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, 2018

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	**47-3844457**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. employer identification no.)**
302 Knights Run Avenue Suite 1000 Tampa, FL	**33602**
(Address of principal executive offices)	**(Zip code)**

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

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 ☐	Accelerated filer ☐
Non-accelerated filer ☐	Smaller reporting company ☑
	Emerging growth company ☑

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

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

The registrant had 2.3 million shares of Common Stock, par value $0.001 per share, outstanding as of November 13, 2018.

LM FUNDING AMERICA, INC.

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

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

	September 30, 2018 (Unaudited)	December 31, 2017
ASSETS		
Cash	$ 929,149	$ 590,394
Finance receivables:		
Original product - net (Note 2)	465,004	637,937
Special product - New Neighbor Guaranty program - net (Note 3)	263,835	339,471
Prepaid expenses and other assets	233,967	101,339
Fixed assets, net (Note 1)	42,813	69,505
Real estate assets owned (Note 1)	124,586	196,707
Other Assets	32,036	32,964
Total assets	$ 2,091,390	$ 1,968,317
LIABILITIES AND STOCKHOLDERS' EQUITY		
Notes payable (Note 5)		
Principal amount, net	$ 569,610	$ 39,028
Accounts payable and accrued expenses	520,373	477,953
Due to related party (Note 4)	46,010	-
Accrued loss litigation settlement	-	505,000
Other liabilities and obligations	27,950	49,353
Total liabilities	1,163,943	1,071,334
Stockholders' equity:		
Common stock, par value $.001; 30,000,000 shares authorized; 625,318 shares issued and outstanding	625	625
Additional paid-in capital	12,085,029	11,914,083
Accumulated deficit	(11,158,207)	(11,017,725)
Total stockholders' equity	927,447	896,983
Total liabilities and stockholders' equity	$ 2,091,390	$ 1,968,317

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)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	**2017**	**2018**	**2017**
Revenues:				
Interest on delinquent association fees	$ 459,505	$ 593,613	$ 1,574,960	$ 1,888,205
Administrative and late fees	59,517	64,959	178,146	218,883
Recoveries in excess of cost - special product	31,446	134,787	90,546	219,160
Underwriting and other revenues	79,838	87,286	188,024	221,065
Rental revenue	151,204	161,726	591,553	496,614
Total revenues	781,510	1,042,371	2,623,229	3,043,927
Operating Expenses:				
Staff costs and payroll	273,400	470,056	974,334	1,479,232
Professional fees	432,265	533,591	888,949	1,639,278
Settlement costs with associations	11,731	101,175	38,846	257,256
Selling, general and administrative	71,864	178,615	224,079	630,466
Provision for credit losses	-	-	581	-
Real estate management and disposal	178,372	144,992	460,312	414,928
Depreciation and amortization	10,884	18,825	55,195	65,015
Collection costs	8,797	37,994	38,959	136,489
Other operating expenses	3,614	4,153	15,493	10,969
Total operating expenses	990,927	1,489,401	2,696,748	4,633,633
Operating loss	(209,417)	(447,030)	(73,519)	(1,589,706)
Other income (loss)				
Interest expense	(377,387)	(122,406)	(471,963)	(375,042)
Gain (loss) on litigation	-	-	405,000	(505,000)
Loss before income taxes	(586,804)	(569,436)	(140,482)	(2,469,748)
Income tax expense	-	4,134,436	-	3,431,536
Net Loss	$ (586,804)	$ (4,703,872)	$ (140,482)	$ (5,901,284)
Net loss per share:				
Basic	$ (0.94)	$ (14.25)	$ (0.22)	$ (17.88)
Diluted	(0.94)	(14.25)	(0.22)	(17.88)
Weighted average number of common shares outstanding:				
Basic	625,318	330,000	625,318	330,000
Diluted	625,318	330,000	625,318	330,000

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)

	Nine Months ended September 30,	
	2018	**2017**
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	**$ (140,482)**	**$ (5,901,284)**
Adjustments to reconcile net loss to cash used in operating activities		
Depreciation and amortization	55,195	64,003
Amortization of debt discount	154,676	-
Stock compensation	16,270	21,799
Amortization of debt issuance costs	291,760	73,922
(Gain) loss on litigation	(405,000)	505,000
Change in assets and liabilities		
Prepaid expenses and other assets	(44,686)	14,571
Accounts payable	(41,408)	5,050
Accrued expenses	(216,172)	20,355
Advances (repayments) to related party	46,010	94
Other liabilities	(21,403)	46,813
Deferred taxes	-	3,431,536
Net cash used in operating activities	**(305,240)**	**(1,718,141)**
CASH FLOWS FROM INVESTING ACTIVITIES:		
Net collections of finance receivables - original product	172,933	152,810
Net collections of finance receivables - special product	75,633	157,812
Capital expenditures	-	(4,468)
Proceeds for real estate assets owned	43,619	320,997
Net cash provided by investing activities	**292,185**	**627,151**
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from borrowing	500,000	-
Principal repayments	(56,430)	(574,611)
Debt issue costs	(91,760)	-
Net cash provided by (used in) financing activities	**351,810**	**(574,611)**
NET INCREASE (DECREASE) IN CASH	338,755	(1,665,601)
CASH - BEGINNING OF YEAR	590,394	2,268,180
CASH - END OF YEAR	**$ 929,149**	**$ 602,579**
SUPPLEMENTAL DISCLOSURES OF CASHFLOW INFORMATION		
Cash paid for interest	$ -	$ 313,042
SUPPLEMENTAL DISCLOSURE OF NON-CASH INVESTING AND FINANCING ACTIVITIES:		
Debt discount on issuance of warrants	154,676	$ -
Insurance financing	87,012	-

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

Note 1. Summary of Significant Accounting Policies

Nature of Operations

LM Funding America, Inc. ("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 dated 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 is a specialty finance company that provides funding principally to community associations that are almost exclusively located in Florida. The business of the Company is conducted pursuant to relevant state statutes (the "Statutes"), principally Florida Statute 718.116. The Statutes provide each community association lien rights to secure payment from unit owners (property owners) for assessments, interest, administrative late fees, reasonable attorneys' fees, and collection costs. In addition, the lien rights granted under the Statutes are given a higher priority (a "Super Lien") than all other lien holders except property tax liens. The Company provides funding to associations for their delinquent assessments from property owners in exchange for an assignment of the association's right to collect proceeds pursuant to the Statutes. The Company derives its revenues from the proceeds of association collections.

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 Statutes in Florida 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.

The Statutes limit the liability of a first mortgage holder for unpaid assessments and related charges and fees (as set forth above) in the event of title transfer by foreclosure or acceptance of deed in lieu of foreclosure. This liability is limited to the lesser of twelve months of regular periodic assessments or one percent of the original mortgage debt on the unit (the "Super Lien Amount").

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; and LMF SPE #2, LLC and various single purpose limited liability corporations owned by REO Management Holdings, LLC which own various properties. 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, 2018 and for the three and nine months ended September 30, 2018 and September 30, 2017, 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 condensed consolidated balance sheet as of December 31, 2017, is derived from the audited consolidated financial statements presented in the Company's Annual Report on Form 10-K for fiscal the year ended December 31, 2017.

Use of Estimates

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Significant estimates include the evaluation of any probable losses on amounts funded under the Company's *New Neighbor Guaranty* program as disclosed below, the evaluation of probable losses on balances due from a related party, the realization of deferred tax assets, the evaluation of contingent losses related to litigation and fair value estimates of real estate assets owned.

Revenue Recognition

Accounting Standards Codification ("ASC") 606 of the Financial Accounting Standards Board ("FASB") states an entity needs to conclude at the inception of the contract that collectability of the consideration to which it will be entitled in exchange for the goods and services that will be transferred to the customer is probable. That is, in some circumstances, an entity may not need to assess its ability to collect all of the consideration in the contract. The Company provides funding to community associations by purchasing their rights under delinquent accounts from unpaid assessments due from property owners (the "accounts"). Collections on the accounts may vary greatly in both the timing and amount ultimately recovered compared with the total revenues earned on the accounts because of a variety of economic and social factors affecting the real estate environment in general. The Company's contracts with its customers have very specific performance obligations. The Company has determined that the known amount of cash to be realized or realizable on its revenue generating activities cannot be reasonably estimated.

The Company classifies its finance receivables as nonaccrual and recognizes revenues in the accompanying statements of income on the cash basis or cost recovery method. The Company applies the cash basis method to its original product and the cost recovery method to its special product as follows:

Finance Receivables—Original Product: Under the Company's original product, delinquent assessments are funded only up to the Super Lien Amount as discussed above. Recoverability of funded amounts is generally assured because of the protection of the Super Lien Amount. As such, payments by unit owners on the Company's original product are recorded to income when received in accordance with the provisions of the Florida Statute (718.116(3)) and the provisions of the purchase agreements entered into between the Company and community associations. Those provisions require that all payments be applied in the following order: first to interest, then to late fees, then to costs of collection, then to legal fees expended by the Company and then to assessments owed. In accordance with the cash basis method of recognizing revenue and the provisions of the statute, the Company records revenues for interest and late fees when cash is received. In the event the Company determines the ultimate collectability of amounts funded under its original product are in doubt, payments are applied to first reduce the funded or principal amount.

Finance Receivables—Special Product (New Neighbor Guaranty program): During 2012, the Company began offering associations an alternative product under the *New Neighbor Guaranty* program where the Company will fund amounts in excess of the Super Lien Amount. Under this special product, the Company purchases substantially all of the delinquent assessments owed to the association, in addition to all accrued interest and late fees, in exchange for payment by the Company of (i) a negotiated amount or (ii) on a going forward basis, all monthly assessments due for a period up to 48 months. Under these arrangements, the Company considers the collection of amounts funded is not assured and under the cost recovery method, cash collected is applied to first reduce the carrying value of the funded or principal amount with any remaining proceeds applied next to interest, late fees, legal fees, collection costs and any amounts due to the community association. Any excess proceeds still remaining are recognized as revenues. If the future proceeds collected are lower than the Company's funded or principal amount, then a loss is recognized.

Cash

The Company maintains cash balances at several financial institutions that are insured under the Federal Deposit Insurance Corporation's ("FDIC") Transition Account Guarantee Program. Balances with the financial institutions may exceed federally insured limits.

Finance Receivables

Finance receivables are recorded at the amount funded or cost (by unit). The Company evaluates its finance receivables at each period end for losses that are considered probable and can be reasonably estimated in accordance with ASC 450-20. As discussed above, recoverability of funded amounts under the Company's original product is generally assured because of the protection of the Super Lien Amount. However, the Company did have an accrual at September 30, 2018 and December 31, 2017 for an allowance for credit losses for this program of $180,000 and $194,000, respectively.

Under the *New Neighbor Guaranty* program (special product), the Company funds amounts in excess of the Super Lien Amount. When evaluating the carrying value of its finance receivables, the Company looks at the likelihood of future cash flows based on historical payoffs, the fair value of the underlying real estate, the general condition of the community association in which the unit exists, and the general economic real estate environment in the local area. The Company estimated an allowance for credit losses for this program of $51,230 as of each of September 30, 2018 and December 31, 2017 under ASC 450-20 related to its New Neighbor Guaranty program.

The Company will charge any receivable against the allowance for credit losses when management believes the collectability of the receivable is confirmed. The Company considers writing off a receivable when (i) a first mortgage holder who names the association in a foreclosure suit takes title and satisfies an estoppel letter for amounts owed which are less than amounts the Company funded to the association; (ii) a tax deed is issued with insufficient excess proceeds to pay amounts the Company funded to the association; (iii) an association settles an account for less than amounts the Company funded to the association or (iv) the association terminates its relationship with the Company's designated legal counsel. Upon the occurrence of any of these events, the Company evaluates the potential recovery via a deficiency judgment against the prior owner and the ability to collect upon the deficiency judgment within the statute of limitations period or whether the deficiency judgment can be sold. If the Company determines that collection through a deficiency judgment or sale of a deficiency judgment is not feasible, the Company writes off the unrecoverable receivable amount. Any losses greater than the recorded allowance will be recognized as expenses. Under the Company's revenue recognition policies, all finance receivables (original product and special product) are classified as nonaccrual.

During the nine months ended September 30, 2018 and 2017, write offs charged against the allowance for credit losses were $14,105 and $73,770, respectively. Any losses greater than the recorded allowance will be recognized as expenses. Under the Company's revenue recognition policies, all finance receivables (original product and special product) are classified as nonaccrual.

Real Estate Assets Owned

In the event collection of a delinquent assessment results in a unit being sold in a foreclosure auction, the Company has the right to bid (on behalf of the community association) for the delinquent unit as attorney in fact, applying any amounts owed for the delinquent assessment to the foreclosure price as well as any additional funds that the Company, in its sole discretion, decides to pay. If a delinquent unit becomes owned by the community association by acquiring title through an association lien foreclosure auction, by accepting a deed-in-lieu of foreclosure, or by any other way, the Company in its sole discretion may direct the community association to quitclaim title of the unit to the Company.

Properties quitclaimed to the Company are in most cases acquired subject to a first mortgage or other liens,and are recognized in the accompanying consolidated balance sheets solely at costs incurred by the Company in excess of original funding. At times, the Company will acquire properties through foreclosure actions free and clear of any mortgages or liens. In these cases, the Company records the estimated fair value of the properties in accordance with ASC 820-10, *Fair Value Measurements*. Any real estate held for sale is adjusted to fair value less the cost to dispose in the event the carrying value of a unit or property exceeds its estimated net realizable value.

The Company capitalizes costs incurred to acquire real estate owned properties and any costs incurred to get the units in a condition to be rented. These costs include, but are not limited to, renovation/rehabilitation costs, legal costs, and delinquent taxes. These costs are depreciated over the estimated minimum time period the Company expects to maintain possession of the units. Costs incurred for unencumbered units are depreciated over 20 years and costs for units subject to a first mortgage are depreciated over 3 years. As of September 30, 2018 and December 31, 2017, capitalized real estate costs, net of accumulated depreciation, were $124,586 and $196,707, respectively.

During the three and nine month periods ended September 30, 2018 and 2017, depreciation expense for real estate was $5,858 and $28,503, respectively for 2018 and $8,539 and $34,459, respectively for 2017.

If the Company elects to take a quitclaim title to a unit or property held for sale, the Company is responsible to pay all future assessments on a current basis, until a change of ownership occurs. The community association must allow the Company to lease or sell the unit to satisfy obligations for delinquent assessments of the original debt. All proceeds collected from any sale of the unit shall be first applied to all amounts due the Company plus any additional funds paid by the Company to purchase the unit, if applicable. Rental revenues and sales proceeds related to real estate assets held for sale are recognized when earned and realizable. Expenditures for current assessments owed to associations, repairs and maintenance, utilities, etc. are expensed when incurred.

If the community association elects (prior to the Company obtaining title through its own election) to maintain ownership and not quitclaim title to the Company, the community association must pay the Company all interest, late fees, collection costs, and legal fees expended, plus the original funding on the unit, which have accrued according to the purchase agreement entered into by the community association and the Company. In this event, the unit will be reassigned to the community association.

Fixed Assets

The Company capitalizes all acquisitions of fixed assets in excess of $500. Fixed assets are stated at cost. Depreciation is provided on the straight-line method over the estimated useful lives of the assets. Fixed assets are comprised of furniture, computer and office equipment with an assigned useful life of 3 to 5 years. Fixed assets also include capitalized software costs. Capitalized software costs include costs to develop software to be used solely to meet the Company's internal needs, consist of employee salaries and benefits and fees paid to outside consultants during the application development stage, and are amortized over their estimated useful life of 5 years. As of September 30, 2018 and December 31, 2017, capitalized software costs, net of accumulated amortization, was $27,766 and $45,210, respectively. Amortization expense for capitalized software costs for the three and nine month periods ended September 30, 2018 and 2017 was $5,815 and $17,444, respectively for 2018, and $5,815 and $17,444, respectively for 2017.

Debt Issue Costs

The Company capitalizes all debt issue costs and amortizes them on a method that approximates the effective interest method over the remaining term of the note payable. The Company capitalizes all debt issue costs and amortizes them on a method that approximates the effective interest method over the remaining term of the note payable. The Company incurred $91,760 of debt issuance costs for the nine months ended September 30, 2018. Unamortized debt issue costs of $0 at September 30, 2018 and $0 at December 31, 2017 are presented in the accompanying condensed consolidated balance sheets as other assets until the loan proceeds are received which at that time will be reclassified as a direct deduction from the carrying amount of that debt liability in accordance with Accounting Standards Update ("ASU") 2015-03 (see below). The Company adopted this new standard in the first quarter of fiscal 2016. The adoption of this standard did not have a material impact on the Company's consolidated financial position and had no impact on its consolidated income or cash flows. In addition, the amortization of debt issuance costs is to be reported as interest expense under ASU 2015-03 (ASC 835-30-45-3). During the three and nine months ended September 30, 2018 and 2017, the amortization of debt issuance costs was $286,055 and $ 291,760, respectively for 2018 and $24,641 and $73,922, respectively for 2017.

Debt Discount

On April 2, 2018, the Company entered into a Securities Purchase Agreement (the "SPA") with a New York-based family office ("Investor"), which was subsequently amended (see Note 8. Subsequent Events), pursuant to which the Company issued to Investor a Senior Convertible Promissory Note ("Note") in the original principal amount of $500,000 in exchange for a purchase price of $500,000. The maturity date of the Note is six months after the date of issuance (subject to acceleration upon an event of default). The Note carries a 10.5% interest rate, with accrued but unpaid interest being payable on the Note's maturity date. Investor was also issued pursuant to the SPA five- year warrants exercisable at the closing per share bid price on April 2, 2018 to purchase 40,000 shares of the Company's common stock (the "Warrants") (see Note 5. Long Term Debt).

The 40,000 warrants were valued on the grant date at approximately $3.87 per warrant or a total of $154,676 using a Black-Scholes option pricing model with the following assumptions: stock price of $7.40 per share (based on the quoted trading price on the date of grant), volatility of 100.6%, expected term of 5 years, and a risk-free interest rate of 2.55%. The fair value of the warrants ($154,676) was treated as a debt discount that is being amortized over 6 months. The amortization of the discount is recognized as interest expense of which $154,676 was recognized for the three and nine months ended September 30, 2018.

Settlement Costs with Associations

Community associations working with the Company will at times incur costs in connection with litigation initiated by the Company against property owners and/or mortgage holders. These costs include settlement agreements whereby the community association agrees to pay some monetary compensation to the opposing party or judgments against the community associations for fees of opposing legal counsel or other damages awarded by the courts. The Company indemnifies the community association for these costs pursuant to the provisions of the agreement between the Company and the community association. Costs incurred by the Company for these indemnification obligations for the three and nine months ended September 30, 2018 and 2017 were approximately $12,000 and $39,000, respectively for 2018 and $101,000 and $257,000, respectively for 2017. The Company does not limit its indemnification based on amounts ultimately collected from property owners.

Income Taxes

Income taxes are provided for the tax effects of transactions reported in the consolidated financial statements and consist of taxes currently due plus deferred taxes resulting primarily from the tax effects of temporary differences between financial and income tax reporting. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled.

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 2017 and 2016, the Company concluded there was not sufficient positive evidence to overcome this recent operating history. As a result, the Company believes that a valuation allowance was necessary based on the more-likely-than-not threshold noted above. The Company recorded a valuation allowance of approximately of $3,620,000 during the year ended December 31, 2017 equal to its deferred tax asset as of December 31, 2017. The valuation allowance was subsequently reduced to reflect the decrease in deferred tax assets resulting from the tax act of 2017.

The Company incurred net income for the first nine months ended September 30, 2018, but no income tax expense was recorded because the net operating carryforward losses would offset the net income resulting in no current tax expense.

Loss Per Share

On October 15, 2018, the Company effected a common share consolidation ("Reverse Stock Split") by means of a one-for-ten (1:10) reverse split of its outstanding common stock, par value $0.001 per share which resulted in a decrease in outstanding common stock to 625,318 shares. The Reverse Stock Split became effective, on October 16, 2018 and the Company's common stock began trading on The Nasdaq Global Market on a split-adjusted basis on October 16, 2018.

The Company has restated all share amounts to reflect the Reverse Stock Split.

Basic loss per share is calculated as net loss to common stockholders divided by the weighted average number of common shares outstanding during the period. Diluted loss per share for the period equals basic loss per share as the effect of any stock based compensation awards or stock warrants would be anti-dilutive. The anti-dilutive stock based compensation awards consisted of:

	As of September 30,	
	2018	2017
Stock Options	19,800	26,700
Stock Warrants	160,000	120,000

On April 2, 2018, the Company issued warrants that allowed for the right to purchase 40,000 shares of common stock at an exercise price of $6.605 per share. Due to the subsequent issuance of stock and warrants, these warrants now have the right to purchase 143,587 shares at an exercise price of $1.84 per share. These warrants have average remaining life of 4.50 years as of September 30, 2018. These warrants expire in the year 2023.

Stock-Based Compensation

The following is a summary of the stock option plan activity during the nine months ended September 30, 2018 and 2017:

	2018		2017	
	Number of Options	Weighted Average Exercise Price	Number of Options	Weighted Average Exercise Price
Options Outstanding at Beginning of the year	11,290	$ 111.10	26,700	$ 110.30
Granted	10,000	10.00	-	-
Exercised	-	-	-	-
Adjustment	1,010	125.00	-	-
Forfeited	(2,500)	125.00	-	-
Options Outstanding at End of Period	19,800	$ 62.13	26,700	$ 110.30
Options Exercisable at End of Period	3,790	$ 107.64	3,790	$ 100.00

The Company records all equity-based incentive grants to employees and non-employee members of the Company's Board of Directors in operating expenses in the Company's Consolidated Statements of Operations based on their fair values determined on the date of grant. Stock-based compensation expense, reduced for estimated forfeitures, is recognized on a straight-line basis over the requisite service period of the award, which is generally the vesting term of the outstanding equity awards.

The Company recognized stock compensation expense after forfeitures for the nine month periods ended September 30, 2018 and 2017 of $16,270 and $21,799 respectively.

