

SECURITIES & EXCHANGE COMMISSION EDGAR FILING

Dolphin Entertainment, Inc.

Form: 10-K

Date Filed: 2020-03-30

Corporate Issuer CIK: 1282224

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
Form 10-K**

(Mark One)

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

For the fiscal year ended December 31, 2019

Or

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

Commission file number: 001-38331

DOLPHIN ENTERTAINMENT, INC.
(Exact name of registrant as specified in its charter)

Florida

*(State or other jurisdiction of
incorporation or organization)*

86-0787790

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

150 Alhambra Circle, Suite 1200, Coral Gables, FL

(Address of principal executive offices)

33134

(Zip Code)

Registrant's telephone number (305) 774-0407

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.015 par value per share	DLPN	The Nasdaq Capital Market
Warrants to purchase Common Stock, \$0.015 par value per share	DLPNW	The Nasdaq Capital Market

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

None

Indicate by a check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by a check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by a check mark if 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 a 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 Act.) Yes No

The aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, as of the last business day of the registrant's most recently completed second fiscal quarter: \$12,686,688

Number of shares outstanding of the registrant's common stock as of March 30, 2020: 19,997,752

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Registrant's definitive proxy statement for its 2020 annual meeting of shareholders, which proxy statement will be filed no later than 120 days after the close of the Registrant's fiscal year ended December 31, 2019, are hereby incorporated by reference in Part III of this Annual Report on Form 10-K.

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PART I

Unless the context otherwise requires, all references to “we”, “us”, “our”, “Dolphin” and the “Company” refer to Dolphin Entertainment, Inc., a Florida corporation, and its consolidated subsidiaries.

ITEM 1. BUSINESS

Overview

We are a leading independent entertainment marketing and premium content development company. Through our subsidiaries, 42West LLC (“42West”), The Door Marketing Group LLC (“The Door”) and Shore Fire Media, Ltd (“Shore Fire”), we provide expert strategic marketing and publicity services to many of the top brands, both individual and corporate, in the entertainment, hospitality and music industries. The Door, 42West and Shore Fire are all recognized global leaders in the PR services for the industries they serve. Our acquisition of Viewpoint Computer Animation Incorporated (“Viewpoint”) has added full-service creative branding and production capabilities to our marketing group. Dolphin’s legacy content production business, founded by our Emmy-nominated Chief Executive Officer, Bill O’Dowd, has produced multiple feature films and award-winning digital series, primarily aimed at the family and young adult markets.

We were first incorporated in the State of Nevada on March 7, 1995 and domesticated in the State of Florida on December 4, 2014. Our common stock trades on The Nasdaq Capital Market under the symbol “DLPN”.

We currently operate in two reportable segments: our entertainment publicity and marketing segment and our content production segment. The entertainment publicity and marketing segment is composed of 42West, The Door, Shore Fire and Viewpoint and provides clients with diversified services, including public relations, entertainment content marketing, strategic communications, social media marketing, creative branding, and the production of marketing video content. The content production segment is composed of Dolphin Films, Inc. (“Dolphin Films”) and Dolphin Digital Studios, which produce and distribute feature films and digital content.

With respect to our entertainment publicity and marketing segment, we currently see a favorable environment for organic growth. The original content budgets of many large studios and streaming services have grown considerably the past few years, and are expected to continue to do so for the foreseeable future. Furthermore, 2019 saw the entrance of large streaming services such as Disney + and Apple TV. Additional streaming services such as Peacock (from NBCUniversal), HBO Max, Discovery/BBC and Quibi are scheduled to launch in early 2020, all to compete with Netflix, Amazon and Hulu. We believe that the foremost differentiating factor for all of these platforms will be original programming and, consequently, it is anticipated that there will be an increase of tens of billions of dollars in programming spent across the market. We also believe that each of these original shows will need substantial public relations and marketing campaigns to drive consumer awareness of both the shows themselves and the respective platforms on which to find them.

Additionally, we have endeavored to create a “marketing super group,” combining marketing, public relations, branding, and digital production, that will serve as a platform for organic growth via the cross-selling of services among our subsidiaries. By way of example, all of our public relations companies (42West, The Door and Shore Fire) have identified the ability to create content for clients as a “must have” for public relations campaigns in today’s environment, which relies so heavily on video clips to drive social media awareness and engagement. Thus, we believe that our acquisition of Viewpoint provides a critical competitive advantage in the acquisition of new clients in the entertainment and lifestyle marketing space, and has the potential to fuel topline revenue growth as the average revenue per client increases with the cross-selling of video content creation services.

Finally, we believe that our expanding portfolio of public relations and marketing companies will continue to attract future acquisitions. We believe that our “marketing super group” is unique in the industry, as a collection of best-in-class service providers across a variety of entertainment and lifestyle verticals. We further believe that with each new acquisition in this space, our portfolio will increase its breadth and depth of services and, therefore, be able to offer an even more compelling opportunity for other industry leaders to join, and enjoy the benefits of cross-selling to a wide variety of existing and potential clients. Thus, we believe we can continue to grow both revenues and profits through future acquisitions into our entertainment publicity and marketing segment.

Growth Opportunities and Strategies

We are focused on driving growth through the following:

Expand and grow 42West to serve more clients with a broad array of interrelated services. As a result of 42West's acquisition by Dolphin and enhanced by the acquisition of Viewpoint, 42West has the ability to create promotional and marketing content for clients, a critical service for celebrities and marketers alike in today's digital world. We believe that by the addition of content creation to 42West's capabilities, we can capitalize on unique synergies to drive organic growth, which we expect will allow us to both attract new clients and broaden our offering of billable services to existing ones. We also believe that the skills and experience of our 42West business in entertainment PR are readily transferable to related business sectors, such as sports and gaming. The growing involvement in non-entertainment businesses by many of our existing entertainment clients has allowed 42West to establish a presence and develop expertise outside its traditional footprint. Using this as a foundation, we are now working to expand our involvement in these new areas.

We also expect to continue to grow 42West's current business divisions. For example:

- In the Entertainment Marketing division, several of our large key clients have announced increased movie marketing budgets over the next several years that we expect will drive growth of our revenue and profits;
- In the Talent division, we expect to continue to drive significant growth through the hiring of additional individuals or teams whose existing books of business and talent rosters can be accretive to revenues and profits of the business; and
- In the Strategic Communications division, we believe that growth will be driven by increasing demand for these services by traditional and non-traditional media clients over the next three to five years as they expand their activities in the content production, branding, and consumer products sectors. We believe that this growth could result in the Strategic Communications division significantly increasing its contribution to revenue and profit, as this division typically generates higher profit margins than the other 42West divisions.

Expand and grow The Door through the expansion of Consumer Products PR business. The Door's market-leading position in both the food and hospitality verticals, with many clients which have consumer-facing products and the need for attendant marketing campaigns, has provided the Company with the requisite experience for a successful entry into the high-margin consumer products PR business with potential clients outside of the food and hospitality verticals. We plan to significantly increase the number of consumer products PR accounts at The Door through the hiring of a dedicated team of experienced professionals for this new business line. Such accounts often generate higher monthly fees and longer-term engagements than any other customer vertical.

Expand and grow Shore Fire Media to serve more clients in more genres of music and in more markets. For over 30 years, Shore Fire has been an undisputed leader in providing public relations and marketing services to a broad array of songwriters, recording artists, publishers and others within the music industry, all from its headquarters in Brooklyn. We plan to significantly expand Shore Fire's presence in other major music markets, including Los Angeles, Nashville and Miami, which will provide access to potential clients across a wide array of popular musical genres, including pop, country and Latin.

Diversify Viewpoint's Client Base. Viewpoint is a leading creative branding agency and promotional video content producer for the television industry, with long-term clients such as HBO, Discovery Networks, Showtime and AMC. Through 42West, The Door and Shore Fire, Viewpoint can offer its best-in-class services to several new verticals, including motion picture production and distribution companies, musical artists, restaurant groups, the hospitality and travel industry and the marketers of consumer products. The ability for Viewpoint to reach clients of 42West, The Door and Shore Fire provides Viewpoint with the opportunity to diversify its client base, while allowing 42West, The Door and Shore Fire to increase their service offerings to, existing and future clients, potentially driving increased revenues.

Opportunistically grow through complementary acquisitions. We plan to selectively pursue acquisitions to further enhance our competitive advantages, scale our revenues, and increase our profitability. Our acquisition strategy is based on identifying and acquiring companies that complement our existing entertainment publicity services businesses. We believe that complementary businesses, such as digital and social media marketing, event planning and PR firms in other entertainment verticals, can create synergistic opportunities that may increase profits and operating cash flow. We intend to complete at least one acquisition during the next year, although there is no assurance that we will be successful in doing so.

Build a portfolio of premium film, television and digital content. We intend to grow and diversify our portfolio of film, television and digital content by capitalizing on demand for high quality digital media and film content throughout the world marketplace. We plan to balance our financial risks against the probability of commercial success for each project. We believe that our strategic focus on content and creation of innovative content distribution strategies will enhance our competitive position in the industry, ensure optimal use of our capital, build a diversified foundation for future growth and generate long-term value for our shareholders. Finally, we believe that marketing strategies that will be developed by 42West will drive our creative content, thus creating greater potential for profitability.

Given the recent events surrounding the global pandemic (COVID-19), we are evaluating the effects, both positive and negative, on our growth opportunities and strategies. As an example, we believe The Door will be impacted since they operate in the hospitality industry, but there may be additional opportunities for 42West in the streaming service marketing business. Additionally, new acquisition opportunities may be available. We currently don't have sufficient information to know what these effects will be but will continue to monitor the situation and take corrective action as necessary.

Entertainment Publicity and Marketing

42West

Through 42West, an entertainment public relations agency, we offer talent publicity, entertainment (motion picture and television) marketing and strategic communications services. Prior to its acquisition, 42West grew to become one of the largest independently-owned public relations firms in the entertainment industry, and in December 2019, 42West was ranked #4 in the annual rankings of the nation's Power 50 PR firms by the New York Observer, the highest position held by an entertainment PR firm. As such, we believe that 42West has served, and will continue to serve, as an "acquisition magnet" for us to acquire new members of our marketing "super group," which has the ability to provide synergistic new members with the opportunity to grow revenues and profits through 42West's access, relationships and experience in the entertainment industry.

Our public relations and marketing professionals at 42West develop and execute marketing and publicity strategies for dozens of movies and television shows annually, as well as for individual actors, filmmakers, recording artists, and authors. Through 42West, we provide services in the following areas:

Entertainment Marketing

We provide marketing direction, public relations counsel and media strategy for productions (including theatrical films, DVD and VOD releases, television programs, and online series) as well as content producers, ranging from individual filmmakers and creative artists to production companies, film financiers, DVD distributors, and other entities. Our capabilities include worldwide studio releases, independent films, television programming and web productions. We provide entertainment marketing services in connection with film festivals, awards campaigns, event publicity and red-carpet management.

Talent Publicity

We focus on creating and implementing strategic communication campaigns for performers and entertainers, including film, television and Broadway stars. Our talent roster includes multiple Oscar-, Emmy- and Tony-winning actors. Our services in this area include ongoing strategic counsel, media relations, studio, network, charity, corporate liaison and event support.

Strategic Communications

Our strategic communications team advises brands and non-profits seeking to utilize entertainment and pop culture in their marketing campaigns. We also help companies define objectives, develop messaging, create brand identities, and construct long-term strategies to achieve specific goals, as well as manage functions such as media relations or internal communications on a day-to-day basis. Our clients include major studios and production companies, record labels, media conglomerates, technology companies, philanthropic organizations, talent guilds, and trade associations, as well as a wide variety of high-profile individuals, ranging from major movie and pop stars to top executives and entrepreneurs.

The Door

Through The Door, a hospitality, lifestyle and consumer products public relations agency, we offer traditional public relations services, as well as social media marketing, creative branding, and strategic counsel. Prior to its acquisition, The Door was widely considered the leading independent public relations firm in the hospitality and lifestyle industries. Among other benefits, The Door acquisition has expanded our entertainment verticals through the addition of celebrity chefs and their restaurants, as well as with live events, such as some of the most prestigious and well-attended food and wine festivals in the United States. Our public relations and marketing professionals at The Door develop and execute marketing and publicity strategies for dozens of restaurant and hotel groups annually, as well as for individual chefs, live events, and consumer-facing corporations.

Shore Fire Media

Through Shore Fire Media, we represent musical artists and culture makers at the top of their fields. The company's dedicated teams in New York, Los Angeles, and Nashville wield extensive, varied expertise to strategically amplify narratives and shape reputations for career-advancing effect. Shore Fire Media represents top recording artists in multiple genres, songwriters, music producers, record labels, music industry businesses, venues, trade organizations, authors, comedians, social media personalities and cultural institutions.

Viewpoint

Viewpoint is a full-service, boutique creative branding and production agency that has earned a reputation as one of the top producers of promotional brand-support videos for a wide variety of leading cable networks in the television industry. Viewpoint's capabilities run the full range of creative branding and production, from concept creation to final delivery, and include: brand strategy, concept and creative development, design & art direction, script & copywriting, live action production & photography, digital development, video editing & composite, animation, audio mixing & engineering, project management and technical support.

Content Production

Dolphin Films

Dolphin Films is a content producer of motion pictures. We own the rights to several scripts that we intend to produce at a future date.

Our pipeline of feature films includes:

- *Youngblood*, an updated version of the 1986 hockey classic;
- *Sisters Before Mistrs*, a comedy about two estranged sisters finding their way back to each other after a misunderstanding causes one of them to have to plan the other's wedding; and
- *Out of Their League*, a romantic comedy pitting husband against wife in the cut-throat world of fantasy football.

We have completed development of each of these feature films, which means that we have completed the script and can begin pre-production if and when financing is obtained. We also own several other scripts that we may determine to produce as digital content if online distribution is secured.

Dolphin Digital Studios

Dolphin Digital Studios creates original content to premiere online, sources financing for our digital media projects and distributes our series through a variety of distribution partners depending on the demographic served.

Competition

The businesses in which we engage are highly competitive. Through 42West, The Door and Shore Fire, we compete against other public relations and marketing communications companies, as well as independent and niche agencies to win new clients and maintain existing client relationships. Through Viewpoint, we compete against other creative branding agencies, as well as in-house creative teams at many of our clients. Our content production business faces competition from companies within the entertainment business and from alternative forms of leisure entertainment, such as travel, sporting events, video games and computer-related activities. We are subject to competition from other digital media and motion production companies, as well as from large, well-established companies within the entertainment industry that have significantly greater development, production, distribution and capital resources than us. We compete for the acquisition of literary properties and for the services of producers, directors, actors and other artists as well as creative and technical personnel and production financing, all of which are essential to the success of our business. In addition, our productions compete for audience acceptance and advertising dollars.

We believe that we compete on the basis of the following competitive strengths:

- **Market Reputations of 42West, The Door and Shore Fire**— 42West and The Door consistently rank among the most prestigious and powerful public relations firms in the United States (each ranking in the Top 50 Most Powerful PR Firms each of the last three years, as published by the New York Observer), which is a significant competitive advantage given the nature of the entertainment marketing and public relations industry, in which “perception is power”. Our latest acquisition, Shore Fire was listed for the first time in 2019;
- **An Exceptional Management Team**—our CEO, Mr. O'Dowd, has a 20-year history of producing and delivering high-quality family entertainment. In addition, 42West's three co-CEOs, Leslee Dart, Amanda Lundberg, and Allan Mayer, The Door's CEO, Charlie Dougiello and President, Lois O'Neill, and Shore Fire's President Marilyn Laverty are all longtime PR practitioners, with decades of experience, and are widely regarded as being among the top communications strategists in the entertainment, hospitality and music industries, as evidenced by the market reputation of their companies; and
- **Our Ability to Offer Interrelated Services**—we believe that the ability to create video and other promotional content for our 42West, The Door and Shore Fire clients, primarily through the services of Viewpoint, and the ability to internally develop and execute marketing campaigns for our digital and film productions will allow us to expand and grow each of our business lines.

Employees

As of March 20, 2020, we had 159 full-time employees. We believe our relationship with our employees is good. We also utilize consultants in the ordinary course of our business and hire additional employees on a project-by-project basis in connection with the production of digital media projects or motion pictures.

Regulatory Matters

We are subject to state and federal work and safety laws and disclosure obligations, under the jurisdiction of the U.S. Occupational Safety and Health Administration and similar state organizations.

As a public company, we are subject to the reporting requirements under Section 13(a) and Section 15(d) of the Exchange Act. To the extent we are subject to these requirements, we will have our financial statements audited by an independent public accounting firm that is registered with the Public Company Accounting Oversight Board and comply with Rule 8-03 or 10-01(d), as applicable, of Regulation S-X.

Corporate Offices

Our corporate headquarters is located at 150 Alhambra Circle, Suite 1200, Coral Gables, Florida 33134. We also have offices located at 600 3rd Avenue, 23rd Floor, New York, New York, 10016, 37 West 17th Street, 5th Floor, New York, New York, 10011, 1840 Century Park East, Suite 700, Los Angeles, California 90067, 1460 West Chicago Avenue, Chicago, Illinois, 60642, 55 Chapel Street, Newton, Massachusetts, 02458, 1017 17th Ave S Unit 4, Nashville, TN 37212, and 12 Court Street, Suite 1800, Brooklyn, NY 11201. Our telephone number is (305) 774-0407 and our website address is www.dolphinentertainment.com. Information available on, or accessible through, our website is not incorporated by reference into this Annual Report on Form 10-K.

ITEM 1A. RISK FACTORS

Risks Related to our Business and Financial Condition

Management has determined that certain factors raise substantial doubt about our ability to continue as a going concern.

The financial statements included with this report are presented under the assumption that we will continue as a going concern, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business over a reasonable length of time. Management has determined that certain factors raise substantial doubt about our ability to continue as a going concern, such as incurring substantial net losses and losses from operations for the years ended December 31, 2019 and 2018. As of December 31, 2019, the Company had cash and cash equivalents of approximately \$2.9 million, of which \$0.7 million is a guaranty for certain leases. Management is planning to raise any necessary additional capital to fund our operating expenses through loans and additional sales of our common stock, securities convertible into our common stock, debt securities or a combination of such financing alternatives; however, there can be no assurance that we will be successful in raising any necessary additional capital. If we are not successful in raising additional capital, we may not have enough financial resources to support our business and operations and, as a result, may not be able to continue as a going concern and could be forced to liquidate. The financial statements do not include any adjustments that might result from the outcome of this uncertainties. Please also see Note 2 to our audited consolidated financial statements contained in this Annual Report on Form 10-K.

We have a history of net losses and may continue to incur net losses.

We have a history of net losses and may be unable to generate sufficient revenue to achieve profitability in the future. For the fiscal years ended December 31, 2019 and 2018, respectively, our net loss was \$1,193,377 and \$2,913,321. Our accumulated deficit was \$96,024,243 and \$94,529,174 at December 31, 2019 and 2018, respectively. Our ability to generate net profit in the future will depend on our ability to realize the financial benefits from the operations of 42West, The Door, Shore Fire, Viewpoint and to successfully produce and commercialize multiple web series or films, as no single project is likely to generate sufficient revenue to cover our operating expenses. If we are unable to generate net profit at some point, we will not be able to meet our debt service or working capital requirements. As a result, we may need to (i) issue additional equity, which could substantially dilute the value of our share holdings, (ii) sell a portion or all of our assets, including any project rights which might have otherwise generated revenue, or (iii) cease operations.

We currently have substantial indebtedness which may adversely affect our cash flow and business operations and may affect our ability to continue to operate as a going concern.

We currently have a substantial amount of debt. We do not currently have sufficient assets to repay such debt in full when due, and our available cash flow may not be adequate to maintain our current operations if we are unable to repay, extend or refinance such indebtedness. The table below sets forth our total principal amount of debt and stockholders' equity as of December 31, 2019 and 2018. Approximately \$3.0 million of our total debt as of December 31, 2019 represented the fair value of the put options in connection with the 42West acquisition, which may or may not be exercised by the sellers. Approximately \$3.3 million of our indebtedness as of December 31, 2019 was incurred by Max Steel Productions, LLC. Max Steel Productions, LLC is a variable interest entity (or VIE) created in connection with the financing and production of *Max Steel* (the "Max Steel VIE"). We are not a party to the indebtedness of our VIE, however, if a lender were to successfully assert that we are liable to the lender for the payment of Max Steel VIE's debt despite the lack of contractual obligation, we do not have sufficient funds to repay this loan, which would have a material adverse effect on our liquidity, financial condition and results of operations. Approximately \$4.4 million of our debt is related to convertible notes payable, \$1.4 million to non-convertible notes payable and \$1.7 million is a line of credit with Bank United.

	As of December 31, 2019	As of December 31, 2018
Related party debt	\$ 1,107,873	\$ 1,107,873
Max Steel debt (including accrued interest)	\$ 3,311,198	\$ 4,036,583
Line of credit	\$ 1,700,390	\$ 1,700,390
Put rights (current and noncurrent)	\$ 3,003,547	\$ 5,984,067
Notes payable (current and noncurrent)	\$ 1,362,359	\$ 1,092,233
Convertible notes payable (current and noncurrent)	\$ 4,360,535	\$ 2,001,924
Total Stockholders' Equity	\$ 9,688,815	\$10,776,527

Our indebtedness could have important negative consequences, including:

- our ability to obtain additional financing for working capital, capital expenditures, future productions or other purposes may be impaired or such financing may not be available on favorable terms or at all;
- we may have to pay higher interest rates upon obtaining future financing, thereby reducing our cash flows; and
- we may need a substantial portion of our cash flow from operations to make principal and interest payments on our indebtedness, reducing the funds that would otherwise be available for operations and future business opportunities.

Our ability to service our indebtedness will depend upon, among other things, our future financial and operating performance and our ability to obtain additional financing, which will be affected by prevailing economic conditions, the profitability of our content production and entertainment publicity and marketing businesses and other factors contained in these *Risk Factors*, some of which are beyond our control.

If we are not able to generate sufficient cash to service our current or future indebtedness, we will be forced to take actions such as reducing or delaying digital or film productions, delaying or abandoning potential acquisitions, selling assets, restructuring or refinancing our indebtedness or seeking additional debt or equity capital or bankruptcy protection. We may not be able to effect any of these remedies on satisfactory terms or at all and our indebtedness may affect our ability to continue to operate as a going concern.

Our business and operations, and the operations of our customers, may be adversely affected by epidemics and pandemics, such as the recent COVID-19 outbreak.

We may face risks related to health epidemics and pandemics or other outbreaks of communicable diseases, which could result in a widespread health crisis that could adversely affect general commercial activity and the economies and financial markets of the country as a whole. For example, the recent outbreak of COVID-19, which began in China, has been declared by the World Health Organization to be a “pandemic,” has spread across the globe, including the United States of America, where we conduct most of our business. A health epidemic or pandemic or other outbreak of communicable diseases, such as the current COVID-19 pandemic, poses the risk that we or our customers, suppliers and other business partners may be disrupted or prevented from conducting business activities for certain periods of time, the durations of which are uncertain, and may otherwise experience significant impairments of business activities, including due to, among other things, operational shutdowns or suspensions that may be requested or mandated by national or local governmental authorities or self-imposed by us, our customers, suppliers or other business partners. As an example, our subsidiary, The Door, operates in the food and hospitality industry, which is being adversely affected by the government imposed shut down of restaurants and hotels throughout the United States. While it is not possible at this time to estimate the impact that COVID-19 could have on our business, customers, suppliers or other business partners, the continued spread of COVID-19, the measures taken by the local and federal government, actions taken to protect employees, and the impact of the pandemic on various business activities could adversely affect our results of operations and financial condition.

Litigation or legal proceedings could expose us to significant liabilities.

We may in the future become party to litigation claims and legal proceedings. We face litigation risks regarding a variety of issues including without limitation, copyright infringement, allegations against clients or events we provide marketing services for, alleged violations of federal and state labor and employment laws, securities laws, and other matters. These proceedings may be time consuming, expensive and disruptive to normal business operations. The defense of such lawsuits could result in significant expense and the diversion of our management’s time and attention from the operation of our business. Costs we incur to defend or to satisfy a judgment or settlement of these claims may not be covered by insurance or could exceed the amount of that coverage or increase our insurance costs and could have a material adverse effect on our financial condition, results of operations, liquidity and cash flows.

Our management has determined that our disclosure controls and procedures and our internal controls over financial reporting are not effective as we have identified material weaknesses in our internal controls.

As disclosed in Part II, Item 9A. Controls and Procedures of this Annual Report on Form 10-K, management concluded that for the years ended December 31, 2019 and 2018, our internal control over financial reporting was not effective and we identified several material weaknesses. Our management concluded that our disclosure controls and procedures were not effective due to material weaknesses in our internal control over financial reporting. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

We have commenced our remediation efforts as discussed in Part II, 9A. Controls and Procedures of this Annual Report on Form 10-K to address the material weaknesses in internal control over financial reporting and ineffective disclosure controls and procedures. If our remedial measures are insufficient, or if additional material weaknesses or significant deficiencies in our internal controls occur in the future, we could be required to restate our financial results, which could materially and adversely affect our business, results of operations and financial condition, restrict our ability to access the capital markets, require us to expend significant resources to correct the weakness or deficiencies, harm our reputation and otherwise cause a decline in investor confidence. In addition, we could be subject to, among other things, regulatory or enforcement actions by the Securities and Exchange Commission, (the “SEC” or the “Commission”).

We rely on information technology systems that are susceptible to cybersecurity risks. In the event of a cybersecurity incident, we could experience operational interruptions, incur substantial additional costs, become subject to legal or regulatory proceedings or suffer damage to our reputation.

We rely on information technologies and infrastructure to manage our businesses, including digital storage of marketing strategies and client information, films and digital programming and delivery of digital marketing services for our businesses. Data maintained in digital form is subject to the risk of intrusion, tampering and theft. The incidence of malicious technology-related events, such as cyberattacks, computer hacking, computer viruses, worms or other destructive or disruptive software, denial of service attacks or other malicious activities is on the rise worldwide. Power outages, equipment failure, natural disasters (including extreme weather), terrorist activities or human error may also affect our systems and result in disruption of our services or loss or improper disclosure of personal data, business information or other confidential information.

Likewise, data privacy breaches, as well as improper use of social media, by employees and others may pose a risk that sensitive data, such as personally identifiable information, strategic plans and trade secrets, could be exposed to third parties or to the general public. We also utilize third parties, including third-party “cloud” computing services, to store, transfer or process data, and system failures or network disruptions or breaches in the systems of such third parties could adversely affect our reputation or business. Any such breaches or breakdowns could lead to business interruption, exposure of our or our clients’ proprietary or confidential information, data corruption, damage to our reputation, exposure to legal and regulatory proceedings and other costs. Such events could have a material adverse impact on our financial condition, results of operations and cash flows. In addition, we could be adversely affected if any of our significant customers or suppliers experience any similar events that disrupt their business operations or damage their reputation. Efforts to develop, implement and maintain security measures are costly, may not be successful in preventing these events from occurring and require ongoing monitoring and updating as technologies change and efforts to overcome security measures become more sophisticated. Although we maintain monitoring practices and protections of our information technology to reduce these risks, there can be no assurance that our efforts will prevent the risk of a security breach of our databases or systems that could adversely affect our business.

Risks Related to Our Entertainment Publicity and Marketing Business

Our business could be adversely affected if we fail to retain the principal sellers, and other key employees of 42West, The Door and Shore Fire and the clients they serve.

The success of our entertainment publicity and marketing business operated by 42West, The Door and Shore Fire substantially depends on our ability to retain the services of the former owners and certain key employees of 42West, The Door and Shore Fire. If we lose the services of one or more of these individuals, our ability to successfully implement our business plan with respect to our entertainment publicity and marketing business and the value of our common stock could be materially adversely affected. Although we entered into employment agreements with each of the principal sellers, there can be no assurance that they will serve the terms of their respective employment agreements or choose to remain with us following the expiration of such terms. In addition, the employees of 42West, The Door and Shore Fire, and their skills and relationships with clients, are among our most valuable assets. In June of 2018, three of 42West's most senior publicists and their related staff left the firm to form their own company. Their departures resulted in a significant decrease in revenues. An important aspect of the business' competitiveness is its ability to retain such key employees. If 42West, The Door or Shore Fire fail to hire and retain a sufficient number of these key employees, it may have a material adverse effect on our overall business and results of operations.

42West, The Door and Shore Fire's talent rosters currently include some of the best known and most highly respected members of the entertainment, hospitality, and musical communities. These include major studios and networks, corporations, well-known consumer brands, celebrity chefs, leading restaurant and hotel brands, and recording artists. These clients often form highly loyal relationships with certain public relations and marketing professionals rather than with a particular firm. The employment agreements with the principal sellers currently contain non-competition provisions that prohibit the principal sellers from continuing to provide services to such clients should they leave our company, however, clients are free to engage other public relations and marketing professionals and there can be no assurance that they will choose to remain with our company. The success of 42West, The Door, and Shore Fire, therefore, depend on our ability to continue to successfully maintain such client relationships should the principal sellers or other key employees leave our company. If we are unable to retain the current 42West, The Door, and Shore Fire clients or attract new clients, then we could suffer a material adverse effect on our business and results of operations.

