it.

4889-9362-9190.2

ARTICLE V

INDEMNIFICATION OF OFFICERS, DIRECTORS AND OTHERS

Section 1. Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved (including involvement as a witness) in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director, officer or employee of the Corporation or, while a director, officer or employee of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter, an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer or employee or in any other capacity while serving as a director, officer or employee, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior thereto), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith and such indemnification shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators. The right to indemnification conferred in this Section 1 of Article V shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition (hereinafter an "advance of expenses"); provided, however, that, if and to the extent that the DGCL requires, an advance of expenses incurred by an indemnitee in his or her capacity as a director, officer or employee (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Section 1 of Article V or otherwise. The Corporation may, by action of its Board of Directors, provide indemnification to agents of the Corporation with the same scope and effect as the foregoing indemnification of directors, officers and employees.

Section 2. Procedure for Indemnification. Any indemnification of a director, officer or employee of the Corporation or advance of expenses under Section 1 of this Article V shall be made promptly, and in any event within forty-five (45) days (or, in the case of an advance of expenses, twenty (20) days), upon the written request of the director, officer or employee. If a determination by the Corporation that the director, officer or employee is entitled to indemnification pursuant to this Article V is required, and the Corporation fails to respond within sixty (60) days to a written request for indemnification, the Corporation shall be deemed to have approved the request. If the Corporation denies a written request for indemnification or advance of expenses, in whole or in part, or if payment in full pursuant to such request is not made within forty-five (45) days (or, in the case of an advance of expenses, twenty (20) days), the right to indemnification or advances as granted by this Article V shall be enforceable by the director, officer or employee in any court of competent jurisdiction. Such person's costs and expenses incurred in connection with successfully establishing his or her right to indemnification, in whole or in part, in any such action shall also be indemnified by the Corporation. It shall be a defense to any such action (other than an action brought to enforce a claim for the advance of expenses where the undertaking required pursuant to Section 1 of this Article V, if any, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the DGCL for the Corporation to indemnify the claimant for the amount claimed, but the burden of such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct. The procedure for indemnification of agents for whom indemnification is provided pursuant to Section 1 of this Article V shall be the same procedure set forth in this Section 2 for directors, officers and employees, unless otherwise set forth in the action of the Board of Directors providing indemnification for such agent.

Section 3. Service for Subsidiaries. Any person serving as a director, officer, employee or agent of a subsidiary of the Corporation shall be conclusively presumed to be serving in such capacity at the request of the Corporation.

Section 4. Reliance. Persons who after the date of the adoption of this provision become or remain directors, officers or employees of the Corporation or who, while a director, officer or employee of the Corporation, become or remain a director, officer, employee or agent of a subsidiary of the Corporation, shall be conclusively presumed to have relied on the rights to indemnity, advance of expenses and other rights contained in this Article V in entering into or continuing such service. The rights to indemnification and to the advance of expenses conferred in this Article V shall apply to claims made against an indemnitee arising out of acts or omissions which occurred or occur both prior and subsequent to the adoption hereof.

Section 5. Non-Exclusivity of Rights. The rights to indemnification and to the advance of expenses conferred in this Article V shall not be exclusive of any other right which any person may have or hereafter acquire under the Certificate of Incorporation or under any statute, By-Law, agreement, vote of stockholders or disinterested directors or otherwise.

Section 6. Insurance. The Corporation may purchase and maintain insurance on its own behalf and on behalf of any person who is or was a director, officer, employee or agent of the Corporation or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss asserted against him or her and incurred by him or her in any such capacity, whether or not the Corporation would have the power to indemnify such person against such expenses, liability or loss under the DGCL.

ARTICLE VI

CERTIFICATES OF STOCK

Section 1. Form. The shares of stock of the Corporation may be represented by certificates or uncertificated, as determined by the Board of Directors. Notwithstanding the foregoing, each holder of uncertificated shares shall be entitled, upon request, to a certificate representing such shares. Every holder of stock in the Corporation represented by a certificate shall be entitled to have the certificate signed by, or in the name of, the Corporation by the Chairman of the Board, the President or a Vice-President and the Secretary, Treasurer or an Assistant Secretary or an Assistant Treasurer of the Corporation, certifying the number of shares owned by such holder in the Corporation. If such a certificate is countersigned (1) by a transfer agent or an assistant transfer agent other than the Corporation or its employee or (2) by a registrar, other than the Corporation or its employee, the signature of any such Chairman of the Board, President, Vice-President, Secretary, Treasurer or Assistant Secretary may be facsimiles. In case any officer or officers who have signed, or whose facsimile signature or signatures have been used on, any such certificate or certificates shall cease to be such officer or officers of the Corporation whether because of death, resignation or otherwise before such certificate or certificates have been delivered by the Corporation, such certificate or certificates may nevertheless be issued and delivered as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures have been used thereon had not ceased to be such officer or officers of the Corporation. All certificates for shares shall be consecutively numbered or otherwise identified. The name of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered on the books of the Corporation. Shares of stock of the Corporation shall only be transferred on the books of the Corporation by the holder of record thereof or by such holder's attorney duly authorized in writing, upon surrender to the Corporation of the certificate or certificates for such shares endorsed by the appropriate person or persons, with such evidence of the authenticity of such endorsement, transfer, authorization, and other matters as the Corporation may reasonably require, and accompanied by all necessary stock transfer stamps. In that event, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate or certificates, and record the transaction on its books. The Board of Directors may appoint a bank, trust company or other entity organized under the laws of the United States or any state thereof to act as its transfer agent or registrar, or both, in connection with the transfer of any class or series of securities of the Corporation.