On May 29, 2018 the Company granted a total of 10,000 stock options to our employees at an exercise price of $10.00 per share. These awards will vest evenly over a three year period. The maximum term of an option is 10 years from the date of grant. The grant date fair value of the options granted was $3.50. The 10,000 options granted in May 2018 were valued on the grant date at approximately $3.50 per option or a total of $35,100 using a Black-Scholes option pricing model with the following assumptions: stock price of $6.00 per share (based on the quoted trading price on the date of grant), volatility of 108.0%, expected term of 6 years, and a risk-free interest rate of 2.65%. The Company expensed $3,972 of these awards as of September 30, 2018 and has $31,128 remaining to be expensed over the next 3 years.

Contingencies

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.

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. The Company engages a third-party valuation firm to assist in estimating the fair value of its finance receivables.

Risks and Uncertainties

Funding amounts are secured by a priority lien position provided under Florida law (see discussion above regarding Florida Statute 718.116). However, in the event the first mortgage holder takes title to the property, the amount payable by the mortgagee to satisfy the priority lien is capped under this same statute and would generally only be sufficient to reimburse the Company for funding amounts noted above for delinquent assessments. Amounts paid by the mortgagee would not generally reimburse the Company for interest, administrative late fees and collection costs. Even though the Company does not recognize these charges as revenues until collected, its business model and long-term viability is dependent on its ability to collect these charges.

In the event a delinquent unit owner files for bankruptcy protection, the Company may at its option be reimbursed by the association for the amounts funded (i.e., purchase price) and all collection rights are re-assigned to the association.

New Accounting Pronouncements

In May 2017, the FASB issued ASU 2017-09, "Compensation—Stock Compensation (Topic 718): Scope of Modification Accounting," which provides guidance about which changes to the terms or conditions of a share-based payment award require an entity to apply modification accounting pursuant to Topic 718. ASU 2017-09 is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2017. Early adoption is permitted. The amendments in this update are required to be applied prospectively to an award modified on or after the adoption date. This standard became effective for the Company as of January 1, 2018. The impact this standard will have on the Company's consolidated financial statements and related disclosures will be dependent on the terms and conditions of any modifications made to share-based awards after January 1, 2018.

In May 2014, the FASB issued ASU 2014-09, "Revenue from Contracts with Customers (Topic 606)." This ASU creates a single, comprehensive revenue recognition model for all contracts with customers. The model is based on changes in contract assets (rights to receive consideration) and liabilities (obligations to provide a good or service). Revenue will be recognized based on the satisfaction of performance obligations, which occurs when control of a good or service transfers to a customer and enhanced disclosures will be required regarding the nature, amount, timing and uncertainty of revenue and cash flows arising from an entity's contracts with customers. Either a retrospective or cumulative effect transition method, referred to as the modified retrospective method, is permitted. The impact from the adoption of this standard was immaterial to the consolidated financial statements for the full fiscal year 2018. The Company adopted ASU 2014-09 on January 1, 2018 using the modified retrospective method by recognizing the cumulative effect of initially applying the new standard as an increase to the opening balance of retained earnings. There was no impact from the cumulative effect adjustment for the nine months ended September 30, 2018.

Recent Accounting Pronouncements Not Yet Adopted

In February 2016, the FASB issued ASU 2016-02, "Leases (Topic 842)," which requires lessees to recognize right-of-use assets and lease liability, initially measured at present value of the lease payments, on its balance sheet for leases with terms longer than 12 months and classified as either financing or operating leases. ASU 2016-02 requires a modified retrospective transition approach for capital and operating leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements, and provides certain practical expedients that companies may elect including those contained in ASU 2018-01, "Leases (Topic 842): Lease Easement Practical Expedient for Transition to Topic 842". This ASU is effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years with early adoption permitted. The Company is currently evaluating the impact that the adoption of this ASU will have on its consolidated financial statements and related disclosures.

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments - Credit Losses* which establishes a new approach for credit impairment based on an expected loss model rather than an incurred loss model. The standard requires the consideration of all available relevant information when estimating expected credit losses, including past events, current conditions and forecasts and their implications for expected credit losses. The guidance is effective January 1, 2020 with a one-year early adoption permitted. The Company is evaluating the impact of the new guidance.

In June 2018, the FASB issued ASU No. 2018-07 " Compensation—Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting". The standard simplified the accounting for share-based payments granted to nonemployees for goods and services, therefore guidance on such payments to nonemployees would be mostly aligned with the requirements for share-based payments granted to employees. ASU 2018-07 will be effective for us beginning October 1, 2019, but early adoption is permitted (but no earlier than the adoption date of Topic 606). We are currently evaluating the impact of implementation of this standard on our financial statements.

Recent accounting guidance not discussed above is not applicable, did not have, or is not expected to have a material impact to the Company.

Reclassifications

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

Note 2. Finance Receivables – Original Product

The Company's original funding product provides financing to community associations only up to the secured or "Super Lien Amount" as discussed in Note 1. Finance receivables for the original product based on the year of funding are approximately as follows:

	September 30, 2018	December 31, 2017 (Audited)
Funded during the current year	$ 45,000	$ 118,000
1-2 years outstanding	51,000	38,000
2-3 years outstanding	25,000	12,000
3-4 years outstanding	8,000	24,000
Greater than 4 years outstanding	516,000	640,000
	645,000	832,000
Reserve for credit losses	(180,000)	(194,000)
	$ 465,000	$ 638,000
Number of active units with delinquent assessments	896	1,162
Amount of outstanding interest and late fees on active units	$ 13,264,000	$ 14,600,000

Note 3. Finance Receivables – Special Product (New Neighbor Guaranty program)

The Company typically funds amounts equal to or less than the "Super Lien Amount". During 2012, the Company began offering Associations an alternative product under the New Neighbor Guaranty program where the Company funds amounts in excess of the "Super Lien Amount".

Under this special product, the Company purchases substantially all of the outstanding past due assessments due from delinquent property owners, in addition to all interest, late fees and other charges in exchange for the Company's commitment to pay monthly assessments on a going forward basis up to 48 months.

As of September 30, 2018, maximum future contingent payments under these arrangements was approximately $269,000.

Delinquent assessments and accrued charges under these arrangements are as follows:

	September 30, 2018	December 31, 2017 (Audited)
Finance receivables, net	$ 264,000	$ 339,000
Delinquent assessments	799,000	1,200,000
Accrued interest and late fees	515,000	728,000
Number of active units with delinquent assessments	68	97

Allowance for credit losses are recorded for losses that are considered "probable" and can be "reasonably estimated" in accordance with ASC 450-20. Recoverability of the Company's Original Product is generally assured because of the protection of the Super Lien under Florida statute and as such no allowance is recorded.

Credit losses on the New Neighbor Guaranty product were estimated by the Company based on analyzing the investment in each unit and comparing that balance to the average payout for completed units for the past 12 months. The allowance for losses based on these analyses, had a remaining balance of $51,000 as of each of September 30, 2018 and December 31, 2017.

Note 4. 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 or "BLG") which was owned solely by Bruce M. Rodgers, the Chief Executive Officer of LMFA until and through the date of the initial public offering. Following the offering, Mr. Rodgers transferred his interest in BLG to other attorneys at the firm through a redemption of his interest in the firm, and BLG is now 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.

During 2016, the Company experienced a decline in collection events that affected revenues both to the Company and BLG. That resulted in an increase in the related party receivable and reflects the decision by the Company to advance funds to BLG based on the amount of their unpaid legal fees due from property owners. Effective January 1, 2017, the Company entered into a new services agreement with BLG which partially alters the traditional deferred billing arrangement noted above.

Under the new agreement, the Company pays BLG a fixed monthly fee of $82,000 per month for services rendered. The Company will continue to pay 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.

Amounts expensed by the Company to BLG for the three and nine months ended September 30, 2018 and 2017 were approximately $246,000 and $738,000, respectively for 2018 and $246,000 and $738,000, respectively for 2017. As of September 30, 2018 and December 31, 2017, receivables from property owners for charges ultimately payable to BLG approximate $2,986,000 and $3,657,000, respectively.

Under the related party agreement with BLG in effect during 2017 and 2018, 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, 2018 and 2017 of $75,000 and $248,000, respectively for 2018 and $128,000 and $394,000, respectively for 2017. Recoveries during the three and nine month periods ended September 30, 2018 and 2017, related to those costs were approximately $66,000 and $208,000, respectively for 2018 and $91,000 and $258,000, respectively for 2017.

The Company also shares office space and related common expenses with BLG. All shared expenses, including rent, are charged to the legal firm based on an estimate of actual usage. Any expenses of 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 sheet.

The Company assessed the collectability of the amount due from BLG as of December 31, 2017 and concluded that even though BLG had repaid $252,771 during the year, it did not have the ability to repay the remaining balance and as such took a reserve of approximately $1.4 million for the balance due as of December 31, 2017. Amounts receivable from (payable to) BLG as of September 30, 2018 and December 31, 2017 were approximately $(46,000) and $0, respectively.

Note 5. Long-Term Debt and Other Financing Arrangements

	September 30, 2018	December 31, 2017 (Audited)
Financing agreement with FlatIron capital that is unsecured. Down payment of $16,500 was required upfront and equal installment payments of $9,610 were made over a 10 month period. The note matured May 31, 2018. Annualized interest rate was 5.25%	$ -	$ 39,028
Financing agreement with FlatIron capital that is unsecured. Down payment of $28,125 was required upfront and equal installment payments of $8,701 to be made over a 10 month period. The note matures May 1, 2019. Annualized interest is 5.99%	$ 69,610	$ -
Senior secured convertible promissory note issued to Esousa Holdings LLC bearing interest at 10.5% that matures October 2, 2018. The interest is payable upon maturity. The note is secured by a lien on all of the assets of the Company.	500,000	
	569,610	39,028
Less: debt issuance costs	-	-
debt discount	-	
	$ 569,610	$ 39,028

On April 2, 2018, the Company entered into a Securities Purchase Agreement (the “SPA”) with a New York-based family office (“Investor”), which was subsequently amended on July 23, 2018, pursuant to which the Company issued to Investor a Senior Convertible Promissory Note (“Note”) in the original principal amount of $500,000 in exchange for a purchase price of $500,000. The maturity date of the Note is nine months after the date of issuance (subject to acceleration upon an event of default). The Note carries a 10.5% interest rate, with accrued but unpaid interest being payable on the Note’s maturity date (see Note 8. Subsequent

Events). Investor was also issued pursuant to the SPA five- year warrants exercisable at a per-share exercise price of $6.605 to purchase 40,000 shares of the Company's common stock (the "Warrants") (see section entitled "Debt Discount" under Note 1.). Due to the subsequent issuance of stock and warrants, these warrants now have the right to purchase 143,587 shares at an exercise price of $1.84 per share (See Note 8 Subsequent Events).

The Note originally allowed the Investor the option at any time on or after the maturity date to convert all or any part of the outstanding and unpaid principal amount and accrued and unpaid interest of the Note into fully paid and non-assessable shares of the Company's common stock, par value $0.001 per share ("Common Stock"), at a conversion price equal to 85% of the lowest daily volume weighted average price of the Common Stock in the 10 trading days immediately prior to conversion. This conversion feature was removed upon a subsequent amendment on July 23, 2018.

On April 2, 2018, the Company also entered into a Common Stock Purchase Agreement ("Purchase Agreement") with Investor relating to the purchase by Investor from the Company up to $5,000,000 of the Company's Common Stock. The Purchase Agreement provides that, upon the terms and subject to the conditions set forth therein, Investor has committed to purchase up to $5,000,000 worth of the Company's Common Stock ("Purchase Shares") over a 2-year period beginning on the date on which a registration statement relating to the resale of the Purchase Shares (the "Registration Statement") is first declared effective by the U.S. Securities and Exchange Commission (the "Commission").

The Purchase Agreement requires the Company to pay the Investor a commitment fee equal to $200,000 on the earlier of the first draw on the Purchase Agreement or October 3, 2018 which was unpaid as of September 30, 2018. This amount was expensed as interest expense as of September 30, 2018 since the Company cancelled this Purchase Agreement on October 5, 2018.

As contemplated by the Purchase Agreement, on April 2, 2018, the Company entered into registration rights agreement with the Investor (the "Registration Rights Agreement"). The Registration Rights Agreement, as amended on July 23, 2018, requires that an initial registration statement for the Purchase Shares be filed by August 13, 2018 (the "Filing Deadline") and be declared effective by September 13, 2018 (the "Effectiveness Deadline"). If the Company fails to meet the Filing Deadline or the Effectivness Deadline, subject to certain terms provided for in the Registration Rights Agreement, the Company will be required to pay liquidated damages to the Investor. The Registration Rights Agreement also provides for customary indemnification and contribution provisions. This Agreement was cancelled at the same time the Purchase Agreement was cancelled on October 5, 2018.

Note 6. Management's Plans

On August 27, 2014, FASB issued ASU 2014-05, *Disclosure of Uncertainties about an Entity's ability to Continue as a Going Concern*, which requires management to assess a company's ability to continue as a going concern within one year from financial statement issuance and to provide related footnote disclosures in certain circumstances.

The Company has experienced significant operating losses over the past 2 years (2016 and 2017) and generated a net loss for the three and nine months ended September 30, 2018. These losses resulted in the usage of all cash proceeds from the Company's initial public offering in 2015. The Company successfully raised $5.4 million through a secondary public offering on October 30, 2018.

We believe that we have enough cash to mitigate the substantial doubt raised by our recent operating losses and satisfy our estimated liquidity needs for the 12 months from the issuance of these financial statements and avoid any substantial doubt about the Company's ability to continue as a going concern as defined by ASU 2014-05. However, we cannot predict, with certainty, the outcome of our actions to generate liquidity, including the availability of additional debt financing, or whether such actions would generate the expected liquidity as currently planned. Additionally, a failure to generate additional liquidity could negatively impact our ability to acquire units.

Note 7. Commitments and Contingencies

Leases

The Company leases its office under an operating lease beginning March 1, 2014 and ending July 31, 2019.

Future minimum lease payments due under this lease as of September 30, 2018 are as follows:

Years Ending December 31,	
2018	$ 86,000
2019	101,000
	$ 187,000

The Company shares this space and the related costs associated with this operating lease with a related party which generates $168,000 of annual rental income (see Note 4) that also performs legal services associated with the collection of delinquent assessments. The Company's sub-lease to an unrelated party usually generates $71,000 of annual rental income, however they are currently in default on their sub-lease.

Legal Proceedings

Other than the lawsuit described below, we are not currently a party to material 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.

We were a defendant in an action entitled *Solaris at Brickell Bay Condominium Association, Inc. v. LM Funding, LLC*, which was brought before the Circuit Court of the Eleventh Judicial Circuit, Miami-Dade Civil Division on July 31, 2014. In this matter, which was initially preliminarily settled in August 2017, the plaintiff (an association under contract with us) alleged claims such as a usurious loan transaction, state and federal civil Racketeer Influenced and Corrupt Organization Act claims, Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") violations, and other related claims, and the plaintiff requested rescission of their agreement with us, forfeiture of all amounts lent by us to the plaintiff, a declaratory judgment that we have violated FDUTPA, other damages for breach of contract and violations of FDUTPA, and attorneys' fees. On August 4, 2017, an order by the court was entered on Plaintiff's Motion for Preliminary Approval of Class Action Settlement Agreement. In the order, the motion of the Plaintiff, Solaris at Brickell Bay Condominium Association, Inc., individually and on behalf of the certified plaintiff class ("Plaintiffs"), for approval of the Class Action Settlement Agreement (the "Settlement Agreement") with Defendant LM Funding, LLC was granted. Despite our belief that we are not liable for the claims asserted and that we have good defenses thereto, we nevertheless agreed to enter into the Settlement Agreement in order to: (1) avoid any further expense, inconvenience, and distraction of burdensome and protracted litigation and its consequential negative financial effects to our operations; (2) obtain the releases, orders, and final judgment contemplated by the Settlement Agreement; and (3) put to rest and terminate with finality all claims that had been or could have been asserted against us by the Plaintiffs arising from the facts alleged in the lawsuit. Pursuant to the agreement subsequently reached between counsel, all required actions and deadlines set forth in the Settlement Agreement are currently stayed. On March 1, 2018 a continuation of the abatement was granted until April 2, 2018. As of December 31, 2017, the Company had accrued costs of $505,000 as part of the Settlement Agreement. The settlement amount was contingent upon the Company obtaining sufficient financing within the allotted timeframe of the Settlement Agreement. On April 2, 2018, the Plaintiffs withdrew from the Settlement Agreement. On August 14, 2018, the parties to the Solaris class action litigation entered into a revised settlement in which the Plaintiffs amended their complaint (the Fourth Amended Complaint) to reflect no demand for damages and only a claim for declarative and injunctive relief and amended the class definition to reflect a requirement that class members must have active units still under contract with LMF under a "Traditional Model" waterfall in the Allocation of Collection Proceeds. This was submitted to the court who approved the amended Complaint and Class Action Settlement Agreement. On November 6, 2018, the court entered an order granting Plaintiff's Motion for Final Approval of Class Action Settlement. The New Settlement Agreement will also reimburse the Plaintiff's opposing counsel $99,000 plus an administrative fee.

As such, the Company adjusted the class action accrual to $100,000 and recorded a $405,000 class action reversal to the statement of operations. The amount was paid in the third quarter ended September 30, 2018.

The Company received a $200,000 insurance reimbursement for a previously resolved case that is reflected as a reduction of professional fees for the three and nine months ended September 30, 2018.

Note 8. Subsequent Events

On October 5, 2018, the Company exercised its right to terminate the Purchase Agreement originally entered into on April 2, 2018 with the Investor. The Company also repaid the $500,000 note and accrued interest on October 5, 2018. The Company paid the $200,000 Commitment Fee on November 2, 2018 (see Note 5. Long-Term Debt).

On October 30, 2018, LM Funding America, Inc. (the "***Company***") entered into an underwriting agreement (the "***Underwriting Agreement***") with Maxim Group LLC (the "***Underwriter***") with respect to the issuance and sale, in an underwritten public offering (the "***Offering***"), of (i) 1,005,000 units (the "***Units***"), with each Unit being comprised of one share of Company common stock, par value $0.001 per share ("***Common Stock***"), and one warrant to purchase one share of Common Stock (the "***Common Warrants***"), (ii) 1,495,000 pre-funded units (the "***Pre-Funded Units***"), with each Pre-Funded Unit being comprised of one pre-funded warrant to purchase one share of Common Stock at an exercise price of $.01 per share (the "***Pre-Funded Warrants***") and one Common Warrant. Each Unit was sold for a price of $2.40 per Unit, and each Pre-Funded Unit was sold for a price of $2.39 per Unit. The shares of Common Stock and Common Warrants included in the Units, and the Common Warrants and Pre-Funded Warrants included in the Pre-Funded Units, were offered together, but the securities included in the Units and Pre-Funded Units are issued separately.

Pursuant to the Underwriting Agreement, the Company has granted the Underwriter a 45-day option to purchase up to an additional 375,000 shares of Common Stock and/or Common Warrants and/or Pre-Funded Warrants at price of $2.399999 per shares of Common Stock, $0.000001 per Common Warrant, and $2.389999 per Pre-Funded Unit (the "***Over-Allotment***").

Pursuant to the Underwriting Agreement, the Company agreed to issue to the Underwriter warrants (the "***Underwriter Warrant***") to purchase a number of shares of Common Stock equal to an aggregate of 5% of the total number of shares of Common Stock sold in the Offering at an exercise price of $2.64 per share, which is 110% of the public offering price. The Underwriter Warrant is exercisable for a three-year period beginning six months following the closing of the Offering. The Underwriter received an underwriting discount equal to 8.0% of the offer price of the aggregate number of Units and Pre-Funded Units sold in the Offering and Over-Allotment. The Company also agreed to reimburse the Underwriter for reasonable out-of-pocket expenses related to the Offering, including, without limitation, the reasonable fees and expenses of counsel to the Underwriter, up to $90,000.

The Common Warrants are immediately exercisable at a price of $2.40 per share of Common Stock, subject to adjustment in certain circumstances, and will expire five years from the date of issuance. The Common Warrants contain a full-ratchet anti-dilution exercise price adjustment upon the issuance of any Common Stock, securities convertible into Common Stock or certain other issuances at a price below the then-existing exercise price of the Common Warrants, with certain exceptions.

The Offering closed on November 1, 2018. A registration statement on Form S-1 relating to the Offering (File No. 333-227203) was declared effective by the Securities and Exchange Commission on October 29, 2018. The Offering is being made only by means of a prospectus forming a part of the effective registration statement. Simultaneously with the closing, the Company sold additional Common Warrants to purchase up to 375,000 shares of Common Stock in connection with the partial exercise of the Over-Allotment.

The net proceeds of the Offering are approximately $5.4 million, after deducting the underwriting discounts and commissions and offering expenses and assuming no exercise of the Common Warrants or Underwriter Warrant. The Company intends to use the net proceeds from the Offering for general corporate purposes, including working capital and payment of a past-due $200,000 financing fee to a third-party. As a result of the Offering, the Company's stockholders' equity will exceed $2.5 million and its publicly held shares (i.e., shares not held directly or indirectly by an officer, director, or greater-than-10% of the total shares outstanding) will be approximately 1.1 million shares.

On April 2, 2018, the Company issued warrants that allowed for the right to purchase of 40,000 shares of common stock at an exercise price of $6.605 per share. Due to the subsequent issuance of stock and warrants resulting from the Underwriting Agreement, these warrants now have the right to purchase 143,587 shares at an exercise price of $1.84 per share. These warrants have average remaining life of 4.50 years as of September 30, 2018. These warrants expire in the year 2023.

On November 2, 2018, the Company invested part of the proceeds by purchasing a Securities Purchase Agreement (the "IIU SPA") from IIU Inc. ("IIU"), a possible synergistic Virginia based travel insurance brokerage company controlled by Craven House N.A. (which owns approximately 27% of the Company's outstanding stock as of November 13, 2018), pursuant to which IIU issued to the Company a Senior Convertible Promissory Note ("IIU Note") in the original principal amount of $1,500,000 in exchange for a

purchase price of $1,500,000. The maturity date of the Note is 360 dates after the date of issuance (subject to acceleration upon an event of default). The Note carries a 3.0% interest rate, with accrued but unpaid interest being payable on the Note's maturity date.