42West, The Door, Shore Fire and Viewpoint operate in a highly competitive industry.

The entertainment publicity and marketing business is highly competitive. Through 42West, The Door and Shore Fire, we must compete with other agencies, and with other providers of marketing and publicity services, in order to maintain existing client relationships and to win new clients. Through Viewpoint, we compete against other creative branding agencies, as well as in-house creative teams at many of our clients. The client's perception of the quality of an agency's creative work and the agency's reputation are critical factors in determining its competitive position.

The success of our entertainment publicity and marketing business depends on its ability to consistently and effectively deliver marketing and public relations services to its clients.

42West, The Door and Shore Fire's success depends on its ability to effectively and consistently staff and execute client engagements to achieve the clients' unique personal or professional goals. 42West, The Door and Shore Fire work to design customized communications or publicity campaigns tailored to the particular needs and objectives of particular projects. In some of its engagements, 42West, The Door and Shore Fire rely on other third parties to provide some of the services to its clients, and we cannot guarantee that these third parties will effectively deliver their services or that we will have adequate recourse against these third parties in the event they fail to effectively deliver their services. Other contingencies and events outside of our control may also impact 42West, The Door and Shore Fire's ability to provide its services. 42West, The Door and Shore Fire's failure to effectively and timely staff, coordinate and execute its client engagements may adversely impact existing client relationships, the amount or timing of payments from clients, its reputation in the marketplace and ability to secure additional business and our resulting financial performance. In addition, our contractual arrangements with our clients may not provide us with sufficient protections against claims for lost profits or other claims for damages.

If we are unable to adapt to changing client demands, social and cultural trends or emerging technologies, we may not remain competitive and our business, revenues and operating results could suffer.

We operate in an industry characterized by rapidly changing client expectations, marketing technologies, and social mores and cultural trends that impact our target audiences. The entertainment industry continues to undergo significant developments as advances in technologies and new methods of message delivery and consumption emerge. These developments drive changes in our target audiences' behavior to which we must adapt in order to reach our target audiences. In addition, our success depends on our ability to anticipate and respond to changing social mores and cultural trends that impact the entertainment industry and our target audiences. We must adapt our business to these trends, as well as shifting patterns of content consumption and changing behaviors and preferences of our target audiences, through the adoption and exploitation of new technologies. If we cannot successfully exploit emerging technologies or if the marketing strategies we choose misinterpret cultural or social trends and prove to be incorrect or ineffective, any of these could have a material adverse effect on our business, financial condition, operating results, liquidity and prospects.

A significant labor dispute in our clients' industries could have a material adverse effect on our business.

An industry-wide strike or other job action by or affecting the Writers Guild, Screen Actors Guild or other major entertainment industry union could reduce the supply of original entertainment content, which would in turn reduce the demand for our talent and entertainment marketing services. An extensive work stoppage would affect feature film production as well as television and commercial production and could have a material adverse effect on our clients and the motion picture production industry in general. For example, on November 5, 2007, the Writers Guild declared a strike affecting the script writing for television shows and films. The strike, which lasted until February 12, 2008, significantly affected the entertainment industry which consequently, had a material adverse impact on revenue generated by public relations and entertainment marketing agencies. Contracts between entertainment industry unions and the Alliance of Motion Picture and Television Producers, which we refer to as AMPTP, expire from time to time. The failure to finalize and ratify a new agreement with the AMPTP or the failure to enter into new commercial contracts upon expiration of the current contracts could lead to a strike or other job action. Any such severe or prolonged work stoppage could have an adverse effect on the television and/or motion picture production industries and could severely impair our clients' prospects. Any resulting decrease in demand for our talent and entertainment marketing and other public relations services would have a material adverse effect on our cash flows and results of operations.

Clients may terminate or reduce their relationships with us on short notice.

As is customary in the industry, 42West, The Door and Shore Fire's agreements with their respective clients generally provide for termination by either party on relatively short notice, usually 30 days. Consequently, these clients may choose to reduce or terminate their relationships with us, on a relatively short time frame and for any reason. If a significant number of the 42West, The Door or Shore Fire clients were to reduce the volume of business they conducted with us or terminate their relationships with us completely, this could have a material adverse effect upon our business and results of operations. Viewpoint's revenue is derived on a project by project basis. Clients may decide to use other creative branding and production companies for their projects which would have an adverse effect upon our business and results of operations.

42West's, The Door's, Shore Fire's and Viewpoint's ability to generate new business from new and existing clients may be limited.

To increase their revenues, 42West, The Door, Shore Fire and Viewpoint need to obtain additional clients or generate demand for additional services from existing clients. 42West, The Door, Shore Fire and Viewpoint's ability to generate initial demand for its services from new clients and additional demand from existing clients is subject to such clients' and potential clients' needs, trends in the entertainment industry, financial conditions, strategic plans and internal resources of corporate clients, as well as the quality of 42West, The Door, Shore Fire and Viewpoint's employees, services and reputation. To the extent 42West, The Door, Shore Fire and Viewpoint cannot generate new business from new or existing clients due to these limitations, their ability to grow their respective businesses, and our ability to increase our revenues, will be limited.

Revenues from our Entertainment Publicity and Marketing segment are susceptible to declines as a result of unfavorable economic conditions.

Economic downturns often severely affect the marketing services industry. Some of our corporate clients may respond to weak economic performance by reducing their marketing budgets, which are generally discretionary in nature and easier to reduce in the short-term than other expenses related to operations. In addition, economic downturns could lead to reduced public demand for varying forms of entertainment for which we are engaged to provide public relations and media strategy and promotional services. Such reduced demand for our services could have a material adverse effect on our revenues and results of operations.

If our clients experience financial distress, or seek to change or delay payment terms, it could negatively affect our own financial position and results.

We have a large and diverse client base, and at any given time, one or more of our clients may experience financial difficulty, file for bankruptcy protection or go out of business. Unfavorable economic and financial conditions, such as the current events surrounding the COVID-19 global outbreak, could result in an increase in client financial difficulties that affect us. As an example, the temporary closure of restaurants and hotels due to the pandemic will most likely adversely affect the revenues of our subsidiary, The Door. The direct impact on us could include reduced revenues, write-offs of accounts receivable and expenditures billable to clients, and negatively impact our operating cash flow. While we currently cannot estimate what those effects will be, if they are severe, the indirect impact could include impairments of intangible assets, credit facility covenant violations and reduced liquidity.

Risks Related to Our Content Production Business

Our content production business requires a substantial investment of capital, and failure to access sufficient capital while awaiting delayed revenues will have a material adverse effect on our results of operation.

The production, acquisition and distribution of film or digital media content require significant capital. The budget for the projects we intend to produce will each require between \$6 and \$8 million to produce. In addition, if a distributor does not provide the funds for the distribution and marketing of our film, we will require additional capital to distribute and market the film. We estimate that distribution and marketing fees will be approximately \$10,000 per theatrical screen. A significant amount of time may elapse between our expenditure of funds and the receipt of revenues from our productions. Our content production business does not have a traditional credit facility with a financial institution on which to depend for our liquidity needs, and a time lapse may require us to fund a significant portion of our capital requirements through loans and additional issuances of our common stock, securities convertible into our common stock, debt securities or a combination of such financing alternatives. There can be no assurance that any additional financing will be available to us as and when required, or on terms that will be acceptable to us. Our inability to raise capital necessary to sustain our operations while awaiting delayed revenues would have a material adverse effect on our liquidity and results of operations.

Our success is highly dependent on audience acceptance of our films and digital media productions, which is extremely difficult to predict and, therefore, inherently risky.

We cannot predict the economic success of any of our films because the revenue derived from the distribution of a film (which does not necessarily directly correlate with the production or distribution costs incurred) depends primarily upon its acceptance by the public, which cannot be accurately predicted. The economic success of a film also depends upon the public's acceptance of competing films, the availability of alternative forms of entertainment and leisure-time activities, general economic conditions and other tangible and intangible factors, all of which can change and cannot be predicted with certainty.

The economic success of a film is largely determined by our ability to produce content and develop stories and characters that appeal to a broad audience and by the effective marketing of the film. The theatrical performance of a film is a key factor in predicting revenue from post-theatrical markets. If we are unable to accurately judge audience acceptance of our film content or to have the film effectively marketed, the commercial success of the film will be in doubt, which could result in costs not being recouped or anticipated profits not being realized. Moreover, we cannot assure you that any particular feature film will generate enough revenue to offset its distribution, fulfillment services and marketing costs, in which case we would not receive any revenues for such film from our distributors.

In addition, changing consumer tastes affect our ability to predict which digital media productions will be popular with web audiences. As we invest in various digital projects, stars and directors, it is highly likely that at least some of the digital projects in which we invest will not appeal to our target audiences. If we are unable to produce web content that appeals to our target audiences, the costs of such digital media productions could exceed revenues generated and anticipated profits may not be realized. Our failure to realize anticipated profits could have a material adverse effect on our results of operations.

We have in the past and may, in the future, incur significant write-offs if our feature films and other projects do not perform well enough to recoup production, marketing, distribution and other costs.

We are required to amortize capitalized production costs over the expected revenue streams as we recognize revenue from our films or other projects. The amount of production costs that will be amortized each quarter depends on, among other things, how much future revenue we expect to receive from each project. Unamortized production costs are evaluated for impairment when events or circumstances indicate that the carrying value of the capitalized production costs may be below their fair value. If estimated remaining revenue is not sufficient to recover the unamortized production costs, the unamortized production costs will be written down to fair value. In any given quarter, if we lower our previous forecast with respect to total anticipated revenue from any individual feature film or other project, we may be required to accelerate amortization or record impairment charges with respect to the unamortized costs, even if we have previously recorded impairment charges for such film or other project. For example, in 2019, we recorded \$0.6 million impairment of the capitalized production costs for our feature film, *Max Steel*. In addition, certain GAAP guidance requires us to impair costs that have been capitalized for projects that are not set for production within three years of capitalizing the cost. In 2019 and 2018, we impaired the cost of several scripts based on this guidance. Such impairment charges have had, and in the future could have, a material adverse impact on our business, operating results and financial condition.

Our content production business is substantially dependent upon the success of a limited number of film releases and digital media productions, if any, in any given year and our inability to release any film or digital media productions or the unexpected delay or commercial failure of any one of them could have a material adverse effect on our financial results and cash flows.

Our content production business is currently substantially dependent upon the success of a limited number of film releases and digital media productions, if any, in any given year. The unexpected delay in release or commercial failure of just one of these films or digital media productions, or our inability to release any productions at all, could have a significant adverse impact on our results of operations and cash flows in both the year of release and in the future. Historically, feature films that are successful in the domestic theatrical market are generally also successful in the international theatrical and ancillary markets, although each film is different and there is no way to guarantee such results. If our films fail to achieve domestic box office success, their success in the international box office and ancillary markets and our business, results of operations and financial condition could be adversely affected. Further, we can make no assurances that the historical correlation between results in the domestic box office and results in the international box office and ancillary markets will continue in the future. If we are unable to release any film or digital media productions in a given year, or if the feature films we release do not perform well in the domestic or international theatrical markets and ancillary markets, or our digital media productions do not perform as anticipated, the failure to release any productions, or the failure of any one of the productions we release, could have a material adverse effect on our financial results and cash flows.

Delays, cost overruns, cancellation or abandonment of the completion or release of our web series or films may have an adverse effect on our business.

There are substantial financial risks relating to production, completion and release of web series and feature films. Actual costs may exceed their budgets due to factors such as labor disputes, unavailability of a star performer, equipment shortages, disputes with production teams or adverse weather conditions, any of which may cause cost overruns and delay or hamper film completion. We are typically responsible for paying all production costs in accordance with a budget and receive a fixed producer's fee for our services plus a portion of any project income. However, to the extent that delays or cost overruns result in us not completing the web series or film within budget, there may not be enough funds left to pay us our producer's fee, to generate any project income or complete the project at all. If this were to occur, it would significantly and adversely affect our revenue and results of operations.

We rely on third party distributors to distribute our films and their failure to perform or promote our films could negatively impact our ability to generate revenues and have a material adverse effect on our operating results.

Our films are primarily distributed and marketed by third party distributors. If any of these third-party distributors fails to perform under their respective arrangements, such failure could negatively impact the success of our films and have a material adverse effect on our business, reputation and ability to generate revenues.

We generally do not control the timing and manner in which our distributors distribute our films; their decisions regarding the timing of release and promotional support are important in determining success. Any decision by those distributors not to distribute or promote one of our films or to promote our competitors' films or related products to a greater extent than they promote ours could have a material adverse effect on our business, cash flows and operating results. Additionally, because third parties are the principal distributors of our movies, the amount of revenue that is recognized from films in any given period is dependent on the timing, accuracy and sufficiency of the information received from our distributors. As is typical in the film industry, our distributors may make adjustments in future periods to information previously provided to us that could have a material impact on our operating results in later periods. In 2018, our domestic distributor of *Max Steel* and *Believe*, Open Road Films, LLC ("Open Road") filed for bankruptcy protection under Chapter 11. The assets of Open Road were purchased by Raven Capital Management ("Raven Capital") which now has the rights to distribute the films under the same arrangements as Open Road. There is no guaranty that Raven Capital will be successful in distributing *Max Steel* and *Believe*.

Our success depends on the services of our Chief Executive Officer.

Our success greatly depends on the skills, experience and efforts of our Chief Executive Officer, Mr. O'Dowd. We do not have an employment agreement with Mr. O'Dowd. If Mr. O'Dowd resigns or becomes unable to continue in his present role and is not adequately replaced, the loss of his services could have a material adverse effect on our business, operating results or financial condition.

The popularity and commercial success of our digital media productions and feature films are subject to numerous factors, over which we may have limited or no control.

The popularity and commercial success of our digital media productions and films depends on many factors including, but not limited to, the key talent involved, the timing of release, the promotion and marketing of the digital media production or film, the quality and acceptance of other competing productions released into the marketplace at or near the same time, the availability of alternative forms of entertainment, general economic conditions, the genre and specific subject matter of the digital media production or film, its critical acclaim and the breadth, timing and format of its initial release. We cannot predict the impact of such factors on any digital media production or film, and many are factors that are beyond our control. As a result of these factors and many others, our digital media productions and films may not be as successful as we anticipate, and as a result, our results of operations may suffer.

The creation of content for the entertainment industry is highly competitive and we will be competing with companies with much greater resources than we have.

The business in which we engage is highly competitive. Our content production business operations are subject to competition from companies which, in many instances, have greater development, production and distribution and capital resources than us. We compete for the services of writers, producers, directors, actors and other artists to produce our digital media and motion picture content, as well as for advertisement dollars. Larger companies have a broader and more diverse selection of scripts than we do, which translates to a greater probability that they will be able to more closely fit the demands and interests of advertisers than we can.

As a small independent producer, we compete with major U.S. and international studios. Most of the major U.S. studios are part of large diversified corporate groups with a variety of other operations that can provide both the means of distributing their products and stable sources of earnings that may allow them better to offset fluctuations in the financial performance of their film and other operations. In addition, the major studios have more resources with which to compete for ideas, storylines and scripts created by third parties, as well as for actors, directors and other personnel required for production. Such competition for the industry's talent and resources may negatively affect our ability to acquire, develop, produce, advertise and distribute digital media and motion picture content.

We must successfully respond to rapid technological changes and alternative forms of delivery or storage to remain competitive.

The entertainment industry continues to undergo significant developments as advances in technologies and new methods of product delivery and storage, and certain changes in consumer behavior driven by these developments emerge. New technologies affect the demand for our content, the manner in which our content is distributed to consumers, the sources and nature of competing content offerings and the time and manner in which consumers acquire and view our content. We and our distributors must adapt our businesses to shifting patterns of content consumption and changing consumer behavior and preferences through the adoption and exploitation of new technologies. If we cannot successfully exploit these and other emerging technologies, it could have a material adverse effect on our business, financial condition, operating results, liquidity and prospects.

Our business may be affected by changes in consumer discretionary spending in the U.S. or internationally.

Our success depends on our ability to distribute or otherwise generate income from our current and future motion pictures and digital productions. Our industry is subject to discretionary consumer spending, which is influenced by general economic conditions, consumer confidence and the availability of discretionary income. Changes in economic conditions affecting potential distributors or viewers of our motion pictures could reduce our ability to generate income from our motion pictures. Furthermore, weak economic conditions and geopolitical and economic uncertainties in international regions and countries where our movie productions are distributed could lead to lower consumer spending for our content, which could have a material adverse effect on our financial condition and results of operations.

We have in the past and may, in the future, be adversely affected by union activity.

We retain the services of actors who are covered by collective bargaining agreements with Screen Actors Guild – American Federation of Television and Radio Artists, which we refer to as SAG-AFTRA, and we may also become signatories to certain guilds such as Directors Guild of America and Writers Guild of America in order to allow us to hire directors and talent for our productions. Collective bargaining agreements are industry-wide agreements, and we lack practical control over the negotiations and terms of these agreements. In addition, our digital projects fall within SAG-AFTRA's definition of "new media", which is an emerging category covered by its New Media and Interactive Media Agreements for actors. As such, our ability to retain actors is subject to uncertainties that arise from SAG-AFTRA's administration of this relatively new category of collective bargaining agreements. Such uncertainties have resulted and may continue to result in delays in production of our digital projects.

In addition, if negotiations to renew expiring collective bargaining agreements are not successful or become unproductive, the union could take actions such as strikes, work slowdowns or work stoppages. Strikes, work slowdowns or work stoppages or the possibility of such actions could result in delays in production of our digital projects. We could also incur higher costs from such actions, new collective bargaining agreements or the renewal of collective bargaining agreements on less favorable terms. Depending on their duration, union activity or labor disputes could have an adverse effect on our results of operations.

Others may assert intellectual property infringement claims or liability claims for digital media or film content against us which may force us to incur substantial legal expenses.

There is a possibility that others may claim that our productions and production techniques misappropriate or infringe the intellectual property rights of third parties with respect to their previously developed web series, films, stories, characters, other entertainment or intellectual property. In addition, as distributors of digital media and film content, we may face potential liability for such claims as defamation, invasion of privacy, negligence, copyright or trademark infringement or other claims based on the nature and content of the materials distributed. If successfully asserted, our insurance may not be adequate to cover any of the foregoing claims. Irrespective of the validity or the successful assertion of such claims, we could incur significant costs and diversion of resources in defending against them, which could have a material adverse effect on our operating results.

If we fail to protect our intellectual property and proprietary rights adequately, our business could be adversely affected.

Our ability to compete depends, in part, upon successful protection of our intellectual property. We attempt to protect proprietary and intellectual property rights to our productions through available copyright and trademark laws and distribution arrangements with companies for limited durations. Unauthorized parties may attempt to copy aspects of our intellectual property or to obtain and use property that we regard as proprietary. We cannot assure you that our means of protecting our proprietary rights will be adequate. In addition, the laws of some foreign countries do not protect our proprietary rights to as great an extent as the laws of the United States. Intellectual property protections may also be unavailable, limited or difficult to enforce in some countries, which could make it easier for competitors to steal our intellectual property. Our failure to protect adequately our intellectual property and proprietary rights could adversely affect our business and results of operations.

Risks Related to Acquisitions

We are subject to risks associated with acquisitions and we may not realize the anticipated benefits of such acquisitions.

We have in the past completed acquisitions, and may in the future consummate additional acquisitions and otherwise engage in discussions and activities with respect to possible acquisitions, intended to complement or expand our business, some of which may be significant transactions for us. Identifying suitable acquisition candidates can be difficult, time-consuming and costly, and we may not be able to identify suitable candidates or complete acquisitions in a timely manner, on a cost-effective basis or at all.

Even if we complete an acquisition, we may not realize the anticipated benefits of such transaction. Our recent acquisitions have required, and any similar future transactions may also require, significant efforts and expenditures, including with respect to integrating the acquired business with our historical business. We may encounter unexpected difficulties, or incur unexpected costs, in connection with acquisition activities and integration efforts, including, without limitation:

- diversion of management attention from managing our historical core business;
- potential disruption of our historical core business or of the acquired business;
- the strain on, and need to continue to expand, our existing operational, technical, financial and administrative infrastructure;
- inability to achieve synergies as planned;
- challenges in controlling additional costs and expenses in connection with and as a result of the acquisition;
- dilution to existing shareholders from the issuance of equity securities;
- becoming subject to adverse tax consequences or substantial depreciation;
- difficulties in assimilating employees and corporate cultures or in integrating systems and controls;
- difficulties in anticipating and responding to actions that may be taken by competitors;
- difficulties in realizing the anticipated benefits of the transaction;
- inability to generate sufficient revenue from acquisitions to offset the associated acquisition costs;
- potential loss of key employees, key clients or other partners of the acquired business as a result of the change of ownership; and
- the assumption of and exposure to unknown or contingent liabilities of the acquired businesses.

If any of our acquisitions do not perform as anticipated for any of the reasons noted above or otherwise, there could be a negative impact on our results of operations and financial condition.

Any due diligence conducted by us in connection with potential future acquisition may not reveal all relevant considerations or liabilities of the target business, which could have a material adverse effect on our financial condition or results of operations.

We conduct such due diligence with respect to our acquisitions as we deem reasonably practicable and appropriate. The objective of the due diligence process is to identify material issues and liabilities that may affect the decision to proceed with any one particular acquisition target or the consideration payable for an acquisition. We also use information revealed during the due diligence process to formulate our business and operational planning for, and our valuation of, any target company or business. While conducting due diligence and assessing a potential acquisition, we may rely on publicly available information, if any, information provided by the relevant target company to the extent such company is willing or able to provide such information and, in some circumstances, third party investigations.

There can be no assurance that the due diligence undertaken with respect to an acquisition, will reveal all relevant facts that may be necessary to evaluate such acquisition including the determination of the price we may pay for an acquisition target or to formulate a business strategy. Furthermore, the information provided during due diligence may be incomplete, inadequate or inaccurate. As part of the due diligence process, we will also make subjective judgments regarding the results of operations, financial condition and prospects of a potential target. Our due diligence investigation of a particular acquisition target may not uncover all material issues and liabilities to which we may become subject. If our due diligence investigation fails to correctly identify material issues and liabilities that may be present in a target company or business, or if we consider such material risks to be commercially acceptable relative to the opportunity, and we proceed with an acquisition, we may subsequently incur substantial impairment charges or other losses.

In addition, following an acquisition, including those already completed, we may be subject to significant, previously undisclosed liabilities of the acquired business that were not identified during due diligence. Any such liabilities could contribute to poor operational performance, undermine any attempt to restructure the acquired company or business in line with our business plan and otherwise have a material adverse effect on our financial condition and results of operations.

Losses incurred by us subsequent to completion of an acquisition may not be indemnifiable by the seller or may exceed the seller's indemnification obligations.

As discussed above, there may be liabilities assumed in any acquisition that we did not discover or that we underestimated in the course of performing our due diligence. Although a seller generally will have indemnification obligations to us under an acquisition agreement, these obligations are usually subject to financial limitations, such as general deductibles and maximum recovery amounts, as well as time limitations. We cannot assure you that our right to indemnification from any seller will be enforceable, collectible or sufficient in amount, scope or duration to fully offset the amount of any losses that we incur with respect to a particular acquisition. Any such liabilities, individually or in the aggregate, could have a material adverse effect on our business, financial condition and operating results.

We recognized a goodwill impairment charge for the year ended December 31, 2018 and may be required to recognize additional goodwill and intangible asset impairment charges in the future.

We acquire other companies and intangible assets and may not realize all the economic benefit from those acquisitions, which could cause an impairment of goodwill or intangibles. We review amortizable intangible assets for impairment when events or changes in circumstances indicate the carrying value may not be recoverable. We test goodwill for impairment at least annually. Events or changes indicating that the carrying value of our goodwill or amortizable intangible assets may not be recoverable include reduced future cash flow estimates, slower growth rates in industry segments in which we participate and a decline in our stock price and market capitalization. We may be required to record a significant charge in our consolidated financial statements during the period in which any impairment of our goodwill or amortizable intangible assets is determined, negatively affecting our results of operations. For the year ended December 31, 2018, we recorded approximately \$1.9 million in charges for the impairment of goodwill for 42West based on a reduced cash flow estimate.

Risks Related to our Common Stock and Preferred Stock

We have recently issued, and may in the future issue, a significant amount of equity securities and, as a result, your ownership interest in our company has been, and may in the future be, substantially diluted and your investment in our common stock could suffer a material decline in value.

From January 1, 2018 to December 31, 2019, the number of shares of our common stock issued and outstanding has increased from 10,565,789 to 17,892,900 shares. During this period, we issued approximately 1,979,904 shares of our common stock as consideration for 42West, The Door, Shore Fire and Viewpoint acquisitions. We will issue an additional 971,735 shares of our common stock to the sellers of 42West for the earn out (net of indemnifications) that was earned in 2017. On August 14, 2019 we exchanged 44,740 put rights held by one of the sellers of 42West for 385,514 shares of common stock. We will issue 26,821 shares of our common stock for the working capital adjustment to the sellers of The Door. Furthermore, we may issue up to 1,538,462 shares of our common stock to the sellers of The Door if the applicable earn out financial target is achieved in the following two years. We will issue to the Shore Fire seller the equivalent of \$200,000 of our common stock at the trading stock price on each of the first and second anniversaries of the acquisition of Shore Fire. During the year ended December 31, 2019, certain holders of convertible notes exercised their right to convert all or a portion of their convertible notes and we issued 433,794 shares of common stock. As of December 31, 2019, we had outstanding convertible notes payable that as of the date of this report are still outstanding in the aggregate principal amount of \$2,352,500, which are currently convertible into 3,372,612 shares of our common stock (calculated based on either a 30-trading-day average price per share, 90-trading-day average price per share as of March 6, 2020 or \$0.78 per share based on the terms of the convertible notes payable). As of December 31, 2019, we had convertible notes payable in the amount of \$1.1 million that were converted subsequent to year end for 1,877,811 shares of our common stock. On October 21, 2019, we issued 2,700,000 shares of our common stock in a public offering at a purchase price of \$0.78 per share. As a result of these past issuances and potential future issuances, your ownership interest in the Company has been, and may in the future be, substantially diluted.

The market price for our common stock has been volatile, and these issuances could cause the price of our common stock to continue to fluctuate substantially. In addition, we have historically experienced significantly low trading volume. Once restricted stock issued in either private placements or to the sellers of the companies we acquired becomes freely tradable, these shareholders may decide to sell their shares of common stock and, if our stock is thinly traded, this could have a material adverse effect on its market price.

We currently have an effective shelf registration statement on Form S-3 filed with the SEC under which we may offer from time to time any combination of common stock, warrants and units. In the near term, we will need to raise additional capital and may seek to do so by selling additional securities under the shelf registration statement, conducting one or more private placements of equity securities, securities convertible into equity securities or debt securities, or through a combination of one or more of such financing alternatives. Such issuances of additional securities would further dilute the equity interests of our existing shareholders, perhaps substantially, and may further exacerbate any or all of the above risks.

The Series C Convertible Preferred Stock has anti-dilution protections and super voting rights that may adversely affect our shareholders.

For a period of five years from March 7, 2016, the date of issuance, the Series C Convertible Preferred Stock, which are all held by Mr. O'Dowd, will have certain anti-dilution protections. Upon triggers specified in the Series C Certificate of Designation, the number of shares of common stock into which any Series C Convertible Preferred Stock held by Mr. O'Dowd (or any entity directly or indirectly controlled by Mr. O'Dowd) can be converted will be increased, such that the total number of shares of common stock held by Mr. O'Dowd (or any entity directly or indirectly controlled by Mr. O'Dowd) (based on the number of shares of common stock held as of the date of issuance of such Series C Convertible Preferred Stock) will be preserved at the same percentage of shares of common stock outstanding held by such persons on such date. As a result, your ownership interests may be further diluted.

Except as required by law, holders of Series C Convertible Preferred Stock will only have voting rights once the independent directors of the Board determine that an optional conversion threshold (as defined in the Series C Certificate of Designation) has occurred. Upon such determination by the Board, a holder of Series C Convertible Preferred Stock (Mr. O'Dowd) will be entitled to super voting rights of three votes for each share of common stock into which such holder's shares of Series C Convertible Preferred Stock could then be converted. Holders of Series C Convertible Preferred Stock will be entitled to vote together as a single class on all matters upon which common stockholders are entitled to vote. Your voting rights will be diluted as a result of these super voting rights. In addition, the anti-dilution protections may result in an increase in the number of shares of common stock into which Series C Convertible Preferred Stock held by Mr. O'Dowd and certain eligible persons can be converted, which could further dilute your percentage of voting rights.