Section 2. Lost Certificates. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates previously issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate to be lost, stolen, or destroyed. When authorizing such issue of a new certificate or certificates, the Corporation may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen, or destroyed certificate or certificates, or his or her legal representative, to give the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the loss, theft or destruction of any such certificate or the issuance of such new certificate.

Section 3. Fixing a Record Date for Stockholder Meetings. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty (60) days nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be the close of business on the next day preceding the day on which notice is first given. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 4. Fixing a Record Date for Other Purposes. In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment or any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of capital stock, or for the purposes of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 5. Registered Stockholders. Prior to the surrender to the Corporation of the certificate or certificates for a share or shares of capital stock with a request to record the transfer of such share or shares, the Corporation may treat the registered owner as the person entitled to receive dividends, to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner. The Corporation shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof.

ARTICLE VII

GENERAL PROVISIONS

Section 1. Dividends. Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation of the Corporation, if any, may be declared by the Board of Directors at any regular or special meeting, in accordance with applicable law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation of the Corporation. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or any other purpose, and the directors may modify or abolish any such reserve in the manner in which it was created.

Section 2. Checks, Drafts or Orders. All checks, drafts or other orders for the payment of money by or to the Corporation and all notes and other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation, and in such manner, as shall be determined by resolution of the Board of Directors or a duly authorized committee thereof.

Section 3. Contracts. In addition to the powers otherwise granted to officers pursuant to Article IV hereof, the Board of Directors may authorize any officer or officers, or any agent or agents, of the Corporation to enter into any

4889-9362-9190.2

contract or to execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 5. Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors and initially shall be the annual period ending on December 31 of each year.

Section 6. Corporate Seal. The Board of Directors may provide a corporate seal which shall have inscribed thereon the name of the Corporation and such other information as the Board of Directors may deem necessary or convenient. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

Section 7. Voting Securities Owned By Corporation. Voting securities in any other corporation held by the Corporation shall be voted by the Chairman of the Board, the Chief Executive Officer, the President or a Vice-President, unless the Board of Directors specifically confers authority to vote with respect thereto, which authority may be general or confined to specific instances, upon some other person or officer. Any person authorized to vote securities shall have the power to appoint proxies, with general power of substitution.

Section 8. Inspection of Books and Records. Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the Corporation's stock ledger, a list of its stockholders, and its other books and records, and to make copies or extracts therefrom. A proper purpose shall mean any purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the Corporation at its registered office in the State of Delaware or at its principal executive office. The Corporation shall have a reasonable amount of time to respond to any such request.

Section 9. Section Headings. Section headings in these By-Laws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

Section 10. Inconsistent Provisions. In the event that any provision of these By-Laws is or becomes inconsistent with any provision of the Certificate of Incorporation of the Corporation, the DGCL or any other applicable law, the provision of these By-Laws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

ARTICLE VIII

AMENDMENTS

These By-Laws may be amended, altered, or repealed and new By-Laws adopted at any meeting of the Board of Directors by the affirmative vote of the majority of the total number of directors then in office. Sections 2, 11 and 13 of Article II, Sections 2, 3, 4, and 5 of Article III, Article V and this Article VIII of these By-Laws shall not be altered, amended or repealed by, and no provision inconsistent therewith shall be adopted by, the stockholders without the affirmative vote of the holders of a majority of the issued and outstanding voting stock of the Corporation entitled to vote generally for election of directors represented at a meeting of stockholders at which a quorum is present (as provided in these By-Laws).
4889-9362-9190.2

**Certification of Chief Executive Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Bruce Rodgers, certify that:

1. I have reviewed this quarterly report on Form 10-Q of LM Funding America, 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 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 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.

November 17, 2022

/s/ Bruce Rodgers
Bruce Rodgers
Chief Executive Officer
(Principal Executive Officer)

A signed original of this document has been provided to LM Funding America, Inc. and will be retained by LM Funding America, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

**Certification of Chief Financial Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Richard Russell, certify that:

1. I have reviewed this quarterly report on Form 10-Q of LM Funding America, 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 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 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.

November 17, 2022

/s/ Richard Russell
Richard Russell
Chief Financial Officer
(Principal Financial and Accounting Officer)

A signed original of this document has been provided to LM Funding America, Inc. and will be retained by LM Funding America, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

Written Statement of the Chief Executive Officer

Pursuant to 18 U.S.C. Section 1350

Solely for the purposes of complying with 18 U.S.C. ss.1350, I, the undersigned Chief Executive Officer of LM Funding America, Inc. (the "Company"), hereby certify, based on my knowledge, that the Quarterly Report on Form 10-Q of the Company for the quarterly period ended September 30, 2022 as filed with the Securities and Exchange Commission on November 17, 2022 (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and that information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Bruce Rodgers

Bruce Rodgers

Chief Executive Officer

(Principal Executive Officer)

November 17, 2022

A signed original of this document has been provided to LM Funding America, Inc. and will be retained by LM Funding America, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

Written Statement of the Chief Financial Officer

Pursuant to 18 U.S.C. Section 1350

Solely for the purposes of complying with 18 U.S.C. ss.1350, I, the undersigned Chief Financial Officer of LM Funding America, Inc. (the "Company"), hereby certify, based on my knowledge, that the Quarterly Report on Form 10-Q of the Company for the quarterly period ended September 30, 2022 as filed with the Securities and Exchange Commission on November 17, 2022 (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and that information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Richard Russell

Richard Russell

Chief Financial Officer

(Principal Financial and Accounting Officer)

November 17, 2022

A signed original of this document has been provided to LM Funding America, Inc. and will be retained by LM Funding America, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.