The IIU Note allows the Company the right on or after the maturity date to convert any unpaid principal and accrued and unpaid interest of the IIU Note into shares of IIU based on a conversion amount which is the fair value of the common shares of IIU at the time. The conversion price will be reset if IIU issues or sells common shares, convertibles securities or options at a price per share that is less than the conversion price in effect immediately prior to such issue or sale or deemed issuance or sale of such dilutive issuance.

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

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 purchase defaulted consumer receivables at appropriate prices, changes in governmental regulations that affect our ability to collect sufficient amounts on our defaulted consumer receivables, our ability to employ and retain qualified employees, changes in the credit or capital markets, changes in interest rates, deterioration in economic conditions, and negative press regarding the debt collection industry which may have a negative impact on a debtor's willingness to pay the debt we acquire, as well as other factors set forth under "Item 1A. Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2017 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

We are a specialty finance company that provides funding to nonprofit community associations primarily located in the state of Florida and, to a lesser extent, nonprofit community associations in the states of Washington, Colorado, and, since February 2016, Illinois. 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. We provide 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. More recently, we have started to engage in the business of purchasing Accounts on varying terms tailored to suit each Association's financial needs, including under our New Neighbor Guaranty program.

Because of our role as a trusted advisor to our Association clients, we are exploring a potential product line which resembles a more traditional consulting model for Associations desirous of this relationship. Areas of our consultancy may include purchase money mortgage qualification consulting, accounts receivable management, reserve study recommendations, and property tax assessed value analysis. In the event we move forward with this new product line, we will seek to provide services and advice inside of our core competency of community association finance in an effort to drive demand for our financial products.

In our original product offering, we typically purchase an Association's right to receive a portion of the proceeds collected from delinquent unit owners. Once under contract, we engage law firms, typically on behalf of our Association clients pursuant to a power of attorney, to perform collection work on delinquent unit accounts. Our law firms typically service collection matters on a deferred billing basis whereby payment is received upon collection from the delinquent unit account debtors or at a predetermined contractual rate if amounts collected from delinquent unit account debtors are less than legal fees and costs incurred. We typically fund an amount less than or equal to the statutory "Super Lien Amount" an Association would recover at some point in the future based on the

Association's statutory lien priority. Upon collection of an Account, the law firm retained for the collection matter distributes proceeds pursuant to the terms of the agreement by and between the Association and us. Not all agreements are the same, but our typical payoff distribution will result in us first recovering amounts advanced to the Association, interest, late fees, and costs advanced, with legal fees kept by the retained law firm, and assessment amounts remitted to the Association client. In connection with our business, we have developed proprietary software for servicing Accounts, which we believe enables law firms to service Accounts efficiently and profitably.

Under the 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 an amount less than or equal to the monthly assessment payment for each assigned delinquent unit account. This simultaneously eliminates a substantial portion of the Association's balance sheet bad debts and assists the Association in meeting its budget by both guaranteeing periodic revenues and relieving the Association of its legal fee and cost burdens typically incurred to collect bad debts.

In our initial underwriting of an Association and its individual Accounts, we review the property values of the underlying units, the governing documents of the Association, the total number of delinquent receivables held by the Association, the legal proceedings instituted, and many other factors. While we are relatively certain of the actions necessary to produce a revenue event, we cannot predict when an individual delinquent unit account will have a revenue event or payoff.

Corporate History and Reorganization

The Company was originally organized in January 2008 as a Florida limited liability company under the name LM Funding, LLC. Historically, all of our business was conducted through LM Funding, LLC and its subsidiaries (the "Predecessor"). Immediately prior to our initial public offering in October 2015, the members of 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 an aggregate of 2,100,000 shares of the common stock of LMFA (the "Corporate Reorganization"). 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 the LM Funding, LLC a wholly-owned subsidiary of LMFA. As used in this discussion and analysis, unless the context requires otherwise, references to "LMF," "LM Funding," "we," "us," "our," "the Company," "our company," and similar references refer to (i) following the date of the Corporate Reorganization, LM Funding America, Inc., a Delaware corporation, and its consolidated subsidiaries, and (ii) prior to the date of the Corporate Reorganization, LM Funding, LLC, a Florida limited liability company, and its consolidated subsidiaries.

Results of Operations

The Three Months Ended September 30, 2018 compared with the Three Months Ended September 30, 2017

Revenues

During the Three Months ended September 30, 2018, total revenues decreased by approximately $261 thousand, or 25%, to $781 thousand from $1,042 thousand in the Three Months ended September 30, 2017.

Interest on delinquent association fees for the Three Months ended September 30, 2018 decreased $134 thousand or 22.6% as the number of payoffs decreased slightly to 212 payoff occurrences as compared to 214 payoff occurrences for the three months ended September 30, 2017. "Payoffs" consist of recovery of the entire legally collectible portion, or a settlement thereof, of our principal investment, accrued interest, and late fees owed to us from the proceeds of the Accounts collected by the Associations in accordance with our contracts with Associations. We believe the flattening of payoff occurrences is attributed to an improved economy that encourages people to resolve their debt situations. The decrease in revenue was due in part to a decrease in revenue per unit. The average revenue per unit per the Statement of Operations, excluding rental revenue decreased slightly to $2,970 for the Three Months ended September 30, 2018 compared with $4,110 for the Three Months ended September 30, 2017.

We saw a slight decrease in rental operation revenue in the Three Months ended September 30, 2018 of $11 thousand to $151 thousand from $162 thousand for the Three Months ended September 30, 2017. This was due to a stabilization of the utilization of our rental base in 2017 that has carried over into 2018.

Operating Expenses

During the Three Months ended September 30, 2018, operating expenses decreased $498 thousand, or 33.5%, to $991 thousand from $1,489 thousand for the Three Months ended September 30, 2017. The decrease in operating expenses can be attributed to various factors, including a reduction in staffing costs of $197 thousand resulting from fewer employees in 2018 as compared to the comparable period in 2017, reduced professional fees of $101 thousand resulting from a reduction in fees arising from corporate

litigation matters, a $89 thousand decrease in collection expense and a $107 thousand decline in selling, general and administrative costs arising from lower marketing costs, less rent expense due to a sub-lease and lower travel and entertainment costs.

Legal fees, excluding fees from the BLG service agreement, for the Three Months ended September 30, 2018 were $186 thousand as compared with approximately $288 thousand for the Three Months ended September 30, 2017. In the ordinary course of our business, we are involved in numerous legal proceedings. We regularly initiate collection lawsuits, using our network of third party law firms, against debtors. In addition, debtors occasionally initiate litigation against us. The settlement costs of these lawsuits decreased by approximately $89 thousand to approximately $12 thousand compared with approximately $101 thousand for the Three Months ended September 30, 2017.

Legal fees for BLG for the Three Months ended September 30, 2018 were $246 thousand compared to $246 thousand for the Three Months ended September 30, 2017. See Note 4. Due to Related Party for further discussion regarding the service agreements with BLG.

Interest Expense

During the Three Months ended September 30, 2018, the Company incurred $377 thousand of interest expense as compared to $122 thousand of interest expense for the Three Months ended September 30, 2017. This increase reflects the expense of all deferred financing costs as the $500,000 loan was repaid on October 5, 2018 and the $200,000 Commitment Fee expense associated with the Purchase Agreement that was cancelled on October 5, 2018 as well as $78 thousand expense of the $154 thousand debt discount associated with the issuance of warrants (See note 5 Debt).

Income Tax Expense

During the Three Months ended September 30, 2018, the Company did not incur any income tax expense due to the release of the income tax allowance as compared to a $4.1 million income tax expense generated from a deferred tax asset valuation allowance incurred during the Three Months ended September 30, 2017.

Net Loss

During the Three Months ended September 30, 2018, the Company generated a net loss of $587 thousand as compared to a net loss of $4.7 million for the Three Months ended September 30, 2017. This change was primarily due to reduction in revenue and the deferred tax valuation allowance offset in part by the cost savings and litigation adjustment listed above.

The Nine months Ended September 30, 2018 compared with the Nine months Ended September 30, 2017

Revenues

During the Nine months ended September 30, 2018, total revenues decreased by $421 thousand, or 13.8%, to $2,623 thousand from $3,044 thousand in the Nine months ended September 30, 2017.

Interest on delinquent association fees for the Nine months ended September 30, 2018 decreased $313 thousand or 16.6% even as the number of payoffs increased to 614 payoff occurrences as compared to 579 payoff occurrences for the Nine months ended September 30, 2017. “Payoffs” consist of recovery of the entire legally collectible portion, or a settlement thereof, of our principal investment, accrued interest, and late fees owed to us from the proceeds of the Accounts collected by the Associations in accordance with our contracts with Associations. We believe the slight increase in payoff occurrences is attributed to an improved economy that encourages people to resolve their debt situations. The decrease in revenue was due in part to a decrease in revenue per unit. The average revenue per unit per the Statement of Operations, excluding rental revenue decreased to $3,300 for the Nine months ended September 30, 2018 compared with $4,400 for the Nine months ended September 30, 2017.

We saw an increase in rental operation revenue in the Nine months ended September 30, 2018 of $95 thousand to $592 thousand from $497 thousand for the Nine months ended September 30, 2017. This was due to improving the utilization of our rental base in 2017 that has carried over into 2018 and sales or rental properties.

Operating Expenses

During the Nine months ended September 30, 2018, operating expenses decreased $1,937 thousand, or 41.8% to $2,697 thousand from $4,634 thousand for the Nine months ended September 30, 2017. The decrease in operating expenses can be attributed to various factors, including a reduction in staffing costs of $505 thousand resulting from fewer employees in 2018 as compared to the

comparable period in 2017, reduced professional fees of $750 thousand resulting from a reduction in fees arising from corporate litigation matters and a $406 thousand decline in selling, general and administrative costs arising from lower marketing costs, less rent expense due to a sub-lease and lower travel and entertainment costs coupled with a $98 thousand decrease in collection expense.

Legal fees, excluding fees from the BLG service agreement, for the Nine months ended September 30, 2018 were $151 thousand compared with approximately $901 thousand for the Nine months ended September 30, 2017 due in part to a $200 thousand insurance reimbursement and a reduction in class action and regular corporate legal fees. In the ordinary course of our business, we are involved in numerous legal proceedings. We regularly initiate collection lawsuits, using our network of third party law firms, against debtors. In addition, debtors occasionally initiate litigation against us. The settlement costs of these lawsuits decreased by approximately $218 thousand to approximately $39 thousand compared with approximately $257 thousand for the Nine months ended September 30, 2017.

Legal fees for BLG for the Nine months ended September 30, 2018 were $738 thousand compared to $738 thousand for the Nine months ended September 30, 2017. See Note 4. Due to Related Party for further discussion regarding the service agreements with BLG.

Interest Expense

During the Nine months ended September 30, 2018, the Company incurred interest expense of $472 thousand compared to $375 thousand of interest expense for the Nine months ended September 30, 2017. This increase reflects the expensing of deferred financing costs associated with a $500,000 debt incurred on April 2, 2018, a debt discount of $154 thousand associated with the issuance of warrants and a $200,000 Commitment Fee expense associated with the Purchase Agreement that was cancelled on October 5, 2018. This was offset in part by the decrease in interest associated with the payoff of the $4.7 million of primary debt in December 2017 that was outstanding during the first Nine months of 2017 (See Note 5 Debt).

Gain (Loss) on Litigation

During the Nine months ended September 30, 2018, the Company reassessed its class action litigation and adjusted the $505,000 class action accrual that was incurred during the Nine months ended September 30, 2017 to $100,000 with the $405,000 change reflected as income.

Income Tax Expense

During the Nine months ended September 30, 2018, the Company did not incur any income tax expense due to the release of the income tax allowance as compared to a $3,432 thousand income tax expense arising from a deferred tax asset valuation allowance recorded in the third quarter of 2017.

Net Loss

During the Nine months ended September 30, 2018, the Company generated a net loss of $140 thousand as compared to a net loss of $5,901 thousand for the Nine months ended September 30, 2017. This change was primarily due to reduction in revenue and the deferred tax valuation allowance offset in part by the cost savings and litigation adjustment listed above.

Liquidity and Capital Resources

General

As of September 30, 2018, we had cash and cash equivalents of $929 thousand compared with $590 thousand at December 31, 2017. This increase was primarily driven by $500 thousand proceeds from debt and receipt of finance receivables. The Company successfully raised net proceeds of $5.4 million through a secondary public offering on October 30, 2018.

Cash from Operations

Net cash used in operations was $305 thousand during the Nine months ended September 30, 2018 compared with $1,718 thousand during the Nine months ended September 30, 2017. This decline in cash used was primarily driven by the Company's reduced operating loss of approximately $74 thousand for the Nine months ended September 30, 2018 compared with an Operating loss of $1,590 thousand during the Nine months ended September 30, 2017.

Cash from Investing Activities

Net cash provided by investing activities was $292 thousand for the Nine months ended September 30, 2018 compared to $627 thousand during the Nine months ended September 30, 2017. For the Nine months ended September 30, 2018, we collected $249 thousand of our finance receivables compared to $311 thousand for the Nine months ended September 30, 2017. For the nine months ended September 30, 2018, the Company generated $44 thousand from the disposal of real estate assets held for sale as compared to $321 thousand for the Nine months ended September 30, 2017. Our primary business relies on our ability to invest in Accounts, and during the Nine months ended September 30, 2018, the number of active Accounts has decreased compared with the Nine months ended September 30, 2017. This balance has been in consistent decline since 2012. This balance is very susceptible to housing market fluctuations in Florida.

Cash from Financing Activities

Net cash provided by financing activities was $352 thousand for the Nine months ended September 30, 2018 compared to cash used in financing activities of $575 thousand during the Nine months ended September 30, 2017. At September 30, 2018, the principal indebtedness of the Company was $570 thousand compared with $39 thousand at December 31, 2017 and $4.8 million at September 30, 2017. For the Nine months ended September 30, 2018 the Company had $56 thousand of principal repayments and $92 thousand of debt issue costs (associated with the $500 thousand bridge loan and $5 million equity line mentioned in Note 7) compared to $575 thousand of principal repayments for the Nine months ended September 30, 2017.

Liquidity Outlook

The Company has experienced significant operating losses over the past 2 years (2016 and 2017) and a net loss generated in 2018 primarily with cumulative losses of approximately $11 million as a result of declining revenues and high expenses due to a number of factors. These losses resulted in the usage of all cash proceeds from the Company's initial public offering in 2015. The Company successfully raised net proceeds of $5.4 million through a secondary public offering on October 30, 2018.

The Company started a number of initiatives in 2017 which included cost saving initiatives, a focus on collections and a resolve to settle its outstanding debt. The Company initiated a reduction in its workforce from 2017 through 2018 which resulted in the workforce decreasing from 19 full time employees to 10 full time employees (currently 6 employees), a reduction in marketing expenses and a reduction in other controllable expenses.

We believe that we have enough cash to mitigate the substantial doubt raised by our recent operating losses and satisfy our estimated liquidity needs for the 12 months from the issuance of these financial statements and avoid any substantial doubt about the Company's ability to continue as a going concern as defined by ASU 2014-05. However, we cannot predict, with certainty, the outcome of our actions to generate liquidity, including the availability of additional debt financing, or whether such actions would generate the expected liquidity as currently planned. Additionally, a failure to generate additional liquidity could negatively impact our ability to acquire units.

Debt of the Company consisted of the following:

	September 30, 2018	December 31, 2017 (Audited)
Financing agreement with FlatIron capital that is unsecured. Down payment of $16,500 was required upfront and equal installment payments of $9,610 were made over a 10 month period. The note matured May 31, 2018. Annualized interest rate was 5.25%	$ -	$ 39,028
Financing agreement with FlatIron capital that is unsecured. Down payment of $28,125 was required upfront and equal installment payments of $8,701 to be made over a 10 month period. The note matures May 1, 2019. Annualized interest is 5.99%	$ 69,610	$ -
Senior secured convertible promissory note issued to Esousa Holdings LLC bearing interest at 10.5% that matures October 2, 2018. The interest is payable upon maturity. The note is secured by a lien on all of the assets of the Company.	500,000	
	569,610	39,028
Less: debt issuance costs	-	-
debt discount	-	
	$ 569,610	$ 39,028

As of September 30, 2018, minimum required payments on commitment for our NNG product were approximately $269,000.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

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 Exchange Act 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, 2018. 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, 2018 for the reasons discussed below. In addition, management identified the following material weaknesses in internal controls over financial reporting in the course of its assessment of the effectiveness of disclosure controls and procedures as of September 30, 2018:

The Company did not effectively segregate certain accounting duties 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 our internal control over financial reporting was not effective, as of September 30, 2018, and 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.

(b) Changes in internal control over financial reporting.

There were no changes in our internal control over financial reporting that occurred during the quarter ended September 30, 2018 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

Other than the lawsuit described below, we are not currently a party to material 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.

We were a defendant in an action entitled *Solaris at Brickell Bay Condominium Association, Inc. v. LM Funding, LLC*, which was brought before the Circuit Court of the Eleventh Judicial Circuit, Miami-Dade Civil Division on July 31, 2014. In this matter, which was initially preliminarily settled in August 2017, the plaintiff (an association under contract with us) alleged claims such as a usurious loan transaction, state and federal civil Racketeer Influenced and Corrupt Organization Act claims, Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") violations, and other related claims, and the plaintiff requested rescission of their agreement with us, forfeiture of all amounts lent by us to the plaintiff, a declaratory judgment that we have violated FDUTPA, other damages for breach of contract and violations of FDUTPA, and attorneys' fees. On August 4, 2017, an order by the court was entered on Plaintiff's Motion for Preliminary Approval of Class Action Settlement Agreement. In the order, the motion of the Plaintiff, Solaris at Brickell Bay Condominium Association, Inc., individually and on behalf of the certified plaintiff class ("Plaintiffs"), for approval of the Class Action Settlement Agreement (the "Settlement Agreement") with Defendant LM Funding, LLC was granted. Despite our belief that we are not liable for the claims asserted and that we have good defenses thereto, we nevertheless agreed to enter into the Settlement Agreement in order to: (1) avoid any further expense, inconvenience, and distraction of burdensome and protracted litigation and its consequential negative financial effects to our operations; (2) obtain the releases, orders, and final judgment contemplated by the Settlement Agreement; and (3) put to rest and terminate with finality all claims that had been or could have been asserted against us by the Plaintiffs arising from the facts alleged in the lawsuit. Pursuant to the agreement subsequently reached between counsel, all required actions and deadlines set forth in the Settlement Agreement are currently stayed. On March 1, 2018 a continuation of the abatement was granted until April 2, 2018. As of December 31, 2017, the Company had accrued costs of $505,000 as part of the Settlement Agreement. The settlement amount was contingent upon the Company obtaining sufficient financing within the allotted timeframe of the Settlement Agreement. On April 2, 2018, the Plaintiffs withdrew from the Settlement Agreement. On August 14, 2018, the parties to the Solaris class action litigation entered into a revised settlement in which the Plaintiffs amended their complaint (the Fourth Amended Complaint) to reflect no demand for damages and only a claim for declarative and injunctive relief and amended the class definition to reflect a requirement that class members must have active units still under contract with LMF under a "Traditional Model" waterfall in the Allocation of Collection Proceeds. This was submitted to the court who approved the amended Complaint and Class Action Settlement Agreement. On November 6, 2018, the court entered an order granting Plaintiff's Motion for Final Approval of Class Action Settlement. The New Settlement Agreement will also reimburse the Plaintiff's opposing counsel $99,000 plus an administrative fee.

Item 1A. Risk Factors

None

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

None

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

None.

Item 5. Other Information

On November 2, 2018, the Company entered into a Securities Purchase Agreement (the "IIU SPA") with IIU Inc. ("IIU"), a Virginia based travel insurance brokerage company controlled by Craven House N.A. (who owns approximately 27% of the Company's outstanding stock as of November 13, 2018), pursuant to which IIU issued to the Company a Senior Convertible Promissory Note ("IIU Note") in the original principal amount of $1,500,000 in exchange for a purchase price of $1,500,000. The maturity date of the IIU Note is 360 dates after the date of issuance (subject to acceleration upon an event of default). The Note carries a 3.0% interest rate, with accrued but unpaid interest being payable on the Note's maturity date.

The IIU Note allows the Company the right on or after the maturity date to convert any unpaid principal and accrued and unpaid interest of the IIU Note into shares of IIU based on a conversion amount which is the fair value of the common shares of IIU at the time. The conversion price will be reset if IIU issues or sells common shares, convertibles securities or options at a price per share that is less than the conversion price in effect immediately prior to such issue or sale or deemed issuance or sale of such dilutive issuance.

The foregoing is a summary description of certain terms of the IIU SPA and IIU Note, and by its nature, is incomplete. Such summary is qualified in its entirety by the full text of such agreements, copies of which are filed herewith and are incorporated herein by reference.

Item 6. Exhibits

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

EXHIBIT NUMBER	DESCRIPTION
1.1	Underwriting Agreement, dated as of October 30, 2018, by and between LM Funding America, Inc. and Maxim Group LLC (incorporated by reference to Exhibit 1.1 to the Form 8-K filed on November 5, 2018).
4.1	Form of Common Warrant (incorporated by reference to Exhibit 4.1 to the Form 8-K filed on November 5, 2018).
4.2	Form of Pre-Funded Warrant (incorporated by reference to Exhibit 4.2 to the Form 8-K filed on November 5, 2018).
4.3	Form of Underwriter's Warrant (incorporated by reference to Exhibit 4.3 to the Form 8-K filed on November 5, 2018).
10.1	Senior Convertible Promissory Note, dated as of November 9, 2018 by and between the Company and IIU, Inc.
10.2	Securities Purchase Agreement, dated as of November 9, 2018 by and between the Company and IIU, Inc.
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	XBRL Instance Document.
101.SCH	XBRL Taxonomy Extension Schema.
101.CAL	XBRL Taxonomy Extension Calculation Linkbase.
101.DEF	XBRL Taxonomy Extension Definition Linkbase.
101.LAB	XBRL Taxonomy Extension Label Linkbase.
101.PRE	XBRL Taxonomy Extension Presentation Linkbase.