If we are unable to maintain compliance with Nasdaq listing requirements, our stock could be delisted, and the trading price, volume and marketability of our stock could be adversely affected.

Our common stock and certain of our warrants are listed on the Nasdaq Capital Market. We cannot assure you, that we will be able to maintain compliance with Nasdaq's current listing standards, or that Nasdaq will not implement additional listing standards with which we will be unable to comply. On October 17, 2019, we received a deficiency notice from Nasdaq informing us that our common stock failed to comply with the \$1 minimum bid price required for continued listing on Nasdaq under Nasdaq Listing Rule 5550(a)(2) based upon the closing bid price of the Common Stock for the 30 consecutive business days prior to the date of the notice from Nasdaq. Nasdaq provides us an initial cure period of six months or until April 14, 2020 to regain compliance which requires us to have a closing bid price of our common stock that meets or exceeds \$1.00 per share for a minimum of ten days prior to such date. If we are unable to regain compliance by April 14, 2020, we may be eligible for an additional 180 calendar day compliance period to demonstrate compliance with the minimum bid requirement. There is no assurance that we can regain compliance of the minimum bid requirement before April 14, 2020 or that Nasdaq will grant us an additional 180 calendar day compliance period. Failure to maintain compliance with Nasdaq listing requirements could result in the delisting of our shares from Nasdaq, which could have a material adverse effect on the trading price, volume and marketability of our common stock. Furthermore, a delisting could adversely affect our ability to issue additional securities and obtain additional financing in the future or result in a loss of confidence by investors or employees.

Accounting for the put rights and contingent consideration could cause variability in the results we report.

In connection with the 42West acquisition, we granted put rights to the sellers to cause us to purchase up to an aggregate of 1,187,087 (including the shares from the earn out consideration) of their shares of common stock received as consideration for a purchase price equal to \$9.22 per share during certain specified exercise periods set forth in the put agreements up until December 2020. As of the date of this report, the sellers have exercised an aggregate of 895,653 shares of common stock pursuant to the put rights. We have also purchased 120,451 shares of common stock and may purchase up to an additional 20,246 shares of common stock, at a purchase price of \$9.22, from certain 42West employees with change of control provisions in their employment agreements, who received shares of our common stock at the time of the 42West acquisition and will receive additional shares in 2019 related to the earn out consideration. The sellers of The Door may also earn up to 1,538,462 shares of common stock if certain financial targets are achieved over a four-year period. The put rights are an embedded derivative within our common stock requiring certain fair value measurements at each reporting period. We record the fair value of the put right liability and the contingent consideration liability in the consolidated balance sheets and we record changes to the liability against earnings or loss in the consolidated statements of operations. The put rights and contingent consideration are inherently difficult to value. We could have substantial variability in the related periodic fair value measurements, which would affect our operating results and in turn could impact our stock price.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

As of the date of this report, we do not own any real property. For our content production business, we lease 3,024 square feet of office space with a lease commencement date of October 1, 2019, located at 150 Alhambra Circle, Suite 1200, Coral Gables, Florida 33134, at a monthly rate of \$9,954, with annual increase of 3% and four months of rent abatement. The lease expires on November 30, 2024.

For our entertainment publicity and marketing business, we lease the following office space: (i) 12,505 square feet located at 600 Third Avenue, 23rd Floor, New York, NY 10016, at a monthly rate of \$67,735 with increases every three years; (ii) 5,000 square feet located at 37 West 17th Street, 5th Floor, New York, NY 10010 at a monthly rent of \$16,912 with a 2.5% annual increase and expiring in August of 2020; (iii) two office suites located at 1460 West Chicago Avenue, Chicago, Illinois 60642 at a monthly rate of \$2,200 and expiring on May 31, 2020; (iv) 12,139 square feet of office space at 1840 Century Park East, Suite 700, Los Angeles, CA 90067 at a base rate of \$36,417 (commencing on February 1, 2014), with annual increases of 3% per year; (v) 12,376 square feet located at 55 Chapel Street, Newton, MA 02458 at a current monthly rate of \$23,656 with annual increases of 3% and expiring on March 31, 2021; (vi) 32 Court Street, Brooklyn, NY at a current monthly rate of \$17,000 with annual increases of 3% and expiring on February 28, 2026 and (vii) 1017 17th Avenue, Unit 4, Nashville, TN 37212 at a current monthly rate of \$2,179 and expiring on July 31, 2020. We believe our current facilities are adequate for our operations for the foreseeable future.

ITEM 3. LEGAL PROCEEDINGS

We currently do not have any material legal proceedings, including those relating to claims arising in the ordinary course of business.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market Information and Holders of our Common Stock

Our common stock trades on The Nasdaq Capital Market under the symbol "DLPN".

As of March 18, 2020, there were approximately 333 shareholders of record, of our issued and outstanding shares of common stock based on information provided by our transfer agent.

Recent Sales of Unregistered Securities

On October 11, 2019 the Company issued convertible promissory note agreement to a third-party investor and received \$500,000 to be used for working capital. The convertible promissory note bear interest at a rate of 10% per annum and mature on October 11, 2021. The balance of the convertible promissory note and any accrued interest may be converted into shares of Common Stock at the noteholder's option at any time at a purchase price based on the 30-day trailing average closing price of the Common Stock.

Company Purchases of Equity Securities

The following table presents information related to our repurchases of our shares of common stock during the quarter ended December 31, 2019:

Period	Total Number of Shares Purchased ⁽¹⁾	Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares that May Yet Be Purchased Under the Plans or Programs
10/1/2019 – 10/31/2019	—	\$ —	—	—
11/1/2019 – 11/30/2019	10,846	9.22	—	—
12/1/2019 – 12/31/2019	51,518	9.22	—	—
Total	62,364	\$ 9.22	—	—

(1) Pursuant to the terms and subject to the conditions set forth in put agreements, entered into with the sellers of 42West, certain of such sellers exercised their put rights and caused us to purchase 62,364 shares of common stock for an aggregate amount of \$575,000 of which \$275,000 was paid in January 2020. See Note 4 — Acquisitions to our audited consolidated financial statements contained in this Annual Report on Form 10-K for further discussion of these put agreements.

ITEM 6. SELECTED FINANCIAL DATA

Not required for smaller reporting companies.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion of our financial condition and results of operations should be read in conjunction with our audited historical consolidated financial statements and the notes thereto, which are included elsewhere in this Annual Report on Form 10-K for the year ended December 31, 2019 (this "2019 Form 10-K"). The following discussion includes forward-looking statements that involve certain risks and uncertainties, including, but not limited to, those described in Item 1A. Risk Factors in this 2019 Form 10-K. Our actual results may differ materially from those discussed below. See "Special Note Regarding Forward-Looking Statements" and Item 1A. Risk Factors, in each case contained in this 2019 Form 10-K.

OVERVIEW

We are a leading independent entertainment marketing and premium content development company. We were first incorporated in the State of Nevada on March 7, 1995 and domesticated in the State of Florida on December 4, 2014. Our common stock trades on The Nasdaq Capital Market under the symbol "DLPN".

Through our subsidiaries 42West, The Door and Shore Fire, we provide expert strategic marketing and publicity services to many of the top brands, both individual and corporate, in the entertainment and hospitality industries. 42West, The Door and Shore Fire are each recognized global leaders in PR services for the respective industries they serve. Our acquisition of Viewpoint has added full-service creative branding and production capabilities to our marketing group. Dolphin's legacy content production business, founded by Emmy-nominated Chief Executive Officer, Bill O'Dowd, has produced multiple feature films and award-winning digital series, primarily aimed at family and young adult markets.

On December 3, 2019, referred to as the Shore Fire Closing Date, we acquired all of the issued and outstanding capital stock of Shore Fire, a New York corporation. Shore Fire is a public relations and media management firm that specializes in music, entertainment and popular culture.

We agreed to pay an aggregate purchase price of \$3 million for Shore Fire, before adjustments, comprising (i) \$1,000,000 in cash paid to the seller on the Shore Fire Closing Date (as adjusted for Shore Fire's indebtedness, working capital and cash targets, and transaction expenses); (ii) \$200,000 in shares of our common stock based on a price, per share of \$0.64, issued to the seller on the Shore Fire Closing Date and (iii) \$140,000 in cash paid on the Shore Fire Closing Date to certain key employees, referred to as the Shore Fire Key Employees; (iv) additional \$250,000 in cash paid on each of the third, sixth, twelve and twenty-four month anniversary of the Shore Fire Closing Date; (v) \$200,000 in shares of our common stock to the seller on each of the twelve and twenty-four month anniversary of the Shore Fire Closing Date; (vi) \$140,000 in cash to the Shore Fire Key Employees on the twelve month anniversary of the Shore Fire Closing Date and (vii) \$120,000 in cash to the Shore Fire Key Employees on the twenty-four month anniversary of the Shore Fire Closing Date. In connection with the acquisition of Shore Fire, we acquired intangible assets of approximately \$1.1 million and goodwill of \$1.9 million.

We have established an acquisition strategy based on identifying and acquiring companies that complement our existing entertainment publicity and marketing services and content production businesses. We believe that complementary businesses, such as data analytics and digital marketing, can create synergistic opportunities and bolster profits and cash flow. We have identified potential acquisition targets and are in various stages of discussion with such targets. We intend to complete at least one acquisition during 2020, but there is no assurance that we will be successful in doing so, whether in 2020 or at all. We currently intend to fund any acquisitions through loans or additional issuances of our common stock, securities convertible into our common stock, debt securities or a combination of such financing alternatives; however, there can be no assurance that we will be successful in raising the capital necessary to consummate any acquisitions, whether on favorable terms or at all.

We operate in two reportable segments: our entertainment publicity and marketing segment and our content production segment. The entertainment publicity and marketing segment comprises 42West, The Door, Shore Fire and Viewpoint and provides clients with diversified services, including public relations, entertainment content marketing, strategic marketing consulting, creative branding and in-house production of content for marketing. The content production segment comprises Dolphin Films and Dolphin Digital Studios and specializes in the production and distribution of digital content and feature films.

Going Concern

In the audit opinion for our financial statements as of and for the year ended December 31, 2019, our independent auditors included an explanatory paragraph expressing substantial doubt about our ability to continue as a going concern based upon our accumulated deficit as of December 31, 2019 and our level of working capital. The financial statements do not include any adjustments that might result from the outcome of these uncertainties. Management is planning to raise any necessary additional funds through loans and additional sales of our common stock, securities convertible into our common stock, debt securities or a combination of such financing alternatives; however, there can be no assurance that we will be successful in raising any necessary additional capital or securing loans. Such issuances of additional securities would further dilute the equity interests of our existing shareholders, perhaps substantially. With the acquisitions of 42West, The Door, Viewpoint and now Shore Fire, we are currently exploring opportunities to expand the services currently being offered by them to the entertainment and hospitality community. In addition, we are exploring ways to reduce expenses by identifying certain costs that can be combined, for example, consolidating certain "back office" functions such as accounting and human resources. There can be no assurance that we will be successful in selling these services to clients or reducing expenses.

REVENUES

For the years ended December 31, 2019 and 2018, we derived substantially all of our revenues from our entertainment publicity and marketing segment. The entertainment publicity and marketing segment derives its revenues from providing public relations services for celebrities and musicians, entertainment and targeted content marketing for film and television series, strategic communications services for corporations and public relations, marketing services and brand strategies for hotels and restaurants. We additionally derived revenues from the content production segment primarily from the distribution of our feature films, *Max Steel* and *Believe*. The table below sets forth the percentage of total revenue derived from our two segments for the years ended December 31, 2019 and 2018:

	For the years ended December 31,	
	2019	2018
Revenues:		
Entertainment publicity	99.7%	97.2%
Content production	0.3%	2.8%
Total revenue	<u>100.0%</u>	<u>100.0%</u>

Entertainment Publicity and Marketing

Our revenue is directly impacted by the retention and spending levels of existing clients and by our ability to win new clients. We believe that we currently have a stable client base, and we have continued to grow organically through referrals and actively soliciting new business as well as through acquisition of new businesses within the same industry. We earn revenues primarily from the following sources: (i) celebrity talent services; (ii) content marketing services under multiyear master service agreements in exchange for fixed project-based fees; (iii) numerous individual engagements for entertainment content marketing services for durations of generally between three and six months; (iv) strategic communications services; (v) engagements for marketing of special events such as food and wine festivals and (vi) content productions of marketing materials on a project contract basis. For these revenue streams, we collect fees through either fixed fee monthly retainer agreements or project-based fees.

We earn entertainment publicity and marketing revenues primarily through the following:

- **Talent** – We earn fees from creating and implementing strategic communication campaigns for performers and entertainers, including Oscar, Tony and Emmy winning film, theater and television stars, directors, producers, celebrity chefs and Grammy winning recording artists. Our services in this area include ongoing strategic counsel, media relations, studio and/or network liaison work, and event and tour support.

- **Entertainment Marketing and Brand Strategy**– We earn fees from providing marketing direction, public relations counsel and media strategy for entertainment content (including theatrical films, television programs, DVD and VOD releases, and streaming services) from all the major studios, as well as content producers ranging from individual filmmakers and creative artists to production companies, streaming services, film financiers, DVD distributors, and other entities. In addition, we provide entertainment marketing services in connection with film and festivals, food and wine festivals, awards campaigns, event publicity and red-carpet management. As part of our services we offer marketing and publicity services tailored to reach diverse audiences. We also provide marketing direction targeted to the ideal consumer through a creative public relations and creative brand strategy for hotel and restaurant groups. Our clients for this type of service include major studios, independent producers for whom we create targeted multicultural marketing campaigns and leading hotel and restaurant groups.

We expect that increased digital streaming marketing budgets at several large key clients will drive growth of revenue and profit in 42West's Entertainment Marketing division over the next several years.

- **Strategic Communications** – We earn fees by advising companies looking to create, raise or reposition their public profiles, primarily in the entertainment industry. We believe that growth in 42West's Strategic Communications division will be driven by increasing demand for these services by traditional and non-traditional media clients who are expanding their activities in the content production, branding, and consumer products PR sectors. We expect that this growth trend will continue for the next three to five years. We also help studios and filmmakers deal with controversial movies, as well as high-profile individuals address sensitive situations.
- **Creative Branding and Production** – We offer clients creative branding and production services from concept creation to final delivery. Our services include brand strategy, concept and creative development, design and art direction, script and copyrighting, live action production and photography, digital development, video editing and composite, animation, audio mixing and engineering, project management and technical support. We expect that our ability to offer these services to our existing clients in the entertainment and hospitality industries will be accretive to our revenue.

Content Production

Dolphin Films

For the years ended December 31, 2019 and 2018, we derived revenues from Dolphin Films primarily through the distribution of our motion pictures, *Max Steel* and *Believe*, in the ancillary markets.

Our ability to receive additional revenues from *Max Steel* depends on our ability to repay our loans under our production service agreement and prints and advertising loan agreement from the profits of *Max Steel*. *Max Steel* did not generate sufficient funds to repay either of these loans prior to the applicable maturity dates. On August 23, 2019, we entered into a revenue participation agreement with the lender of the prints and advertising loan. Under this revenue participation agreement, we agreed to give the lender all of the future domestic distribution proceeds of *Max Steel* up to \$0.9 million in exchange for the payment and satisfaction in full of the prints and advertising loan. As a result, we recorded a gain on the extinguishment of debt of \$0.7 million and impaired the capitalized production costs of \$0.6 million during the year ended December 31, 2019. We have provided a \$0.6 million backstop to the guarantor of the prints and advertising loan and that amount is recorded in other current liabilities.

If the lender of the production loan forecloses on the collateral securing the loan, our subsidiary Max Steel VIE would lose any future international distribution revenue of *Max Steel*, which we believe is minimal. We are not a party to this loan and have not guaranteed to the lender any of the amounts outstanding under this loan. For a discussion of the terms of such agreements and the \$620,000 backstop, see "Liquidity and Capital Resources" below.

Project Development and Related Services

We have a team that dedicates a portion of its time to sourcing scripts for future development. The scripts can be for either digital or motion picture productions. We have acquired the rights to certain scripts that we intend to produce and release in the future, subject to obtaining financing. We have not yet determined if these projects would be produced for digital or theatrical distribution.

Our pipeline of feature films includes:

- *Youngblood*, an updated version of the 1986 hockey classic;
- *Out of Their League*, a romantic comedy pitting husband versus wife in the cut-throat world of fantasy football; and
- *Sisters Before Mist*ers, a comedy about two estranged sisters finding their way back to each other after a misunderstanding causes one of them to have to plan the other's wedding.

We have completed development of each of these feature films, which means that we have completed the script and can begin pre-production once financing is obtained. We are planning to fund these projects through loans or additional sales of our common stock, securities convertible into our common stock, debt securities or a combination of such financing alternatives; however, there can be no assurance that we will be successful in raising any necessary capital. There is no assurance that we will be able to obtain the financing necessary to produce these feature films.

EXPENSES

Our expenses consist primarily of: (1) direct costs; (2) selling, general and administrative expenses; (3) depreciation and amortization; (4) legal and professional fees; and (5) payroll. For the year ended December 31, 2018, we also had non-cash charge of goodwill impairment of approximately \$1.9 million.

Direct costs include certain cost of services, as well as certain production costs, related to our entertainment publicity and marketing business. Direct costs also include amortization of deferred production costs, impairment of deferred production costs, residuals and other costs associated with our content production business. Residuals represent amounts payable to various unions or "guilds" such as the Screen Actors Guild, Directors Guild of America, and Writers Guild of America, based on the performance of the motion picture and digital productions in certain ancillary markets. Included within direct costs are immaterial impairments for any of our projects. Capitalized production costs are recorded at the lower of their cost, less accumulated amortization and tax incentives, or fair value. If estimated remaining revenue is not sufficient to recover the unamortized capitalized production costs for that title, the unamortized capitalized production costs will be written down to fair value.

Selling, general and administrative expenses include all overhead costs except for payroll, depreciation and amortization and legal and professional fees that are reported as a separate expense item.

Depreciation and amortization include the depreciation of our property, equipment and leasehold improvements and amortization of intangible assets, including the favorable lease asset.

Legal and professional fees include fees paid to our attorneys, fees for investor relations consultants, audit and accounting fees and fees for general business consultants.

Payroll expenses include wages, payroll taxes and employee benefits.

Other Income and Expenses

For the years ended December 31, 2019 and 2018, other income and expenses consisted primarily of: (1) gain or loss on extinguishment of debt; (2) acquisition costs; (3) changes in the fair value of put rights; (4) changes in fair value of contingent consideration and (5) interest expense.

RESULTS OF OPERATIONS

Year ended December 31, 2019 as compared to year ended December 31, 2018

Revenues

For the years ended December 31, 2019 and 2018, our revenues were as follows:

	For the year ended December 31,	
	2019	2018
Revenues:		
Entertainment publicity and marketing	\$24,915,261	\$21,916,727
Content production	86,606	634,612
Total revenue	<u>\$25,001,867</u>	<u>\$22,551,339</u>

Revenues from entertainment publicity and marketing increased by approximately \$3.0 million, for the year ended December 31, 2019 as compared to the year ended December 31, 2018. The increase was due to a full year of revenue of The Door acquired on July 5, 2018 and Viewpoint acquired on October 31, 2018 and one month of revenue of Shore Fire acquired December 3, 2019. The increase is partially offset by the decrease in revenue of 42West due to departures of senior publicists and their staff in 2018.

Revenues from content production decreased by \$0.5 million for the year ended December 31, 2019 as compared to the year ended December 31, 2018, primarily due to the normal revenue cycle of our motion picture *Max Steel*. The majority of the revenues of a motion picture are recognized in the first twelve months following the release of the film. *Max Steel* was released on October 14, 2016, and we have already recognized the revenues from the theatrical release, a majority of home entertainment (i.e. DVD) and from international licensing arrangements. For the year ended December 31, 2018, we also recorded \$0.2 million of revenues from domestic ancillary markets, related to our motion picture *Believe* that was released in December of 2013.

On September 4, 2018, our domestic distributor, Open Road, filed for Chapter 11 bankruptcy protection. The assets of Open Road were sold on December 21, 2018 to Raven Capital, with the final deal closing in February 2019. We expect that our domestic distribution agreements for *Max Steel* and *Believe*, which were purchased in the sale of the assets of Open Road, will continue on the same terms as agreed upon with Open Road. On August 23, 2019, we entered into a revenue participation agreement with the lender of the prints and advertising loan and agreed to give them up \$0.9 million of future domestic distribution revenue in exchange for the payment and full satisfaction of the prints and advertising loan in the amount of \$0.7 million, including accrued interest, on the date of the agreement. We do not expect to receive any significant future revenues from the domestic distribution of *Max Steel*.

Expenses

For the years ended December 31, 2019 and 2018, our operating expenses were as follows:

	For the year ended December 31,	
	2019	2018
Expenses:		
Direct costs	\$ 5,043,903	\$ 2,176,968
Selling, general and administrative	3,799,765	4,486,023
Depreciation and amortization	1,946,960	1,978,804
Legal and professional	1,560,483	2,119,107
Payroll	16,735,911	14,082,014
Goodwill impairment	—	1,857,000
Total expenses	<u>\$29,087,022</u>	<u>\$26,699,916</u>

Overall expenses increased by approximately \$2.4 million for the year ended December 31, 2019, as compared to the year ended December 31, 2018. The increase was due to a full year of expenses of The Door acquired on July 5, 2018 and Viewpoint acquired on October 31, 2018 and one month of expenses of Shore Fire acquired December 3, 2019.

Direct costs increased by approximately \$2.9 million for the year ended December 31, 2019, as compared to the year ended December 31, 2018. Direct costs related to the entertainment publicity and marketing segment were approximately \$4.3 million in 2019, as compared to \$1.6 million in 2018. The increase was primarily due to a full year of direct costs associated with the operations of The Door and Viewpoint during 2019. The Door was acquired on July 5, 2018 and Viewpoint was acquired on October 31, 2018 and as such, we only recorded direct costs from their respective dates of acquisition.

Direct costs related to the content production segment were approximately \$0.8 million for 2019, as compared to \$0.6 million for 2018. During 2019, direct costs for the content production segment consisted primarily of impairment of capitalized production costs. Capitalized production costs for *Max Steel* were impaired during the year ended December 31, 2019 as a result of the agreement to direct all future domestic film revenues up to \$0.9 million to the print and advertising loan's creditor, in settlement of said loan. We evaluate capitalized production costs to determine if the fair value of the capitalized production costs is below the carrying value. Based on management's estimate of ultimate revenues for *Max Steel*, the capitalized production costs in the amount of \$0.6 million were determined to be above fair value and were impaired during the year ended December 31, 2019. During 2018, direct costs for the content production segment consisted primarily of amortization of capitalized production costs. Capitalized production costs are amortized based on revenues recorded during the period over the estimated ultimate revenues of the film.

Selling, general and administrative expenses decreased by approximately \$0.7 million for the year ended December 31, 2019, as compared to the year ended December 31, 2018. The decrease is mainly due to bad debt expenses recorded for the year ended December 31, 2018 of approximately \$0.6 million. Of that amount, \$0.4 million was from the content production segment and consisted of receivables from the international sales of *Max Steel*. The other \$0.2 million was related to the entertainment publicity and marketing segment.

Depreciation and amortization had an immaterial decrease of \$0.03 million for the year ended December 31, 2019, as compared to the year ended December 31, 2018. However, we should note that this decrease is in spite of a full year of amortization for the intangible assets acquired in the acquisitions of The Door and Viewpoint. This decrease is due to our adoption of the new lease accounting (ASC 842) on January 1, 2019, that requires favorable leases be accounted for as a right-of-use asset rather than be amortized as an intangible asset.

Legal and professional fees for the year ended December 31, 2019 decreased by approximately \$0.6 million as compared to the year ended December 31, 2018. Legal and professional fees attributable to the entertainment publicity and marketing segment decreased by approximately \$0.2 million for the year ended December 31, 2019, as compared to the year ended December 31, 2018, primarily due to Bank United not requiring a stand-alone audit for 42West. Legal and professional fees for the content production segment decreased by approximately \$0.4 million for the year ended December 31, 2019 as compared to December 31, 2018, primarily due to the elimination of services of consultants and legal fees.

Payroll expenses increased by approximately \$2.7 million for the year ended December 31, 2019 as compared to the year ended December 31, 2018. Payroll expenses attributable to our entertainment publicity and marketing business increased by approximately \$1.8 million for the year ended December 31, 2019 as compared to the year ended December 31, 2018 due to including payroll expenses for a full year of The Door and Viewpoint that were acquired on July 5, 2018 and October 31, 2018, offset by a decrease in payroll of 42West related to the departures of certain senior publicists in mid-2018. Payroll expenses related to the content production segment increased by approximately \$0.09 million for the year ended December 31, 2019, as compared to the year ended December 31, 2018 due to salary increases of the CEO and CFO.

Goodwill impairment decreased by approximately \$1.9 million for the year ended December 31, 2019 as compared to the year ended December 31, 2018 as a result of our 2018 test of goodwill that determined that the carrying value of our goodwill was higher than the fair value of the goodwill for the reporting unit 42West within the entertainment publicity and marketing segment. We did not have any goodwill impairment for the year ended December 31, 2019.

Other Income and Expenses

	For the year ended	
	December 31,	
	2019	2018
Other Income and expenses:		
Gain (loss) extinguishment of debt	\$ 711,718	\$ (53,271)
Acquisition costs	(106,015)	(438,552)
Change in fair value of put rights	2,880,520	616,943
Change in fair value of contingent consideration	193,557	1,070,000
Interest expense	(1,206,201)	(1,050,478)
Total	\$ 2,473,579	\$ 144,642

As previously discussed, during the year ended December 31, 2019, we agreed to exchange up to \$0.9 million of future domestic revenues of *Max Steel* for the extinguishment of the prints and advertising loan and recorded \$0.7 million of a gain on the extinguishment of that debt. During the year ended December 31, 2018, a holder of a convertible promissory note exchanged the principal and accrued interest on the promissory note into 85,299 shares of our common stock pursuant to the terms of the promissory note, at an exercise price of \$3.21 per share. On the date of the conversion, the market price of our common stock was \$3.83 per share resulting in a loss on extinguishment of debt of \$0.05 million.

Acquisition costs consisted primarily of legal, consulting and auditing costs related to our acquisitions. Acquisition costs for the year ended December 31, 2019 were related to the acquisition of Shore Fire on December 3, 2019. Acquisition costs for the year ended December 31, 2018 consisted primarily of costs associated with our acquisition of The Door and Viewpoint on July 5, 2018 and October 31, 2018, respectively.

The fair value of put rights related to the 42West acquisition were recorded on our balance sheet on the date of the acquisition. The fair value of the put rights is measured at every balance sheet date and any changes are recorded on our consolidated statements of operations. The change in fair value of the puts was \$2.8 million and \$0.6 million, respectively, for the years ended December 31, 2019 and 2018.

The fair value of contingent consideration related to our acquisition of The Door was recorded on our balance sheet on July 5, 2018. The fair value of the related contingent consideration is measured at every balance sheet date and any changes recorded on our consolidated statements of operations. For the years ended December 31, 2019 and 2018, we recorded a gain of \$0.2 million and \$1.1 million related to the change in fair value of the contingent consideration for The Door.

Interest expense increased by approximately \$0.2 million for the year ended December 31, 2019, as compared to the year ended December 31, 2018, primarily due to additional convertible and non-convertible promissory notes signed during 2019. See Liquidity and Capital Resources for further discussion on these notes payable.

Income Tax Benefit

We had an income tax benefit of \$0.4 million for year ended December 31, 2019, compared to a benefit of \$1.1 million for year ended December 31, 2018. The primary component of the income tax benefit in both years is due to a release of the valuation allowance against the deferred tax liabilities of the companies acquired.

As of December 31, 2019, we have approximately \$43.7 million of net operating loss carryforwards for U.S. federal income tax purposes that begin to expire in 2028. Federal net operating losses generated after December 31, 2017 have an indefinite life and do not expire. Additionally, we have approximately \$25.3 million of net operating loss carryforwards for Florida state income tax purposes that begin to expire in 2029, approximately \$13.1 million of California net operating loss carryforwards that begin to expire in 2032, and approximately \$1.8 million of New York and New York City net operating loss carryforwards that begin to expire in 2038. A portion of the carryforwards may expire before being applied to reduce future income tax liabilities.

In assessing the ability to realize the deferred tax assets, we consider whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of the deferred tax asset is dependent upon the generation of future taxable income during the periods in which these temporary differences become deductible. We believe it is more likely than not that the deferred tax asset will not be realized and we have accordingly recorded a net valuation allowance of \$16.2 million and \$14.3 million as of December 31, 2019 and 2018, respectively.