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 14, 2018

By: /s/ Bruce M. Rodgers
Bruce M. Rodgers
Chief Executive Officer and Chairman of the Board
(Principal Executive Officer)

Date: November 14, 2018

By: /s/ Richard Russell
Richard Russell
Chief Financial Officer
(Principal Accounting Officer)

Exhibit 10.1

NEITHER THIS NOTE NOR THE SECURITIES ISSUABLE UPON CONVERSION OF THIS NOTE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. IN ADDITION, HEDGING TRANSACTIONS INVOLVING THIS NOTE MAY NOT BE CONDUCTED UNLESS IN ACCORDANCE WITH THE SECURITIES ACT. ANY TRANSFEREE OF THIS NOTE SHOULD CAREFULLY REVIEW THE TERMS OF THIS NOTE, INCLUDING SECTION AND 17(a) HEREOF. THE PRINCIPAL AMOUNT REPRESENTED BY THIS NOTE MAY BE LESS THAN THE AMOUNTS SET FORTH ON THE FACE HEREOF PURSUANT TO SECTION [3(c)(iii)] OF THIS NOTE.

LM FUNDING AMERICA, INC.

Senior Convertible Promissory Note

Issuance Date: November 2, 2018 Original Principal Amount: U.S. $1,500,000

FOR VALUE RECEIVED, IIU, Inc., a corporation incorporated and existing under the laws of Virginia (the "***Company***"), hereby promises to pay to the order of LM Funding America, Inc., a Delaware corporation or its registered assigns ("***Holder***") the amount set out above as the Original Principal Amount (as reduced pursuant to the terms hereof pursuant to redemption or otherwise, the "***Principal***") when due, whether upon the Maturity Date (as defined below), acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and to pay interest ("***Interest***") on any outstanding Principal (as defined below) (as such interest on any outstanding Principal may be reduced pursuant to the terms hereof pursuant to redemption or otherwise) at the applicable Interest Rate (as defined below) from the date set out above as the Issuance Date (the "***Issuance Date***") until the same becomes due and payable, whether upon the Maturity Date or acceleration, redemption or otherwise (in each case in accordance with the terms hereof). This Senior Secured Convertible Promissory Note (this "***Note***", including all Notes issued in exchange, transfer or replacement hereof, collectively, the "***Notes***") is issued pursuant to the Securities Purchase Agreement (as defined below) on the Closing Date (as defined below). Certain capitalized terms used herein are defined in Section 28.

1. PAYMENTS OF INTEREST AND PRINCIPAL; PREPAYMENT.

(a) On the Maturity Date, the Company shall pay to the Holder at the election of Holder, either (i) an amount in cash representing all outstanding Principal, accrued and unpaid Interest and accrued and unpaid Late Charges (as defined in Section 23(c)) on such Principal and Interest) or (ii) shares of the common stock of the Company representing representing equal or equivalent value on a fully diluted basis as determined by a third party appraiser chosen by mutual agreement of Company and Holder.

(b) The Holder shall not have the right to require the Company to prepay all or any portion of the outstanding Principal, accrued and unpaid Interest and accrued and unpaid Late Charges other than in accordance with this Note.

2. INTEREST; INTEREST RATE.

(a) Interest on this Note shall commence accruing on the Issuance Date, shall accrue daily at the Interest Rate on the outstanding Principal amount from time to time, shall be computed on the basis of a 360-day year and twelve 30-day months and shall be payable in cash to the Holder on the Maturity Date or any applicable Redemption Date (each, an "***Interest Date***").

(b) From and after the occurrence and during the continuance of any Event of Default, the Interest Rate shall automatically be increased to twenty percent (20.0%) per annum. In the event that such Event of Default is subsequently cured, the adjustment referred to in the preceding sentence shall cease to be effective as of the date of such cure; provided that the Interest as calculated and unpaid at such increased rate during the continuance of such Event of Default shall continue to apply to the extent relating to the days after the occurrence of such Event of Default through and including the date of such cure of such Event of Default.

3. CONVERSION.

(a) Conversion Right. The Holder shall have the right at any time on or after the Maturity Date, to convert all or any part of the outstanding and unpaid principal amount and accrued and unpaid interest of this Note into fully paid and non-assessable Common Shares, as such Common Shares exists on the Issuance Date, or any shares of capital stock or other securities of the Company into which such Common Shares shall hereafter be changed or reclassified at the Conversion Price (as defined herein) (the "**Conversion Shares**") determined as provided herein (a "**Conversion"**). The term "**Conversion Amount**" means, with respect to any conversion of this Note, the sum of (1) the principal amount of this Note to be converted in such conversion plus (2) at the Holder's option, accrued and unpaid interest, if any, on such principal amount at the Interest Rate to the Conversion Date, plus (3) at the Holder's option, any amounts owed to the Holder pursuant to Section 3(c)(vii) hereof. The term "**Conversion Price**" means, with respect to any Conversion of this Note, the fair value of the Common Shares as determined per Section hereof. For the avoidance of doubt, Common Shares shall be deemed to include any shares of capital stock or other securities of the Company into which such Common Shares shall hereafter be changed or reclassified.

(b) Authorization of Conversion Shares. The Company covenants that during the period the conversion right exists, the Company will reserve from its authorized and unissued Common Shares a sufficient number of shares, free from preemptive rights, to provide for the issuance of Common Shares upon the full conversion of this Note. The Company is required at all times to have authorized and reserved four (4) times the number of Common Shares that is actually issuable upon full conversion of the Note (based on the Conversion Price of the Note in effect from time to time) (the "**Reserved Amount**"). The Reserved Amount shall be increased from time to time in accordance with the Company's obligations hereunder. The Company represents that upon issuance, such shares will be duly and validly issued, fully paid and non-assessable. In addition, if the Company shall issue any securities or make any change to its capital structure which would change the number of Common Shares into which the Notes shall be convertible at the then current Conversion Price, the Company shall at the same time make proper provision so that thereafter there shall be a sufficient number of Common Shares authorized and reserved, free from preemptive rights, for conversion of the outstanding Notes. The Company (i) acknowledges that it has irrevocably instructed its transfer agent to issue certificates for the Common Shares issuable upon conversion of this Note, and (ii) agrees that its issuance of this Note shall constitute full authority to its officers and agents who are charged with the duty of executing stock certificates to execute and issue the necessary certificates for Common Shares in accordance with the terms and conditions of this Note.

(c) Method of Conversion.

(i)Mechanics of Conversion. Subject to Section 3(b), this Note may be converted by the Holder in whole or in part, at any time on or after the Maturity Date, by (A) submitting to the Company a notice of conversion (the "**Notice of Conversion**") (by facsimile, e-mail or other reasonable means of communication dispatched on the date of Conversion (the "**Conversion Date**") prior to 5:00 p.m., New York, New York time) and surrendering this Note at the principal office of the Company.

(ii)Surrender of Note Upon Conversion. Notwithstanding anything to the contrary set forth herein, upon Conversion of this Note in accordance with the terms hereof, the Holder shall not be required to physically surrender this Note to the Company unless the entire unpaid principal amount of this Note is so converted. The Holder and the Company shall maintain records showing the principal amount so converted and the dates of such Conversions or shall use such other method, reasonably satisfactory to the Holder and the Company, so as not to require physical surrender of this Note upon each such conversion. In the event of any dispute or discrepancy, such records of the Company shall, *prima facie,* be controlling and determinative in the absence of manifest error. Notwithstanding the foregoing, if any portion of this Note is converted as aforesaid, the Holder may not transfer this

Note unless the Holder first physically surrenders this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note of like tenor, registered as the Holder (upon payment by the Holder of any applicable transfer taxes) may request, representing in the aggregate the remaining unpaid principal amount of this Note. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of a portion of this Note, the unpaid and unconverted principal amount of this Note represented by this Note may be less than the amount stated on the face hereof.

(iii)Payment of Taxes. The Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of Common Shares or other securities or property on conversion of this Note in a name other than that of the Holder (or in street name), and the Company shall not be required to issue or deliver any such units or other securities or property unless and until the person or persons (other than the Holder or the custodian in whose street name such units are to be held for the Holder's account) requesting the issuance thereof shall have paid to the Company the amount of any such tax or shall have established to the satisfaction of the Company that such tax has been paid.

(iv)Delivery of Common Shares Upon Conversion. Upon receipt by the Company from the Holder of a facsimile transmission or e-mail (or other reasonable means of communication) of a Notice of Conversion meeting the requirements for conversion as provided in this Section 3, the Company shall issue and deliver or cause to be issued and delivered to or upon the order of the Holder certificates for the Common Shares issuable upon such conversion within two (2) Business Days after such receipt (the "**Deadline**") (and, solely in the case of conversion of the entire unpaid principal amount hereof, surrender of this Note) in accordance with the terms hereof.

(v)Obligation of Company to Deliver Common Shares. Upon receipt by the Company of a Notice of Conversion, the Holder shall be deemed to be the holder of record of the Common Shares issuable upon such conversion, the outstanding principal amount and the amount of accrued and unpaid interest on this Note shall be reduced to reflect such Conversion, and, unless the Company defaults on its obligations under this Section 3, all rights with respect to the portion of this Note being so converted shall forthwith terminate except the right to receive the Common Shares or other securities, cash or other assets, as herein provided, on such Conversion. If the Holder shall have given a Notice of Conversion as provided herein, the Company's obligation to issue and deliver the certificates for Common Shares shall be absolute and unconditional irrespective of the absence of any action by the Holder to enforce the same, any waiver or consent with respect to any provision thereof, the recovery of any judgment against any person or any action to enforce the same, any failure or delay in the enforcement of any other obligation of the Company to the holder of record, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Holder of any obligation to the Company, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to the Holder in connection with such conversion. The Conversion Date specified in the Notice of Conversion shall be the Conversion Date so long as the Notice of Conversion is received by the Company before 5:00 p.m., New York, New York time, on such date.

(vi)Delivery of Common Shares by Electronic Transfer. In lieu of delivering physical certificates representing the Common Shares issuable upon conversion, provided the Company is participating in the Depository Trust Company ("**DTC**") Fast Automated Securities Transfer ("**FAST**") program, upon request of the Holder and its compliance with the provisions contained in Section 3(a) and in this Section 3(c), the Company shall use its best efforts to cause its transfer agent to electronically transmit the Common Shares issuable upon conversion to the Holder by crediting the account of Holder's prime broker with DTC through its Deposit Withdrawal Agent Commission ("**DWAC**") system.

(vii)Failure to Deliver Common Shares Prior to Deadline. Without in any way limiting the Holder's right to pursue other remedies, including actual damages and/or equitable relief, the parties agree that if delivery of the Common Shares issuable upon conversion of this Note is not delivered by the Deadline the Company shall pay to the Holder $1,000 per day in cash, for each day beyond the Deadline that the Company fails to deliver such Common Shares. Such cash amount shall be paid to Holder by the fifth day of the month following the month in which it has accrued or, at the option of the Holder (by written notice to the Company by the first day of the month following the month in which it has accrued), shall be added to the principal amount of this Note, in which event interest shall accrue thereon in accordance with the terms of this Note and such additional principal amount shall be convertible into Common Shares in accordance with the terms of this Note. The Company agrees that the right to convert is a valuable right to the Holder. The damages resulting from a failure, attempt to frustrate, interference with

such conversion right are difficult if not impossible to qualify. Accordingly the parties acknowledge that the liquidated damages provision contained in this Section 3(c)(vii) are justified.

(d) Status as Shareholders. Upon submission of a Notice of Conversion by the Holder, (i) the Common Shares covered thereby (other than the Common Shares, if any, which cannot be issued because their issuance would exceed the Holder's allocated portion of the Reserved Amount or exceed the Maximum Percentage) shall be deemed converted into Common Shares and (ii) the Holder's rights as a holder of such converted portion of this Note shall cease and terminate, excepting only the right to receive certificates for such Common Shares and to any remedies provided herein or otherwise available at law or in equity to such Holder because of a failure by the Company to comply with the terms of this Note. Notwithstanding the foregoing, if the Holder has not received certificates for all Common Shares prior to the tenth (10th) Business Day after the expiration of the Deadline with respect to a conversion of any portion of this Note for any reason, then (unless the Holder otherwise elects to retain its status as a holder of Common Shares by so notifying the Company) the Holder shall regain the rights of a holder of this Note with respect to such unconverted portions of this Note and the Company shall, as soon as practicable, return such unconverted Note to the Holder or, if the Note has not been surrendered, adjust its records to reflect that such portion of this Note has not been converted. In all cases, the Holder shall retain all of its rights and remedies.

4. RIGHTS UPON EVENT OF DEFAULT.

(a) Event of Default. Each of the following events shall constitute an "***Event of Default***":

(i) the Company's or any of its subsidiary's failure to pay to the Holder any amount of Principal, Interest, Late Charges or other amounts when and as due under this Note (including, without limitation, the Company's or any Subsidiary's failure to pay any redemption payments or amounts hereunder) or any other Transaction Document (as defined in the Note Purchase Agreement) or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated hereby and thereby, except, in the case of a failure to pay Interest and Late Charges when and as due, in which case only if such failure remains uncured for a period of at least five (5) Business Days;

(ii) the occurrence of any default under, redemption of or acceleration prior to maturity of an aggregate of any Indebtedness of the Company or any of its Subsidiaries in excess of $100,000, or the occurrence or existence of any event of default for which the Company has received a notice from the lender under any outstanding loan or credit facility in connection with a breach of a financial covenant set forth in the governing agreement of such loan or credit facility which has not been cured within twenty (20) Business Days;

(iii) bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for the relief of debtors shall be instituted by or against the Company or any Subsidiary and, if instituted against the Company or any Subsidiary by a third party, shall not be dismissed within thirty (30) days of their initiation;

(iv) the commencement by the Company or any Subsidiary of a voluntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree, order, judgment or other similar document in respect of the Company or any Subsidiary in an involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal, state or foreign law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the execution of a composition of debts, or the occurrence of any other similar federal, state or foreign proceeding, or the admission by it in writing of its inability to pay its debts generally as they become due, the taking of corporate action by the Company or any Subsidiary in furtherance of any such action or the taking of any action by any Person to commence a Uniform Commercial Code foreclosure sale or any other similar action under federal, state or foreign law;

(v) the entry by a court of (i) a decree, order, judgment or other similar document in respect of the Company or any Subsidiary of a voluntary or involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or (ii) a decree, order, judgment or other similar document adjudging the Company or any Subsidiary as bankrupt or insolvent, or approving as properly filed a petition seeking liquidation, reorganization, arrangement, adjustment or composition of or in respect of the Company or any Subsidiary under any applicable federal, state or foreign law or (iii) a decree, order, judgment or other similar document appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree, order, judgment or other similar document or any such other decree, order, judgment or other similar document unstayed and in effect for a period of thirty (30) consecutive days;

(vi) a final judgment or judgments for the payment of money aggregating in excess of $50,000 are rendered against the Company and/or any of its Subsidiaries and which judgments are not, within thirty (30) days after the entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within thirty (30) days after the expiration of such stay; provided, however, any judgment which is covered by insurance or an indemnity from a credit worthy party shall not be included in calculating the $50,000 amount set forth above so long as the Company provides the Holder a written statement from such insurer or indemnity provider (which written statement shall be reasonably satisfactory to the Holder) to the effect that such judgment is covered by insurance or an indemnity and the Company or such Subsidiary (as the case may be) will receive the proceeds of such insurance or indemnity within thirty (30) days of the issuance of such judgment;

(vii) the Company and/or any Subsidiary, individually or in the aggregate, either (i) fails to pay, when due, or within any applicable grace period, any payment with respect to any Indebtedness in excess of $25,000 due to any third party (other than, with respect to unsecured Indebtedness only, payments contested by the Company and/or such Subsidiary (as the case may be) in good faith by proper proceedings and with respect to which adequate reserves have been set aside for the payment thereof in accordance with GAAP) or is otherwise in breach or violation of any agreement for monies owed or owing in an amount in excess of $25,000, which breach or violation permits the other party thereto to declare a default or otherwise accelerate amounts due thereunder, or (ii) suffer to exist any other circumstance or event that would, with or without the passage of time or the giving of notice, result in a default or event of default under any agreement binding the Company or any Subsidiary, which default or event of default would or is likely to have a material adverse effect on the business, assets, operations (including results thereof), liabilities, properties, condition (including financial condition) or prospects of the Company or any of its Subsidiaries, individually or in the aggregate;

(viii) other than as specifically set forth in another clause of this Section 4(a), the Company or any Subsidiary breaches any representation, warranty, covenant or other term or condition of any Transaction Document, except, in the case of a breach of a covenant or other term or condition that is curable, only if such breach remains uncured for a period of five (5) consecutive Business Days after receipt of written notice of such breach;

(ix) the Company's inability to issue any of its securities for 20 consecutive Business Days for any reason;

(xii) the Company's failure at any time to issue Common Shares to the Holder pursuant to the Securities Purchase Agreement, except for the purposes of complying with the Company's code of ethics and any related black-out periods;;

(xiv) the Company's issuance, offer, sale, grant of any option or right to purchase, or other disposition (or any announcement in connection with any of the foregoing) of any equity security or any equity-linked or related security (including, without limitation, any "equity security" (as that term is defined under Rule 405 promulgated under the Securities Act)), or any Convertible Securities, without the prior written consent of the Holder, except to the extent allowed under any existing agreements of the Company. "Convertible Securities" means any capital stock, note, debenture, preferred stock or other security of the Company or any of its Subsidiaries that is, or may become, at any time and under any circumstances directly or indirectly convertible into, exercisable or

exchangeable for, or which otherwise entitles the holder thereof to acquire, any capital stock, note, debenture or other security of the Company (including, without limitation, Common Stock) or any of its Subsidiaries.

(xv) any Material Adverse Effect (as defined in the Note Purchase Agreement) occurs; or

(xvi) any Change of Control occurs.

(b) Notice of an Event of Default; Redemption Right. Upon the occurrence of an Event of Default with respect to this Note, the Company shall within one (1) Business Day deliver written notice thereof via facsimile and overnight courier (with next day delivery specified) (an "***Event of Default Notice***") to the Holder. At any time after the earlier of the Holder's receipt of an Event of Default Notice and the Holder becoming aware of an Event of Default, the Holder may require the Company to redeem, at any time during the period commencing on the date the Holder first becomes aware of such Event of Default through and including the tenth (10^{th}) Business Day after the later of (x) the date the Holder receives the applicable Event of Default Notice with respect there and (y) the date such Event of Default has been cured, all or any amount of this Note by delivering written notice thereof (the "***Event of Default Redemption Notice***") to the Company, which Event of Default Redemption Notice shall indicate the amount of this Note the Holder is electing to redeem. Each amount of this Note subject to redemption by the Company pursuant to this Section 4(b) shall be redeemed by the Company in cash at a price equal to the product of (i) the Outstanding Amount to be redeemed multiplied by (ii) the Redemption Premium (the "***Event of Default Redemption Price***"). Redemptions required by this Section 4(b) shall be made in accordance with the provisions of Section 10. To the extent redemptions required by this Section 4(b) are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. In the event of the Company's redemption of any portion of this Note under this Section 4(b), the Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any redemption premium due under this Section 4(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty.

5. RIGHTS UPON FUNDAMENTAL TRANSACTION. The Company shall not enter into or be party to a Fundamental Transaction unless the Successor Entity assumes in writing all of the obligations of the Company under this Note and the other Transaction Documents in accordance with the provisions of this Section 5 pursuant to written agreements in form and substance satisfactory to the Holder and approved by the Holder prior to such Fundamental Transaction, including agreements to deliver to each holder of the Note, in exchange for such Note, a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to the Note, including, without limitation, having a principal amount and interest rate equal to the principal amounts then outstanding and the interest rates of the Note held by such holder, and having similar ranking to the Note, and satisfactory to the Holder. Upon the occurrence of any Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Note and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Note and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein. Notwithstanding the foregoing, the Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 5 to permit the Fundamental Transaction without the assumption of this Note. The provisions of this Section 5 shall apply similarly and equally to successive Fundamental Transactions.

6. RESERVED.

7. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its articles of incorporation, bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Note, and will at all times in good faith carry out all of the provisions of this Note and take all action as may be required to protect the rights of the Holder of this Note.

8. CERTAIN ADJUSTMENTS. The Conversion Price and number of Conversion Shares issuable upon conversion of this Note are subject to adjustment from time to time as set forth in this Section 8.

(a) Common Share Dividends and Splits. If the Company, at any time while this Note is outstanding, (i) pays a dividend on its Common Shares or otherwise makes a distribution on any class of capital stock that is payable in Common Shares, (ii) subdivides its outstanding Common Shares into a larger number of units, (iii) combines its outstanding Common Shares into a smaller number of units, or (iv) otherwise conducts a corporate action or transaction to change the number of outstanding Common Shares, including any reorganization, recapitalization, or other transaction similar to (i) through (iii), then in each such case the Conversion Price shall be multiplied by a fraction, the numerator of which shall be the number of Common Shares outstanding immediately before such event and the denominator of which shall be the number of Common Shares outstanding immediately after such event. Any adjustment made pursuant to this paragraph shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution or the effective date of such subdivision or combination, as applicable.

(b)Subsequent Rights Offerings. If the Company, at any time while this Note is outstanding, shall issue rights, options or warrants to all holders of the Common Shares entitling them to subscribe for or purchase Common Shares (the "**Purchase Rights**"), then, upon any conversion of this Note, the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights that the Holder could have acquired if the Holder had held the number of Conversion Shares issued upon such conversion of this Note immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of the Common Shares are to be determined for the grant, issue or sale of such Purchase Rights.

(c)Pro Rata Distributions. If the Company, at any time while this Note is outstanding, shall distribute to all holders of Common Shares evidences of its indebtedness or assets (including cash and cash dividends) or rights or warrants to subscribe for or purchase any security other than Common Shares (a "**Distribution**"), then, upon any conversion of this Note, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of Conversion Shares issued upon such conversion of this Note immediately before the date on which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of Common Shares are to be determined for the participation in such Distribution.

(d)Fundamental Transactions. If, at any time while this Note is outstanding (i) the Company effects any Fundamental Transaction in accordance with Section 5 herein, then the Holder shall have the right thereafter to receive, upon the Conversion, the same amount and kind of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of the Conversion Shares then issuable upon conversion in full of this Note without regard to any limitations on exercise contained herein (the "**Alternate Consideration**"); provided, however, that such limitations on exercise shall continue to apply upon the occurrence of such Fundamental Transaction. The provisions of this paragraph (b) shall similarly apply to subsequent transactions analogous to a Fundamental Transaction.

(e)Adjustment Upon Issuance of Common Shares.

Dilutive Issuances.

If, at any time while this Note is outstanding (the "**Adjustment Period**"), the Company issues or sells, or in accordance with this Section 8 is deemed to have issued or sold, any Common Shares, Convertible Securities or Options (including the issuance or sale of Common Shares owned or held by or for the account of the Company, but excluding any Excluded Securities issued or sold or deemed to have been issued or sold) for a consideration per share (the "**New Issuance Price**") less than a price equal to the Conversion Price in effect immediately prior to such issue or sale or deemed issuance or sale (such Conversion Price then in effect is referred to as the "**Applicable Price**" and such issuance, a "**Dilutive Issuance**") then immediately after such Dilutive Issuance, the Conversion Price then in effect shall be reduced to an amount equal to the New Issuance Price. The Merger shall not be deemed a Dilutive Issuance; provided, however, that the Merger shall be deemed a Dilutive Issuance if it is based on a pre-Merger valuation (as prepared by a third party valuation expert reasonably acceptable to Buyer) of the Company (excluding any investment by Holder pursuant to the Securities Purchase Agreement)

of less than $6 million or if in connection with the Merger, any securities of the Issuer other than Common Shares are issued, assigned or transferred. For all purposes of the foregoing (including, without limitation, determining the adjusted Conversion Price and consideration per share under this Section 8(e)(i)), clauses (ii) through (vii) of this Section 8(e) shall be applicable.

Issuance of Options.

If, during the Adjustment Period, the Company in any manner grants or sells any Option (other than Excluded Securities) and the lowest price per unit for which one Common Share is issuable upon the exercise of such Option or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option (such Common Shares issuable upon such exercise of any Option or upon conversion, exercise or exchange of any Convertible Securities, the "**Convertible Securities Shares**") is less than the Applicable Price, then such Convertible Securities Shares shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the granting or sale of such Option for such price per unit. For purposes of this Section 8(e)(ii), the "lowest price per unit for which one Common Share is issuable upon the exercise of any such Option or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option" shall be equal to (A) the sum of (1) the lowest amount of consideration (if any) received or receivable by the Company with respect to any one Convertible Securities Share upon the granting or sale of such Option, upon exercise of such Option or upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option and (2) the lowest exercise price set forth in such Option for which one Convertible Securities Share is issuable upon the exercise of such Option or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of such Option, minus (B) the sum of all amounts paid or payable to the holder of such Option (or any other Person), with respect to any one Convertible Securities Share, upon the granting or sale of such Option, upon exercise of such Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option plus the value of any other consideration received or receivable by, or benefit conferred on, the holder of such Option (or any other Person), with respect to any one Convertible Securities Share. Except as contemplated below, no further adjustment of the Conversion Price shall be made upon the actual issuance of such Convertible Securities Share or of such Convertible Securities upon the exercise of such Options or upon the actual issuance of such Convertible Securities Share upon conversion, exercise or exchange of such Convertible Securities.

Issuance of Convertible Securities.

If, during the Adjustment Period, the Company in any manner issues or sells any Convertible Securities (other than Excluded Securities) and the lowest price per unit for which one Convertible Securities Share is issuable upon the conversion, exercise or exchange thereof is less than the Applicable Price, then such Convertible Securities Share shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the issuance or sale of such Convertible Securities for such price per unit. For the purposes of this Section 8(e)(iii), the "lowest price per share for which one Convertible Securities Share is issuable upon the conversion, exercise or exchange thereof" shall be equal to (A) the sum of (1) the lowest amount of consideration (if any) received or receivable by the Company with respect to one Convertible Securities Share upon the issuance or sale of the Convertible Security or upon conversion, exercise or exchange of such Convertible Security and (2) the lowest conversion price set forth in such Convertible Security for which one Convertible Securities Share is issuable upon conversion, exercise or exchange thereof, minus (B) the sum of all amounts paid or payable to the holder of such Convertible Security (or any other Person), with respect to any one Convertible Securities Share, upon the issuance or sale of such Convertible Security plus the value of any other consideration received or receivable by, or benefit conferred on, the holder of such Convertible Security (or any other Person), with respect to any one Convertible Securities Share. Except as contemplated below, no further adjustment of the Conversion Price shall be made upon the actual issuance of such Convertible Securities Share upon conversion, exercise or exchange of such Convertible Securities, and if any such issue or sale of such Convertible Securities is made upon exercise of any Options for which adjustment of the Conversion Price has been or is to be made pursuant to other provisions of this Section 8(e), except as contemplated below, no further adjustment of the Conversion Price shall be made by reason of such issue or sale.

Change in Option Price or Rate of Conversion.

If, during the Adjustment Period, the purchase or exercise price provided for in any Option, the additional consideration, if any, payable upon the issue, conversion, exercise or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exercisable or exchangeable for Common Shares increases or decreases at any time, the Conversion Price in effect at the time of such increase or decrease shall be adjusted to the Conversion Price which would have been in effect at such time had such Options or Convertible Securities provided for such increased or decreased purchase price, additional consideration or increased or decreased conversion rate, as the case may be, at the time initially granted, issued or sold. For purposes of this Section 8(e)(iv), if the terms of any Option or Convertible Security that was outstanding as of the Original Issue Date are increased or decreased in the manner described in the immediately preceding sentence, then such Option or Convertible Security and the Convertible Securities Share deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such increase or decrease. No adjustment pursuant to this Section 8(e) shall be made if such adjustment would result in an increase of the Conversion Price then in effect.

Calculation of Consideration Received.

If, during the Adjustment Period, any Option, Convertible Security, and/or Adjustment Right is issued in connection with the issuance or sale or deemed issuance or sale of any other securities of the Company (the "**Primary Security**" and such Option, Convertible Security, and/or Adjustment Right, a "**Secondary Security**"), together comprising one integrated transaction, the Primary Security issued or sold in such integrated transaction shall be deemed to have been issued for consideration equal to the difference of (A) the aggregate consideration received by the Company to purchase such Primary Security and each such Option, Convertible Security, and/or Adjustment Right (as applicable), minus (B) the product of (1) the sum of the Black Scholes Consideration Value of each such Option, Convertible Security, and/or Adjustment Right (as applicable) on a per Convertible Securities Share basis multiplied by (2) the aggregate number of Convertible Securities Shares issued or issuable pursuant to such Option, Convertible Security, and/or Adjustment Right (as applicable). If any Common Shares, Options or Convertible Securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor (for the purpose of determining the consideration paid for such Common Shares, Options or Convertible Securities, but not for the purpose of the calculation of the Black Scholes Consideration Value) will be deemed to be the gross amount of consideration received by the Company therefor. If any Common Shares, Options or Convertible Securities are issued or sold for a consideration other than cash (for the purpose of determining the consideration paid for such Common Shares, Options or Convertible Securities, but not for the purpose of the calculation of the Black Scholes Consideration Value), the amount of such consideration received by the Company will be the fair value of such consideration, except where such consideration consists of publicly traded securities, in which case the amount of consideration received by the Company for such securities will be the arithmetic average of the VWAPs of such security for each of the five (5) Business Days immediately preceding the date of receipt. If any Common Shares, Options or Convertible Securities are issued to the owners of the non-surviving entity in connection with any merger in which the Company is the surviving entity (for the purpose of determining the consideration paid for such Common Shares, Option or Convertible Security, but not for the purpose of the calculation of the Black Scholes Consideration Value), the amount of consideration therefor will be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Shares, Options or Convertible Securities, as the case may be. The fair value of any consideration other than cash or publicly traded securities (for the purpose of determining the consideration paid for such Common Shares, Options or Convertible Securities, but not for the purpose of the calculation of the Black Scholes Consideration Value) will be determined by the Company and the Holder. If such parties are unable to reach agreement within ten (10) days after the occurrence of an event requiring valuation (the "**Valuation Event**"), the fair value of such consideration will be determined within five (5) Business Days after the tenth (10^{th}) day following such Valuation Event by an independent, reputable appraiser jointly selected by the Company and the Holder. The determination of such appraiser shall be final and binding upon all parties absent manifest error and the fees and expenses of such appraiser shall be borne by the Company.

Record Date.

If, during the Adjustment Period, the Company takes a record of the holders of the Common Shares for the purpose of entitling them (A) to receive a dividend or other distribution payable in Common Shares, Options or in Convertible Securities or (B) to subscribe for or purchase Common Shares, Options or Convertible Securities, then such record date will be deemed to be the date of the issue or sale of the Common Shares deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase (as the case may be).

Holder's Right of Alternative Conversion Price Following Issuance of Certain Options or Convertible Securities.

In addition to and not in limitation of the other provisions of this Section 8, if, during the Adjustment Period, the Company in any manner issues or sells or enters into any agreement to issue or sell, any Common Shares, Options or Convertible Securities other than Excluded Securities (any such securities, "**Variable Price Securities**") after the Issuance Date that are issuable pursuant to such agreement or convertible into or exchangeable or exercisable for Common Shares pursuant to such Options or Convertible Securities, as applicable, at a price which varies or may vary with the market price of the Common Shares, including by way of one or more reset(s) to a fixed price, but exclusive of such formulations reflecting customary anti-dilution provisions (such as share splits, share combinations and share dividends) (each of the formulations for such variable price being herein referred to as, the "**Variable Price**"), the Company shall provide written notice thereof via facsimile and overnight courier to the Holder on the date of such agreement and/or the issuance of such Convertible Securities or Options, as applicable. From and after the date the Company enters into such agreement or issues any such Variable Price Securities, the Holder shall have the right, but not the obligation, in its sole discretion to substitute the Variable Price for the Conversion Price upon conversion of this Note by designating in the Conversion Notice delivered upon any conversion of this Note that solely for purposes of such conversion the Holder is relying on the Variable Price rather than the Conversion Price then in effect. The Holder's election to rely on a Variable Price for a particular conversion of this Note shall not obligate the Holder to rely on a Variable Price for any future conversion of this Note.

(f) Number of Conversion Shares. Simultaneously with any adjustment to the Conversion Price pursuant to Section 8, the number of Conversion Shares that may be issued upon conversion of this Note shall be increased or decreased proportionately, so that after such adjustment the aggregate Conversion Price payable hereunder for the increased or decreased number of Warrant Shares shall be the same as the aggregate Conversion Price in effect immediately prior to such adjustment.

(g) Calculations. All calculations under this Section 8 shall be made to the nearest cent or the nearest 1/100th of a unit, as applicable. The number of Common Shares outstanding at any given time shall not include units owned or held by or for the account of the Company, and the sale or issuance of any such units shall be considered an issue or sale of Common Shares.

9. SECURITY INTEREST. This Note is secured by a lien on all assets of the Company pursuant to the terms of the Transaction Documents.

10. REDEMPTIONS MECHANICS.

(a) Event of Default Redemption Price. The Company shall deliver the applicable Event of Default Redemption Price to the Holder within five (5) Business Days after the Company's receipt of the Holder's Event of Default Redemption Notice.

(b) Partial Redemption. In the event of a redemption of less than all of the Outstanding Amount of this Note, the Company shall promptly cause to be issued and delivered to the Holder a new Note (in accordance with Section 17(d)) representing the outstanding Principal which has not been redeemed. In the event that the Company does not pay the Redemption Price to the Holder within the time period required, at any time thereafter and until the Company pays such unpaid Redemption Price in full, the Holder shall have the option, in lieu of redemption, to require the Company to promptly return to the Holder all or any portion of this Note representing the Outstanding Amount that was submitted for redemption and for which the applicable Redemption Price (together with

any Late Charges thereon) has not been paid. Upon the Company's receipt of such notice, (x) the Redemption Notice shall be null and void with respect to such Outstanding Amount, and (y) the Company shall immediately return this Note, or issue a new Note (in accordance with Section 17(d)) to the Holder representing such Outstanding Amount. The Holder's delivery of a notice voiding a Redemption Notice and exercise of its rights following such notice shall not affect the Company's obligations to make any payments of Late Charges which have accrued prior to the date of such notice with respect to the Outstanding Amount subject to such notice.

11. VOTING RIGHTS. The Holder shall have no voting rights as the holder of this Note, except as required by law and as expressly provided in this Note.

12. RESERVED.

13. COVENANTS. Until the Note has been redeemed or otherwise satisfied in accordance with their terms:

(a) Rank. All payments due under the Note shall be rank senior in payment to all other unsecured and subsequently secured Indebtedness of the Company and its Subsidiaries.

(b) Additional Capital. The Company shall not, without Holder's consent, raise additional capital from a third party, including through the sale and issuance of any securities of the Company or any additional Indebtedness of the Company.

(c) Reserved.

(d) Restricted Payments. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, redeem, defease, repurchase, repay or make any payments in respect of, by the payment of cash or cash equivalents (in whole or in part, whether by way of open market purchases, tender offers, private transactions or otherwise), all or any portion of any Indebtedness, whether by way of payment in respect of principal of (or premium, if any) or interest on, such Indebtedness if at the time such payment is due or is otherwise made or, after giving effect to such payment, (i) an event constituting an Event of Default has occurred and is continuing or (ii) an event that with the passage of time and without being cured would constitute an Event of Default has occurred and is continuing.

(e) Restricted Issuances. The Company shall (i) only incur additional Indebtedness after the Closing Date in accordance with Section 13(a), above, and (ii) not issue any other securities that would cause a breach or default under the Notes.

(f) Restriction on Redemption and Cash Dividends. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, redeem, repurchase or declare or pay any cash dividend or distribution on any of its capital stock (other than any obligations to do so outstanding as of the Issuance Date).

(g) Restriction on Transfer of Assets. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, sell, lease, license, assign, transfer, spin-off, split-off, close, convey or otherwise dispose of any material assets or rights of the Company or any Subsidiary owned or hereafter acquired whether in a single transaction or a series of related transactions, other than (i) sales, leases, licenses, assignments, transfers, conveyances and other dispositions of such assets or rights by the Company and its Subsidiaries in the ordinary course of business and (ii) sales of inventory in the ordinary course of business. Notwithstanding the foregoing, this provision shall not apply to any transactions pursuant to a binding agreement existing on the date hereof.

(h) Reserved.

(i) Change in Nature of Business. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, engage in any material line of business substantially different from those lines of business conducted by the Company and each of its Subsidiaries on the Issuance Date or any business

substantially related or incidental thereto. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, modify its or their corporate structure or purpose.

(j) Preservation of Existence, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, its existence, rights and privileges, and become or remain, and cause each of its Subsidiaries to become or remain, duly qualified and in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary.

(k) Maintenance of Properties, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its properties which are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted, and comply, and cause each of its Subsidiaries to comply, at all times with the provisions of all leases to which it is a party as lessee or under which it occupies property, so as to prevent any material loss or forfeiture thereof or thereunder.

(l) Maintenance of Intellectual Property. The Company will, and will cause each of its Subsidiaries to, take all reasonable action necessary or advisable to maintain all of the Intellectual Property Rights of the Company and/or any of its Subsidiaries that are necessary or material to the conduct of its business in full force and effect.

(m) Maintenance of Insurance. The Company shall maintain, and cause each of its Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations (including, without limitation, comprehensive general liability, hazard, rent and business interruption insurance) with respect to its properties (including all real properties leased or owned by it) and business, in such amounts and covering such risks as is required by any governmental authority having jurisdiction with respect thereto or as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated.

(n) Material Transactions with Affiliates. The Company shall not, nor shall it permit any of its Subsidiaries to, enter into, renew, extend or be a party to, any material transaction or series of related material transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any affiliate except in the ordinary course of business in a manner and to an extent consistent with past practice and necessary or desirable for the prudent operation of its business, for fair consideration and on terms no less favorable to it or its Subsidiaries than would be obtainable in a comparable arm's length transaction with a Person that is not an affiliate thereo.

14. PARTICIPATION. The Holder, as the holder of this Note, shall not be entitled to any dividends paid or distributions made to the holders of Common Shares.

15. AMENDING THE TERMS OF THIS NOTE. The prior written consent of the Holder shall be required for any change or amendment to this Note.

16. TRANSFER. This Note may be offered, sold, assigned or transferred by the Holder without the consent of the Company, subject only to the provisions of Section 17(a) below and Section 5 of the Securities Purchase Agreement.

17. REISSUANCE OF THIS NOTE.

(a) Transfer. If this Note is to be transferred, the Holder shall surrender this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note (in accordance with Section 17(d)), registered as the Holder may request, representing the outstanding Principal being transferred by the Holder and, if less than the entire outstanding Principal is being transferred, a new Note (in accordance with Section 17(d)) to the Holder representing the outstanding Principal not being transferred. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that, by reason of the provisions of this Section 17(a), following redemption of any portion of this Note, the outstanding Principal represented by this Note may be less than the Principal stated on the face of this Note.

(b) Lost, Stolen or Mutilated Note. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Note (as to which a written certification and the indemnification contemplated below shall suffice as such evidence), and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of this Note, the Company shall execute and deliver to the Holder a new Note (in accordance with Section 17(d)) representing the outstanding Principal.

(c) Note Exchangeable for Different Denominations. This Note is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Note or Notes (in accordance with Section 17(d) and in principal amounts of at least $1,000) representing in the aggregate the outstanding Principal of this Note, and each such new Note will represent such portion of such outstanding Principal as is designated by the Holder at the time of such surrender.

(d) Issuance of New Notes. Whenever the Company is required to issue a new Note pursuant to the terms of this Note, such new Note (i) shall be of like tenor with this Note, (ii) shall represent, as indicated on the face of such new Note, the Principal remaining outstanding (or in the case of a new Note being issued pursuant to Section 17(a) or Section 17(c), the Principal designated by the Holder which, when added to the principal represented by the other new Notes issued in connection with such issuance, does not exceed the Principal remaining outstanding under this Note immediately prior to such issuance of new Notes), (iii) shall have an issuance date, as indicated on the face of such new Note, which is the same as the Issuance Date of this Note, (iv) shall have the same rights and conditions as this Note, and (v) shall represent accrued and unpaid Interest and Late Charges on the Principal and Interest of this Note, from the Issuance Date.

18. REMEDIES, CHARACTERIZATIONS, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF . The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note and any of the other Transaction Documents at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Note. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to an injunction restraining any such breach or any such threatened breach, without the necessity of showing economic loss and without any bond or other security being required. The Company shall provide all information and documentation to the Holder that is requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Note.

19. PAYMENT OF COLLECTION, ENFORCEMENT AND OTHER COSTS . If (a) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Note or to enforce the provisions of this Note or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, attorneys' fees and disbursements. The Company expressly acknowledges and agrees that no amounts due under this Note shall be affected, or limited, by the fact that the purchase price paid for this Note was less than the original Principal amount hereof.

20. CONSTRUCTION; HEADINGS. This Note shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any Person as the drafter hereof. The headings of this Note are for convenience of reference and shall not form part of, or affect the interpretation of, this Note. Each and every reference to unit prices, Common Units and any other numbers in this Agreement that relate to the Common Units shall be automatically adjusted for stock splits, stock dividends, stock combinations and other similar transactions that occur with respect to the Common Units after the date of this Agreement. Terms used in this Note but defined in the other

Transaction Documents shall have the meanings ascribed to such terms on the Closing Date in such other Transaction Documents unless otherwise consented to in writing by the Holder.

21. FAILURE OR INDULGENCE NOT WAIVER . No failure or delay on the part of the Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

22. DISPUTE RESOLUTION. In the case of a dispute as to the determination of any Redemption Price or fair market value (as the case may be) or the arithmetic calculation of the applicable Redemption Price (as the case may be), the Company or the Holder (as the case may be) shall submit the disputed determinations or arithmetic calculations (as the case may be) via facsimile (i) within two (2) Business Days after receipt of the applicable notice giving rise to such dispute to the Company or the Holder (as the case may be) or (ii) if no notice gave rise to such dispute, at any time after the Holder learned of the circumstances giving rise to such dispute. If the Holder and the Company are unable to agree upon such determination or calculation within two (2) Business Days of such disputed determination or arithmetic calculation (as the case may be) being submitted to the Company or the Holder (as the case may be), then the Company shall, within two (2) Business Days, submit via facsimile (a) the disputed determination of any Redemption Price or fair market value (as the case may be) to an independent, reputable investment bank selected by the Company and approved by the Holder or (b) the disputed arithmetic calculation of any Redemption Price to an independent, outside accountant selected by the Holder that is reasonably acceptable to the Company. The Company shall cause at its expense the investment bank or the accountant (as the case may be) to perform the determinations or calculations (as the case may be) and notify the Company and the Holder of the results no later than ten (10) Business Days from the time it receives such disputed determinations or calculations (as the case may be). Such investment bank's or accountant's determination or calculation (as the case may be) shall be binding upon all parties absent demonstrable error.

23. NOTICES; CURRENCY; PAYMENTS.

(a) Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 9(f) of the Securities Purchase Agreement. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Note, including in reasonable detail a description of such action and the reason therefore.

(b) Currency. All dollar amounts referred to in this Note are in United States Dollars ("***U.S. Dollars***"), and all amounts owing under this Note shall be paid in U.S. Dollars. All amounts denominated in other currencies (if any) shall be converted into the U.S. Dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. "***Exchange Rate***" means, in relation to any amount of currency to be converted into U.S. Dollars pursuant to this Note, the U.S. Dollar exchange rate as published in the Wall Street Journal on the relevant date of calculation (it being understood and agreed that where an amount is calculated with reference to, or over, a period of time, the date of calculation shall be the final date of such period of time).