Net Loss

Net loss was approximately \$(1.2) million or \$(0.07) per share based on 16,522,924 weighted average shares outstanding and approximately \$(0.20) per share based on 21,425,506 weighted average shares outstanding on a fully diluted basis for the year ended December 31, 2019. Net loss was approximately \$(2.9) million or \$(0.22) per share based on 13,773,395 weighted average shares outstanding and approximately \$(0.23) per share based on 16,159,486 weighted average shares outstanding on a fully diluted basis for the year ended December 31, 2018. Net loss for the years ended December 31, 2019 and 2018, respectively, were related to the factors discussed above.

LIQUIDITY AND CAPITAL RESOURCES

Cash Flows

Year ended December 31, 2019 as compared to year ended December 31, 2018

Cash flows used by operating activities for the year ended December 31, 2019 were \$2.9 million compared to cash flows used by operating activities of \$0.6 million for the year ended December 31, 2018. The increase in cash used in operating activities for the year ended December 31, 2019 as compared to the year ended December 31, 2018 is primarily due to lower cash flows from operations before changes in operating assets and liabilities of approximately \$2.0 million. In addition, we used approximately \$0.1 million to purchase the rights to scripts for our content production segment.

Cash flows used in investing activities for the year ended December 31, 2019 were \$0.9 million primarily related to the purchase of Shore Fire, net of cash acquired and the purchase of fixed assets. Cash flows used in investing activities for the year ended December 31, 2018, were approximately \$1.6 million and were primarily related to the purchase of The Door and Viewpoint, net of cash acquired and for the purchase of fixed assets.

Cash flows provided by financing activities for year ended December 31, 2019 was approximately \$0.4 million as compared to \$3.2 million for the year ended December 31, 2018. Cash flows used in financing activities for the year ended December 31, 2019 consisted primarily of (i) \$0.1 million of net repayment of debt related to *Max Steel*; (ii) \$2.3 million used to purchase our Common Stock pursuant to Put Rights that were exercised; (iii) \$0.3 million comprising the second and third installments of the consideration paid for Viewpoint; (iv) second installment of the consideration for The Door in the amount of \$0.8 million; (v) final installment of the consideration paid to employees of 42West to settle change of control provisions in their employment contracts in the amount of \$0.4 million; (vi) \$1.9 million proceeds from the sale of common stock through a public offering in October 2019; (vii) proceeds from convertible notes payable of \$2.1 million and (viii) proceeds from non-convertible note payable of \$0.3 million. By contrast, cash flows provided by financing activities for the year ended December 31, 2018 consisted primarily of (i) \$1.7 million in proceeds from our loan agreement with Bank United; (ii) repayment of \$0.8 million on a line of credit with City National Bank; (iii) repayment of our debt under the prints and advertising loan; (iv) \$3.9 million used to buy back our common stock pursuant to the put agreements with the sellers of 42West; (v) repayment of \$0.6 million of a related party promissory note; (vi) \$1.5 million in proceeds from a note payable and (vii) \$6.8 million in proceeds from the sale of common stock including shares sold through a public offering and shares sold to an investor in a registered direct offering.

As of December 31, 2019 and 2018, we had cash available for working capital of approximately \$2.2 million and \$5.5 million, respectively, not including \$0.7 million pledged as collateral for standby letter of credit for the New York office, and a working capital deficit of approximately \$15.6 million and \$11.9 million, respectively.

These factors, along with an accumulated deficit of \$96.0 million as of December 31, 2019, raise substantial doubt about our ability to continue as a going concern. Our audited consolidated financial statements contained in this 2019 Form 10-K do not include any adjustments that might result from the outcome of these uncertainties. In this regard, management is planning to raise any necessary additional funds through loans and additional issuances of our common stock, securities convertible into our common stock, debt securities or a combination of such financing alternatives. There is no assurance that we will be successful in raising additional capital. Such issuances of additional shares of common stock or securities convertible into common stock would further dilute the equity interests of our existing shareholders, perhaps substantially. We currently have the rights to several scripts, that we intend to produce and release subject to obtaining financing. We will potentially earn a producer and overhead fee for this production. There can be no assurances that such production will be released or fees will be realized in future periods.

In addition, we have a substantial amount of debt. We do not currently have sufficient assets to repay such debt in full when due, and our available cash flow may not be adequate to maintain our current operations if we are unable to repay, extend or refinance such indebtedness. As of December 31, 2019, our total debt was approximately \$14.8 million and our total stockholders' equity was approximately \$9.7 million. Approximately \$3.0 million of the total debt as of December 31, 2019 represents the fair value of put options in connection with the 42West acquisition, which may or may not be exercised by the sellers. Approximately \$3.3 million (including \$1.7 of accrued interest) of our indebtedness as of December 31, 2019 was incurred by the variable interest entity consolidated in our financial statements, Max Steel Productions LLC ("Max Steel VIE"). Repayment of this loan was intended to be made from revenues generated by *Max Steel* outside of the United States. *Max Steel* did not generate sufficient funds to repay this loan prior to the maturity date. If the lender of this loan forecloses on the collateral securing the loan, our subsidiary Max Steel VIE would lose any future international distribution revenue of *Max Steel*, which we believe is minimal.

If we are not able to generate sufficient cash to service our current or future indebtedness, we will be forced to take actions such as reducing or delaying digital or film productions, selling assets, restructuring or refinancing our indebtedness or seeking additional debt or equity capital or bankruptcy protection. We may not be able to affect any of these remedies on satisfactory terms or at all and our indebtedness may affect our ability to continue to operate as a going concern.

Financing Arrangements

Prints and Advertising Loan

On August 12, 2016, Dolphin Max Steel Holdings LLC, or Max Steel Holdings, a wholly owned subsidiary of Dolphin Films, entered into a loan and security agreement, or the P&A Loan, providing for a \$14.5 million non-revolving credit facility that matured on August 25, 2017. The loan is not guaranteed by any other Dolphin entity and the only asset held by Max Steel Holdings is the copyright for the motion picture, which secures the loan. The proceeds of the credit facility were used to pay a portion of the P&A expenses of the domestic distribution of our feature film, *Max Steel*. To secure Max Steel Holding's obligations under the P&A Loan, we granted to the lender a security interest in bank account funds totaling \$1,250,000 pledged as collateral. During the year ended December 31, 2017, we agreed to allow the lender to apply the \$1,250,000 to the loan balance. The loan was partially secured by a \$4,500,000 corporate guaranty from an unaffiliated party associated with the motion picture, of which we have agreed to backstop \$620,000. As a condition precedent to closing the loan, Max Steel Holdings delivered to the lender clear chain-of-title to the rights of the motion picture *Max Steel*. The lender retained a reserve of \$1.5 million for loan fees and interest. Amounts borrowed under the credit facility accrue interest at either (i) a fluctuating per annum rate equal to the 5.5% plus a base rate or (ii) a per annum rate equal to 6.5% plus the LIBOR determined for the applicable interest period. During 2017, the third-party guarantor paid \$4.5 million pursuant to the guarantee of the loan, reducing the outstanding balance by such amount and increasing our accrued expenses by the \$620,000 backstop related to the guarantee. Repayment of the loan was intended to be made from revenues generated by *Max Steel* in the United States. *Max Steel* did not generate sufficient funds to repay the loan prior to the maturity date. On August 23, 2019, we entered into a revenue participation agreement with the lender whereby they are entitled to the next \$0.9 million of revenues from the domestic distribution of *Max Steel* in exchange for payment and satisfaction in full of the P&A Loan. During the year ended December 31, 2019, we recognized a gain on extinguishment of debt of \$0.7 million related to this revenue participation agreement.

Production Service Agreement

During 2014, the Max Steel VIE, a variable interest entity (or VIE) created in connection with the financing and production of *Max Steel*, entered into a loan agreement in the amount of \$10.4 million to produce *Max Steel*. The loan is partially secured by international distribution agreements made prior to the commencement of principal photography and tax incentives. The agreement contains repayment milestones to be made during 2015, which, if not met, accrue interest at a default rate of 8.5% per annum above the published base rate of HSBC Private Bank (UK) Limited until the maturity on January 31, 2016 or the release of the movie. As a condition precedent to closing the loan, Max Steel Holdings delivered to the lender clear chain-of-title to the rights of the motion picture *Max Steel*. Due to delays in the release of the film, Max Steel VIE was unable to make some of the scheduled payments and, pursuant to the terms of the agreement, the Max Steel VIE has accrued \$1.6 million of interest at the default rate. The film was released in theaters in the United States on October 14, 2016 and delivery to the international distributors began after the US release. As of December 31, 2019 and 2018, we had outstanding balances of \$3.3 million and \$3.4 million, respectively, including accrued interest of \$1.7 million and \$1.6 million, respectively, related to this debt on our consolidated balance sheets. Repayment of the loan was intended to be made from revenues generated by *Max Steel* outside of the United States. *Max Steel* did not generate sufficient funds to repay the loan prior to the maturity date. On February 20, 2020, we received a letter from the lender stating that no sums, debts, liabilities, expenses, opportunity costs, revenues and any other amounts were due from the Max Steel VIE. We are currently evaluating the status of Max Steel Productions LLC as a VIE and our primary beneficiary status of Max Steel VIE.

42West Line of Credit

On March 15, 2018, 42West entered into a business loan agreement with BankUnited, N.A., (the "Loan Agreement"), for a revolving line of credit agreement under a revolving note. The revolving line of credit matures on March 15, 2020 and bears interest on the outstanding balance at the bank's prime rate plus 0.25% per annum. The maximum amount that can be drawn on the revolving line of credit is \$2,300,000. Amounts outstanding under the note are secured by 42West's current and future inventory, chattel paper, accounts, equipment and general intangibles. On March 28, 2018, we drew \$1,690,000 from the line of credit facility to purchase 183,296 shares of our common stock, per the put agreements with the sellers. On June 29, 2018, we issued a standby letter of credit, in the amount of \$50,000, to secure the lease of 42West's Los Angeles office. The borrowing capacity under the Loan Agreement was reduced by the same amount. As of December 31, 2019 and 2018, the outstanding balance on the line of credit was \$1,700,390. Subsequently on February 20, 2020, in anticipation of converting the line of credit into a term loan, we partially repaid the line of credit in the amount of \$500,000. On March 27, 2020 we received loan documents from Bank United for a one year term loan in the amount of \$1,200,390, amortizable over 36 months, with a rate prime plus 0.75 percentage points. The Door will be a co-borrower on the loan and it will be guaranteed by the Company.

Promissory Notes

Convertible Notes

2020 Lincoln Park Note

On January 3, 2020, we entered into a securities purchase agreement with Lincoln Park Capital Fund LLC and issued a convertible promissory note with a principal amount of \$1.3 million at a purchase price of \$1.2 million together with warrants to purchase up to 207,588 shares of our common stock at an exercise price of \$0.78 per share. The securities purchase agreement provides for issuance of warrants to purchase up to 207,588 shares of our common stock on each of the second, fourth and sixth month anniversaries of the securities purchase agreement if the principal balance has not been paid on such dates. As such, on March 4, 2020 we issued warrants to purchase up to 207,588 shares of our common stock. The convertible promissory note has an original issue discount of \$100,000 and does not bear interest unless there is an event of default. The convertible promissory note may be converted at any time into shares of our common stock at an initial conversion price equal to the lower of (A) \$2.00 per share and (B) the lower of (i) the lowest intraday sales price of our common stock on the applicable conversion date and (ii) the average of the three lowest closing sales prices of our common stock during the twelve consecutive trading days including the trading day immediately preceding the conversion date but under no circumstances lower than \$0.78 per share. The convertible promissory note matures on January 3, 2022. The proceeds of the convertible promissory note were used to repay the 2018 Convertible Debt described below.

On January 3, 2020, in connection with the securities purchase agreement with Lincoln Park discussed above, we entered into a Registration Rights Agreement with Lincoln Park pursuant to which we agreed to register any shares converted into our Common Stock pursuant to the terms of the convertible promissory note with Lincoln Park, if during the six-month period commencing on the date of the Registration Rights Agreement, we determine to file a resale registration statement with the Securities and Exchange Commission.

2020 Convertible Notes

On March 4, 2020, we issued a convertible promissory note to a third-party investor and received \$500,000. We also agreed to issue a warrant to purchase up to 100,000 shares of our common stock at purchase price of \$0.78 per share. The convertible promissory note bears interest at a rate of 8% per annum and matures on March 4, 2030. The balance of the convertible promissory note and any accrued interest may be converted at the note holder's option at any time at a purchase price \$0.78 per share of our common stock.

On March 18, 2020, we issued two convertible promissory notes to two third-party investors for principal amounts of \$120,000 and \$75,000. The notes earn interest at 10% per annum and mature on March 18, 2022. The balance of each of the convertible promissory notes and any accrued interest may be converted at the noteholder's option at any time at a purchase price \$0.78 per share of our common stock.

On March 25, 2020, we issued a convertible promissory note to a third-party investor for a principal amount of \$560,000 and received \$500,000, net of transaction costs of \$10,000 and original issue discount. The Company also issued 50,000 shares of our common stock related to this convertible note payable. The maturity date of the convertible promissory note is March 25, 2021 and the balance of the convertible promissory note and any accrued interest may be converted at the noteholder's option at any time at a purchase price \$0.78 per share of our common stock.

2019 Lincoln Park Note

On May 20, 2019, we entered into a securities purchase agreement with Lincoln Park Capital Fund LLC and issued a convertible promissory note with a principal amount of \$1.1 million at a purchase price of \$1.0 million together with warrants to purchase up to 137,500 shares of our common stock at an exercise price of \$2.00 per share. The securities purchase agreement provides for issuance of warrants to purchase up to 137,500 shares of our common stock on each of the second, fourth and sixth month anniversaries of the securities purchase agreement if the principal balance has not been paid on such dates. As such, on each of July 23, 2019, September 20, 2019 and November 20, 2019 we issued warrants to purchase up to 137,500 shares of our common stock. The convertible promissory note has an original issue discount of \$100,000 and does not bear interest unless there is an event of default. The convertible promissory note may be converted at any time into shares of our common stock at an initial conversion price equal to the lower of (A) \$5.00 per share and (B) the lower of (i) the lowest intraday sales price of our common stock on the applicable conversion date and (ii) the average of the three lowest closing sales prices of our common stock during the twelve consecutive trading days including the trading day immediately preceding the conversion date. The convertible promissory note matures on May 21, 2021. As of December 31, 2019, we had a balance of \$0.8 million, net of \$0.1 million original issue discount and \$0.1 million of a beneficial conversion feature, on our consolidated balance sheet.

The 2019 Lincoln Park Note contains a clause that re-prices the conversion price if we sell equity securities within 180-days of the 2019 Lincoln Park Note. On October 21, 2019, we issued 2,700,000 shares of common stock pursuant to a public offering at a purchase price of \$0.78 per share. As such, the conversion price of the Lincoln Park Note was adjusted to \$0.78. On each of February 3, February 13 and February 27, 2020, Lincoln Park notified us that they were converting \$250,000 of the Lincoln Park Note into 319,366 shares of our common stock.

2019 Convertible Debt

On October 11, 2019, we issued a convertible promissory note agreement to a third-party investor and received \$500,000. The convertible promissory note bears interest at a rate of 10% per annum and matures on October 11, 2021. The balance of the convertible promissory note and any accrued interest may be converted at the note holder's option at any time at a purchase price based on the 30-day average closing market price per share of our common stock.

On September 25, 2019, we issued a convertible promissory note agreement to a third-party investor and received \$250,000. The convertible promissory note bears interest at a rate of 10% per annum and matures on September 25, 2021. The balance of the convertible promissory note and any accrued interest may be converted at the note holder's option at any time at a purchase price based on the 30-day average closing market price per share of our common stock.

On August 12, 2019, in lieu of cash, we issued a \$702,500 convertible promissory note agreement in exchange for 76,194 shares of our common stock related to 76,194 exercised put rights of one of the 42West Sellers. The convertible promissory note bears interest at a rate of 10% per annum and matures on August 12, 2020. The balance of the convertible promissory note and any accrued interest may be converted at the note holder's option at any time at a purchase price based on the 30-day average closing market price per share of our common stock.

On July 9, 2019, we issued a convertible promissory note agreement to a third-party investor and received \$150,000. The convertible promissory note bears interest at a rate of 10% per annum and matures on July 9, 2021. The balance of the convertible promissory note and any accrued interest may be converted at the note holder's option at any time at a purchase price based on the 30-day average closing market price per share of our common stock. On January 12, 2020, the convertible note holder notified us that they were converting the principal balance of the convertible note into 254,326 shares of our common stock using 30-day average closing market price (January 10, 2020) of \$0.59 per share of common stock.

On March 25, 2019, we issued a convertible promissory note agreement to an unrelated investor and received \$200,000. The convertible promissory note bears interest at a rate of 10% per annum and matures on March 25, 2021. The balance of the convertible promissory note and any accrued interest may be converted at the note holders' option at any time at a purchase price based on the 30-day trailing average market price of the Common Stock. On January 1, 2020, the convertible note holder notified us that they were converting the principal balance of the convertible note into 346,021 shares of our common stock using 30-day average closing market price (December 31, 2019) of \$0.58 per share of common stock.

As of December 31, 2019, we had a balance of \$702,500 in current liabilities and \$1,100,000 in noncurrent liabilities related to these convertible notes payable.

2018 Convertible Debt

On July 5, 2018, we issued an 8% secured convertible promissory note in the principal amount of \$1.5 million (the "Note"), to Pinnacle Family Office Investments, L.P. ("Pinnacle"), pursuant to a Securities Purchase Agreement, dated the same date. We used the proceeds of the convertible promissory note to finance the Company's acquisition of The Door. Our obligations under the Note are secured primarily by a lien on the assets of The Door and Viewpoint. We must pay interest on the principal amount of the Note, at the rate of 8% per annum in cash on a quarterly basis. The Note matures on January 5, 2020. The Note contained a clause that re-prices the conversion price if we sell equity securities at a price lower than the conversion price at any time that the Note is outstanding. On October 21, 2019, we issued 2,700,000 shares of common stock pursuant to a public offering at a purchase price of \$0.78 per share. As such, the conversion price of the Note was adjusted to \$0.78. On December 4, 2019, Pinnacle notified us that they were converting \$297,936 of the Note into 380,603 shares of our common stock.

On the date of the Note, our common stock had a market value of \$3.65. We determined that the Note contained a beneficial conversion feature or debt discount by calculating the number of shares using the conversion rate of the Note of \$3.25 per share, and then calculating the market value of the shares that would be issued at conversion using the market value of our common stock on the date of the Note. We recorded a debt discount on the Note of \$184,614 that is amortized and recorded as interest expense over the life of the Note. For the year ended December 31, 2019, we recorded interest expense in our audited consolidated statement of operations in the amount of \$118,279 and paid \$90,000 of interest. For the year ended December 31, 2018, we paid interest and recorded interest expense in the amount of \$58,333.

For the year ended December 31, 2019 and 2018, respectively, we recorded interest expense of \$123,076 and \$61,538 from the amortization of the beneficial conversion of the Note. As of December 31, 2019, we had a balance of \$1,202,064 (after the conversion of \$297,936 into shares of our common stock) recorded in current liabilities on our balance sheet, related to this Note. As of December 31, 2018, we had \$1,376,924, net of \$123,076 of debt discount, recorded in noncurrent liabilities on our audited consolidated balance sheet, related to this Note.

On January 5, 2020, the Note maturity date, we paid Pinnacle \$1,231,678, including accrued interest of \$29,614, in full satisfaction and repayment of the Note.

2017 Convertible Debt

In 2017, we entered into subscription agreements pursuant to which we issued unsecured convertible promissory notes, each with substantially similar terms, for an aggregate principal amount of \$875,000. The convertible promissory notes mature during the third quarter of 2020 and each bears interest at a rate of 10% per annum. The principal and any accrued and unpaid interest of the convertible promissory notes are convertible by the respective holders into shares of our common stock at a price of either (i) the 90 day average closing market price per share of our common stock as of the date the holder submits a notice of conversion or (ii) if an Eligible Offering (as defined in the convertible promissory notes) of our common stock is made, 95% of the public offering price per share of our common stock. As of December 31, 2019, we had a balance of \$550,000 in current liabilities related to these convertible promissory notes.

On June 25, 2018, one of the holders of a convertible promissory note notified us that they would convert \$250,000 of principal and \$23,425 of accrued interest into 85,299 shares of common stock at a price of \$3.21 per share using the 90-day trading average price per share of common stock as of June 22, 2018. On the date of the conversion (June 25, 2018), the market price of the Common Stock was \$3.83 per share and we recorded a loss on extinguishment of debt in the amount of \$53,271 on our consolidated statements of operation for the year ended December 31, 2018.

On March 21, 2019, one of the holders of a convertible promissory note notified us that they would convert \$75,000 of principal into 53,191 shares of common stock at a price of \$1.41 per share using the 90-day trading average price per share of common stock as of March 20, 2019. On the date of the conversion the market price of the Common Stock was \$1.81 per share and we recorded a loss on extinguishment of debt in the amount of \$21,287 on our consolidated statements of operation for the year ended December 31, 2019.

As of December 31, 2019 and 2018, respectively, we have a balance of \$550,000 and \$625,000 in current liabilities related to the 2017 convertible promissory notes.

Nonconvertible Notes Payable

On November 5, 2019, we issued a promissory note in the amount of \$350,000 that matures two years after issuance. We may prepay this promissory note with no penalty after the initial six months. The promissory note bears interest at a rate of 10% per annum.

On July 5, 2012, we issued an unsecured promissory note in the amount of \$300,000 bearing interest at a rate of 10% per annum and payable on demand to KCF Investments LLC ("KCF"), an entity controlled by Mr. Stephen L Perrone, an affiliate of Dolphin. The proceeds from this note were used for working capital. On December 10, 2018, we agreed to exchange this promissory note, including accrued interest of \$192,233, for a new unsecured promissory note in the amount of \$492,233 that matures on December 10, 2023. The promissory note bears interest at a rate of 10% per annum and provides for monthly repayments of principal and interest in the amount of \$10,459 beginning January 15, 2019. The promissory note may be repaid at any time prior to maturity without a penalty.

On November 30, 2017, we issued a promissory note in the amount of \$200,000 that matures on January 15, 2019. We may prepay this promissory note with no penalty at any time. The promissory note bears interest at a rate of 10% per annum. We agreed to extend the maturity date until January 15, 2021.

On June 14, 2017, we issued a promissory note in the amount of \$400,000 that matures two years after issuance. We may prepay this promissory note with no penalty after the initial six months. The promissory note bears interest at a rate of 10% per annum.

As of December 31, 2019, we have a balance of \$288,237 in current liabilities, a balance of \$1,074,122 in noncurrent liabilities and accrued interest of \$8,788 in other current liabilities related to these promissory notes on our balance sheet. As of December 31, 2018, we have a balance of \$479,874 in current liabilities, a balance of \$612,359 in noncurrent liabilities and accrued interest of \$6,315 in other current liabilities related to these promissory notes payable.

2019 Public Offering

On October 21, 2019, in an underwritten registered public offering, we sold 2,700,000 shares of common stock at a public offering price of \$0.78 per share. The net proceeds of the 2019 Public Offering were approximately \$1.9 million, after deducting underwriting discounts and commissions and offering expenses payable by us.

2018 Public Offering

On July 24, 2018, in an underwritten registered public offering, we sold 2,000,000 shares of common stock at a public offering price of \$3.00 per share. The net proceeds of the Offering were approximately \$5.3 million, after deducting underwriting discounts and commissions and offering expenses payable by us. In August 2018, the underwriters exercised their over-allotment option with respect to 265,000 shares of common stock and we received proceeds, net of the underwriter discount and expenses, of \$0.7 million.

2018 Registered Direct Offering

On September 19, 2018, we issued and sold to a single investor in a registered direct offering an aggregate of 250,000 shares of our common stock at a price of \$3.00 per share. The offering was made pursuant to our effective shelf registration statement on Form S-3 previously filed with the Securities and Exchange Commission. We received proceeds of approximately \$0.7 million from this issuance and sale of our common stock after deducting related expenses.

Critical Accounting Policies, Judgments and Estimates

Our discussion and analysis of our financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with U.S. Generally Accepted Accounting Principles, or "GAAP". The preparation of these consolidated financial statements requires us to make estimates, judgments and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses, and the related disclosure of contingent assets and liabilities. We base our estimates on historical experience and on various other assumptions that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates.

An accounting policy is considered to be critical if it requires an accounting estimate to be made based on assumptions about matters that are highly uncertain at the time the estimate is made, and if different estimates that reasonably could have been used, or changes in the accounting estimate that are reasonably likely to occur, could materially impact the consolidated financial statements. We believe that the following critical accounting policies reflect the more significant estimates and assumptions used in the preparation of the consolidated financial statements.

Leases

On January 1, 2019, we adopted ASU 2016-02, Leases (Topic 842), which requires all assets and liabilities arising from leases to be recognized in our consolidated balance sheets. The Company adopted this new accounting guidance effective January 1, 2019. In July 2018, the FASB added an optional transition method which we elected upon adoption of the new standard. This allowed us to recognize and measure leases existing at January 1, 2019 without restating comparative information. In addition, we elected to apply the package of practical expedients permitted under the transition guidance within the new standard, which among other things, allows us to carry forward the historical lease classification.

We determine if an arrangement is a lease at the lease commencement date. In addition to our lease agreements, we review all material new vendor arrangements for potential embedded lease obligations. The asset balance related to operating leases is presented within “right-of-use (ROU) asset” on our consolidated balance sheet. The current and noncurrent balances related to operating leases are presented as “Lease liability”, in their respective classifications, on our consolidated balance sheet.

The lease liability is recognized based on the present value of the remaining fixed lease payments discounted using our incremental borrowing rate as of January 1, 2019. The ROU asset is calculated based on the lease liability adjusted for any lease payments paid to the lessor at or before the commencement date (i.e. prepaid rent) and initial direct costs incurred by us and excluding any lease incentives received from the Lessor. For operating leases, the lease expense is recognized on a straight-line basis over the lease term. The Company accounts for its lease and non-lease components as a single component, and therefore both are included in the calculation of lease liability recognized on the consolidated balance sheets.

Revenue Recognition

On January 1, 2018, we adopted ASU No. 2014-09 – Revenue from Contracts with Customers (Topic 606). Using this newly adopted guidance, we recognize revenue when promised goods or services are transferred to our clients in an amount that reflects the consideration to which we expect to be entitled to in exchange for those goods or services. Revenue from public relations services consists of fees from the performance of professional services and billings for direct costs reimbursed by clients. Fees are generally recognized on a straight-line or monthly basis, as the services are consumed by our clients, which approximates the proportional performance on such contracts. Direct costs reimbursed by clients are billed as pass-through revenue with no mark-up. Revenues from content produced for digital marketing is recognized upon satisfactory delivery to the client.

We have entered into agreements with foreign and a domestic distributor for our motion picture *Max Steel*. These international distribution agreements contain minimum guaranteed payments once the motion picture is delivered and other specifications are met per the agreements. We entered into a domestic distribution agreement with Open Road to distribute the film in the United States using their existing relationships and output agreements with the movie theaters, as well, as DVD, SVOD, pay TV, and free TV distributors. These distribution agreements are for the licensing of function intellectual property and, as such, we recognize revenue once the motion picture has been delivered and the license period has begun.

ASC 606 provides guidance on determining whether revenues should be recognized on a gross or net basis (Principal vs Agent). Based on the new guidance of ASC 606, we determined that for the domestic distribution of *Max Steel* we should report revenues on a gross basis because we are primarily responsible for the fulfillment of the completed motion picture and carry the “inventory risk” if the motion picture does not meet the customers specifications. At other times, we may enter into contracts with distributors, on significantly different terms, and will need to evaluate these contracts at that time.

Fair Value Measurements

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Assets and liabilities measured at fair value are categorized based on whether the inputs are observable in the market and the degree that the inputs are observable. Inputs refer broadly to the assumptions that market participants would use in pricing the asset or liability, including assumptions about risk. Observable inputs are based on market data obtained from sources independent of our company. Unobservable inputs reflect our own assumptions based on the best information available in the circumstances. The fair value hierarchy prioritizes the inputs used to measure fair value into three broad levels, defined as follows:

Level 1 — Inputs are quoted prices in active markets for identical assets or liabilities as of the reporting date.

Level 2 — Inputs other than quoted prices included within Level 1, such as quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar assets and liabilities in markets that are not active; or other inputs that are observable or can be corroborated with observable market data.

Level 3 — Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets and liabilities. This includes certain pricing models, discounted cash flow methodologies, and similar techniques that use significant unobservable inputs. Unobservable inputs for the asset or liability that reflect management's own assumptions about the assumptions that market participants would use in pricing the asset or liability as of the reporting date.

We carry certain derivative financial instruments using inputs classified as "Level 3" in the fair value hierarchy on our balance sheets.

On July 1, 2018, we adopted ASU 2017-11 and as a result certain warrants with down round provisions that were previously classified as liabilities with changes in fair value on each balance sheet date recorded in the statement of operations are now recorded in equity.

Put Rights

In connection with the 42West acquisition, we entered into put agreements with each of the sellers of 42West granting them the right, but not the obligation, to cause us to purchase up to an aggregate of 1,187,087 of their shares received as consideration for their membership interest of 42West, including the put rights on the shares earned from the earn out consideration. Based upon the results of operations of 42West during 2017, the sellers earned this additional consideration. In January of 2018, we also entered into put agreements with certain 42West employees granting them the right, but not the obligation, to cause us to purchase up to an aggregate of 140,697 of their shares received in April 2017 and in July 2018 and those earned from the earn out consideration. We have agreed to purchase the shares at \$9.22 per share during certain specified exercise periods as set forth in the put agreements, up until December 2020. During the year ended December 31, 2019, we purchased 355,802 shares of common stock and paid approximately \$2.2 million cash, issued a convertible promissory note in the amount of \$702,500 and issued 385,514 shares of common stock at a purchase price of \$1.08 as payment for these put rights.

We use a Black-Scholes Option Pricing model, which incorporates significant inputs that are not observable in the market, and thus represents a Level 3 measurement as defined in ASC820. The unobservable inputs utilized for measuring the fair value of the put rights reflects management's own assumptions that market participants would use in valuing the put rights. The put rights were initially measured on the date of the put agreements and are subsequently measured at each balance sheet date with changes in the fair value between balance sheet dates, being recorded as a gain or loss in the statement of operations.

Contingent Consideration

On July 5, 2018, in connection with our acquisition of The Door, we agreed to issue to the sellers up to 1,538,462 shares of common stock based on a price of \$3.25 per share and up to \$2.0 million in cash if certain adjusted net income targets were met over a four-year period. If the adjusted net income targets are achieved, the contingent consideration is first paid in shares of common stock and the last \$2.0 million of contingent consideration earned, if any, is paid in cash.

To value the contingent consideration, we used a Monte Carlo Simulation Model, which incorporates significant inputs that are not observable in the market, and thus represents Level 3 measurement as defined in ASC820. The unobservable inputs utilized for measuring the fair value of the contingent consideration reflect management's own assumptions about the assumptions that market participants would use in valuing the contingent consideration. The contingent consideration for The Door was initially measured as of the date of the merger (July 5, 2018) and is subsequently measured at each balance sheet date with changes in the fair value between balance sheet dates, being recorded as a gain or loss in the statement of operations.

Income Taxes

We reported an effective tax rate of 25.4% and 26.9% for the years ended December 31, 2019 and 2018, respectively. We have deferred tax assets and liabilities as a result of temporary differences between financial statement carrying amounts and the tax basis of assets and liabilities. As of December 31, 2019, we had approximately \$43,692,000 of net operating loss carryforwards for U.S. federal income tax purposes. We believe it is more likely than not that the deferred tax asset will not be realized and have recorded a net valuation allowance of \$16,227,300 and \$14,259,043 as of December 31, 2019 and 2018, respectively which resulted in a decrease in this deferred tax account.

Recent Accounting Pronouncements

For a discussion of recent accounting pronouncements, see Note 3 to the audited consolidated financial statements included elsewhere in this 2019 Form 10-K.

Off-Balance Sheet Arrangements

As of December 31, 2019 and 2018, we did not have any off-balance sheet arrangements.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

Certain statements in this 2019 Form 10-K contain “forward-looking statements” and information within the meaning of Section 27A of the Securities Act of 1933, as amended, or the “Securities Act”, and Section 21E of the Securities Exchange Act of 1934, as amended, or the “Exchange Act”, which are subject to the “safe harbor” created by those sections. These forward-looking statements include, but are not limited to, statements about our plans, objectives, representations and intentions and are not historical facts and typically are identified by use of terms such as “may,” “should,” “could,” “expect,” “plan,” “anticipate,” “believe,” “estimate,” “predict,” “potential,” “continue,” “will,” “would” and similar words, although some forward-looking statements are expressed differently. You should be aware that the forward-looking statements included herein represent management’s current judgment and expectations, but our actual results, events and performance could differ materially from those in the forward-looking statements. Specifically, this 2019 Form 10-K contains forward-looking statements regarding:

- our expectations regarding the potential benefits and synergies we can derive from our acquisitions;
- our expectations to offer clients a broad array of interrelated services, the impact of such strategy on our future profitability and growth and our belief regarding our resulting market position;
- our beliefs regarding our competitive advantages;
- our expectations regarding increased movie marketing budgets at several large key clients and the impact of such increased budgets on revenue and profit in our entertainment publicity and marketing segment over the next several years;
- our intention to hire new individuals or teams whose existing books of business and talent rosters can be accretive to revenues and profits of the business and our expectations regarding the impact of such additional hires on the growth of our revenues and profits;
- our beliefs regarding the drivers of growth in the entertainment publicity and marketing segment, the timing of such anticipated growth trend and its resulting impact on the overall revenue;
- our intention to expand into television production in the near future;
- our belief regarding the transferability of 42West, The Door, Shore Fire and Viewpoints skills and experience to related business sectors and our intention to expand our involvement in those areas;
- our intention to grow and diversify our portfolio of film and digital content and our beliefs regarding our strategies to accomplish such growth and diversification;
- our beliefs regarding the impact of our strategic focus on content and creation of innovative content distribution strategies on our competitive position in the industry, use of capital, growth and long-term shareholder value;
- our plan to balance our financial risks against the probability of commercial success for each project;
- our intention to selectively pursue complementary acquisitions to enforce our competitive advantages, scale and grow, our belief that such acquisitions will create synergistic opportunities and increased profits and cash flows, and our expectation regarding the timing of such acquisitions;
- our expectations concerning our ability to derive future cash flows and revenues from the production, release and advertising of future web series on online platforms, and the timing of receipt of such cash flows and revenues;
- our expectations concerning the timing of production and release of future feature films and digital projects, our intention to obtain financing for such projects and our target demographics;
- our intention to use our purchased scripts for future motion picture and digital productions;
- our expectations to raise funds through loans, additional sales of our common stock, securities convertible into our common stock, debt securities or a combination of financing alternatives;

- our belief that the only recourse to the lenders under the production service agreement is to foreclose on the collateral securing the loans, which consists of the copyright for *Max Steel*;
- our beliefs regarding the outcome of litigation to which we are a party, that arise in the ordinary course of business; and
- our intention to implement improvements to address material weaknesses in internal control over financial reporting.

These forward-looking statements reflect our current views about future events and are subject to risks, uncertainties and assumptions. We wish to caution readers that certain important factors may have affected and could in the future affect our actual results and could cause actual results to differ significantly from those expressed in any forward-looking statement. The most important factors that could prevent us from achieving our goals, and cause the assumptions underlying forward-looking statements and the actual results to differ materially from those expressed in or implied by those forward-looking statements include, but are not limited to, the following:

- our ability to continue as a going concern;
- our history of net losses and our ability to generate a profit;
- our significant indebtedness and our ability to obtain additional financing or service the existing indebtedness;
- the effect of the COVID-19 outbreak on our business and operations;
- our ability to realize the anticipated benefits of the acquisitions we have made, including synergies, expanded interrelated service offerings, growth and increased revenues;
- our ability to accurately predict our clients' acceptance of our differentiated business model that offers interrelated services;
- our ability to successfully identify and complete acquisitions in line with our growth strategy and anticipated timeline, and to realize the anticipated benefits of those acquisitions;
- our ability to accurately interpret trends and predict future demand in the digital media and film industries;
- our ability to comply with terms and covenants in our revolving credit line;
- our ability to maintain compliance with Nasdaq listing requirements;
- the ability of the lenders under the production service agreement to successfully assert that we are liable to them for the payment of Max Steel VIE's debt;
- adverse events, trends and changes in the entertainment or entertainment marketing industries that could negatively impact our operations and ability to generate revenues;
- loss of a significant number of entertainment publicity and marketing clients;
- the ability of key 42West clients to increase their movie marketing budgets as anticipated;
- our ability to continue to successfully identify and hire new individuals or teams who will provide growth opportunities;
- uncertainty that our strategy of hiring of new individuals or teams will positively impact our revenues and profits;
- lack of demand for strategic communications services by traditional and non-traditional media clients who are expanding their activities in the content production, branding and consumer products PR sectors;
- unpredictability of the commercial success of our future web series and motion pictures;
- economic factors that adversely impact the entertainment industry, as well as advertising, production and distribution revenue in the online and motion picture industries;
- economic factors that adversely impact the food and hospitality industries, such as those economic factors from the global outbreak of COVID-19;
- our ability to identify, produce and develop online digital entertainment and motion pictures that meet industry and customer demand;
- competition for talent and other resources within the industry and our ability to enter into agreements with talent under favorable terms;
- our ability to attract and/or retain the highly specialized services of the 42West, The Door and Shore Fire executives and employees and our CEO;
- availability of financing from investors under favorable terms;

- our ability to adequately address material weaknesses in internal control over financial reporting; and
- uncertainties regarding the outcome of pending litigation.

The foregoing list of important factors does not include all such factors, nor necessarily present them in order of importance. In addition, you should consult other disclosures made by the Company (such as in our other filings with the SEC or in Company press releases) for other factors that may cause actual results to differ materially from those projected by the Company. Please refer to Part I, Item 1A, Risk Factors of this 2019 Form 10-K for additional information regarding factors that could affect the Company's results of operations, financial condition and liquidity. Any forward-looking statements, which we make in this 2019 Form 10-K, speak only as of the date of such statement, and we undertake no obligation to update such statements, except as otherwise required by applicable law. We can give no assurance that such forward-looking statements will prove to be correct. An occurrence of, or any material adverse change in, one or more of the risk factors or risks and uncertainties referred to in this report or included in our other periodic reports filed with the SEC could materially and adversely impact our operations and our future financial results. Comparisons of results for current and any prior periods are not intended to express any future trends or indications of future performance, unless expressed as such, and should only be viewed as historical data.

Any public statements or disclosures made by us following this report that modify or impact any of the forward-looking statements contained in or accompanying this report will be deemed to modify or supersede such outlook or other forward-looking statements in or accompanying this report.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not required for smaller reporting companies.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The financial statements required by this Item 8 are included at the end of this Report beginning on page F-1 as follows:

	<u>Page</u>
Reports of Independent Registered Public Accounting Firm	F-2
Consolidated Balance Sheets as of December 31, 2019 and 2018	F-3
Consolidated Statements of Operations for the years ended December 31, 2019 and 2018	F-4
Consolidated Statements of Cash Flows for the years ended December 31, 2019 and 2018	F-5
Consolidated Statements of Changes in Stockholders' Equity for the years ended December 31, 2019 and 2018	F-7
Notes to Consolidated Financial Statements	F-8

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Management's Report on the Effectiveness of Disclosure Controls and Procedures

Disclosure controls and procedures are controls and other procedures that are designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in our reports filed under the Exchange Act is accumulated and communicated to management, including our Chief Executive Officer, to allow timely decisions regarding required disclosure.

We carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) as of December 31, 2019. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were not effective due to material weaknesses identified in our internal control over financial reporting described below.

We are responsible for establishing and maintaining adequate internal control over financial reporting as such term is defined by Exchange Act Rule 13a-15(f). Our internal controls are designed to provide reasonable assurance as to the reliability of our financial statements for external purposes in accordance with accounting principles generally accepted in the United States.

Internal control over financial reporting has inherent limitations and may not prevent or detect misstatements. Therefore, even those systems determined to be effective can provide only reasonable, not absolute, assurance with respect to financial statement preparation and presentation. Further, because of changes in conditions, the effectiveness of internal control over financial reporting may vary over time.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

Under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, we have evaluated the effectiveness of our internal control over financial reporting as of December 31, 2019, as required by Exchange Act Rule 13a-15(c). The framework on which such evaluation was based is contained in the report entitled "Internal Control — Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 Framework) (the "COSO Report"). We concluded that based on our evaluation, our internal control over financial reporting was not effective as of December 31, 2019, due to the following material weaknesses that have been outstanding since our review in 2016:

- We determined the following design deficiencies related to the entity level control environment, including risk assessment, information and communication and monitoring controls.
 - There is no documented fraud risk assessment or risk management oversight function.
 - There is no documented process to monitor and remediate deficiencies in internal controls.
- We determined that review and approval of certain aspects of the accounting process including the documented review of accounting reconciliations, complex transactions and journal entries are inadequate and thus considered to be a material weakness in internal control. Specifically:
 - There are no documented period end procedures for analyzing complex transactions and documented approval of accounting reconciliations and journal entries.
- We observed the following inadequate segregation of duties within the accounting process that we determined were a material weakness of our internal control:
 - One individual has the ability to add vendors to the master vendor file. This individual also has access to the Company checkbook that is maintained in a secured location.

Remediation of Material Weaknesses in Internal Control over Financial Reporting

In order to remediate the material weaknesses in internal control over financial reporting, we will continue to implement improvements during fiscal year 2020, under the direction of our board of directors, as follows:

- Our board of directors intends to review the COSO "Internal Control over Financial Reporting - Guidance for Smaller Public Companies" that was published in 2006 including the control environment, risk assessment, control activities, information and communication and monitoring. Based on this framework, the board of directors plans to implement controls as needed assuming a cost benefit relationship. In addition, our board of directors plans to evaluate the key concepts of the updated 2013 COSO "Internal Control – Integrated Framework" as it provides a means to apply internal control to any type of entity.
- Implement a procedure to document the review and approval of accounting reconciliations and journal entries on a monthly basis and discussion of complex transactions and the appropriate accounting treatment;
- Enhance our controls over segregation of duties.

Limitations on Effectiveness of Controls and Procedures

A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. We do not expect that our disclosure controls will prevent or detect all errors and all fraud. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Controls can also be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the controls. The design of any system of controls is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions or deterioration in the degree of compliance with associated policies or procedures. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

Changes in Internal Controls

During the year ended December 31, 2019, we implemented the following procedures to remediate some of the material weaknesses in internal controls:

- During the third quarter of 2019, we hired a Corporate Controller that is in the process of standardizing the accounting software and chart of accounts across all of the Company's subsidiaries. We expect to have this completed during the second quarter of 2020.
- We have engaged the services of an independent public accounting firm to assist with review of complex accounting transactions.
- During 2019, the Company implemented formal month-end closing procedures for its subsidiaries and reviews on a monthly basis the budget to actual results. This allows management to closely monitor its results against expected results and make any necessary changes when actual results differ from expected results.

We are neither an accelerated filer nor a large accelerated filer, as defined in Rule 12b-2 under the Exchange Act, and are not otherwise including in this 2019 Form 10-K an attestation report of our independent registered public accounting firm regarding internal control over financial reporting. Management's report was not required to be attested to by our registered public accounting firm pursuant to Item 308(b) of Regulation S-K.

ITEM 9B. OTHER INFORMATION

Item 3.02 Unregistered Sales of Equity Securities

On March 25, 2020, the Company issued a convertible promissory note to a third-party investor for a principal amount of \$560,000 and received \$500,000, net of transaction costs of \$10,000 and original issue discount. The Company also issued 50,000 shares of Common Stock to the investor related to this convertible note payable. The maturity date of the convertible promissory note is March 25, 2021 and the balance of the convertible promissory note and any accrued interest may be converted into our common stock at the noteholder's option at any time at a purchase price \$0.78 per share of our common stock. The conversion price is subject to price protection anti-dilution upon any dilutive issuance (or deemed issuance) of common stock at a price below \$0.78 per share, and is also subject to pro rata adjustments for stock splits, recapitalizations, reorganizations and certain fundamental transactions involving the Company or its securities. The proceeds of the convertible note will be used for working capital.

The securities referred to above, including the shares of Common Stock issuable upon conversion of the promissory notes and exercise of the warrants, were offered, issued and sold by the Company to the investors in reliance upon the exemption from registration provided by Section 4(a)(2) of the Securities Act and Rule 506 of Regulation D promulgated thereunder. The Investor represented to the Company that it was an "accredited investor", as defined in Rule 501(a) under the Securities Act, and that it was acquiring such securities for investment purposes.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS, AND CORPORATE GOVERNANCE

The information required by this item is incorporated by reference to our Proxy Statement for our 2020 Annual Meeting of Shareholders to be filed with the SEC within 120 days after the end of the fiscal year ended December 31, 2019 and is incorporated herein by reference.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this item is incorporated by reference to our Proxy Statement for our 2020 Annual Meeting of Shareholders to be filed with the SEC within 120 days after the end of the fiscal year ended December 31, 2019 and is incorporated herein by reference.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information required by this item is incorporated by reference to our Proxy Statement for our 2020 Annual Meeting of Shareholders to be filed with the SEC within 120 days after the end of the fiscal year ended December 31, 2019 and is incorporated herein by reference.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information required by this item is incorporated by reference to our Proxy Statement for our 2020 Annual Meeting of Shareholders to be filed with the SEC within 120 days after the end of the fiscal year ended December 31, 2019 and is incorporated herein by reference.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

The information required by this item is incorporated by reference to our Proxy Statement for our 2020 Annual Meeting of Shareholders to be filed with the SEC within 120 days after the end of the fiscal year ended December 31, 2019 and is incorporated herein by reference.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

(a) Documents filed as part of this report:

(1) Financial Statements

See Item 8 for Financial Statements included with this 2019 Form 10-K.

(2) Financial Statement Schedules

None.

(3) Exhibits

The exhibits identified in the Exhibit Index below are included herein or incorporated by reference.

Exhibit Index

Exhibit No.	Description	Incorporated by Reference
2.1	Membership Interest Purchase Agreement, dated as of March 30, 2017, by and among the Company and Leslee Dart, Amanda Lundberg, Allan Mayer and The Beatrice B. Trust.*	Incorporated herein by reference to Exhibit 2.2 to the Company's Annual Report on Form 10-K for the year ended December 31, 2016.
2.2	Agreement and Plan of Merger, dated July 5, 2018, by and among the Company, The Door, Merger Sub and the Members.	Incorporated herein by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K, filed on July 11, 2018.
2.3	Share Purchase Agreement, dated October 31, 2018, by and among the Company, Sellers and Sellers' Representative.	Incorporated herein by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K, filed on November 1, 2018.
2.4	Share Purchase Agreement, dated December 3, 2019, by and among the Company and Marilyn Lavery	Incorporated herein by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K, filed on December 4, 2019.
3.1(a)	Amended and Restated Articles of Incorporation of Dolphin Entertainment, Inc. (conformed copy incorporating all amendments through September 14, 2017).	Incorporated herein by reference to Exhibit 3.1(a) to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2017.
3.1(b)	Articles of Amendment to the Amended and Restated Articles of Incorporation of Dolphin Entertainment, Inc.	Incorporated herein by reference to Exhibit 3.1(b) to the Company's Current Report on Form 8-K, filed on September 19, 2017.
3.2	Bylaws of Dolphin Digital Media, Inc., dated as of December 3, 2014.	Incorporated herein by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K, filed on December 9, 2014.
4.1	Description of Capital Stock	Filed herewith
4.2	Registration Rights Agreement, dated as of March 30, 2017; by and among the Company and Leslee Dart, Amanda Lundberg, Allan Mayer and the Beatrice B. Trust.	Incorporated herein by reference to Exhibit 4.1 to the Company's Annual Report on Form 10-K for the year ended December 31, 2016.
4.3	Warrant Purchase Agreement, dated as of November 4, 2016, between the Company and T Squared Partners LP.	Incorporated herein by reference to Exhibit 4.5 to the Company's Current Report on Form 8-K, filed on November 10, 2016.
4.3(a)	Form of Common Stock Purchase Warrant I.	Incorporated herein by reference to Exhibit 4.5 to the Company's Current Report on Form 8-K, filed on November 10, 2016.
4.3(b)	Form of Common Stock Purchase Warrant F.	Incorporated herein by reference to Exhibit 4.2(d) to the Registration Statement on Form S-1/A (SEC File No. 333-219029), filed on October 10, 2017.
4.3(c)	Form of Common Stock Purchase Warrant.	Incorporated herein by reference to Exhibit 4.2(e) to the Registration Statement on Form S-1/A (SEC File No. 333-219029), filed on October 10, 2017.

4.4	Form of Warrant (attached as Exhibit A to Form of Warrant Agency Agreement).	Incorporated herein by reference to Exhibit 1.2 to Current Report on Form 8-K, filed on December 26, 2017.
4.5	Warrant Agency Agreement, dated as of December 20, 2017, by and between the Company and Nevada Agency and Transfer Company.	Incorporated herein by reference to Exhibit 1.2 to Current Report on Form 8-K, filed on December 26, 2017.
4.6	Form of Underwriters' Warrant.	Incorporated herein by reference to Exhibit 4.6 to the Registration Statement on Form S-1/A (SEC File No. 333-219029), filed on December 15, 2017.
4.7	Form of Lock-Up Agreement.	Incorporated herein by reference to Exhibit 4.7 to the Registration Statement on Form S-1/A (SEC File No. 333-219029), filed on December 15, 2017.
4.8	Senior Secured Convertible Promissory Note due January 5, 2020.	Incorporated herein by reference to Exhibit 4.1 to Current Report on Form 8-K, filed on July 11 2018.
4.9	Dolphin Entertainment, Inc. Senior Convertible Note	Incorporated herein by reference to Exhibit 4.1 to the Company's Current Report of Form 8-K filed on May 22, 2019
4.10	Form of Warrant issued to Lincoln Park Capital Fund LLC	Incorporated herein by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed on May 22, 2019
4.11	Convertible Note, dated as of August 12, 2019 (Leslee Dart)	Incorporated herein by reference to Exhibit 4.3 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2019.
4.12	Dolphin Entertainment, Inc. Senior Convertible Note	Incorporated herein by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on January 6, 2020
4.13	Form of Warrant issued to Lincoln Park Capital Fund LLC	Incorporated herein by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed on January 6, 2020
4.14	Dolphin Entertainment, Inc. Senior Convertible Note	Filed herewith
4.15	Form of Warrant issued to M Shanken Communications, Inc.	Filed herewith
10.1	Dolphin Entertainment Inc., 2017 Equity Incentive Plan.†	Incorporated herein by reference to Exhibit 10.1 to the Company's Registration Statement on Form S-8, filed on August 08, 2017.
10.2	Executive Employment Agreement, dated as of March 30, 2017, by and between the Company and Allan Mayer.†	Incorporated herein by reference to Exhibit 10.16 to the Registration Statement on Form S-1/A (SEC File No. 333-219029), filed on October 10, 2017.
10.3	Put Agreement, dated as of March 30, 2017, by and among the Company and Alan Mayer and William O'Dowd, IV and 42West, LLC, as guarantors.	Incorporated herein by reference to Exhibit 10.17 to the Registration Statement on Form S-1/A (SEC File No. 333-219029), filed on December 15, 2017.
10.4	Promissory Note, dated October 1, 2016, in favor of Dolphin Entertainment, LLC (formerly, Dolphin Entertainment, Inc.).	Incorporated herein by reference to Exhibit 10.18 to the Registration Statement on Form S-1/A (SEC File No. 333-219029), filed on December 05, 2017.
10.5	Business Loan Agreement, dated as of March 15, 2018, by and between 42West, LLC and BankUnited, N.A.	Incorporated herein by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2018.
10.6	Promissory Note, dated as of March 15, 2018, in favor of BankUnited, N.A.	Incorporated herein by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2018.
10.7	Commercial Security Agreement, dated as of March 15, 2018, by and between 42West, LLC and BankUnited, N.A.	Incorporated herein by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2018
10.8	'Max Steel' Revenue Participation Agreement, dated as of August 23, 2019 by and between the Company and ORF MS LLC	Incorporated herein by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2019
10.9	Securities Purchase Agreement, dated as of May 20, 2019, by and between the Company and Lincoln Park Capital Fund LLC	Incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, filed on May 22, 2019

10.10	Registration Rights Agreement, dated as of May 20, 2019, by and between the Company and Lincoln Park Capital Fund LLC	Incorporated herein by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K, filed on May 22, 2019
10.11	Amendment, Waiver and Exchange Agreement, dated as of August 12, 2019 by and between the Company, William O'Dowd IV, 42West LLC and Leslee Dart	Incorporated herein by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2019
10.12	Amendment, Waiver and Exchange Agreement, dated as of August 12, 2019 by and between the Company, William O'Dowd IV, 42West LLC and Allan Mayer	Incorporated herein by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2019
10.13	Securities Purchase Agreement, dated as of January 3, 2020, by and between the Company and Lincoln Park Capital Fund, LLC	Incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on January 6, 2020
10.14	Registration Rights Agreement, dated as of January 3, 2020, by and between the Company and Lincoln Park Capital Fund, LLC	Incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on January 6, 2020
10.15	Securities Purchase Agreement, dated as of March 4, 2020, by and between the Company and M. Shanken Communications, Inc.	Filed herewith.
10.16	Registration Rights Agreement, dated as of March 4, 2020, by and between the Company and M. Shanken Communications, Inc.	Filed herewith.
21.1	List of Subsidiaries of the Company.	Filed herewith.
23.1	Consent of BDO USA, LLP.	Filed herewith.
31.1	Certification of Chief Executive Officer of the Company, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	Filed herewith.
31.2	Certification of Chief Financial Officer of the Company pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	Filed herewith.
32.1	Certification of Chief Executive Officer of the Company pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	Furnished herewith.
32.2	Certification of Chief Financial Officer of the Company pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	Furnished herewith.
101.INS	XBRL Instance Document.	Filed herewith.
101.SCH	XBRL Taxonomy Extension Schema Document.	Filed herewith.
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document.	Filed herewith.
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document.	Filed herewith.
101.LAB	XBRL Taxonomy Extension Label Linkbase Document.	Filed herewith.
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document.	Filed herewith.

† Management contract or compensatory plan or arrangement.

* Schedules (and similar attachments) have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company agrees to furnish supplementally a copy of any omitted schedule to the Securities and Exchange Commission upon request.

ITEM 16 FORM 10-K SUMMARY

None.

SIGNATURES

In accordance with Section 13 or 15(d) of the Exchange Act of 1934, the Registrant caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

DOLPHIN ENTERTAINMENT, INC.

Dated: March 30, 2020

By: /s/ William O'Dowd, IV

William O'Dowd, IV
Chief Executive Officer

Dated: March 30, 2020

By: /s/ Mirta A Negrini

Mirta A Negrini
Chief Financial and Operating Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ William O'Dowd, IV</u> William O'Dowd, IV	Chairman, President and Chief Executive Officer (Principal Executive Officer)	March 30, 2020
<u>/s/ Mirta A Negrini</u> Mirta A Negrini	Chief Financial and Operating Officer and Director (Principal Financial Officer and Principal Accounting Officer)	March 30, 2020
<u>/s/ Michael Espensen</u> Michael Espensen	Director	March 30, 2020
<u>/s/ Nelson Famadas</u> Nelson Famadas	Director	March 30, 2020
<u>/s/ Nicholas Stanham</u> Nicholas Stanham	Director	March 30, 2020

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Dolphin Entertainment, Inc. (formerly known as Dolphin Digital Media, Inc.) Audited Consolidated Financial Statements

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Stockholders
Dolphin Entertainment, Inc. and subsidiaries
Coral Gables, Florida

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Dolphin Entertainment, Inc. and subsidiaries (the "Company") as of December 31, 2019 and 2018, the related consolidated statements of operations, changes in stockholders' equity, and cash flows for each of the two years then ended and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company and subsidiaries at December 31, 2019 and 2018, and the results of their operations and their cash flows for each of the two years then ended December 31, 2019, in conformity with accounting principles generally accepted in the United States of America.

Going Concern Uncertainty

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 2 to the consolidated financial statements, the Company has suffered recurring losses from operations from prior years, has an accumulated deficit, and a working capital deficit that raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 2. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Change in Accounting Principle

As discussed in Notes 3 and 21 to the consolidated financial statements, the Company has changed its method of accounting for leases in 2019 due to the adoption of Accounting Standards Codification Topic 842, Leases.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ BDO USA, LLP
Certified Public Accountants

We have served as the Company's auditor since 2014.