(c) Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, unless otherwise expressly set forth herein, such payment shall be made in lawful money of the United States of America by a certified check drawn on the account of the Company and sent via overnight courier service to such Person at such address as previously provided to the Company in writing, provided that the Holder may elect to receive a payment of cash via wire transfer of immediately available funds by providing the Company with prior written notice setting out such request and the Holder's wire transfer instructions. Whenever any amount expressed to be due by the terms of this Note is due on any day which is not a Business Day, the same shall instead be due on the next succeeding day which is a Business Day. Any amount of Principal or other amounts due under the Transaction Documents which is not paid when due (solely to the extent such amount is not then accruing interest at the Default Rate) shall result in a late charge being incurred and payable by the Company in an amount equal to interest on such amount at the rate of twelve percent (12.0%) per annum from the date such amount was due until the same is paid in full ("***Late Charge***").

24. CANCELLATION. After all Principal, accrued Interest, Late Charges and other amounts at any time owed on this Note have been paid in full, this Note shall automatically be deemed canceled, shall be surrendered to the Company for cancellation and shall not be reissued.

25. WAIVER OF NOTICE. To the extent permitted by law, the Company hereby irrevocably waives demand, notice, presentment, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note and the Securities Purchase Agreement.

26. GOVERNING LAW. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the internal laws of the State of Florida, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Florida or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Florida. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in Hillsborough County, Florida, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. In the event that any provision of this Note is invalid or unenforceable under any applicable statute or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform with such statute or rule of law. Any such provision which may prove invalid or unenforceable under any law shall not affect the validity or enforceability of any other provision of this Note. Nothing contained herein shall be deemed or operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of the Holder. **THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS NOTE OR ANY TRANSACTION CONTEMPLATED HEREBY.**

27. MAXIMUM PAYMENTS. Nothing contained herein shall be deemed to establish or require the payment of a rate of interest or other charges in excess of the maximum permitted by applicable law. In the event that the rate of interest required to be paid or other charges hereunder exceed the maximum permitted by such law, any payments in excess of such maximum shall be credited against amounts owed by the Company to the Holder and thus refunded to the Company.

28. CERTAIN DEFINITIONS. For purposes of this Note, the following terms shall have the following meanings:

(a) "***Adjustment Right***" means any right granted with respect to any securities issued in connection with, or with respect to, any issuance or sale (or deemed issuance or sale in accordance with Section 8(e)) of Common Units (other than rights of the type described in Sections 8(a) through (d)) that could result in a decrease in the net consideration received by the Company in connection with, or with respect to, such securities (including, without limitation, any cash settlement rights, cash adjustment or other similar rights).

(b) "***Black Scholes Consideration Value***" means the value of the applicable Option, Convertible Security or Adjustment Right (as the case may be) as of the date of issuance thereof calculated using the Black Scholes Option Pricing Model obtained from the "OV" function on Bloomberg utilizing (i) an underlying price per share equal to the closing bid price of the Common Units on the Business Day immediately preceding the public announcement of the execution of definitive documents with respect to the issuance of such Option, Convertible Security or Adjustment Right (as the case may be), (ii) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the remaining term of such Option, Convertible Security or Adjustment Right (as the case may be) as of the date of issuance of such Option, Convertible Security or Adjustment Right (as the case may be), (iii) a zero cost of borrow and (iv) an expected volatility equal to the greater of 100% and the 100 day volatility obtained from the "HVT" function on Bloomberg (determined utilizing a 365 day annualization factor) as of the Business Day immediately following the date of issuance of such Option, Convertible Security or Adjustment Right (as the case may be).

(c) "***Business Day***" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(d) "***Change of Control***" means any Fundamental Transaction other than (i) any merger of the Company or any of its, direct or indirect, wholly-owned Subsidiaries with or into any of the foregoing Persons, (ii) any reorganization, recapitalization or reclassification of the Common Shares in which holders of the Company's voting power immediately prior to such reorganization, recapitalization or reclassification continue after such reorganization, recapitalization or reclassification to hold publicly traded securities and, directly or indirectly, are, in all material respects, the holders of the voting power of the surviving entity (or entities with the authority or voting power to elect the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities) after such reorganization, recapitalization or reclassification, or (iii) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company or any of its Subsidiaries.

(e) "***Closing Date***" is the date the Company initially issued the Note.

(f) "***Common Shares***" means (i) shares of the Company's common stock, US$_____ par value per share, and (ii) any capital stock into which such common shares shall have been changed or any share capital resulting from a reclassification of such common shares.

(g) "***Excluded Securities***" means any issuance of Common Units, Options and/or Convertible Securities (i) reserved for issuance under the Company's equity incentive plans or issued to employees, consultants or service providers as compensation or consideration in the ordinary course of business, (ii) issued pursuant to agreements, Options, Convertible Securities or Adjustment Rights existing as of the date hereof, provided that such agreements, Options, Convertible Securities or Adjustment Rights have not been amended since the Issuance Date to increase the number of such securities or decrease the exercise price, exchange price or conversion price of such securities, and (iii) to which the Holder consents in writing.

(h) "***Fundamental Transaction***" means that (i) the Company or any of its Subsidiaries shall, directly or indirectly, in one or more related transactions, (1) consolidate or merge with or into (whether or not the Company or any of its Subsidiaries is the surviving corporation) any other Person, or (2) sell, lease, license, assign, transfer, convey or otherwise dispose of all or substantially all of its respective properties or assets to any other Person, or (3) allow any other Person to make a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of Voting Stock of the Company (not including any shares of Voting Stock of the Company held by the Person or Persons making or party to, or associated or affiliated with the Persons making or party to, such purchase, tender or exchange offer), or (4) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with any other Person whereby such other Person acquires more than 50% of the outstanding shares of Voting Stock of the Company (not including any shares of Voting Stock of the Company held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination), or (ii) any "person" or "group" (as these terms are used for purposes of Sections 13(d) and 14(d) of the 1934 Act and the rules and regulations promulgated thereunder) is or shall become the "beneficial owner" (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, of 50% of the aggregate ordinary voting power represented by issued and outstanding Voting Stock of the Company. Fundamental Transaction shall not mean any transaction involving the Company and any one or more of its Affiliates, Subsidiaries, or any of their respective officers or directors or the affiliates of officers or directors of the Company.

(i) "***GAAP***" means United States generally accepted accounting principles, consistently applied.

(j) "***Indebtedness***" shall have the meaning set forth in the Securities Purchase Agreement.

(k) "***Interest Rate***" means ten-and-a-half percent (10.5%) per annum, as may be adjusted from time to time in accordance with Section 2.

(l) "***Maturity Date***" shall mean 360 days from the Closing Date; provided, however, the Maturity Date may be extended at the option of the Holder (i) in the event that, and for so long as, an Event of Default shall have occurred and be continuing or any event shall have occurred and be continuing that with the passage of time and the failure to cure would result in an Event of Default or (ii) through the date that is twenty (20) Business Days after the consummation of a Fundamental Transaction in the event that a Fundamental Transaction is publicly announced or a Fundamental Transaction Notice is delivered prior to the Maturity Date.

(m) "***Options***" means any rights, warrants or options to subscribe for or purchase Common Shares or Convertible Securities.

(l) "***Outstanding Amount***" means the sum of (i) the portion of the Principal to be redeemed or otherwise with respect to which this determination is being made, (ii) accrued and unpaid Interest with respect to such Principal and (iii) accrued and unpaid Late Charges with respect to such Principal and Interest.

(m) "***Parent Entity***" of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common shares or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(n) "***Person***" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or a government or any department or agency thereof.

(o) "***Redemption Notices***" means, collectively, the Event of Default Redemption Notices and other redemption notices, and each of the foregoing, individually, a "***Redemption Notice***."

(p) "***Redemption Premium***" means (i) in the case of the Events of Default described in Section 4(a) (other than Sections 4(a)(iii) through 4(a)(v)), 120% or (ii) in the case of the Events of Default described in Sections 4(a)(iii) through 4(a)(v), 100%.

(q) "***Redemption Prices***" means, collectively, Event of Default Redemption Prices and other redemption prices and each of the foregoing, individually, a "***Redemption Price***."

(r) "***Securities Purchase Agreement***" means that certain Securities Purchase Agreement, dated as of the Closing Date, by and between the Company and the Holder pursuant to which the Company issued this Note, as may be amended from time to time.

(s) "***Subsidiaries***" means subsidiaries of the Company.

(t) "***Successor Entity***" means the Person (or, if so elected by the Holder, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Holder, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

(u) "***Voting Stock***" of a Person means capital stock of such Person of the class or classes pursuant to which the holders thereof have the general voting power to elect, or the general power to appoint, at least a majority of the board of directors, managers, trustees or other similar governing body of such Person (irrespective of whether or not at the time capital stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

(v) Reserved.

29. DISCLOSURE. Upon receipt or delivery by the Company of any notice in accordance with the terms of this Note, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries, the Company shall within one (1) Business Day after any such receipt or delivery publicly disclose such material, non-public information on a report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, non-

public information relating to the Company or any of its Subsidiaries, the Company so shall indicate to such Holder contemporaneously with delivery of such notice, and in the absence of any such indication, the Holder shall be allowed to presume that all matters relating to such notice do not constitute material, non-public information relating to the Company or its Subsidiaries. Nothing contained in this Section 29 shall limit any obligations of the Company, or any rights of the Holder.

[*signature page follows*]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed as of the Issuance Date set out above.

IIU, INC.

By: /s/ Mark Pajak
Name:
Title:

[*Promissory Note - Signature Page*]

Exhibit 10.2

SECURITIES PURCHASE AGREEMENT

This **NOTE PURCHASE AGREEMENT** (the "**Agreement**"), dated as of November 2, 2018, is by and among IIU, Inc., a Virginia corporation (the "**Company**"), and LM Funding America, Inc., a Delaware corporation (the "**Buyer**").

RECITALS

A. The Company and the Buyer are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the "**1933 Act**") and Rule 506 of Regulation D ("**Regulation D**") as promulgated by the United States Securities and Exchange Commission (the "**SEC**") under the 1933 Act.

B. In reliance upon and subject to the respective representations, warranties, covenants, terms and conditions hereinafter set forth, the Buyer wishes to purchase, and the Issuer wishes to sell, upon the terms and conditions stated in this Agreement, (i) senior secured convertible promissory note in the original principal amount of $1,500,000, convertible into shares of common stock of the Company, US$0.001 par value per share (the "**Common Shares**" and such Common Shares issuable upon conversion of the Note, the "**Conversion Shares**"), as further specified herein (together with any note(s) issued in replacement thereof or as a dividend thereon with respect thereto in accordance with the terms thereof or any other note(s) issued in accordance with the terms herein, the "**Note**").

C. The Note and the Conversion Shares are collectively referred to herein as the "**Securities**."

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Buyer hereby agree as follows:

1. PURCHASE AND SALE OF SENIOR SECURED CONVERTIBLE NOTE.

(a) Note. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 6 and 7 below, the Company shall issue and sell to the Buyer, and the Buyer shall purchase from the Company on the Initial Closing Date (as defined below), the Note in the original principal amount of $1,500,000. The Note shall be senior to all other debt obligations of the Company.

(b) Closing. The closing (the "**Closing**") of the purchase of the Note by the Buyer shall take place at the time and place as may be agreed to by the parties. The date and time of the Closing (the "**Closing Date**") shall be 9:00 a.m., New York City time, on the same Business Day on which the conditions to the Closing set forth in Sections 6 and 7 below are satisfied or waived (or such later date as is mutually agreed to by the Company and the Buyer). As used herein "**Business Day**" means any day other than a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to remain closed.

(c) Purchase Price. The aggregate purchase price for the Note to be purchased by the Buyer shall be $1,500,000 (the "**Purchase Price**") and shall be paid at the Closing.

(d) Payment of Purchase Price; Delivery of Note. Subject to Sections 6 and 7 below, (i) on the Closing Date, the Buyer shall pay the Purchase Price to the Company for the Note, representing a principal amount equal to the Purchase Price, by wire transfer of immediately available funds in accordance with the Company's written wire instructions, and on the Closing Date, the Company shall deliver to the Buyer the Note duly executed on behalf of the Company and registered in the name of the Buyer or its designee, duly executed on behalf of the Company and registered in the name of Buyer.

(e) Reserved.

(f) Reserved.

(g) Maturity; Conversion. The Note shall accrue interest at 3% per annum, but no scheduled principal or interest payment will be due from the Company to the Buyer prior to the maturity date of the Note. The maturity date of the note shall be 360 days from execution and delivery of the Note ("Maturity Date"). At the Maturity Date of the Note, to the extent any outstanding principal amount and accrued interest is remaining, the Buyer shall have the right to convert all or any portion of the outstanding principal and accrued interest amount of the Note into Common Shares, at the conversion price set forth in the Note.

2. BUYER'S REPRESENTATIONS AND WARRANTIES.

The Buyer represents and warrants to the Company that:

(a) Organization; Authority. The Buyer is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with the requisite power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents (as defined below) to which it is a party and otherwise to carry out its obligations hereunder and thereunder.

(b) No Public Sale or Distribution. The Buyer is (i) is acquiring the Note and (ii) upon conversion of the Note will acquire the Conversion Shares issuable upon conversion thereof, in each case, for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof in violation of applicable securities laws, except pursuant to sales registered or exempted under the 1933 Act; provided, however, by making the representations herein, the Buyer does not agree, or make any representation or warranty, to hold the Note for any minimum or other specific term and reserves the right to dispose of the Note at any time in accordance with or pursuant to a registration statement or an exemption under the 1933 Act. The Buyer does not presently have any agreement or understanding, directly or indirectly, with any Person to distribute the Note in violation of applicable securities laws.

(c) Reliance on Exemptions. The Buyer understands that the Note is being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws, and that the Company is relying in part upon the truth and accuracy of, and the Buyer's compliance with, the representations, warranties, agreements, acknowledgments and understandings of such Buyer set forth herein in order to determine the availability of such exemptions and the eligibility of the Buyer to acquire the Note. The Buyer is as of the date hereof, an "accredited investor" as that term is defined in Rule 501(a) of the Regulation D (an "**Accredited Investor**")

(d) Information. The Buyer and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Note which have been requested by the Buyer. The Buyer and its advisors, if any, have been afforded the opportunity to ask questions of the Company. The Buyer understands that its investment in the Note involves a high degree of risk. The Buyer has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Note.

(e) No Governmental Review. The Buyer understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Note or the fairness or suitability of the investment in the Note nor have such authorities passed upon or endorsed the merits of the offering of the Note.

(f) Transfer or Resale. The Buyer acknowledges and agrees that the Note cannot be sold, assigned, transferred, conveyed, pledged or otherwise disposed of to any U.S. Person or within the United States of America or its territories or possessions, unless such Note is registered for sale in the United States pursuant to an effective registration statement under the 1933 Act or an exemption from such registration is available. Without limiting the

foregoing, the Buyer understands that: (i) the Note has not been and is not being registered under the 1933 Act or any state securities laws, and may not be offered for sale, sold, assigned, transferred, conveyed or pledged, unless (A) subsequently registered under the 1933 Act and applicable states securities laws, (B) such Note to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from registration under the 1933 Act and applicable state securities laws, or (C) the Buyer provides the Company with reasonable assurance that such Note can be sold, assigned or transferred pursuant to Rule 144A promulgated under the 1933 Act (or a successor rule thereto) (collectively, "**Rule 144A**"); (ii) any sale of the Note made in reliance on Rule 144A may be made only in accordance with the terms of Rule 144A, and further, if Rule 144A is not applicable, any resale of the Note under circumstances in which the seller (or the Person (as defined below) through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the 1933 Act) may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC promulgated thereunder; and (iii) neither the Company nor any other Person is under any obligation to register the Note under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder.

(g) Validity; Enforcement. This Agreement has been duly and validly authorized, executed and delivered on behalf of the Buyer and constitutes the legal, valid and binding obligations of the Buyer enforceable against the Buyer in accordance with its terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

(h) No Conflicts. The execution, delivery and performance by the Buyer of this Agreement and the consummation by the Buyer of the transactions contemplated hereby will not (i) result in a violation of the organizational documents of the Buyer, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Buyer is a party or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to the Buyer, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Buyer to perform its obligations hereunder.

(i) Certain Trading Activities. The Buyer has not directly or indirectly, nor has any Person (as defined below) acting on behalf of or pursuant to any understanding with the Buyer, engaged in any transactions in the securities of the Company (including, without limitation, any Short Sales (as defined below) involving the Company's securities) during the period commencing as of the time that the Buyer and Company first began discussions regarding the specific investment in the Company contemplated by this Agreement and ending immediately prior to the execution of this Agreement (it being understood and agreed that for all purposes of this Agreement, and without implication that the contrary would otherwise be true, that neither transactions nor purchases nor sales shall include the location and/or reservation of borrowable Common Units). "**Short Sales**" means all "short sales" as defined in Rule 200 promulgated under Regulation SHO under the Securities Exchange Act of 1934, as amended (the "**1934 Act**").

(j) Experience of the Buyer. The Buyer, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Note, and has so evaluated the merits and risks of such investment. The Buyer is able to bear the economic risk of an investment in the Note and, at the present time, is able to afford a complete loss of such investment.

(k) Not a 10% Owner. The Buyer is not a "beneficial owner" (as defined for purposes of Rule 13d-3 of the 1934 Act) of more than 10% of the Common Shares.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to the Buyer that:

(a) Organization and Qualification. Each of the Company and each of its subsidiaries are entities duly organized and validly existing and in good standing under the laws of the jurisdiction in which they are formed, and

have the requisite power and authorization to own their properties and to carry on their business as now being conducted and as presently proposed to be conducted. Each of the Company and each of its subsidiaries is duly qualified as a foreign entity to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not have a Material Adverse Effect. "**Material Adverse Effect**" means any material adverse effect on (i) the business, properties, assets, liabilities, operations (including results thereof), condition (financial or otherwise) or prospects of the Company and its subsidiaries taken as a whole, (ii) the transactions contemplated hereby or in any of the other Transaction Documents or (iii) the authority or ability of the Company or any of its subsidiaries to timely perform any of their respective obligations under any of the Transaction Documents (as defined below). Other than as set forth on the SEC Reports (as defined below), the Company has no subsidiaries.

(b) Authorization; Enforcement; Validity. The Company has the requisite corporate power and authority to enter into and perform its obligations under this Agreement and the other Transaction Documents and to issue the Securities in accordance with the terms hereof and thereof. The execution and delivery of this Agreement and the other Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Note and the reservation for issuance and issuance of the Conversion Shares, issuable upon conversion of the Note has been duly authorized by the Company's board of directors. This Agreement has been, and the other Transaction Documents will be prior to the Closing, duly executed and delivered by the Company, and each constitutes the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with its respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies and except as rights to indemnification and to contribution may be limited by federal or state securities law. "**Transaction Documents**" means, collectively, this Agreement, the Note, and each of the other agreements and instruments entered into or delivered by any of the parties hereto in connection with the transactions contemplated hereby and thereby, as may be amended from time to time in writing.

(c) Issuance of the Note. The issuance of the Note is duly authorized and, upon issuance in accordance with the terms of the Transaction Documents, will be validly issued, fully paid and non-assessable and free from all preemptive or similar rights, taxes, liens, charges and other encumbrances with respect to the issue thereof. As of the Closing, the Company shall have reserved from its duly authorized capital stock not less than the sum of 200% of the maximum number of Conversion Shares issuable upon conversion of the Note. The issuance of the Conversion Shares is duly authorized, and upon conversion in accordance with this Agreement and the Note, the Conversion Shares, when issued, will be validly issued, fully paid and non-assessable and free from all preemptive or similar rights, taxes, liens, charges and other encumbrances with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Common Shares. The Buyer will have good and marketable title to the Securities.

(d) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Note, the Conversion Shares and the reservation for issuance of the Conversion Shares) will not (i) result in a violation of the Certificate of Formation (as defined below) (including, without limitation, any certificate of designation contained therein), or other organizational documents of the Company or any of its subsidiaries, any capital stock of the Company or any of its subsidiaries or bylaws or operating agreements of the Company of any of its subsidiaries, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its subsidiaries is a party or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including, without limitation, foreign, federal and state securities laws and regulations and the rules and regulations applicable to the Company or any of its subsidiaries or by which any property or asset of the Company or any of its subsidiaries is bound or affected except, in the case of clause (ii) above, such conflicts, defaults or rights that could not reasonably be expected to have a Material Adverse Effect.

(e) Consents. Neither the Company nor any subsidiary is required to obtain any consent from, authorization or order of, or make any filing or registration with (other than the filing with the SEC of one a Form D with the SEC and other filings as may be required by any state securities agencies, the filing of requisite notice for the

issuance and sale of the Securities and the filings required by Section 4(j) of this Agreement), any court, governmental agency or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its respective obligations under, or contemplated by, the Transaction Documents, in each case, in accordance with the terms hereof or thereof. All consents, authorizations, orders, filings and registrations which the Company is required to obtain at or prior to the Closing have been obtained or effected on or prior to the Closing Date, and the Company is not aware of any facts or circumstances which might prevent the Company from obtaining or effecting any of the registration, application or filings contemplated by the Transaction Documents.

(f) Acknowledgment Regarding Buyer's Purchase of Note. The Company acknowledges and agrees that the Buyer is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated hereby and thereby and that the Buyer is not (i) an officer or director of the Company or any of its subsidiaries, (ii) an "**Affiliate**" (as defined in Rule 405 of the 1933 Act and calculated based on the assumption that only officers, directors and holders of at least 10% of the Company's issued and outstanding Common Units are Affiliates without conceding that any such Persons are "affiliates" for purposes of federal securities laws), or (iii) to the best of its knowledge, a "beneficial owner" of more than 10% of the Common Shares (as defined for purposes of Rule 13d-3 of the 1934 Act. The Company further acknowledges that the Buyer is not acting as a financial advisor or fiduciary of the Company or any of its subsidiaries (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated hereby and thereby, and any advice given by the Buyer or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated hereby and thereby is merely incidental to the Buyer's purchase of the Note. The Company further represents to the Buyer that the Company's decision to enter into the Transaction Documents to which it is a party has been based solely on the independent evaluation by the Company's representatives.

(g) No General Solicitation; Placement Agent's Fees . Neither the Company, nor any of its subsidiaries or Affiliates, nor any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Securities. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, or brokers' commissions relating to or arising out of the transactions contemplated hereby.

(h) No Integrated Offering. None of the Company, its subsidiaries or any of their Affiliates, nor, to the knowledge of the Company, any Person acting on their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would require registration of the issuance of any of the Securities under the 1933 Act, whether through integration with prior offerings or otherwise, or cause this offering of the Securities to require approval of stockholders of the Company under any applicable stockholder approval provisions, including, without limitation, under the rules and regulations of any exchange or automated quotation system on which any of the securities of the Company are listed or designated for quotation. None of the Company, its subsidiaries, their Affiliates nor, to the best knowledge of the Company, any Person acting on their behalf will take any action or steps that would require registration of the issuance of any of the Securities under the 1933 Act or cause the offering of any of the Securities to be integrated with other offerings of securities of the Company.

(i) Dilutive Effect. The Company understands and acknowledges that the number of Conversion Shares may increase in certain circumstances. The Company further acknowledges that its obligation to issue the Conversion Shares upon conversion of the Note in accordance with this Agreement is absolute and unconditional, regardless of the dilutive effect that such issuance may have on the ownership interests of other stockholders of the Company.

(j) Application of Takeover Protections; Rights Agreement. The Company and its board of directors have taken all reasonable action in order to render inapplicable any control share acquisition, interested shareholder, business combination, poison pill (including, without limitation, any distribution under a rights agreement), shareholder rights plan or other similar anti-takeover provision under the Company's certificate of incorporation, as amended and as in effect on the date hereof (the "**Charter**"), the Company's bylaws, as amended and as in effect on the date hereof (the "**Bylaws**"), or other organizational documents or the laws of the jurisdiction of its incorporation or otherwise which is or could become applicable to the Buyer as a result of the transactions contemplated by this Agreement, including, without limitation, the Company's issuance of the Note and the Buyer's ownership of the Note. The Company and its board of directors have taken all reasonable action in order to render inapplicable any

shareholder rights plan or similar arrangement relating to accumulations of beneficial ownership of Common Shares or a change in control of the Company or any of its subsidiaries.

(k) Financial Statements. The Financial Statements of the Company do not contain any untrue statement of a material fact or omit to state any fact necessary to make any statement therein not misleading. The Financial Statements have been prepared in accordance with generally accepted accounting principles ("**GAAP**") applied on a consistent basis throughout the periods indicated and with each other, except that unaudited Financial Statements may not contain all footnote required by generally accepted accounting principles. The Financial Statements fairly present, in all material respects, the financial condition and operating results of the Company as of the dates, and for the periods, indicated therein, subject in the case of unaudited Financial Statements to normal year-end audit adjustments.

(l) Absence of Certain Changes. Except as previously disclosed, neither the Company nor any of its subsidiaries has (i) declared or paid any dividends, (ii) sold any assets outside of the ordinary course of business or (iii) made any capital expenditures outside of the ordinary course of business. Neither the Company nor any of its subsidiaries has taken any steps to seek protection pursuant to any law or statute relating to bankruptcy, insolvency, reorganization, receivership, liquidation or winding up, nor does the Company or any subsidiary have any knowledge or reason to believe that any of their respective creditors intend to initiate involuntary bankruptcy proceedings or any actual knowledge of any fact which would reasonably lead a creditor to do so. The Company is not Insolvent (as defined below). "**Insolvent**" means, (A) the present fair saleable value of the Company's assets is less than the amount required to pay the Company's total Indebtedness (as defined below), (B) the Company is unable to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured or (C) the Company intends to incur or believes that it will incur debts that would be beyond its ability to pay as such debts mature. The Company has not engaged in any business or in any transaction, and is not about to engage in any business or in any transaction, for which the Company's remaining assets constitute unreasonably small capital.

(m) No Undisclosed Events, Liabilities, Developments or Circumstances. Except as previously disclosed, no event, liability, development or circumstance has occurred or exists with respect to the Company, any of its subsidiaries or any of their respective businesses, properties, liabilities, prospects, operations (including results thereof) or condition (financial or otherwise), that (i) would have been required to be disclosed by the Company under applicable laws, (ii) could have a material adverse effect on the Buyer's investment hereunder or (iii) could have a Material Adverse Effect.

(n) Conduct of Business; Regulatory Permits. Neither the Company nor any of its subsidiaries is in violation of any term of or in default under its Charter, any certificate of designation, preferences or rights of any other outstanding series of preferred stock of the Company or any of its subsidiaries or Bylaws or their organizational charter, certificate of formation or certificate of incorporation or bylaws, respectively. Except as previously disclosed, neither the Company nor any of its subsidiaries is in violation of any judgment, decree or order or any statute, ordinance, rule or regulation applicable to the Company or any of its subsidiaries, and neither the Company nor any of its subsidiaries will conduct its business in violation of any of the foregoing, except in all cases for possible violations which could not, individually or in the aggregate, have a Material Adverse Effect. The Company and each of its subsidiaries possess all certificates, authorizations and permits issued by the appropriate regulatory authorities necessary to conduct their respective businesses, except where the failure to possess such certificates, authorizations or permits would not have, individually or in the aggregate, a Material Adverse Effect, and neither the Company nor any such subsidiary has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit.

(o) Foreign Corrupt Practices. Neither the Company nor any of its subsidiaries nor, to the best knowledge of the Company, any director, officer, agent, employee or other Person acting on behalf of the Company or any of its subsidiaries has, in the course of its actions for, or on behalf of, the Company or any of its subsidiaries (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended; or (iv) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee.

(p) Sarbanes-Oxley Act. The Company and each subsidiary is in material compliance with all applicable requirements of the Sarbanes-Oxley Act of 2002 that are effective as of the date hereof, and all applicable rules and regulations promulgated by the SEC thereunder that are effective as of the date hereof

(q) Transactions With Affiliates. Except as previously disclosed, none of the officers, directors, employees or Affiliates of the Company or any of its subsidiaries is presently a party to any transaction with the Company or any of its subsidiaries (other than for ordinary course services as employees, officers or directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any such officer, director, employee or Affiliate or, to the knowledge of the Company or any of its subsidiaries, any corporation, partnership, trust or other Person in which any such officer, director, employee or Affiliate has a substantial interest or is an employee, officer, director, trustee or partner.

(r) Equity Capitalization. The authorized capital stock of the Company is set forth in the Articles of Incorporation. As of the date of this Agreement, all of the outstanding shares of capital stock of the Company, including, without limitation, the Common Shares, are duly authorized and have been, or upon issuance will be, validly issued and are fully paid and non-assessable. To the Company's knowledge, as of the date of this Agreement all of the shares of the Company's issued and outstanding Common Shares are owned by Persons who are "affiliates" (as defined in Rule 405 of the 1933 Act and calculated based on the assumption that only executive officers, directors and holders of at least 10% of the Company's issued and outstanding Common Shares are "affiliates" without conceding that any such Persons are "affiliates" for purposes of federal securities laws) of the Company or any of its subsidiaries. To the Company's knowledge, no Person owns 10% or more of the Company's issued and outstanding Common Shares (calculated based on the assumption that all Convertible Securities, whether or not presently exercisable or convertible, have been fully exercised or converted (as the case may be) taking account of any limitations on exercise or conversion (including "blockers") contained therein without conceding that such identified Person is a 10% shareholder for purposes of federal securities laws). (i) Except as previously disclosed, none of the Company's or any subsidiary's capital stock is subject to preemptive rights or any other similar rights or any liens or encumbrances suffered or permitted by the Company or any subsidiary; (ii) except as previously disclosed, there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any capital stock of the Company or any of its subsidiaries, or contracts, commitments, understandings or arrangements by which the Company or any of its subsidiaries is or may become bound to issue additional capital stock of the Company or any of its subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any capital stock of the Company or any of its subsidiaries; (iii) there are no outstanding debt securities, notes, credit agreements, credit facilities or other agreements, documents or instruments evidencing Indebtedness of the Company or any of its subsidiaries or by which the Company or any of its subsidiaries is or may become bound; (iv) there are no financing statements securing obligations in any amounts filed in connection with the Company or any of its subsidiaries; (v) there are no agreements or arrangements under which the Company or any of its subsidiaries is obligated to register the sale of any of their securities under the 1933 Act; (vi) there are no outstanding securities or instruments of the Company or any of its subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any of its subsidiaries is or may become bound to redeem a security of the Company or any of its subsidiaries; (vii) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Note; (viii) neither the Company nor any subsidiary has any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement; and (ix) neither the Company nor any of its subsidiaries have any liabilities or obligations other than those incurred in the ordinary course of the Company's or its subsidiaries' respective businesses and which, individually or in the aggregate, do not or could not have a Material Adverse Effect. The Company has furnished to the Buyer true, correct and complete copies of the Company's Charter and the Company's Bylaws, and the terms of all Convertible Securities and the material rights of the holders thereof in respect thereto. "**Convertible Securities**" means any capital stock or other security of the Company or any of its subsidiaries that is at any time and under any circumstances directly or indirectly convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any capital stock or other security of the Company (including, without limitation, Common Shares) or any of its subsidiaries.

(s) Indebtedness and Other Contracts. Except as previously disclosed, neither the Company nor any of its subsidiaries (i) has any outstanding Indebtedness (as defined below), (ii) is a party to any contract, agreement or

instrument, the violation of which, or default under which, by the other party(ies) to such contract, agreement or instrument could reasonably be expected to result in a Material Adverse Effect, (iii) is in violation of any term of, or in default under, any contract, agreement or instrument relating to any Indebtedness, and except where such violations and defaults would not result, individually or in the aggregate, in a Material Adverse Effect, or (iv) is a party to any contract, agreement or instrument relating to any Indebtedness, the performance of which, in the judgment of the Company's officers, has or is expected to have a Material Adverse Effect. The Company has no current intention or expectation to file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction. (x) "**Indebtedness**" of any Person means, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the purchase price of property or services (including, without limitation, "capital leases" in accordance with generally accepted accounting principles) (other than trade payables entered into in the ordinary course of business), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with generally accepted accounting principles, consistently applied for the periods covered thereby, is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above; (y) "**Contingent Obligation**" means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto; and (z) "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

(t) Absence of Litigation. Except as previously disclosed, there is no action, suit, proceeding, inquiry or investigation before any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its subsidiaries, the Common Shares or any of the Company's or its subsidiaries' officers or directors which is outside of the ordinary course of business or individually or in the aggregate material to the Company or any of its subsidiaries. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation involving the Company, any of its subsidiaries or any current or former director or executive officer of the Company or any of its subsidiaries.

(u) Insurance. The Company and each of its subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as management of the Company believes to be prudent and customary in the businesses in which the Company and its subsidiaries are engaged. Neither the Company nor any such subsidiary has been refused any insurance coverage sought or applied for, and neither the Company nor any such subsidiary has any reason to believe that it will be unable to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect.

(v) Employee Relations. Neither the Company nor any of its subsidiaries is a party to any collective bargaining agreement or employs any member of a union. The Company believes that its and its subsidiaries' relations with their respective employees are good. No executive officer or other key employee of the Company or any of its subsidiaries has notified the Company or any such subsidiary that such officer intends to leave the Company or any such subsidiary or otherwise terminate such officer's employment with the Company or any such subsidiary. To the best knowledge of the Company, no executive officer or other key employee of the Company or any of its subsidiaries is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement, or any other contract or agreement or any

restrictive covenant, and the continued employment of each such executive officer or other key employee (as the case may be) does not subject the Company or any of its subsidiaries to any liability with respect to any of the foregoing matters. The Company and its subsidiaries are in compliance with all federal, state, local and foreign laws and regulations respecting labor, employment and employment practices and benefits, terms and conditions of employment and wages and hours, except where failure to be in compliance would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(w) Title. The Company and its subsidiaries have good and marketable title in fee simple to all real property, and have good and marketable title to all personal property, owned by them which is material to the business of the Company and its subsidiaries, in each case, free and clear of all liens, encumbrances and defects except such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company and any of its subsidiaries. Any real property and facilities held under lease by the Company or any of its subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company or any of its subsidiaries.

(x) Intellectual Property Rights. The Company and its subsidiaries own or possess adequate rights or licenses to use all trademarks, trade names, service marks, service mark registrations, service names, patents, patent rights, copyrights, original works, inventions, licenses, approvals, governmental authorizations, trade secrets and other intellectual property rights and all applications and registrations therefor ("**Intellectual Property Rights**") necessary to conduct their respective businesses as now conducted and as presently proposed to be conducted. None of the Company's or its subsidiaries' Intellectual Property Rights have expired, terminated or been abandoned, or are expected to expire, terminate or be abandoned, within two years from the date of this Agreement. The Company has no knowledge of any infringement by the Company or any of its subsidiaries of Intellectual Property Rights of others. There is no claim, action or proceeding being made or brought, or to the knowledge of the Company or any of its subsidiaries, being threatened, against the Company or any of its subsidiaries regarding their Intellectual Property Rights. The Company is not aware of any facts or circumstances which might give rise to any of the foregoing infringements or claims, actions or proceedings. The Company and each of its subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their Intellectual Property Rights, except where failure to take such measures would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(y) Environmental Laws. The Company and its subsidiaries (i) are in compliance with all Environmental Laws (as defined below), (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) are in compliance with all terms and conditions of any such permit, license or approval where, in each of the foregoing clauses (i), (ii) and (iii), the failure to so comply could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. "**Environmental Laws**" means all federal, state, local or foreign laws relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), including, without limitation, laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, "**Hazardous Materials**") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations issued, entered, promulgated or approved thereunder.

(z) subsidiary Rights. The Company or one of its subsidiaries has the unrestricted right to vote, and (subject to limitations imposed by applicable law) to receive dividends and distributions on, all capital securities of its subsidiaries as owned by the Company or such subsidiary.

(aa) Tax Status. The Company and each of its subsidiaries (i) has timely made or filed all foreign, federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has timely paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and (iii) has set aside on its books provision reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be

due by the taxing authority of any jurisdiction, and the officers of the Company and its subsidiaries know of no basis for any such claim. The Company is not operated in such a manner as to qualify as a passive foreign investment company, as defined in Section 1297 of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**").

(bb) Internal Accounting and Disclosure Controls. The Company and each of its subsidiaries maintains internal control over financial reporting that is effective 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, including that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset and liability accountability, (iii) access to assets or incurrence of liabilities is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and appropriate action is taken with respect to any difference. Neither the Company nor any of its subsidiaries has received any notice or correspondence from any accountant or other Person relating to any potential material weakness or significant deficiency in any part of the internal controls over financial reporting of the Company or any of its subsidiaries.

(cc) Off Balance Sheet Arrangements. There is no transaction, arrangement, or other relationship between the Company or any of its subsidiaries and an unconsolidated or other off balance sheet entity that is not disclosed or that otherwise could be reasonably likely to have a Material Adverse Effect.

(dd) Reserved.

(ee) U.S. Real Property Holding Corporation. Neither the Company nor any of its subsidiaries is, or has ever been, and so long as the Note is held by the Buyer, shall become, a U.S. real property holding corporation within the meaning of Section 897 of the Code, and the Company and each subsidiary shall so certify upon the Buyer's request.

(ff) Reserved.

(gg) Transfer Taxes. On the Closing Dates, all stock transfer or other taxes (other than income or similar taxes) which are required to be paid in connection with the issuance, sale and transfer of the Note to be sold to the Buyer hereunder will be, or will have been, fully paid or provided for by the Company, and all laws imposing such taxes will be or will have been complied with.

(hh) Reserved.

(ii) No Additional Agreements. The Company does not have any agreement or understanding with the Buyer with respect to the transactions contemplated by the Transaction Documents other than as specified in the Transaction Documents.

(jj) Fixtures and Equipment. Each of the Company and its subsidiaries (as applicable) has good title to, or a valid leasehold interest in, the tangible personal property, equipment, improvements, fixtures, and other personal property and appurtenances that are used by the Company or its subsidiary in connection with the conduct of its business (the "**Fixtures and Equipment**"). The Fixtures and Equipment are structurally sound, are in good operating condition and repair, are adequate for the uses to which they are being put, are not in need of maintenance or repairs except for ordinary, routine maintenance and repairs and are sufficient for the conduct of the Company's and/or its subsidiaries' businesses (as applicable) in the manner as conducted prior to the Closing. Each of the Company and its subsidiaries owns all of its Fixtures and Equipment free and clear of all Encumbrances except for (a) liens for current taxes not yet due and (b) zoning laws and other land use restrictions that do not impair the present or anticipated use of the property subject thereto.

(kk) Illegal or Unauthorized Payments; Political Contributions. Neither the Company nor any of its subsidiaries nor, to the Company's knowledge (after reasonable inquiry of its officers and directors), any of the officers, directors, employees, agents or other representatives of the Company or any of its subsidiaries or any other

business entity or enterprise with which the Company or any subsidiary is or has been affiliated or associated, has, directly or indirectly, made or authorized any payment, contribution or gift of money, property, or services, whether or not in contravention of applicable law, (a) as a kickback or bribe to any Person or (b) to any political organization, or the holder of or any aspirant to any elective or appointive public office except for personal political contributions not involving the direct or indirect use of funds of the Company or any of its subsidiaries.

(ll) Money Laundering. The Company and its subsidiaries are in compliance with, and have not previously violated, the USA Patriot Act of 2001 and all other applicable U.S. and non-U.S. anti-money laundering laws and regulations, including, without limitation, the laws, regulations and Executive Orders and sanctions programs administered by the U.S. Office of Foreign Assets Control, including, without limitation, (i) Executive Order 13224 of September 23, 2001 entitled, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (66 Fed. Reg. 49079 (2001)); and (ii) any regulations contained in 31 CFR, Subtitle B, Chapter V.

(mm) Reserved.

(nn) No Disagreements with Accountants and Lawyers. There are no material disagreements of any kind presently existing, or reasonably anticipated by the Company to arise, between the Company, on the one hand, and any accountants or lawyers formerly or presently employed or engaged by the Company, on the other hand. The Company is current with respect to any fees owed to its accountants and lawyers which could affect the Company's ability to perform any of its obligations under any of the Transaction Documents.

(oo) Disclosure. The Company confirms that neither it nor to the best of the Company's knowledge any other Person acting on its behalf has provided the Buyer or its agents or counsel with any information that constitutes or could reasonably be expected to constitute material, non-public information regarding the Company or any of its subsidiaries, other than the existence of the transactions contemplated by this Agreement and the other Transaction Documents. The Company understands and confirms that the Buyer will rely on the foregoing representations in effecting transactions in securities of the Company. All disclosure provided to the Buyer regarding the Company and its subsidiaries, their businesses and the transactions contemplated hereby, including the schedules to this Agreement, furnished by or on behalf of the Company or any of its subsidiaries is true and correct in all material respects and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. No event or circumstance has occurred or information exists with respect to the Company or any of its subsidiaries or its or their business, properties, liabilities, prospects, operations (including results thereof) or conditions (financial or otherwise), which, under applicable law, rule or regulation, requires public disclosure at or before the date hereof or announcement by the Company but which has not been so publicly disclosed. The Company acknowledges and agrees that the Buyer does not make and has not made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 2.

4. COVENANTS.

(a) Reasonable Best Efforts. The Buyer shall use its reasonable best efforts to timely satisfy each of the conditions to be satisfied by it as provided in Section 6 of this Agreement. The Company shall use its reasonable best efforts to timely satisfy each of the conditions to be satisfied by it as provided in Section 7 of this Agreement.

(b) Reserved.

(c) Use of Proceeds. The Company shall use the proceeds from the sale of the Note solely for general corporate purposes.

(d) Financial Information. As long as the Note remains outstanding, the Company agrees to provide Buyer quarterly consolidated balance sheets, income statements, shareholders' equity statements and/or cash flow statements for each quarter and (ii) copies of any notices and other information made available or given to the shareholders of the Company generally, contemporaneously with the making available or giving thereof to the shareholders.

(e) Reserved.

(f) Fees. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, transfer agent fees, broker's commissions (other than for Persons engaged by the Buyer) relating to or arising out of the transactions contemplated hereby. The Company shall pay, and hold the Buyer harmless against, any liability, loss or expense (including, without limitation, reasonable attorneys' fees and out-of-pocket expenses) arising in connection with any claim relating to any such payment. Except as otherwise set forth in the Transaction Documents, each party to this Agreement shall bear its own expenses in connection with the sale of the Note to the Buyer.

(g) Subsequent Indebtedness. The Company shall not, directly or indirectly, without the prior written consent of the holders of a majority in aggregate principal amount of the Notes then outstanding, incur any Indebtedness after the Initial Closing Date other than (i) Indebtedness that shall rank junior to the Notes; or (ii) Indebtedness incurred in the normal course of business (i.e. bank debt).

(h) Reserved.

(i) Additional Issuance of Securities

. As long as any portion of the Note is outstanding, the Company agrees that the Company shall not directly or indirectly issue, offer, sell, grant any option or right to purchase, or otherwise dispose of (or announce any issuance, offer, sale, grant of any option or right to purchase or other disposition of) any equity security or any equity-linked or related security (including, without limitation, any "equity security" (as that term is defined under Rule 405 promulgated under the 1933 Act), any Convertible Securities, debt (with or related to equity), any preferred stock or any purchase rights), notes, debentures, commercial paper or other instruments representing Indebtedness, or otherwise enter into capital raising transactions with a third party in each case without the consent of the holders of a majority of the outstanding Note.

(j) Reserved.

(k) Conduct of Business. The business of the Company and its subsidiaries shall not be conducted in violation of any law, ordinance or regulation of any governmental entity, except where such violations would not result reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect.

(l) Passive Foreign Investment Company. The Company shall conduct its business, and shall cause its subsidiaries to conduct their respective businesses, in such a manner as will ensure that the Company will not be deemed to constitute a passive foreign investment company within the meaning of Section 1297 of the Code.