Miami, Florida

March 30, 2020

DOLPHIN ENTERTAINMENT, INC. AND SUBSIDIARIES
Consolidated Balance Sheets
As of December 31, 2019 and 2018

	2019	2018
ASSETS		
Current		
Cash and cash equivalents	\$ 2,196,249	\$ 5,542,272
Restricted cash	714,089	732,368
Accounts receivable, net	3,581,155	3,173,107
Other current assets	372,872	620,970
Total current assets	6,864,365	10,068,717
Capitalized production costs, net	203,036	724,585
Right-of-use asset	7,435,903	—
Intangible assets, net of amortization of \$4,299,794 and 2,714,785, respectively	8,361,539	9,395,215
Goodwill	17,947,989	15,922,601
Property, equipment and leasehold improvements, net	1,036,849	1,182,520
Investments	220,000	220,000
Deposits	502,045	475,956
Total Assets	\$ 42,571,726	\$ 37,989,594
LIABILITIES		
Current		
Accounts payable	\$ 832,089	\$ 944,232
Other current liabilities	5,373,809	5,613,753
Line of credit	1,700,390	1,700,390
Put Rights	2,879,403	4,281,595
Accrued compensation	2,625,000	2,625,000
Debt	3,311,198	4,036,582
Loan from related party	1,107,873	1,107,873
Lease liability	1,610,022	—
Contract liabilities	309,880	522,620
Convertible notes payable	2,452,960	625,000
Note payable	288,237	479,874
Total current liabilities	22,490,861	21,936,919
Noncurrent		
Put Rights	124,144	1,702,472
Convertible notes payable	1,907,575	1,376,924
Note payable	1,074,122	612,359
Contingent consideration	330,000	550,000
Lease liability	6,386,209	—
Other noncurrent liabilities	570,000	1,034,393
Total noncurrent liabilities	10,392,050	5,276,148
Total Liabilities	32,882,911	27,213,067
Commitment and contingencies (Note 21)		
STOCKHOLDERS' EQUITY		
Common stock, \$0.015 par value, 200,000,000 shares authorized, 17,892,900 and, 14,123,157, respectively, issued and outstanding at December 31, 2019 and 2018	268,402	211,849
Preferred Stock, Series C, \$0.001 par value, 50,000 shares authorized, 50,000 shares issued and outstanding at December 31, 2019 and 2018	1,000	1,000
Additional paid in capital	105,443,656	105,092,852
Accumulated deficit	(96,024,243)	(94,529,174)
Total Stockholders' Equity	\$ 9,688,815	\$ 10,776,527
Total Liabilities and Stockholders' Equity	\$ 42,571,726	\$ 37,989,594

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

DOLPHIN ENTERTAINMENT, INC. AND SUBSIDIARIES
Consolidated Statements of Operations
For the years ended December 31, 2019 and 2018

	<u>2019</u>	<u>2018</u>
Revenues:		
Entertainment publicity and marketing	\$ 24,915,261	\$21,916,727
Content production	86,606	634,612
Total revenues	25,001,867	22,551,339
Expenses:		
Direct costs	5,043,903	2,176,968
Selling, general and administrative	3,799,765	4,486,023
Depreciation and amortization	1,946,960	1,978,804
Legal and professional	1,560,483	2,119,107
Payroll	16,735,911	14,082,014
Goodwill impairment	—	1,857,000
Total expenses	29,087,022	26,699,916
Loss before other expenses	(4,085,155)	(4,148,577)
Other Income (expenses):		
Gain (loss) on extinguishment of debt	711,718	(53,271)
Acquisition costs	(106,015)	(438,552)
Change in fair value of put rights	2,880,520	616,943
Change in fair value of contingent consideration	193,557	1,070,000
Interest expense	(1,206,201)	(1,050,478)
Total other income, net	2,473,579	144,642
Loss before income taxes	\$ (1,611,576)	\$ (4,003,935)
Income tax benefit	418,199	1,090,614
Net loss	\$ (1,193,377)	\$ (2,913,321)
Loss per Share - Basic		
	\$ (0.07)	\$ (0.22)
Loss per share - Diluted		
	\$ (0.20)	\$ (0.23)
Weighted average number of shares used in per share calculation		
Basic	16,522,924	13,773,395
Diluted	21,425,506	16,159,486

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

DOLPHIN ENTERTAINMENT, INC AND SUBSIDIARIES
Consolidated Statements of Cash Flows
For the years ended December 31, 2019 and 2018

	2019	2018
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	\$ (1,193,377)	\$ (2,913,321)
Adjustments to reconcile net loss to net cash (used in) operating activities:		
Depreciation and amortization	1,946,960	1,978,804
Amortization of capitalized production costs	—	203,560
Amortization of beneficial conversion on debt	223,941	61,538
Impairment of goodwill	—	1,857,000
Impairment of capitalized production costs	670,585	200,000
Bad debt (recovery) expense, net	(109,981)	641,876
Change in fair value of put rights	(2,880,520)	(616,943)
Change in fair value of contingent consideration	(193,557)	(1,070,000)
Stock based compensation	—	20,422
Loss on extinguishment of debt	—	53,271
Gain on extinguishment of debt, net	(711,718)	—
Deferred tax	(342,410)	(1,050,375)
Change in deferred rent	—	71,266
Changes in operating assets and liabilities:		
Accounts receivable	(4,034)	858,883
Other current assets	281,500	(32,516)
Capitalized production costs	(149,036)	(52,500)
Deposits	13,430	40,219
Contract liability	(356,079)	267,817
Lease liability, net	173,814	—
Accrued compensation	—	125,000
Accounts payable	(150,893)	(231,242)
Other current liabilities	(136,166)	(437,648)
Other noncurrent liabilities	12,334	(599,826)
Net Cash (Used in) Operating Activities	(2,905,207)	(624,715)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchase of fixed assets	(103,493)	(89,653)
Acquisition of The Door, net of cash acquired	—	(910,713)
Acquisition of Viewpoint, net of cash acquired	—	(595,632)
Acquisition of Shore Fire, net of cash acquired	(794,989)	—
Net Cash (Used in) Investing Activities	(898,482)	(1,595,998)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from the sale of common stock	1,851,713	6,749,204
Proceeds from the sale of common stock and warrants (unit) in Offering	—	81,044
Proceeds from line of credit	—	1,700,390
Repayment of the line of credit	—	(750,000)
Proceeds from notes payable	348,250	1,500,000
Repayment of notes payable	(79,874)	—
Proceeds from convertible notes payable	2,100,000	—
Repayment of debt	(85,958)	(1,514,786)
Employee shares withheld for taxes	—	(56,091)
Acquisition of The Door	(771,500)	—
Acquisition of Viewpoint	(295,984)	—
Acquisition of 42West	(361,760)	(20,000)
Exercise of put rights	(2,265,500)	(3,890,280)
Repayment to related party	—	(601,001)
Net Cash Provided by Financing Activities	439,387	3,198,480
NET (DECREASE) INCREASE IN CASH AND CASH EQUIVALENTS	(3,364,302)	977,767
CASH AND CASH EQUIVALENTS, BEGINNING OF PERIOD	6,274,640	5,296,873
CASH AND CASH EQUIVALENTS, END OF PERIOD	<u>\$ 2,910,338</u>	<u>\$ 6,274,640</u>

(Continued)

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

DOLPHIN ENTERTAINMENT, INC AND SUBSIDIARIES
Consolidated Statements of Cash Flows (Continued)
For the years ended December 31, 2019 and 2018

	2019	2018
SUPPLEMENTAL DISCLOSURES OF CASH FLOWS INFORMATION:		
Cash paid during the year for:		
Interest paid	\$ 296,771	\$ 185,307
Income taxes	\$ —	\$ 135,000
SUPPLEMENTAL DISCLOSURES OF NON CASH FLOW INFORMATION:		
Conversion of put rights into shares of common stock	\$ 412,500	—
Conversion of put rights into a convertible note payable	\$ 702,500	—
Conversion of accrued interest and a note payable into a new note payable	\$ —	\$ 192,233
Conversion of debt into shares of common stock	\$ 372,936	\$ 273,425
Liability for contingent consideration related to the acquisition of The Door	\$ 330,000	\$ 550,000
Liability for put rights to sellers of 42West	\$ 3,003,547	\$ 5,984,067
Issuance of shares of Common Stock related to the acquisitions	\$ 384,063	\$ 2,673,664

Reconciliation of cash, cash equivalents and restricted cash: The following table provides a reconciliation of cash, cash equivalents and restricted cash reported within the statement of cash flows that sum to the total of the same such amounts shown in the statement of cash flows:

	2019	2018
Cash and cash equivalents	\$ 2,196,249	\$ 5,542,272
Restricted cash	714,089	732,368
Total cash, cash equivalents and restricted cash shown in the consolidated statement of cash flows	<u>\$ 2,910,338</u>	<u>\$ 6,274,640</u>

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

DOLPHIN ENTERTAINMENT INC. AND SUBSIDIARIES
Consolidated Statements of Changes in Stockholders' Equity
For the years ended December 31, 2019 and 2018

	Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders Equity (Deficit)
	Shares	Amount	Shares	Amount			
Balance December 31, 2017	50,000	\$ 1,000	10,565,789	\$ 158,487	\$ 98,816,550	\$(92,899,680)	\$ 6,076,357
Net income for the year ended December 31, 2018	—	—	—	—	—	(2,913,321)	(2,913,321)
Cumulative effect of adoption of ASU 2017-11	—	—	—	—	—	1,441,831	1,441,831
Deemed dividend from change in fair value of instruments with down round feature	—	—	—	—	158,004	(158,004)	—
Deferred tax on beneficial conversion	—	—	—	—	(47,605)	—	(47,605)
Sale of common stock and warrants through an offering pursuant to a Registration Statement on Form S-1	—	—	20,750	312	80,732	—	81,044
Sale of common stock through an offering pursuant to a Registration Statement on Form S-3	—	—	2,515,000	37,725	6,711,479	—	6,749,204
Issuance of shares related to acquisition of 42West	—	—	898,626	13,479	(33,479)	—	(20,000)
Issuance of shares related to acquisition of The Door	—	—	307,692	4,615	2,241,539	—	2,246,154
Issuance of shares related to acquisition of Viewpoint	—	—	218,088	3,273	424,237	—	427,510
Shares retired for payroll taxes per equity compensation plan	—	—	(17,585)	(264)	(35,410)	—	(35,674)
Beneficial conversion of convertible promissory note	—	—	—	—	184,614	—	184,614
Issuance of shares related to conversion of note payable	—	—	85,299	1,279	325,416	—	326,695
Shares retired from exercise of puts	—	—	(470,502)	(7,057)	(3,733,225)	—	(3,740,282)
Balance December 31, 2018	50,000	\$ 1,000	14,123,157	\$ 211,849	\$105,092,852	\$(94,529,174)	\$10,776,527
Net loss for the year ended December 31, 2019	—	—	—	—	—	(1,193,377)	(1,193,377)
Fair value of warrants and beneficial conversion of note payable	—	—	—	—	293,144	—	293,144
Shares issued pursuant to Amendment, Waiver and Exchange Agreement of August 12, 2019	—	—	385,514	5,783	406,717	—	412,500
Deemed dividend from change in fair value of instruments with down round feature	—	—	—	—	301,692	(301,692)	—
Deferred tax on beneficial conversion	—	—	—	—	(39,195)	—	(39,195)
Issuance of shares related to acquisition of The Door	—	—	307,692	4,622	109,002	—	113,624
Issuance of shares related to conversion of notes payable	—	—	433,794	6,507	363,809	—	370,316
Sale of common stock through an offering pursuant to a Registration Statement on Form S-3	—	—	2,700,000	40,500	1,811,213	—	1,851,713
Issuance of shares related to acquisition of Shore Fire	—	—	314,812	4,722	195,278	—	200,000
Third installment of consideration for acquisition of Viewpoint paid with equity	—	—	—	—	184,063	—	184,063
Shares retired from exercise of puts	—	—	(372,069)	(5,581)	(3,274,919)	—	(3,280,500)
Balance December 31, 2019	50,000	\$ 1,000	17,892,900	\$ 268,402	\$105,443,656	\$(96,024,243)	\$ 9,688,815

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

DOLPHIN ENTERTAINMENT, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2019 AND 2018

NOTE 1 — BASIS OF PRESENTATION AND ORGANIZATION

Dolphin Entertainment, Inc., a Florida corporation (the “Company,” “Dolphin,” “we,” “us” or “our”), is a leading independent entertainment marketing and premium content development company. Through its acquisitions of 42West LLC (“42West”), The Door Marketing Group, LLC (“The Door”), Shore Fire Media, Ltd (“Shore Fire”) and Viewpoint Computer Animation Incorporated (“Viewpoint”), the Company provides expert strategic marketing and publicity services to all of the major film studios, and many of the leading independent and digital content providers, A-list celebrity talent, including actors, directors, producers, celebrity chefs and recording artists. The Company also provides strategic marketing publicity services and creative brand strategies for prime hotel and restaurant groups. The strategic acquisitions of 42West, The Door, Shore Fire and Viewpoint bring together premium marketing services with premium content production, creating significant opportunities to serve respective constituents more strategically and to grow and diversify the Company’s business. Dolphin’s content production business is a long established, leading independent producer, committed to distributing premium, best-in-class film and digital entertainment. Dolphin produces original feature films and digital programming primarily aimed at family and young adult markets.

The accompanying consolidated financial statements include the accounts of Dolphin, and all of its wholly-owned and controlled subsidiaries, including Dolphin Films, Inc, Dolphin SB Productions LLC, Dolphin Max Steel Holdings LLC, Dolphin JB Believe Financing, LLC, Dolphin JOAT Productions, LLC, 42West, The Door, Viewpoint and Shore Fire.

The Company enters into relationships or investments with other entities, and in certain instances, the entity in which the Company has a relationship or investment may qualify as a variable interest entity (“VIE”). A VIE is consolidated in the financial statements if the Company is deemed to be the primary beneficiary of the VIE. The primary beneficiary is the party that has the power to direct activities that most significantly impact the activities of the VIE and has the obligation to absorb losses or the right to benefits from the VIE that could potentially be significant to the VIE. The Company has included Max Steel Productions, LLC formed on July 8, 2013 in the State of Florida and JB Believe, LLC formed on December 4, 2012 in the State of Florida in its consolidated financial statements as VIEs.

On July 5, 2018, the Company entered into an Agreement and Plan of Merger (the “Merger Agreement”), together with Lois O’Neill and Charles Dougiello (collectively, the “Members”), The Door Marketing Group, LLC, a New York limited liability company, and Window Merger Sub, LLC, a New York limited liability company and wholly owned subsidiary of the Company (“Merger Sub”). Pursuant to the Merger Agreement, The Door Marketing Group, LLC merged into Merger Sub, with Merger Sub surviving the merger and continuing as a wholly owned subsidiary of the Company (the “Merger”). Subsequent to the Merger, Merger Sub changed its name to The Door Marketing Group LLC. The total consideration payable to the Members in respect of the Merger is composed of the following: (i) \$2.0 million in shares of Common Stock based on a price of \$3.25 per share, (ii) \$2.0 million in cash (as adjusted for certain working capital and closing adjustments and transaction expenses) and (iii) up to an additional \$7.0 million of contingent consideration in a combination of cash and shares of Common Stock upon the achievement of specified financial performance targets over a four-year period as set forth in the Merger Agreement. Each of the Members has entered into a four-year employment agreement with The Door, pursuant to which each Member has agreed not to transfer any shares of Common Stock received as consideration for the Merger (the “Share Consideration”) in the first year following the closing date of the Merger, no more than 1/3 of such Share Consideration in the second year and no more than an additional 1/3 of such Share Consideration in the third year. See Note 4 for additional information regarding the Merger.

On July 24, 2018, in an underwritten registered public offering, the Company issued and sold 2,000,000 shares of Common Stock at a public offering price of \$3.00 per share (the “2018 Offering”). The net proceeds of the 2018 Offering were approximately \$5.3 million, after deducting underwriting discounts and commissions and offering expenses payable by the Company. Pursuant to the related underwriting agreement, the Company granted an over-allotment option to the underwriter, which it exercised on August 22, 2018 and purchased an additional 265,000 shares of Common Stock providing the Company with proceeds of approximately \$707,000 after deducting the underwriter discount and related offering expenses.

DOLPHIN INVESTMENT, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2019 AND 2018

On September 19, 2018, the Company issued and sold to a single investor in a registered direct offering an aggregate of 250,000 shares of the Common Stock at a price of \$3.00 per share. The offering of the shares was made pursuant to the Company's effective shelf registration statement on Form S-3 previously filed with the Securities and Exchange Commission. The Company received proceeds of approximately \$730,000 from the issuance and sale of the Common Stock after deducting related offering expenses.

On October 31, 2018, (the "Viewpoint Closing Date") the Company entered into a Stock Purchase Agreement, with Carlo DiPersio, David Shilale, Michael Middleleer and Glenn Robbins (collectively, the "Viewpoint Shareholders") to acquire 100% of the outstanding shares of Viewpoint from the Viewpoint Shareholders. The consideration paid to the Viewpoint Shareholders is \$2 million as follows: (i) \$750,000 in cash on the Viewpoint Closing Date (adjusted for Viewpoint's indebtedness, working capital and cash targets, and transaction expenses); (ii) \$500,000 in shares of Common Stock at a price of \$2.29 per share (218,088 shares) issued to the Viewpoint Shareholders on the Viewpoint Closing Date and (iii) an additional \$750,000 in cash in three equal payments of \$250,000 each to paid to the Viewpoint Shareholders on the six, twelve and eighteen-month anniversaries of the Viewpoint Closing Date (subject to a right of setoff for certain adjustments and indemnification obligations). See Note 4 for additional information regarding the acquisition.

On October 21, 2019, in an underwritten registered public offering, the Company issued and sold 2,700,000 shares of Common Stock at a public offering price of \$0.7828 per share (the "2019 Offering"). The offering of the shares was made pursuant to the Company's effective shelf registration statement on Form S-3 previously filed with the Securities and Exchange Commission. The net proceeds of the 2019 Offering were approximately \$1.9 million, after deducting underwriting discounts and commissions and offering expenses payable by the Company. Pursuant to the related underwriting agreement, the Company granted an over-allotment option for a period of 45 days to the underwriter of an additional 405,000 shares of Common Stock, that was not exercised.

On December 3, 2019 (the "Shore Fire Closing Date") the Company entered in a Stock Purchase Agreement with Marilyn Laverty (the "Shore Fire Seller") to acquire 100% of the outstanding shares of Shore Fire from the Shore Fire Seller. The consideration paid to the Shore Fire Seller is \$3 million as follows: (i) \$1,140,000 in cash on the Shore Fire Closing Date (adjusted for Shore Fire Media's indebtedness, working capital and cash targets); (ii) \$200,000 in shares of Common Stock at a price of \$0.64 per share (314,812 shares) issued to the Shore Fire Seller on the Shore Fire Closing Date, (iii) an additional \$400,000 in shares of common stock paid in two equal installments of \$200,000 each on the first and second anniversary of the Shore Fire Closing Date, (iv) an additional \$1,000,000 in cash paid in four equal payments of \$250,000 each to the Shore Fire Seller on the six, twelve, and twenty-four month anniversaries of the Shore Fire Closing Date, and (v) \$140,000 and \$120,000 in cash paid to key employees on the first and second anniversary of the Shore Fire Closing Date. See Note 4 for additional information regarding the acquisition.

NOTE 2 — GOING CONCERN

The accompanying consolidated financial statements have been prepared in conformity with U.S generally accepted accounting principles ("U.S. GAAP") and contemplate the continuation of the Company as a going concern. For the years ended December 31, 2019 and 2018, the Company had a net loss of \$1,193,377 and \$2,913,321, respectively. The Company has recorded an accumulated deficit of \$96,024,243 and \$94,529,174, respectively and a working capital deficit of \$15,626,495 and \$11,868,202, respectively, as of December 31, 2019 and 2018 and therefore does not have adequate capital to fund its obligations as they come due or to maintain or grow its operations. The Company is dependent upon funds from private investors, proceeds from debt securities, securities convertible into shares of its Common Stock, sales of shares of Common Stock and financial support of certain shareholders. If the Company is unable to obtain funding from these sources within the next 12 months, it could be forced to liquidate. Please see Note 22 for discussion of uncertainty related to COVID-19.

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These factors raise substantial doubt about the ability of the Company to continue as a going concern. The consolidated financial statements do not include any adjustments that might result from the outcome of these uncertainties. In this regard, management is planning to raise any necessary additional funds through additional issuance of Common Stock, securities convertible into Common Stock, debt securities, as well as available bank and non-bank financing, or a combination of such financing alternatives. There is no assurance that the Company will be successful in raising additional capital. Any issuance of shares of Common Stock or securities convertible into Common Stock would dilute the equity interests of our existing shareholders, perhaps substantially. The Company currently has the rights to several scripts, including one currently in development for which it intends to obtain financing to produce and release following which it expects to earn a producer and overhead fee. There can be no assurances that such production, together with any other productions, will be commenced or released or that fees will be realized in future periods. With the acquisition of 42West, The Door, Viewpoint, and Shore Fire, the Company is currently exploring opportunities to expand the services currently being offered by these companies while reducing expenses through synergies with the Company. There can be no assurance that the Company will be successful in selling these services to clients or reducing expenses. Under the Company's currently effective shelf registration statement on Form S-3, the Company may sell up to \$30,000,000 of equity securities. However, pursuant to applicable SEC rules, the Company's ability to sell securities registered under this shelf registration statement, during any 12-month period, is limited to an amount less than or equal to one-third of the aggregate market value of the Common Stock held by non-affiliates; therefore, there is no assurance that the Company will be able to raise capital through the issuance and sale of equity securities under this registration statement, irrespective of whether there is market demand for such securities.

NOTE 3 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Use of Estimates

The preparation of financial statements in conformity with U.S. 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 financial statements, and the reported amounts of revenue and expenses during the reporting period. The most significant estimates made by management in the preparation of the financial statements relate to expected revenue and costs for investment in digital and feature film projects; estimates of sales returns and other allowances and provisions for doubtful accounts and impairment assessments for investment in digital and feature film projects, goodwill and intangible assets. Actual results could differ from such estimates.

Statement of Comprehensive Income

In accordance with Financial Accounting Standards Board ("FASB") Accounting Standard Codification ("ASC") Topic 220, *Comprehensive Income*, a statement of comprehensive income has not been included as the Company has no items of other comprehensive income. Comprehensive loss is the same as net loss for all periods presented.

Cash and cash equivalents

Cash and cash equivalents consist of cash deposits at financial institutions. The Company considers all highly liquid investments with a maturity of three months or less when purchased to be cash equivalents.

Restricted Cash

Restricted cash represents amounts held by banking institutions as collateral for security deposits under leases for office space in New York City and Newton, Massachusetts. As of December 31, 2019 and 2018 the Company had a balance of \$714,089 and \$732,368, respectively, in restricted cash.

Contracts in the Company's Equity

From time to time, the Company issues contracts related to its own equity securities, such as warrants and convertible notes. The Company evaluates whether a standalone contract (such as a warrant), or an embedded feature of a contract (such as the conversion feature of a convertible note) should be classified in stockholders' deficit or as a liability in the Company's consolidated balance sheet. The determination is made in accordance with the requirements of ASC Topic 480, *Distinguishing Liabilities from Equity* (ASC 480), and ASC Topic 815, *Derivatives and Hedging* (ASC 815).

A warrant is classified as equity so long as it is "indexed to the Company's equity" and several specific conditions for equity classification are met. Effective July 1, 2018, the Company adopted ASU 2017-11, Earnings Per Share (Topic 260), distinguishing Liabilities from Equity (Topic 480), Derivatives and Hedging (Topic 815). The amendments in Part I of this ASU changed the classification analysis of certain equity-linked financial instruments (or embedded features) with down round features.

When determining whether certain financial instruments should be classified as liabilities or as equity instruments, a down round feature (i.e. a financial anti-dilution provision) no longer precludes equity classification when assessing whether the instrument is indexed to an entity's own stock. The amendments also clarify existing disclosure requirements for equity-classified instruments. As a result, a freestanding equity-linked financial instrument (or embedded conversion option) no longer would be accounted for as a derivative liability at fair value as a result of the existence of a down round feature.

For freestanding equity classified financial instruments, the amendments require entities that present earnings per share (EPS) in accordance with Topic 260 to recognize the effect of the down round feature when it is triggered. That effect is treated as a dividend and as a reduction of income available to common shareholders in basic EPS.

The Company adopted ASU 2017-11 by electing the modified retrospective method to the outstanding financial instruments with a down round feature by means of a cumulative-effect adjustment to retained earnings as of the beginning of the fiscal year ended December 31, 2018. Accordingly, the Company reclassified the fair value of the warrants with down round protection provisions from liability to equity (accumulated deficit) and resulted in a cumulative effect adjustment to beginning retained earnings in the aggregate amount of \$1,441,831.

Revenue Recognition

Entertainment publicity and marketing

Entertainment publicity and marketing revenue consists of fees from the performance of professional services, billings for direct costs reimbursed by clients and revenue from producing video content for marketing. The revenues derived from fees and reimbursed expenses are directly dependent upon the publicity and corporate communications requirements of the Company's existing clients and its ability to win new clients. As is customary in the industry, the agreements with the fee-based clients generally provide for termination by either party on relatively short notice, usually 30 days. Some of the contracts may include incentive compensation for our clients' nominations of certain Academy Awards. Fees are generally recognized on a straight-line or monthly basis which approximates the proportional performance on such contracts. Direct costs reimbursed by clients are billed as pass-through revenue with no mark-up. The entertainment publicity and marketing segment also recognizes revenue from the production of video content for marketing purposes which is recognized at a point in time when the project is delivered to and available for use by the client. Cash payments received as deposits for these videos are recorded as contract liabilities until the project is completed.

Content production

Revenue from motion pictures and web series is recorded when a distribution contract, domestic or international, exists, the movie or web series is complete in accordance with the terms of the contract, the customer can begin exhibiting or selling the movie or web series, the fee is determinable and collection of the fee is reasonable. On occasion, the Company may enter into agreements with third parties for the co-production or distribution of a movie or web series. Revenue from these agreements will be recognized when the movie is complete and ready to be exploited. Cash received and amounts billed in advance of meeting the criteria for revenue recognition is classified as contract liabilities.

Gross versus Net Revenue

The Company's motion pictures are primarily distributed and marketed by third party distributors. The Company evaluates its arrangements with third parties to determine whether revenue should be reported under each individual arrangement on a gross or net basis by determining whether the Company acts as the principal or agent under the terms of each arrangement. To the extent that the Company acts as the principal in an arrangement, revenues are reported on a gross basis, resulting in revenues and expenses being classified in their respective financial statement line items. Conversely, to the extent that the Company acts as the agent in an arrangement, revenues are reported on a net basis, resulting in revenues being presented net of any related expenses. Determining whether the Company acts as principal or agent is based on an evaluation of which party has substantial risks and rewards of ownership under the terms of an arrangement. The most significant factors that the Company considers include identification of the primary obligor, as well as which party has general and physical inventory risk, credit risk and discretion in the supplier selection. The Company's primary distribution arrangements, which are those for its theatrical release, are recorded on a gross basis as a result of the evaluation previously described.

Additionally, because third parties are the principal distributors of the Company's movies, the amount of revenue that is recognized from films in any given period is dependent on the timing, accuracy and sufficiency of the information received from its distributors. As is typical in the film industry, the Company's distributors may make adjustments in future periods to information previously provided to the Company that could have a material impact on the Company's operating results in later periods. Furthermore, management may, in its judgment, make material adjustments to the information reported by its distributors in future periods to ensure that revenues are accurately reflected in the Company's financial statements. To date, the distributors have not made, nor has the Company made, subsequent material adjustments to information provided by the distributors and used in the preparation of the Company's historical financial statements.

In general, the Company records revenue when it can identify the contract, identify the performance obligation, determine the transaction price, allocate the transaction price and collectability is reasonably assured.

Capitalized Production Costs

Capitalized production costs represent the costs incurred to develop and produce a motion picture or a web series. These costs primarily consist of salaries, equipment and overhead costs, capitalized interest as well as the cost to acquire rights to scripts. Production costs are stated at the lower of cost, less accumulated amortization and tax credits, if applicable, or fair value. These costs are capitalized in accordance with FASB ASC Topic 926-20-50-2 "Other Assets – Film Costs". Unamortized capitalized production costs are evaluated for impairment whenever events or changes in circumstances indicate that the carrying value of the capitalized production costs is below their fair value. If estimated remaining revenue is not sufficient to recover the unamortized capitalized production costs for that title, the unamortized capitalized production costs will be written down to fair value. The Company is responsible for certain contingent compensation, known as participations, paid to certain creative participants such as writers, directors and actors. Generally, these payments are dependent on the performance of the motion picture or web series and are based on factors such as total revenue as defined per each of the participation agreements.

The Company is also responsible for residuals, which are payments based on revenue generated from secondary markets and are generally paid to third parties pursuant to a collective bargaining, union or guild agreement. The Company has entered into a fifteen-year distribution agreement for its motion picture, *Max Steel*. As provided in the agreement, the distributor has entered into a distribution assumption agreement with the guilds to pay the residuals from gross revenues. Upon expiration of the term of the agreement, and nonrenewal, the Company will be responsible for making the payments directly. These costs are accrued to direct operating expenses as the revenues, as defined in the participation agreements are achieved and as sales to the secondary markets are made triggering the residual payment.

Due to the inherent uncertainties involved in making such estimates of ultimate revenues and expenses, these estimates are likely to differ to some extent in the future from actual results. Management regularly reviews and revises when necessary its ultimate revenue and cost estimates, which may result in a change in the rate of amortization of film costs and participations and residuals and/or write-down of all or a portion of the unamortized deferred production costs to its estimated fair value. Management estimates the ultimate revenue based on existing contract negotiations with domestic distributors and international buyers as well as management's experience with similar productions in the past. Amortization of film costs, participation and residuals and/or write downs of all or a portion of the unamortized deferred production costs to its estimated fair value is recorded in direct costs.

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An increase in the estimate of ultimate revenue will generally result in a lower amortization rate and, therefore, less amortization expense of deferred productions costs, while a decrease in the estimate of ultimate revenue will generally result in a higher amortization rate and, therefore, higher amortization expense of deferred production costs, and also periodically results in an impairment requiring a write-down of the deferred production costs to fair value. These write-downs are included in direct costs within the consolidated statements of operations. During the year ended December 31, 2019, as a result of the revenue participation agreement with the lender of the prints and advertising loan, the Company impaired all remaining capitalized costs related to *Max Steel* in the amount of \$629,585 as direct costs in its consolidated statement of operations. During the year ended December 31, 2018, the Company amortized \$203,560 of capitalized production costs related to the revenues earned for *Max Steel*.

The Company periodically reviews capitalized production costs to determine whether they will ultimately be used in the production of a film or web series. Per ASC 926-20-40-1, it is presumed that an entity will dispose of a property if it has not been set for production within three years from the time it was first capitalized. Based on this guidance, during the years ended December 31, 2019 and 2018, the Company impaired costs related to several scripts in the amount of \$41,000 and \$200,000, respectively. The impairments were recorded in direct costs on the consolidated statement of operations.

Investment

Investment represents an investment in equity securities of The Virtual Reality Company ("VRC"), a privately held company. The Company's \$220,000 investment in VRC represents less than a 1% noncontrolling ownership interest in VRC and there is no market for VRC's common stock. These shares do not have a readily determinable fair value and as such, the Company has elected to account for them at cost less any impairments.

Long-Lived Assets

The Company reviews long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability is measured by comparison of the carrying amount to the future net undiscounted cash flows which the assets are expected to generate. If such assets are considered to be impaired, the impairment to be recognized equals the amount by which the carrying value of the assets exceeds its fair value. Except for those described above in Capitalized Production Costs and those described below in Goodwill, there were no impairment charges for long lived assets during the years ended December 31, 2019 and 2018.

Property, Equipment and Leasehold Improvements

Property and equipment is recorded at cost and depreciated over the estimated useful lives of the assets using the straight-line method. The Company recorded depreciation expense of \$361,951 and \$307,274, respectively for the years ended December 31, 2019 and 2018. When items are retired or otherwise disposed of, income is charged or credited for the difference between net book value and proceeds realized thereon. Ordinary maintenance and repairs are charged to expense as incurred, and replacements and betterments are capitalized. Leasehold improvements are amortized over the lesser of the term of the related lease or the estimated useful lives of the assets. The range of estimated useful lives to be used to calculate depreciation and amortization for principal items of property and equipment are as follow:

Asset Category	Depreciation/ Amortization Period (Years)
Furniture and fixtures	5 - 7
Computer and office equipment	3 - 5
Leasehold improvements	5 - 8, not to exceed the lease terms

Business Combinations

The Company accounts for business combinations under the acquisition method of accounting. Identifiable assets acquired, liabilities assumed and any noncontrolling interest in the acquiree are recognized and measured as of the acquisition date at fair value. Goodwill is recognized to the extent by which the aggregate of the acquisition-date fair value of the consideration transferred and any noncontrolling interest in the acquiree exceeds the recognized basis of the identifiable assets acquired, net of assumed liabilities. Determining the fair value of assets acquired, liabilities assumed and noncontrolling interest requires management's judgment and often involves the use of significant estimates and assumptions, including assumptions with respect to future cash flows, discount rates and asset lives among other items.

Intangible assets

In connection with the acquisitions of 42West on March 30, 2017, The Door on July 5, 2018, Viewpoint on October 31, 2018, and Shore Fire Media on December 3, 2019, the Company acquired in aggregate an estimated \$12,661,333 of intangible assets with finite useful lives initially estimated to range from 3 to 14 years. An additional \$740,000 favorable lease intangible asset was reclassified in accordance with the new lease accounting in year ending December 31, 2019. Intangible assets are initially recorded at fair value and are amortized over their respective estimated useful lives and reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable. The Company amortized \$1,585,009 and \$1,671,530, respectively, of identifiable intangible assets during the years ended December 31, 2019 and 2018. There were no impairments of identifiable intangible assets for the years ended December 31, 2019 and 2018. Balances for Shore Fire Media are provisional as the final purchase price allocation has not been completed.

Goodwill

For the year ended December 31, 2018 in connection with the acquisitions of The Door and Viewpoint (see Note 4), the Company recorded goodwill in the aggregate amount of \$5,000,741 which has also been assigned to the entertainment publicity and marketing segment. For the year ended December 31, 2019 in connection with the acquisition of Shore Fire (see Note 4), the Company recorded goodwill in the provisional amount of \$1,951,011, which has also been assigned to the entertainment publicity and marketing segment. The Company accounts for goodwill in accordance with FASB ASC No. 350, Intangibles—Goodwill and Other (“ASC 350”). ASC 350 requires goodwill to be reviewed for impairment annually, or more frequently if circumstances indicate a possible impairment. The Company evaluates goodwill in the fourth quarter or more frequently if management believes indicators of impairment exist. Such indicators could include, but are not limited to (1) a significant adverse change in legal factors or in business climate, (2) unanticipated competition, or (3) an adverse action or assessment by a regulator.

The Company first assesses qualitative factors to determine whether it is more likely than not that the fair value of the reporting unit is less than its' carrying amount, including goodwill. If management concludes that it is more likely than not that the fair value of the reporting unit is less than its' carrying amount, management conducts a quantitative goodwill impairment test. This impairment test involves comparing the fair value of the reporting unit with its' carrying value (including goodwill). The Company estimates the fair values of its reporting units using a combination of the income, or discounted cash flows approach and the market approach, which utilizes comparable companies' data. If the estimated fair value of the reporting unit is less than its' carrying value, a goodwill impairment exists for the reporting unit and an impairment loss is recorded.

In connection with the updating of estimates and assumptions with the annual impairment tests for goodwill, the Company determined that the goodwill associated with 42West, which was recorded in the year ended December 31, 2017, was impaired. In connection with the departures of the 42West employees in 2018, the Company adjusted operating margins and future cash flows used to estimate the fair value of the reporting unit which resulted in an impairment adjustment of \$1,857,000 of goodwill. The Company did not identify any impairment for the other reporting units within the entertainment publicity and marketing segment.

Warrants

When the Company issues warrants, it evaluates the proper balance sheet classification of the warrant to determine whether the warrant should be classified as equity or as a derivative liability on the consolidated balance sheets. In accordance with ASC 815-40, Derivatives and Hedging-Contracts in the Entity's Own Equity (ASC 815-40), the Company classifies a warrant as equity so long as it is "indexed to the Company's equity" and several specific conditions for equity classification are met. A warrant is not considered indexed to the Company's equity, in general, when it contains certain types of exercise contingencies. If a warrant is not indexed to the Company's equity, it is classified as a derivative liability which is carried on the consolidated balance sheet at fair value with any changes in its fair value recognized currently in the statement of operations. Following adoption of ASU 2017-11, all of the Company's outstanding warrants have been considered indexed to the Company's equity and classified as equity. See Contracts in the Company's Equity discussed above.

Convertible Debt and Convertible Preferred Stock

When the Company issues convertible debt or convertible preferred stock, it evaluates the balance sheet classification to determine whether the instrument should be classified either as debt or equity, and whether the conversion feature should be accounted for separately from the host instrument. A conversion feature of a convertible debt instrument or certain convertible preferred stock would be separated from the convertible instrument and classified as a derivative liability if the conversion feature, were it a standalone instrument, meets the definition of an "embedded derivative" in ASC 815, Derivatives and Hedging. Generally, characteristics that require derivative treatment include, among others, when the conversion feature is not indexed to the Company's equity, as defined in ASC 815-40, or when it must be settled either in cash or by issuing stock that is readily convertible to cash. When a conversion feature meets the definition of an embedded derivative, it would be separated from the host instrument and classified as a derivative liability carried on the consolidated balance sheet at fair value, with any changes in its fair value recognized currently in the consolidated statements of operations.

If a conversion feature does not meet the conditions to be accounted for as a derivative liability, the Company then determines whether the conversion feature is "beneficial". A conversion feature would be considered beneficial if the conversion feature is "in the money" when the host instrument is issued or, under certain circumstances, later. If convertible debt contains a beneficial conversion feature ("BCF"), the amount of proceeds allocated to the BCF reduces the balance of the convertible debt, creating a discount which is amortized over the debt's term to interest expense in the consolidated statements of operations. When a convertible preferred stock contains a BCF, after allocating the proceeds to the BCF, the resulting discount is either amortized over the period beginning when the convertible preferred stock is issued up to the earliest date the conversion feature may be exercised, or if the convertible preferred stock is immediately exercisable, the discount is fully amortized at the date of issuance. The amortization is recorded similar to a dividend.

Fair Value Measurements

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Assets and liabilities measured at fair value are categorized based on whether the inputs are observable in the market and the degree that the inputs are observable. Inputs refer broadly to the assumptions that market participants would use in pricing the asset or liability, including assumptions about risk. Observable inputs are based on market data obtained from sources independent of the Company. Unobservable inputs reflect the Company's own assumptions based on the best information available in the circumstances. The fair value hierarchy prioritizes the inputs used to measure fair value into three broad levels, defined as follows:

- Level 1 — Inputs are quoted prices in active markets for identical assets or liabilities as of the reporting date.
- Level 2 — Inputs other than quoted prices included within Level 1, such as quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar assets and liabilities in markets that are not active; or other inputs that are observable or can be corroborated with observable market data.
- Level 3 — Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets and liabilities. This includes certain pricing models, discounted cash flow methodologies, and similar techniques that use significant unobservable inputs. Unobservable inputs for the asset or liability that reflect management's own assumptions about the assumptions that market participants would use in pricing the asset or liability as of the reporting date.

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To account for the acquisitions of 42West, The Door, Viewpoint, and Shore Fire, the Company made a number of fair value measurements related to the different forms of consideration paid and of the identified assets acquired and liabilities assumed. In addition, the Company makes fair value measurements of its Put Rights and Contingent Consideration. See Notes 4 and 11 for further discussion and disclosures.

Leases (See "Recent Accounting Pronouncements" section below for information pertaining to the adoption of ASU 2016-02, Leases)

The Company recognizes a right-of-use asset and a lease liability based on the present value of the fixed lease payments discounted using the Company's incremental borrowing rate. The right-of-use asset is adjusted for any lease payments paid to the lessor at or before the commencement date (i.e. prepaid rent) and initial direct costs incurred by the Company and excluding any lease incentives received from the lessor. All of the Company's leases are operating leases and the lease expense is recognized on a straight-line basis over the lease term. The Company accounts for its lease and non-lease components as a single component, and therefore both are included in the calculation of lease liability recognized on the consolidated balance sheets. See Note 20 Leases for further discussion.

Income Taxes

Deferred taxes are recognized for the future tax effects of temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases using tax rates in effect for the years in which the differences are expected to reverse. The effects of changes in tax laws on deferred tax balances are recognized in the period the new legislation is enacted. Valuation allowances are recognized to reduce deferred tax assets to the amount that is more likely than not to be realized. In assessing the likelihood of realization, management considers estimates of future taxable income. We calculate our current and deferred tax position based on estimates and assumptions that could differ from the actual results reflected in income tax returns filed in subsequent years. Adjustments based on filed returns are recorded when identified.

Tax benefits from an uncertain tax position are only recognized if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such a position are measured based on the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate resolution. Interest and penalties related to unrecognized tax benefits are recorded as incurred as a component of income tax expense.

Earnings (Loss) Per Share

Basic earnings (loss) per share available to the Company's common stock shareholders equals net income or loss available to common stock shareholders divided by the weighted-average number of common shares outstanding for the applicable period.

Diluted earnings per share equals net income available common stock stockholders divided by the weighted-average number of common shares outstanding, plus any additional common shares that would have been outstanding if potentially dilutive shares had been issued. Diluted earnings per share reflects the potential dilution that would occur if certain potentially dilutive instruments were exercised. The potential issuance of common stock is assumed to occur at the beginning of the year (or at the time of issuance of the potentially dilutive instrument, if later) and the incremental shares are included using the treasury stock method. The proceeds utilized in applying the treasury stock method consist of the amount, if any, to be paid upon exercise. These proceeds are then assumed to be used to purchase common stock at the average market price of the Company's common stock during the period. The incremental shares (difference between the shares assumed to be issued and the shares assumed to be purchased), to the extent they would have been dilutive, are included in the denominator of the diluted earnings per share calculation.

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Going Concern

In accordance with ASC Subtopic 205-40, Going Concern, management evaluates whether relevant conditions and events that, when considered in the aggregate, indicate that it is probable the Company will be unable to meet its obligations as they become due within one year after the date that the financial statements are issued. When relevant conditions or events, considered in the aggregate, initially indicate that it is probable that the Company will be unable to meet its obligations as they become due within one year after the date that the financial statements are issued (and therefore they raise substantial doubt about the Company's ability to continue as a going concern), management evaluates whether its plans that are intended to mitigate those conditions and events, when implemented, will alleviate substantial doubt about the Company's ability to continue as a going concern. Management's plans are considered only to the extent that 1) it is probable that the plans will be effectively implemented and 2) it is probable that the plans will mitigate the conditions or events that raise substantial doubt about the Company's ability to continue as a going concern. See Note 2 related to going concern.

Concentration of Risk

The Company maintains its cash and cash equivalents with financial institutions and, at times, balances may exceed federally insured limits of \$250,000.

Reclassifications

Certain prior year amounts have been reclassified to conform with current year presentation. These changes did not affect the equity or previously reported net losses.

Business Segments

The Company operates the following business segments:

- 1) Entertainment Publicity and Marketing Segment– This segment primarily provides clients with diversified marketing services, including public relations, entertainment and hospitality content marketing, strategic marketing consulting and content production of marketing materials through 42West, The Door, Viewpoint, and Shore Fire. For the years ended December 31, 2019 and 2018, the Company derived a majority of its revenues from this segment.
- 2) Content Production Segment– This segment produces original motion picture and digital content. Revenues from this segment for the years ended December 31, 2019 and 2018 were related to the domestic and international distribution of the Company's motion pictures, *Max Steel* and *Believe*. Revenues from this segment declined significantly for 2019 as compared to 2018 due to reduced revenues from *Max Steel*.

See Note 18 for Segment Reporting for the years ended December 31, 2019 and 2018.

Recent Accounting Pronouncements

Accounting guidance adopted

In February 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2016-02, which requires all assets and liabilities arising from leases to be recognized in our consolidated balance sheets. The Company adopted this new accounting guidance effective January 1, 2019. In July 2018, the FASB added an optional transition method which the Company elected upon adoption of the new standard. This allowed us to recognize and measure leases existing at January 1, 2019 without restating comparative information. In addition, the Company elected to apply the package of practical expedients permitted under the transition guidance within the new standard, which among other things, allows us to carry forward the historical lease classification.

The Company determines if an arrangement is a lease at the lease commencement date. In addition to the Company's lease agreements, we review all material new vendor arrangements for potential embedded lease obligations. The asset balance related to operating leases is presented within "right-of-use (ROU) asset" on the Company's consolidated balance sheet. The current and noncurrent balances related to operating leases are presented as "Lease liability", in their respective classifications, on the Company's consolidated balance sheet.

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The lease liability is recognized based on the present value of the remaining fixed lease payments discounted using the Company's incremental borrowing rate as of January 1, 2019. The ROU asset is calculated based on the lease liability adjusted for any lease payments paid to the lessor at or before the commencement date (i.e. prepaid rent) and initial direct costs incurred by Dolphin and excluding any lease incentives received from the lessor.

The lease term for purposes of lease accounting may include options to extend or terminate the lease when it is reasonably certain that the Company will exercise that option as of the commencement date of the lease. For operating leases, the lease expense is recognized on a straight-line basis over the lease term. The Company accounts for its lease and non-lease components as a single component, and therefore both are included in the calculation of lease liability recognized on the consolidated balance sheets. See Note 20 (Leases) for further discussion.

Accounting Guidance not yet adopted

In March 2019, the FASB issued new guidance on film production costs ASU 2019-02, (*Entertainment Films- Other Assets – Film Costs (Subtopic 926-20)*). The new guidance is effective for fiscal years beginning after December 15, 2019 (for the year ended December 31, 2020 for the Company) and interim periods within those fiscal years and may be early adopted. The new guidance aligns the accounting for the production costs of an episodic series with those of a film by removing the content distinction for capitalization. It also addresses presentation, requires new disclosures for produced and licensed content and addresses cash flow classification for license agreements to better reflect the economics of an episodic series. The Company does not expect adoption of this new guidance to have a material impact on its consolidated financial statements.

In October 2018, the FASB issued new guidance on consolidation ASU 2018-17, Consolidation (Topic 810): Targeted Improvements to Related Party Guidance for Variable Interest Entities). The new guidance is effective for fiscal years beginning after December 15, 2019 and interim periods within those fiscal years and should be applied retrospectively with a cumulative effect adjustment to retained earnings at the beginning of the earliest period presented. Early adoption is permitted. The new guidance provides that indirect interests held through related parties in common control arrangements should be considered on a proportional basis for determining whether fees paid to decisionmakers and service providers are variable interests. The Company does not expect adoption of this new guidance to have a material impact on its consolidated financial statements.

In August 2018, the FASB issued new guidance on fair value measurement (ASU 2018-13, *Fair Value Measurement (Topic 820): Disclosure Framework—Changes to the Disclosure Requirements for Fair Value Measurement*). The new guidance is effective for fiscal years beginning after December 15, 2019 and interim periods within those fiscal years. Early adoption is permitted. The guidance modifies the disclosure requirements on fair value by removing some requirements, modifying others, adding changes in unrealized gains and losses included in other comprehensive income (loss) for recurring Level 3 fair value measurements, and providing the option to disclose certain other quantitative information with respect to significant unobservable inputs in lieu of a weighted average. The Company does not expect adoption of this new guidance to have a material impact on its consolidated financial statements.

In June 2016, the FASB issued 2016-13 "*Financial Instruments - Credit Losses (Topic 326) Measurement of Credit Losses on Financial Instruments*." ASU 2016-13 requires an entity to utilize a new impairment model known as the current expected credit loss ("CECL") model to estimate its lifetime "expected credit loss" and record an allowance that, when deducted from the amortized cost basis of the financial asset, presents the net amount expected to be collected on the financial asset. The CECL model is expected to result in more timely recognition of credit losses. ASU 2016-13 also requires new disclosures for financial assets measured at amortized cost, loans and available-for-sale debt securities. ASU 2016-13 is effective for the Company beginning January 1, 2023. Entities will apply the standard's provisions as a cumulative-effect adjustment to retained earnings as of the beginning of the first reporting period in which the guidance is adopted. The Company is in the process of evaluating the impact of the adoption of ASU 2016-13 on the Company's consolidated financial statements and disclosures.

NOTE 4 — MERGERS AND ACQUISITIONS

Shore Fire Media, Ltd

On the Shore Fire Closing Date, the Company acquired all of the issued and outstanding capital stock of Shore Fire, a New York corporation (the “Shore Fire Purchase”), pursuant to a share purchase agreement (the “Shore Fire Share Purchase Agreement”) dated on the Shore Fire Closing Date, between the Company and Shore Fire Seller. Shore Fire is an entertainment public relations agency, offering talent publicity in the music, events, books, podcasts, and comedy sectors.

The total consideration paid to the Shore Fire Seller in respect of the Shore Fire Purchase is \$3 million as follows: (i) \$1,140,000 in cash on the Shore Fire Closing date (adjusted for Shore Fire’s indebtedness, working capital and cash targets); (ii) \$200,000 in shares of Common Stock at a price of \$0.64 per share (314,812 shares) issued to the Seller on the Shore Fire Closing Date, (iii) an additional \$400,000 in shares of common stock paid in two equal installments of \$200,000 each on the first and second anniversary of the Shore Fire Closing Date, (iv) an additional \$1,000,000 in cash paid in four equal payments of \$250,000 each to the Seller on the six, twelve, and twenty-four month anniversaries of the Shore Fire Closing Date, and (v) \$140,000 and \$120,000 in cash paid to key employees on the first and second anniversary of the Shore Fire Closing Date. The Shore Fire Purchase Agreement contains customary representations, warranties and covenants of the parties thereto. The Common Stock issued as part of the Initial Consideration has not been registered under the Securities Act of 1933, as amended (the “Securities Act”).

As a condition to the Shore Fire Purchase, the Shore Fire Seller entered into an employment agreement with the Company to continue as an employee after the closing of the Shore Fire Purchase. The Shore Fire Seller’s employment agreement is through December 3, 2022 and the contract defines base compensation and a bonus structure based on Shore Fire achieving certain financial targets. The employment agreement contains provisions for termination and as a result of death or disability and entitles the employee to vacations and to participate in all employee benefit plans offered by the Company.

The provisional acquisition-date fair value of the consideration transferred totaled \$3,000,000, which consisted of the following:

Common Stock issued at closing (314,812 shares)	\$ 200,000
Cash Consideration paid at closing	1,140,000
Cash Installment to be paid on March 3, 2020	250,000
Cash Installment to be paid on June 3, 2020	250,000
Cash Installment to be paid on December 3, 2020	390,000
Common Stock issued on December 3, 2020	200,000
Cash Installment to be paid on December 3, 2021	370,000
Common Stock issued on December 3, 2021	200,000
	<u>\$ 3,000,000</u>

The final amount of consideration may potentially change due to any working capital or other closing adjustments, which have not yet been determined.

The fair value of the 314,812 shares of Common Stock issued on the Shore Fire Closing Date was determined based on the closing market price of the Company’s Common Stock on the Shore Fire Closing Date of \$0.64 per share.

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The following table summarizes the provisional fair values of the assets acquired and liabilities assumed at the Shore Fire Closing Date. Amounts in the table are provisional estimates that may change, as described below.

Cash	\$ 384,530
Accounts receivable	294,033
Other current assets	33,402
Property, plant & equipment	112,787
Intangibles	1,080,000
Total identifiable assets acquired	<u>1,904,752</u>
Accrued expenses	(298,870)
Accounts payable	(38,750)
Deferred tax liability	(358,153)
Contract liability	(143,339)
Other current liability	(16,651)
Total liabilities assumed	<u>(855,763)</u>
Net identifiable assets acquired	1,048,989
Goodwill	1,951,011
Net assets acquired	<u>\$ 3,000,000</u>

Of the provisional fair value of the \$1,080,000 of acquired identifiable intangible assets, \$510,000 was assigned to customer relationships (5 years useful life) and \$570,000 was assigned to the trade name (10-year useful life), that were recognized at a provisional fair value on the acquisition date. The customer relationships will be amortized using an accelerated method, and the trade name will be amortized using the straight-line method.

The provisional fair value of accounts receivable acquired is \$294,033.

The provisional fair values of property and equipment and leasehold improvements of \$112,787, and other assets of \$33,402, are based on Shore Fire's carrying values prior to the acquisition, which approximate their provisional fair values.

The provisional amount of \$1,951,011 of goodwill was assigned to the entertainment publicity and marketing segment. The goodwill recognized is attributable primarily to expectations of continued successful efforts to obtain new customers, buyer specific synergies and the assembled workforce of Shore Fire.

The Company expensed \$106,015 of acquisition related costs in the year ended December 31, 2019. These costs are included in the consolidated statements of operations in the line item entitled "acquisition costs."

The revenue and net income of Shore Fire included in the consolidated amounts reported in the consolidated statements of operations for the year ended December 31, 2019 are as follows:

Revenue	\$ 366,761
Net income	\$ 14,204

Viewpoint Computer Animation, Incorporated

On the Viewpoint Closing Date, the Company acquired all of the issued and outstanding capital stock of Viewpoint, a Massachusetts corporation (the "Viewpoint Purchase"), pursuant to a share purchase agreement dated the Viewpoint Closing Date (the "Viewpoint Purchase Agreement"), among the Company and the Viewpoint Shareholders. Viewpoint is a full-service creative branding and production house that has earned a reputation as one of the top producers of promotional and brand-support videos for a wide variety of leading cable networks, media companies and consumer-product brands.

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The total consideration payable to the Viewpoint Shareholders in respect of the Viewpoint Purchase comprises the following: (i) \$500,000 in shares of Common Stock, based on a price per share of Common Stock of \$2.29, (ii) \$1.5 million in cash (as adjusted for certain working capital and closing adjustments and transaction expenses). On the Viewpoint Closing Date, the Company issued to the Viewpoint Shareholders \$500,000 in shares of Common Stock (218,088 shares) and paid the Viewpoint Shareholders an aggregate of \$750,000 in cash (the "Initial Consideration"), adjusted for working capital, indebtedness and certain transaction expenses. Pursuant to the Viewpoint Purchase Agreement, the Company paid to the Viewpoint Shareholders a second installment of \$230,076 in cash (\$250,000 less a working capital adjustment) on April 30, 2019, paid \$65,938 to certain Viewpoint Shareholders on October 31, 2019 and agreed to issue 248,733 shares of Common Stock to another Viewpoint Shareholder as payment for the third installment on October 31, 2019 and will pay the final installment of \$250,000 on April 30, 2020 for a total of \$750,000, less any adjustments for working capital (the "Post Closing Consideration" and, together with the Initial Consideration, the "Viewpoint Purchase Consideration"). The Viewpoint Purchase Agreement contains customary representations, warranties and covenants of the parties thereto. The Common Stock issued as part of the Initial Consideration has not been registered under the Securities Act of 1933, as amended (the "Securities Act").

As a condition to the Viewpoint Purchase, two of the Viewpoint Shareholders, Carlo DiPersio and David Shilale have entered into employment agreements with the Company to continue as employees after the closing of the Viewpoint Purchase. Mr. DiPersio's employment agreement is through December 31, 2020 and the contract defines base compensation and a bonus structure based on Viewpoint achieving certain financial targets. Mr. Shilale's employment agreement is for a period of three years from the Viewpoint Closing Date and the contract defines the base compensation and a commission structure based on Viewpoint achieving certain financial targets. The bonus for Mr. Shilale is determined at the sole discretion of the Company's board of directors and management. Neither agreement provides for guaranteed increases to the base salary. The employment agreements contain provisions for termination and as a result of death or disability and entitles the employee to vacations and to participate in all employee benefit plans offered by the Company. On November 1, 2019, the Company and Mr. DiPersio mutually agreed to terminate his employment agreement. The Company agreed to pay for Mr. DiPersio's health and dental insurance through December 17, 2023.

The acquisition-date fair value of the consideration transferred totaled \$1,960,165, which consisted of the following:

Common Stock issued at closing (218,088 shares)	\$ 427,452
Cash Consideration paid at closing	750,000
Working capital adjustment	32,713
Cash Installment to be paid on April 30, 2019	250,000
Cash Installment to be paid on October 31, 2019	250,000
Cash Installment to be paid on April 30, 2020 (included in other current liabilities)	250,000
	<u>\$ 1,960,165</u>

The Company has engaged an independent third-party valuation expert to determine the fair values of the various forms of consideration transferred.

The fair value of the 218,088 shares of Common Stock issued on the Viewpoint Closing Date was determined based on the closing market price of the Company's Common Stock on the Viewpoint Closing Date of \$1.96 per share.

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The following table summarizes the fair values of the assets acquired and liabilities assumed at the Viewpoint Closing Date.

Cash	\$ 206,950
Accounts receivable	503,906
Other current assets	102,411
Property, plant & equipment	183,877
Prepaid expenses	32,067
Intangible assets	450,000
Total identifiable assets acquired	<u>1,479,211</u>
Accrued expenses	(165,284)
Accounts payable	(77,394)
Deferred tax liability	(206,636)
Deferred revenue	(190,854)
Total liabilities assumed	<u>(640,168)</u>
Net identifiable assets acquired	839,043
Goodwill	1,141,046
Net assets acquired	<u>\$ 1,980,089</u>

Of the fair value of the \$450,000 of acquired identifiable intangible assets, \$220,000 was assigned to customer relationships (5 years useful life) and \$100,000 was assigned to the trade name (5 years useful life), that were recognized at fair value on the acquisition date. The customer relationships will be amortized using an accelerated method, and the trade name will be amortized using the straight-line method. In addition, the Company recognized a favorable lease intangible asset from the Company's Massachusetts office lease in the amount of \$130,000. The favorable lease intangible asset will be amortized using the straight-line method over the remaining lease term of 26 months. On January 1, 2019, the Company adopted ASU 2016-02 and reclassified the favorable lease asset recognized at the date of acquisition to right-of-use asset. The unamortized balance of the favorable lease asset on January 1, 2019 was \$120,000.

The fair value of accounts receivable acquired is \$503,906, with the gross contractual amount being \$509,406. The Company expects \$5,500 to be uncollectible.