(m) Restriction on Redemption and Cash Dividends. So long as the Note is outstanding, the Company shall not, directly or indirectly, redeem, or declare or pay any cash dividend or distribution on, any securities of the Company without the prior express written consent of the Buyer.

(n) Corporate Existence. So long as the Note is outstanding, the Company shall not be party to any Fundamental Transaction (as defined in the Note) unless the Company is in compliance with the applicable provisions governing Fundamental Transactions set forth in the Note.

(o) Pledge of Securities. Notwithstanding anything to the contrary contained in this Agreement, the Company acknowledges and agrees that the Securities may be pledged by the Buyer in connection with a bona fide margin agreement or other loan or financing arrangement that is secured by the Securities. The pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and the Buyer effecting a pledge of Securities shall not be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Transaction Document. At the Buyer's expense, the Company hereby agrees to execute and deliver such documentation as a pledgee of the Securities may reasonably request in connection with a pledge of the Securities to such pledgee by the Buyer provided that the Company shall be under no obligation to deliver any legal opinion required in connection therewith unless required by the Company's transfer agent to be issued by the Company's legal counsel.

5. REGISTER; TRANSFER AGENT INSTRUCTIONS; LEGEND.

(a) Register. The Company shall maintain at its principal executive offices (or such other office or agency of the Company as it may designate by notice to each holder of the Note), a register for the Note in which the Company shall record the name and address of the Person in whose name the Note has been issued (including the name and address of each transferee) and the principal amount of the Note held by such Person. The Company shall keep the register open and available at all times during business hours for inspection of the Buyer or its legal representatives.

(b) Legends. The Buyer understands that the Note has been issued pursuant to an exemption from registration or qualification under the 1933 Act and applicable state securities laws, and except as set forth in Section 5(c) below, the certificates or other instruments representing the Note shall bear any legend as required by the "blue sky" laws of any state and a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such the certificates or other instruments representing the Note and the Company shall be required to refuse to register any transfer of the Note not made in accordance with applicable U.S. securities laws):

> THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS, AND, UNLESS SO REGISTERED, THIS NOTE MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR AN EXEMPTION FROM, OR A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE 1933 ACT, IN EACH CASE ONLY IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. IN ADDITION, HEDGING TRANSACTIONS INVOLVING THE NOTE MAY NOT BE CONDUCTED UNLESS IN ACCORDANCE WITH THE 1933 ACT.

(c) Removal of Legends. The certificates or other instruments representing the Note shall not be required to contain the legend set forth in Section 5(b) above or any other legend (i) while a registration statement covering the resale of the Note is effective under the 1933 Act, (ii) if the Note is eligible to be sold, assigned or transferred under Rule 144A (provided that the Buyer provides the Company with reasonable assurances that the Note is eligible for sale, assignment or transfer under Rule 144A which shall not include an opinion of counsel), (iii) in connection with any other sale, assignment or other transfer of the Note, provided that such sale, assignment or transfer of the Note may be made without registration under the applicable requirements of the 1933 Act or (iv) if such legend is otherwise not required under applicable requirements of the 1933 Act (including, without limitation, controlling judicial interpretations and pronouncements issued by the SEC). If a legend is not required pursuant to the foregoing, the Company shall no later than three (3) Trading Days following the delivery by the Buyer to the Company or the transfer agent (with notice to the Company) of a legended Note (in form necessary to affect the reissuance and/or transfer, if applicable), as directed by such Buyer, issue and deliver at the Company's expense (via reputable overnight courier) to such Buyer, a new Note that is free from all restrictive and other legends, registered in the name of such Buyer or its designee (the date by which such certificate is required to be delivered to such Buyer pursuant to the foregoing is referred to herein as the "**Required Delivery Date**").

(d) Failure to Timely Deliver. If the Company fails to issue and deliver (or cause to be delivered) to the Buyer by the Required Delivery Date a new Note so delivered to the Company by such Buyer that is free from all restrictive and other legends, then, in addition to all other remedies available to such Buyer, the Company shall pay in cash to such Buyer on each day after the Required Delivery Date that the issuance is not timely effected an amount equal to 2% of the original principal amount of such Buyer's Note.

6. CONDITIONS TO THE COMPANY'S OBLIGATION TO SELL.

(a) The obligation of the Company hereunder to issue and sell the Note to the Buyer at the Closing is subject to the satisfaction, at or before each applicable Closing Date, of each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion by providing the Buyer with prior written notice thereof:

(i) The Buyer shall have executed each of the other Transaction Documents to which it is a party and delivered the same to the Company.

(ii) The Buyer shall have delivered to the Company the Purchase Price for the Note being purchased by the Buyer at the Closing by wire transfer of immediately available funds pursuant to the wire instructions provided by the Company.

(iii) The representations and warranties of the Buyer shall be true and correct in all material respects as of the date when made and as of the Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such date), and the Buyer shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by such Buyer at or prior to the Closing Date.

7. CONDITIONS TO THE INVESTOR'S OBLIGATION TO PURCHASE.

(a) The obligation of the Buyer hereunder to purchase the Note at the Closing is subject to the satisfaction, at or before each applicable Closing Date, of each of the following conditions, provided that these conditions are for the Buyer's sole benefit and may be waived by the Buyer at any time in its sole discretion by providing the Company with prior written notice thereof:

(i) The Company and each subsidiary (as the case may be) shall have duly executed and delivered to the Buyer each of the Transaction Documents to which it is a party and the Company shall have duly executed and delivered to the Buyer the Note being purchased by the Buyer at the Closing pursuant to this Agreement.

(ii) The Company shall have delivered to the Buyer a certificate evidencing the formation and good standing of the Company issued by the Secretary of State (or comparable office) of such jurisdiction of formation as of a date within fifteen (15) days of the Closing Date.

(iv) The Company shall have delivered to Buyer a certificate, in the form previously provided to the Company by Buyer, executed by the Secretary of the Company and dated as of the Closing Date, as to (i) the resolutions consistent with Section 3(b) as adopted by the Company's board of directors in a form reasonably acceptable to Buyer, (ii) the Charter and (iii) the Bylaws as in effect at the Closing.

(v) Each and every representation and warranty of the Company shall be true and correct in all material respects as of the date when made and as of the Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct in all material respects as of such date) and the Company shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required to be performed, satisfied or complied with by the Company at or prior to the Closing Date, including, without limitation the issuance of all Securities prior to the Closing Date as required by the Transaction Documents and reserving a sufficient number of duly authorized Common Shares for issuance as may be required to fulfill its obligations pursuant to the Transaction Documents. The Buyer shall have received a certificate, executed by the Chief Executive Officer of the Company, dated as of the Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by the Buyer in the form reasonably acceptable to the Buyer.

(vi) The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the Note.

(vii) No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents, and no actions, suits or proceedings shall be in progress or pending by any Person that seeks to enjoin, prohibit or otherwise adversely affect any of the transactions contemplated by the Transaction Documents.

(viii) No event or series of events shall have occurred that reasonably would have or result in a Material Adverse Effect.

(ix) No Event of Default (as defined in the Note) has occurred and is continuing, or any event which, after notice and/or lapse of time, would become an Event of Default has occurred.

(x) Neither the Company nor any of its subsidiaries has filed for and/or is subject to any bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for relief under any bankruptcy law or any law for the relief of debtors instituted by or against the Company.

(xi) The Company and its subsidiaries shall have delivered to the Buyer such other documents, instruments or certificates relating to the transactions contemplated by this Agreement as the Buyer or its counsel may reasonably request.

8. TERMINATION.

In the event that the Closing shall not have occurred within five (5) days after the Effective Date, then the Buyer shall have the right to terminate its obligations under this Agreement at any time on or after the close of business on such date without liability of the Buyer to any other party; provided, however, the right of the Buyer to terminate its obligations under this Agreement pursuant to this Section 8 shall not be available to the Buyer if the failure of the transactions contemplated by this Agreement to have been consummated by such date is the result of the Buyer's breach of this Agreement. Nothing contained in this Section 8 shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or the other Transaction Documents or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement or the other Transaction Documents.

9. MISCELLANEOUS.

(a) Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of Florida, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Florida or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Florida. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in Hillsborough County, Florida, for the adjudication of any dispute hereunder or under any of the other Transaction Documents or in connection herewith or with any transaction contemplated hereby or thereby or discussed herein or therein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall (i) limit, or be deemed to limit, in any way any right to serve process in any manner permitted by law, (ii) operate, or shall be deemed to operate, to preclude the Buyer from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Buyer or to enforce a judgment or other court ruling in favor of the Buyer or (iii) limit, or be deemed to limit, any provision of Section 22 of the Note. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR UNDER ANY OTHER TRANSACTION DOCUMENT OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.**

(b) Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

(c) Headings; Gender. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof" and words of like import refer to this entire Agreement instead of just the provision in which they are found.

(d) Severability. If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s). Notwithstanding anything to the contrary contained in this Agreement or any other Transaction Document (and without implication that the following is required or applicable), it is the intention of the parties that in no event shall amounts and value paid by the Company and/or its subsidiaries (as the case may be), or payable to or received by the Buyer, under the Transaction Documents (including without limitation, any amounts that would be characterized as "interest" under applicable law) exceed amounts permitted under any applicable law. Accordingly, if any obligation to pay, payment made to the Buyer, or collection by the Buyer pursuant the Transaction Documents is finally judicially determined to be contrary to any such applicable law, such obligation to pay, payment or collection shall be deemed to have been made by mutual mistake of such Buyer, the Company and its subsidiaries and such amount shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by the applicable law. Such adjustment shall be effected, to the extent necessary, by reducing or refunding, at the option of such Buyer, the amount of interest or any other amounts which would constitute unlawful amounts required to be paid or actually paid to such Buyer under the Transaction Documents. For greater certainty, to the extent that any interest, charges, fees, expenses or other amounts required to be paid to or received by such Buyer under any of the Transaction Documents or related thereto are held to be within the meaning of "interest" or another applicable term to otherwise be violative of applicable law, such amounts shall be pro-rated over the period of time to which they relate.

(e) Entire Agreement; Amendments . This Agreement, the other Transaction Documents and the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein supersede all other prior oral or written agreements between the Buyer, the Company, its subsidiaries, their Affiliates and Persons acting on their behalf solely with respect to the matters contained herein and therein, and this Agreement, the other Transaction Documents, the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein contain the entire understanding of the parties solely with respect to the matters covered herein and therein; provided, however, nothing contained in this Agreement or any other Transaction Document shall (or shall be deemed to) (i) have any effect on any agreements the Buyer has entered into with the Company or any of its subsidiaries prior to the date hereof with respect to any prior investment made by the Buyer in the Company or (ii) waive, alter, modify or amend in any respect any obligations of the Company or any of its subsidiaries, or any rights of or benefits to the Buyer or any other Person, in any agreement entered into prior to the date hereof between or among the Company and/or any of its subsidiaries and the Buyer, and all such agreements shall continue in full force and effect. Except as specifically set forth herein or therein, neither the Company nor the Buyer makes any representation, warranty, covenant or undertaking with respect to such matters. For clarification purposes, the Recitals are part of this Agreement. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and the Buyer, and any amendment to any provision of this Agreement made in conformity with the provisions of this Section 9(e) shall be binding on the Buyer and holders of the Note, as applicable, provided that no such amendment shall be effective to the extent that it (1) applies to less than all of the holders of the Note then outstanding or (2) imposes any obligation or liability on the Buyer without the Buyer's prior written consent (which may be granted or withheld in the Buyer's sole discretion). No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party, provided that the Buyer may waive any provision of this Agreement, and any waiver of any provision of this Agreement made in conformity with the provisions of this Section

9(e) shall be binding on the Buyer and holders of Note, as applicable, provided that no such waiver shall be effective to the extent that it (1) applies to less than all of the holders of the Note then outstanding (unless a party gives a waiver as to itself only) or (2) imposes any obligation or liability on the Buyer without such Buyer's prior written consent (which may be granted or withheld in the Buyer's sole discretion). The Company has not, directly or indirectly, made any agreements with the Buyer relating to the terms or conditions of the transactions contemplated by the Transaction Documents except as set forth in the Transaction Documents. Without limiting the foregoing, the Company confirms that, except as set forth in this Agreement, the Buyer has not made any commitment or promise or has any other obligation to provide any financing to the Company, any subsidiary or otherwise. As a material inducement for the Buyer to enter into this Agreement, the Company expressly acknowledges and agrees that (i) no due diligence or other investigation or inquiry conducted by the Buyer, any of its advisors or any of its representatives shall affect the Buyer's right to rely on, or shall modify or qualify in any manner or be an exception to any of, the Company's representations and warranties contained in this Agreement or any other Transaction Document and (ii) unless a provision of this Agreement or any other Transaction Document is expressly preceded by the phrase "except as previously disclosed," nothing shall affect the Buyer's right to rely on, or shall modify or qualify in any manner or be an exception to any of, the Company's representations and warranties contained in this Agreement or any other Transaction Document.

(f) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, if delivered personally; (ii) when sent, if sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); (iii) when sent, if sent by e-mail (provided that such sent e-mail is kept on file (whether electronically or otherwise) by the sending party and the sending party does not receive an automatically generated message from the recipient's e-mail server that such e-mail could not be delivered to such recipient) and (iv) if sent by overnight courier service, one (1) Business Day after deposit with an overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same. The addresses, facsimile numbers and/or e-mail addresses for such communications are as follows:

If to the Company:

LM Funding America, Inc.
302 Knight Run Avenue
Suite 1000
Tampa, Florida 33602
Telephone: 813 222 8996
E-Mail: Bruce@LMFunding.com
Attention: Bruce M. Rodgers, Esq.

If to the Buyer:

IIU, Inc.
104 West Federal St.
P.O. Box 480
Middleburg VA 20117
Telephone: 540 687 3166
E-Mail: M.Pajak@cravenhousecapital.com
Attention: Mark Pajak

or to such other address, facsimile number or e-mail address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine containing the time, date and recipient facsimile number or (C) provided by an overnight courier service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from an overnight courier service in accordance with clause (i), (ii) or (iv) above, respectively. A copy of the e-mail transmission containing the time, date and recipient e-mail address shall be rebuttable evidence of receipt by e-mail in accordance with clause (iii) above.

(g) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including, as contemplated below, any assignee or transferee of the Note. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Buyer (which may be granted or withheld in the sole discretion of the Buyer), including, without limitation, by way of a Fundamental Transaction (as defined in the Note) (unless the Company is in compliance with the applicable provisions governing Fundamental Transactions set forth in the Note). The Buyer may assign some or all of its rights hereunder in connection with any assignment or transfer of this Note without the consent of the Company, in which event such assignee or transferee (as the case may be) shall be deemed to be the Buyer hereunder with respect to such assigned rights.

(h) No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, other than the Indemnitees referred to in Section 9(k).

(i) Survival. The representations, warranties, agreements and covenants shall survive the Closing.

(j) Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) Indemnification

(i) In consideration of the Buyer's execution and delivery of the Transaction Documents and acquiring the Note thereunder and in addition to all of the Company's other obligations under the Transaction Documents, the Company shall defend, protect, indemnify and hold harmless the Buyer and each holder of any Note and all of their shareholders, partners, members, officers, directors, employees and direct or indirect investors and any of the foregoing Persons' agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the "**Indemnitees**") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "**Indemnified Liabilities**"), incurred by any Indemnitee as a result of, or arising out of, or relating to (a) any misrepresentation or breach of any representation or warranty made by the Company in any of the Transaction Documents, (b) any breach of any covenant, agreement or obligation of the Company contained in any of the Transaction Documents or (c) any cause of action, suit, proceeding or claim brought or made against such Indemnitee by a third party (including, without limitation, for these purposes a derivative action brought on behalf of the Company or any subsidiary) or which otherwise involves such Indemnitee that arises out of, relates to or results from (i) the execution, delivery, performance or enforcement of any of the Transaction Documents, (ii) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of the issuance of the Note, (iii) any disclosure properly made by the Buyer pursuant to Section 4(h), or (iv) the status of the Buyer or holder of the Note either as an investor in the Company pursuant to the transactions contemplated by the Transaction Documents or as a party to this Agreement (including, without limitation, as a party in interest or otherwise in any action or proceeding for injunctive or other equitable relief) provided, however, that (A) the Company shall not be liable under this Section 9(k) to the extent that a court of competent jurisdiction or an arbitrator shall have determined that such loss, claim, damage, liability or expense resulted directly and solely from any such acts or failures to act, undertaken or omitted to be taken by the Buyer or such person through its bad faith or willful misconduct or negligence, (B) the foregoing indemnity shall not apply to

any loss, claim, damage, liability or expense to the extent, but only to the extent, arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with information furnished to the Company by or on behalf of the Buyer. To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law.

(ii) Promptly after receipt by an Indemnitee under this Section 9(k) of notice of the commencement of any action or proceeding (including any governmental action or proceeding) involving an Indemnified Liability, such Indemnitee shall, if a claim in respect thereof is to be made against the Company under this Section 9(k), deliver to the Company a written notice of the commencement thereof, and the Company shall have the right to participate in, and, to the extent the Company so desires, to assume control of the defense thereof with counsel mutually satisfactory to the Company and the Indemnitee; provided, however, that an Indemnitee shall have the right to retain its own counsel with the fees and expenses of such counsel to be paid by the Company if: (i) the Company has agreed in writing to pay such fees and expenses; (ii) the Company shall have failed promptly to assume the defense of such Indemnified Liability and to employ counsel reasonably satisfactory to such Indemnitee in any such Indemnified Liability; or (iii) the named parties to any such Indemnified Liability (including any impleaded parties) include both such Indemnitee and the Company, and such Indemnitee shall have been advised by counsel that a conflict of interest is likely to exist if the same counsel were to represent such Indemnitee and the Company (in which case, if such Indemnitee notifies the Company in writing that it elects to employ separate counsel at the expense of the Company, then the Company shall not have the right to assume the defense thereof and such counsel shall be at the expense of the Company), provided further, that in the case of clause (iii) above the Company shall not be responsible for the reasonable fees and expenses of more than one (1) separate legal counsel for such Indemnitee. The Indemnitee shall reasonably cooperate with the Company in connection with any negotiation or defense of any such action or Indemnified Liability by the Company and shall furnish to the Company all information reasonably available to the Indemnitee which relates to such action or Indemnified Liability. The Company shall keep the Indemnitee reasonably apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. The Company shall not be liable for any settlement of any action, claim or proceeding effected without its prior written consent, provided, however, that the Company shall not unreasonably withhold, delay or condition its consent. The Company shall not, without the prior written consent of the Indemnitee, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnitee of a release from all liability in respect to such Indemnified Liability or litigation, and such settlement shall not include any admission as to fault on the part of the Indemnitee. Following indemnification as provided for hereunder, the Company shall be subrogated to all rights of the Indemnitee with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the Company within a reasonable time of the commencement of any such action shall not relieve the Company of any liability to the Indemnitee under this Section 9(k), except to the extent that the Company is materially and adversely prejudiced in its ability to defend such action.

(iii) The indemnification required by this Section 9(k) shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Indemnified Liabilities are incurred.

(iv) The indemnity agreement contained herein shall be in addition to (A) any cause of action or similar right of the Indemnitee against the Company or others, and (B) any liabilities the Company may be subject to pursuant to the law.

(l) Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party. No specific representation or warranty shall limit the generality or applicability of a more general representation or warranty. Each and every reference to share prices, Common Shares and any other numbers in this Agreement that relate to the Common Shares shall be automatically adjusted for stock splits, stock dividends, stock combinations and other similar transactions that occur with respect to the Common Shares after the date of this Agreement.

(m) Remedies. The Buyer and each holder of any Note shall have all rights and remedies set forth in the Transaction Documents and all rights and remedies which such holders have been granted at any time under any other agreement or contract and all of the rights which such holders have under any law. Any Person having any rights

under any provision of this Agreement shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law. Furthermore, the Company recognizes that in the event that it or any subsidiary fails to perform, observe, or discharge any or all of its or such subsidiary's (as the case may be) obligations under the Transaction Documents, any remedy at law may prove to be inadequate relief to the Buyer. The Company therefore agrees that the Buyer shall be entitled to seek specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security. The remedies provided in this Agreement and the other Transaction Documents shall be cumulative and in addition to all other remedies available under this Agreement and the other Transaction Documents, at law or in equity (including, without limitation, a decree of specific performance and/or other injunctive relief).

(n) Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) the Transaction Documents, whenever the Buyer exercises a right, election, demand or option under a Transaction Document and the Company does not timely perform its related obligations within the periods therein provided, then the Buyer may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company or such subsidiary (as the case may be), any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights

(o) Payment Set Aside. To the extent that the Company makes a payment or payments to the Buyer hereunder or pursuant to any of the other Transaction Documents or the Buyer enforces or exercises its rights hereunder or thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, foreign, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred. Until the Note is no longer outstanding, the Company shall not effect any stock combination, reverse stock split or other similar transaction (or make any public announcement or disclosure with respect to any of the foregoing) without the prior written consent of the Buyer (which may be granted or withheld in the sole discretion of the Buyer).

[*signature pages follow*]

IN WITNESS WHEREOF, Buyer and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

COMPANY:

IIU, INC.

By:_/s/ Mark Pajak_____
Name: M. Pajak
Title: President

IN WITNESS WHEREOF, Buyer and the Company have caused their respective signature page to this Agreement to be duly executed as of the date first written above.

BUYER:

LM Funding America, Inc.

By:_/s/ Bruce Rodgers_____
Name: Bruce M. Rodgers, Esq.
Title: Chief Executive Officer

Exhibit 31.1

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.

/s/ Bruce Rodgers

November 14, 2018

Bruce Rodgers
CEO and 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 Executive 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.

/s/ Richard Russell

November 14, 2018

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.

Exhibit 32.1

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, 2018 as filed with the Securities and Exchange Commission on November 14, 2018 (the "Report"), fully complies with the requirements of Section 13(a) 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
CEO and Chief Executive Officer
(Principal Executive Officer)
November 14, 2018

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 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, 2018 as filed with the Securities and Exchange Commission on November 14, 2018 (the "Report"), fully complies with the requirements of Section 13(a) 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 14, 2018

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.