The fair values of property and equipment and leasehold improvements of \$183,877, and other assets of \$102,411, are based on Viewpoint's carrying values prior to the acquisition, which approximate their fair values.

The amount of \$1,096,902 of goodwill was assigned to the entertainment publicity and marketing segment. The goodwill recognized is attributable primarily to expectations of continued successful efforts to obtain new customers, buyer specific synergies and the assembled workforce of Viewpoint.

The Company recognized \$152,308 of acquisition related costs in the year ended December 31, 2018. These costs are included in the consolidated statements of operations in the line item entitled "acquisition costs."

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The following table summarizes the original and revised fair values of the assets acquired and liabilities assumed at the acquisition date of October 31, 2018 and the related measurement period adjustments to the fair values:

	October 31, 2018 (As initially reported)	Measurement Period Adjustments	December 31, 2019 (As adjusted)
Cash	\$ 206,950	\$ —	\$ 206,950
Accounts receivable	503,906	—	503,906
Other current assets	102,411	—	102,411
Property, equipment and leasehold improvements	183,877	—	183,877
Prepaid expenses	32,067	—	32,067
Intangible assets	450,000	—	450,000
Total identifiable assets acquired	1,479,211	—	1,479,211
Accrued expenses	(165,284)	—	(165,284)
Accounts payable	(77,394)	—	(77,394)
Contract liability	(190,854)	—	(190,854)
Deferred tax liability	(206,636)	24,220	(182,416)
Total liabilities assumed	(640,168)	24,220	(615,948)
Net identifiable assets acquired	839,043	24,220	863,263
Goodwill	1,141,046	(44,144)	1,096,902
Net assets acquired	\$ 1,980,089	\$ (19,924)	\$ 1,960,165

The above fair values of assets acquired and liabilities assumed are based on the information that was available as of the Viewpoint Closing Date to estimate the fair value of assets acquired and liabilities assumed. As of October 31, 2018, the Company recorded the identifiable net assets acquired of \$839,043 as shown in the table above in its consolidated balance sheet. During the year ended December 31, 2019, the Company's measurement period adjustments of \$24,220 were made and, accordingly, the Company recognized these adjustments in December 31, 2019 consolidated balance sheet to reflect the adjusted identifiable net assets acquired of \$863,263 as shown in the table above. The Company also made a working capital adjustment of \$19,924 that was deducted from the second installment paid to the Viewpoint Shareholders on April 30, 2019.

The following is a reconciliation of the initially reported fair value to the adjusted fair value of goodwill:

Goodwill originally reported at October 31, 2018	\$ 1,141,046
Changes to estimated fair values	
Deferred tax liability	(24,220)
Working capital adjustment	(19,924)
Adjusted goodwill reported at December 31, 2019	\$ 1,096,902

The estimated fair value of the deferred tax liability decreased by \$24,220 primarily due to the estimated expected future tax rate applied.

The Door Marketing Group LLC

On July 5, 2018 (the "Door Closing Date"), the Company entered into the Merger Agreement in respect of its acquisition of The Door. On the Door Closing Date, The Door merged with and into Merger Sub, with Merger Sub surviving the merger and continuing as a wholly owned subsidiary of the Company. Upon consummation of the Merger, Merger Sub changed its name to The Door Marketing Group, LLC. The Door is an entertainment public relations agency, offering talent publicity, strategic communications and entertainment content marketing primarily in the hospitality sector.

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The total consideration payable to the Door Members in respect of the merger comprises the following: (i) \$2.0 million in shares of the Common Stock, based on a price per share of Common Stock of \$3.25, (ii) \$2.0 million in cash (as adjusted for certain working capital and closing adjustments and transaction expenses) and (iii) up to an additional \$7.0 million of contingent consideration in a combination of cash and shares of Common Stock upon the achievement of specified financial performance targets over a four-year period as set forth in the Merger Agreement (the "Contingent Consideration"). On the Door Closing Date, the Company issued to the Door Members 307,692 shares of Common Stock and paid the Door Members an aggregate of \$1.0 million in cash (the "Initial Consideration"). In October of 2018, the Company agreed to advance \$274,500 of the second installment due January 3, 2019 to the Door Members so they could meet their tax obligations. Pursuant to the Merger Agreement, on January 3, 2019, the Company paid an aggregate of \$725,500 and issued 307,692 shares of Common Stock to the Door Members (the "Post-Closing Consideration" and, together with the Initial Consideration and the Contingent Consideration, the "Merger Consideration"). The Company calculated the working capital adjustment to be \$133,169. On March 12, 2019, the Door Members were paid \$46,000 of the working capital adjustment and will receive 26,822 shares of Common Stock in full satisfaction of the working capital adjustment. The Merger Agreement contains customary representations, warranties and covenants of the parties thereto. The Common Stock issued as Stock Consideration has not been registered for resale under the Securities Act.

Each of the Members has entered into a four-year employment agreement with The Door, pursuant to which each Member has agreed not to transfer any Share Consideration in the first year following the Door Closing Date, no more than 1/3 of such Share Consideration in the second year and no more than an additional 1/3 of such Share Consideration in the third year.

On the Door Closing Date, the Company entered into a registration rights agreement with the Members (the "Registration Rights Agreement"), pursuant to which the Members are entitled to rights with respect to the registration of the Share Consideration under the Securities Act. All fees, costs and expenses of underwritten registrations under the Registration Rights Agreement will be borne by the Company, other than underwriting discounts and commissions. At any time after July 5, 2019, the Company will be required, upon the request of such Members holding at least a majority of the Share Consideration received by the Members, to file up to two registration statements on Form S-3 covering up to 25% of the Share Consideration.

The acquisition-date fair value of the consideration transferred totaled \$5,999,323, which consisted of the following:

Common Stock issued on Door Closing Date (307,692 shares)	\$1,123,077
Common Stock issued on January 3, 2019 (307,692 shares)	1,123,077
Cash paid to Members' on Door Closing Date	882,695
Members' transaction costs paid on Door Closing Date	117,305
Cash paid October 2018	274,500
Cash paid on January 3, 2019	725,500
Contingent Consideration	1,620,000
Working capital adjustment (\$46,000 paid in cash on March 12, 2019. \$87,169 will be issued in shares of stock at a later date)	133,169
	<u>\$5,999,323</u>

The Company engaged an independent third-party valuation expert to determine the fair values of the various forms of consideration transferred. The fair values of the 307,692 shares of Common Stock issued on the Door Closing Date and the 307,692 shares of Common Stock issued on January 2, 2019 were determined based on the closing market price of the Company's Common Stock on the Door Closing Date of \$3.65 per share.

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The Contingent Consideration arrangement requires that the Company issue up to 1,538,462 shares of Common Stock and up to \$2 million in cash to the Members on achievement of adjusted net income targets, (as set forth in the Merger Agreement), based on the operations of The Door over the four-year period beginning January 1, 2018. The fair value of the Contingent Consideration at the Door Closing Date was \$1,620,000. The fair value of the Contingent Consideration was estimated using a Monte Carlo Simulation model, which incorporates significant inputs that are not observable in the market, and thus represents a Level 3 measurement as defined in ASC 820. The unobservable inputs utilized for measuring the fair value of the Contingent Consideration reflect management's own assumptions about the assumptions that market participants would use in valuing the Contingent Consideration as of the Door Closing Date. The key assumptions in applying the Monte Carlo Simulation model are as follows: a risk-free discount rate of between 2.11% and 2.67% based on the U.S government treasury obligation with a term similar to that of the contingent consideration, a discount rate of between 20.0% and 20.5%, and an annual asset volatility estimate of 62.5%. Changes in the fair value on the Contingent Consideration are recorded at each balance sheet date with changes reflected as gains or losses on the consolidated statement of operations. See Note 11 Fair Value Measurements for further discussion on the fair value as of December 31, 2019.

The following table summarizes the fair values of the assets acquired and liabilities assumed at the Door Closing Date.

Cash	\$ 89,287
Accounts receivable	469,344
Property, equipment and leasehold improvements	105,488
Prepaid expense	31,858
Other assets	30,667
Intangible assets	2,110,000
Total identifiable assets acquired	<u>2,836,644</u>
Accrued expenses	(203,110)
Accounts payable	(1,064)
Unearned income	(15,500)
Other liabilities	(1,913)
Deferred tax liabilities	(593,949)
Total liabilities assumed	<u>(815,536)</u>
Net identifiable assets acquired	2,021,108
Goodwill	3,978,215
Net assets acquired	<u>\$ 5,999,323</u>

Of the calculation of \$2,110,000 of acquired intangible assets, \$1,010,000 was assigned to customer relationships (10-year useful life), \$670,000 was assigned to the trade name (10-year useful life), \$260,000 was assigned to non-competition agreements (2-year useful life) and \$170,000 was assigned to a favorable lease from the New York City location (26 months useful life), that were recognized at fair value on the acquisition date. On January 1, 2019, the Company adopted ASU 2016-02 and reclassified the favorable lease asset recognized at the date of acquisition to right-of-use asset. The unamortized balance of the favorable lease asset on January 1, 2019 was \$130,769.

The fair value of accounts receivable acquired is \$469,344.

The fair values of property and equipment and leasehold improvements of \$105,488, and other assets of \$62,525, are based on The Door's carrying values prior to the Merger, which approximate their fair values.

The amount of \$3,859,695 of goodwill was assigned to the Entertainment Publicity and Marketing segment. The goodwill recognized is attributable primarily to expectations of continued successful efforts to obtain new customers, buyer specific synergies and the assembled workforce of The Door.

The Company recognized \$276,735 of acquisition related costs that were expensed in the year ended December 31, 2018. These costs are included in the consolidated statements of operations in the line item entitled "acquisition costs."

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The following table summarizes the original and revised estimated fair values of the assets acquired and liabilities assumed at the Door Closing Date and the related measurement period adjustments to the fair values:

	July 5, 2018 (As initially reported)	Measurement Period Adjustments	December 31, 2019 (As adjusted)
Cash	\$ 89,287	\$ —	\$ 89,287
Accounts receivable	469,344	—	469,344
Property, equipment and leasehold improvements	105,488	—	105,488
Prepaid expenses	31,858	—	31,858
Other assets	30,667	—	30,667
Intangible assets	2,110,000	—	2,110,000
Total identifiable assets acquired	2,836,644	—	2,836,644
Accrued expenses	(203,110)	—	(203,110)
Accounts payable	(1,064)	—	(1,064)
Unearned income	(15,500)	—	(15,500)
Other liabilities	(1,913)	—	(1,913)
Deferred tax liability	(584,378)	(9,571)	(593,949)
Total liabilities assumed	(805,965)	(9,571)	(815,536)
Net identifiable assets acquired	2,030,679	(9,571)	2,021,108
Goodwill	3,835,475	142,740	3,978,215
Net assets acquired	\$ 5,866,154	\$ 133,169	\$ 5,999,323

The above fair values of assets acquired and liabilities assumed are based on the information that was available as of the Door Closing Date to estimate the fair value of assets acquired and liabilities assumed. As of the Door Closing Date, the Company recorded the identifiable net assets acquired of \$2,030,679 as shown in the table above in its consolidated balance sheet. The Company has reflected adjustments of \$142,740 made during the Company's measurement period on its December 31, 2019 consolidated balance sheet to reflect the adjusted identifiable net assets acquired of \$2,021,108 as shown in the table above.

The following is a reconciliation of the initially reported fair value to the adjusted fair value of goodwill:

Goodwill originally reported at July 5, 2018	\$ 3,835,475
Changes to estimated fair values	
Working capital adjustment	133,169
Deferred tax liability	9,571
Adjusted goodwill at December 31, 2019	\$ 3,978,215

The estimated fair value of the deferred tax liability increased by \$9,571 primarily due to the estimated expected future tax rate applied.

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Unaudited Pro Forma Consolidated Statements of Operations

The following presents the pro forma consolidated operations as if Shore Fire had been acquired on January 1, 2019, and as if Viewpoint, The Door, and Shore Fire had been acquired on January 1, 2018 and their results had been included in the consolidated results of the Company:

	2019	2018
Revenues	\$ 29,352,040	\$ 34,428,564
Net loss	(1,051,335)	(3,404,628)

The pro forma amounts for 2018 have been calculated after applying the Company's accounting policies and adjusting the results of the acquisitions to reflect (a) the amortization that would have been charged, assuming the intangible assets resulting from the acquisitions had been recorded on January 1, 2018 (b) interest expense from the Pinnacle Note (as defined below) used to partially pay the consideration for The Door, calculated as if the Pinnacle Note was outstanding as of January 1, 2018, and (c) to exclude \$438,552 of acquisition costs that were expensed by the Company. See Note 8 (Notes Payable) for more information regarding the Pinnacle Note.

The pro forma amounts for 2019 have been calculated after applying the Company's accounting policies to the financial statements of Shore Fire Media and adjusting the results of the acquisition of Shore Fire to (a) reflect the amortization that would have been charged assuming the intangible assets had been recorded on January 1, 2019 and (b) exclude \$106,015 of acquisition related costs that were expensed by the Company for the year ended December 31, 2019.

The impact of the acquisition of Viewpoint, The Door, and Shore Fire Media on the Company's actual results for periods following the acquisitions may differ significantly from that reflected in this unaudited pro forma information for a number of reasons. As a result, this unaudited pro forma information is not necessarily indicative of what the combined company's financial condition or results of operations would have been had the acquisitions been completed on January 1, 2018, or January 1, 2019, as provided in this pro forma financial information. In addition, the pro forma financial information does not purport to project the future financial condition and results of operations of the combined company.

42West

On March 30, 2017 (the "42West Closing Date"), the Company entered into a purchase agreement with the former members of 42West (collectively, the "42West Members") (the "42West Purchase Agreement") pursuant to which the Company acquired 100% of the membership interests of 42West and 42West became a wholly owned subsidiary of the Company. 42West is an entertainment public relations agency offering talent, entertainment and targeted marketing, and strategic communication services. On January 1, 2019, the Company adopted ASU 2016-02 and reclassified the favorable lease asset recognized at the date of acquisition to right-of-use asset. The unamortized balance of the favorable lease asset on January 1, 2019 was \$277,878.

The consideration paid by the Company to the 42West Members in connection with the 42West acquisition was approximately \$18.7 million in shares of Common Stock, based on a 30-day trading-day average stock price prior to the 42West Closing Date of \$9.22 per share, (less certain working capital and closing adjustments, transaction expenses and payments of indebtedness), plus the potential to earn up to \$9.3 million shares of Common Stock at a price of \$9.22 per share, upon achievement of certain financial targets that were achieved during 2017 (the "Earn-Out Consideration"). As a result, the Company has issued 1,906,011 shares of Common Stock and will issue an additional 971,735 shares of Common Stock at a price of \$9.22 related to the Earn Out Consideration, after indemnifications.

In connection with the 42West acquisition, the Company agreed to settle change of control provisions with certain 42West employees and former employees by offering cash payments in lieu of shares of Common Stock. As a result, the Company made payments in the aggregate amount of (i) \$20,000 on February 23, 2018; (ii) \$292,112 on March 30, 2018 and (iii) \$361,760 of March 29, 2019 related to the change of control provisions. The Company entered into Put Agreements with three separate 42West employees with change of control provisions in their employment agreements. The Company agreed to purchase up to 50% of the shares of Common Stock to be received by the employees in satisfaction of the change of control provision in their employment agreements. The employees have the right, but not the obligation, to cause the Company to purchase up to an additional 20,246 shares of Common Stock in respect of the Earn Out Consideration.

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Also, in connection with the 42West acquisition, on March 30, 2017, the Company entered into put agreements (the "Put Agreements") with each of the 42West Members. Pursuant to the terms and subject to the conditions set forth in the Put Agreements, the Company has granted the 42West Members the right, but not the obligation, to cause the Company to purchase up to an aggregate of 1,187,087 of their respective shares of Common Stock received as consideration for the Company's acquisition of 42West for a purchase price equal to \$9.22 per share during certain specified exercise periods set forth in the Put Agreements up until December 2020 (the "Put Rights"). This amount includes the put rights allowable after earning the Earn Out Consideration achieved during the year ended December 31, 2017. During the year ended December 31, 2019, the sellers exercised their Put Rights, in accordance with the Put Agreements, and caused the Company to purchase 355,802 shares of Common Stock for an aggregate amount of cash paid of \$2,165,500, of which \$275,000 was paid in January 2020, \$702,500 as a convertible note payable (discussed below) and \$412,500 paid in shares of Common Stock (discussed below). During the year ended December 31, 2018, the sellers exercised their Put Rights, in accordance with the Put Agreements, and caused the Company to purchase 339,206 shares of Common Stock for an aggregate amount of \$3,127,500, including \$375,000 paid in January of 2019.

On August 12, 2019, the Company entered into an Amendment, Waiver and Exchange Agreement with one of the holders of the Put Rights and exchanged 44,740 Put Rights for 385,514 shares of Common Stock at a purchase price of \$1.08 per share. On August 12, 2019, the Company entered into an Amendment, Waiver and Exchange Agreement ("Exchange Agreement") with another holder of Put Rights that had previously exercised 76,194 Put Rights that remained unpaid for an aggregate amount of \$702,500. Pursuant to the Exchange Agreement, the Company issued a convertible note to such holder of Put Rights in the amount of \$702,500 that bears interest at a rate of 10% per annum and matures on August 12, 2020. The noteholder may convert the principal and accrued interest at any time during the term of the convertible note for shares of Common Stock at a purchase price based on the 30-day trailing average closing price of the Common Stock.

As of year ended December 31, 2019, the Company had purchased an aggregate of 884,807 shares of Common Stock from the 42West Members for an aggregate purchase price of \$8,158,000, of which \$275,000 was paid in January 2020, \$412,500 was exchanged for 385,514 shares of Common Stock and \$702,500 was exchanged for a convertible note payable as described above.

NOTE 5 — CAPITALIZED PRODUCTION COSTS, ACCOUNTS RECEIVABLES AND OTHER CURRENT ASSETS

Capitalized Production Costs

Capitalized production costs include the unamortized costs of completed motion pictures and digital projects that have been produced by the Company, costs of scripts for projects that have not been developed or produced and costs for projects that are in production. These costs include direct production costs and production overhead and are amortized using the individual-film-forecast method, whereby these costs are amortized and participations and residuals costs are accrued in the proportion that current year's revenue bears to management's estimate of ultimate revenue at the beginning of the current year expected to be recognized from the exploitation, exhibition or sale of the motion picture or web series.

Revenues earned from motion pictures was \$86,606 and \$634,612 for the years ended December 31, 2019 and 2018, respectively. These revenues were mainly attributable to *Max Steel*, the motion picture released on October 14, 2016 and *Believe*, a motion picture released on December 25, 2013. On August 23, 2019, the Company agreed to exchange up to \$900,000 of future revenues of *Max Steel* for satisfaction of a debt related to the prints and advertising costs of *Max Steel* (see Note 8 Debt for further discussion). Since the Company does not anticipate generating future revenues from *Max Steel*, the capitalized production costs in the amount of \$629,585 were impaired and recorded as direct costs in the consolidated statement of operations for the year ended December 31, 2019. The Company amortized capitalized production costs (included as direct costs) in the consolidated statements of operations using the individual film forecast computation method in the amounts of \$0 and \$203,560 for the years ended December 31, 2019 and 2018, respectively, related to *Max Steel*. As of December 31, 2019 and 2018, the Company had balances of \$0 and \$629,585, respectively, recorded as capitalized production costs related to *Max Steel*.

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The Company has purchased scripts for other motion picture productions and has capitalized \$203,036 and \$95,500 in capitalized production costs associated with these scripts as of December 31, 2019 and 2018, respectively. The Company currently intends to produce the projects, but they were not yet in production as of December 31, 2019. During years ended December 31, 2019 and 2018, the Company impaired the cost of scripts that it had previously purchased in the amount of \$41,000 and \$200,000, respectively.

As of December 31, 2019 and 2018, the Company had total capitalized production costs of \$203,036 and \$724,585, respectively, net of accumulated amortization, tax incentives and impairment charges, recorded on its consolidated balance sheets related to motion pictures.

Accounts Receivables

The Company entered into various agreements with foreign distributors for the licensing rights of our motion picture, *Max Steel*, in certain international territories. As of December 31, 2019, the Company has delivered the motion picture to the distributors and satisfied the other requirements of these agreements. For the year ended December 31, 2019, the Company received \$116,067 from a foreign distributor that had been deemed uncollectible for the year ended December 31, 2018 and recorded it against bad debt expense in its consolidated statement of operations under selling, general and administrative expenses. The Company did not have a balance in accounts receivable related to *Max Steel* as of both December 31, 2019, and December 31, 2018.

The Company's trade accounts receivables related to its entertainment publicity and marketing business are recorded at amounts billed to customers, and presented on the balance sheet, net of the allowance for doubtful accounts. The allowance is determined by various factors, including the age of the receivables, current economic conditions, historical losses and other information management obtains regarding the financial condition of customers. As of December 31, 2019 and 2018, the Company had accounts receivable balances of \$3,581,155 and \$3,173,107, respectively, net of allowance for doubtful accounts of \$307,887 and \$283,022, respectively, related to its entertainment publicity and marketing segment.

Other Current Assets

The Company had balances of \$372,872 and \$620,970 in other current assets on its consolidated balance sheets as of December 31, 2019 and 2018, respectively. As of December 31, 2019, the balance included the same indemnification asset related to the 42West acquisition, prepaid expenses, employee receivables, a tax incentive from Massachusetts, and a state tax receivable of \$19,610.

As of December 31, 2018, these amounts were composed of an indemnification asset related to the 42West acquisition, prepaid expenses, capitalized costs for video production, a tax incentive from Massachusetts, and a tax receivable of \$62,776.

Indemnification asset – The Company recorded in other current assets on its consolidated balance sheet \$300,000 related to certain indemnification obligations associated with the 42West Acquisition.

Prepaid expenses – The Company records in other assets on its consolidated balance sheets amounts prepaid for insurance premiums. The amounts are amortized on a monthly basis over the life of the policies.

Tax Incentives – The Company has access to government programs that are designed to promote video production in the jurisdiction. As of December 31, 2019, the Company had a balance of \$5,228 from these tax incentives.

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NOTE 6 — PROPERTY, EQUIPMENT AND LEASEHOLD IMPROVEMENTS

Property, equipment and leasehold improvement consists of:

	<u>December 31,</u> <u>2019</u>	<u>December 31,</u> <u>2018</u>
Furniture and fixtures	\$ 792,611	\$ 713,075
Computers and equipment	1,728,916	1,636,391
Leasehold improvements	<u>770,628</u>	<u>732,870</u>
	3,292,155	3,082,336
Less: accumulated depreciation and amortization	<u>(2,255,306)</u>	<u>(1,899,816)</u>
	<u>\$ 1,036,849</u>	<u>\$ 1,182,520</u>

The Company depreciates furniture and fixtures over a useful life of between five and seven years, computer and equipment over a useful life of between three and five years and amortizes leasehold improvements over the remaining term of the related leases. The Company recorded depreciation and amortization expense of \$361,951 and \$307,274, respectively for the years ended December 31, 2019 and 2018.

NOTE 7 — INVESTMENT

As of December 31, 2019, investments, at cost, consisted of 344,980 shares of common stock of VRC. In exchange for services rendered by 42West to VRC during 2015, 42West received both cash consideration and a promissory note that was convertible into shares of common stock of VRC. On April 7, 2016, VRC closed an equity financing round resulting in common stock being issued to a third-party investor. This transaction triggered the conversion of all outstanding promissory notes held by 42West into shares of common stock of VRC. The Company's investment in VRC represents less than 1% noncontrolling ownership interest in VRC. The Company had a balance of \$220,000 on its consolidated balance sheet as of December 31, 2019, and 2018 related to this investment.

NOTE 8 — DEBT

Loan and Security Agreements

Prints and Advertising Loan

During 2016, Max Steel Holdings, a wholly owned subsidiary of Dolphin Films, entered into a loan and security agreement (the "P&A Loan") providing for a non-revolving credit facility in an aggregate principal amount of up to \$14,500,000 that matured on August 25, 2017. Proceeds of the credit facility in the aggregate amount of \$12,500,000 were used to pay a portion of the print and advertising expenses ("P&A") of the domestic distribution of Max Steel. Repayment of the loan was intended to be made from revenues generated by Max Steel in the United States. The loan was partially secured by a \$4,500,000 corporate guaranty from an unaffiliated third-party associated with the film, of which Dolphin provided a backstop guaranty of \$620,000. The Company also granted the lender a security interest in bank account funds totaling \$1,250,000. The loan was also secured by substantially all of the assets of Max Steel Holdings. Once it was determined that Max Steel would not generate sufficient funds to repay the lender, the unaffiliated party paid the lender the \$4,500,000 to reduce the loan balance and the lender applied the \$1,250,000 of funds in the Company's bank account to the reduce the loan balance. Amounts borrowed under the credit facility accrued interest at either (i) a fluctuating per annum rate equal to the 5.5% plus a base rate or (ii) a per annum rate equal to 6.5% plus the LIBOR determined for the applicable interest period, as determined by the borrower.

On August 23, 2019, the Company entered into a Revenue Participation Agreement (the "Participation Agreement") with the creditor of the P&A Loan and agreed to exchange up to \$900,000 of future domestic revenues of *Max Steel* for the full repayment and discharge of the balance of the P&A Loan that on the date of the Participation Agreement was \$712,953, including accrued interest. Per the terms of the Participation Agreement, the Company does not make any representation or warranty that *Max Steel* will generate additional revenues. The Company recorded a gain on extinguishment of debt in the amount of \$712,953 in its consolidated statements of operations for the year ending December 31, 2019, related to the discharge of the P&A Loan. As of December 31, 2019 and December 31, 2018, the Company had outstanding balances of \$0 and \$682,842, respectively, related to the P&A Loan recorded on its consolidated balance sheets in the caption debt. On its consolidated statement of operations for the years ended December 31, 2019 and 2018, the Company recorded interest expense of \$60,660 and \$120,608, respectively, related to the P&A Loan. For the year ended December 31, 2018, the Company also recorded \$500,000 in direct costs from loan proceeds that were not used by the distributor for the marketing of the film and returned to the lender.

Production Service Agreement

During 2014, Dolphin Films entered into a financing agreement to produce *Max Steel* (the "Production Service Agreement"). The Production Service Agreement was for a total amount of \$10,419,009 with the lender taking a \$892,619 producer fee. The Production Service Agreement contained repayment milestones to be made during 2015, which, if not met, accrued interest at a default rate of 8.5% per annum above the published base rate of HSBC Private Bank (UK) Limited until maturity on January 31, 2016 or the release of the movie. Due to a delay in the release of *Max Steel*, the Company did not make the repayments as prescribed in the Production Service Agreement. As a result, the Company recorded accrued interest of \$1,698,280 and \$1,624,754, respectively, as of December 31, 2019 and 2018 in Debt on the Company's consolidated balance sheets. The loan was partially secured by international distribution agreements entered into by the Company prior to the commencement of principal photography and the receipt of tax incentives. As a condition to the Production Service Agreement, the Company acquired a completion guarantee from a bond company for the production of the motion picture. The funds for the loan were held by the bond company and disbursed as needed to complete the production in accordance with the approved production budget. The Company recorded debt as funds were transferred from the bond company for the production.

As of December 31, 2019, and 2018 the Company had outstanding balances of \$3,311,198, including accrued interest in the amount of \$1,698,280 and \$3,353,741, including \$1,624,754 of accrued interest, respectively, related to this debt on its consolidated balance sheets.

Line of Credit

On March 15, 2018, 42West entered into a business loan agreement with BankUnited, N.A. for a revolving line of credit (the "Loan Agreement"). The Loan Agreement matured on March 15, 2020 and bears interest on the outstanding balance at the bank's prime rate plus 0.25% per annum. The maximum amount that can be drawn on the revolving line of credit is \$2,300,000 with a sublimit of \$750,000 for standby letters of credit. Amounts outstanding under the Loan Agreement are secured by 42West's current and future inventory, chattel paper, accounts, equipment and general intangibles. On March 28, 2018, the Company drew \$1,690,000 under the Loan Agreement to purchase 183,296 shares of Common Stock, pursuant to the Put Agreements. As of December 31, 2019 and 2018, the outstanding balance on the line of credit was \$1,700,390.

The Loan Agreement contains customary affirmative covenants, including covenants regarding maintenance of a maximum debt to total net worth ratio of at least 4.0:1.0 and a minimum debt service coverage of 1.40x based on fiscal year-end audit to be calculated as provided in the Loan Agreement. Further, the Loan Agreement contains customary negative covenants, including those that, subject to certain exceptions, restrict the ability of 42West to incur additional indebtedness, grant liens, make loans, investments or certain acquisitions, or enter into certain types of agreements. For the year ended December 31, 2019, the Company did not meet its debt service covenant. The Company and Bank United agreed to convert the line of credit into a term loan upon its maturity on March 15, 2020. See Subsequent Events (Note 22) for further discussion on the terms of the loan.

NOTE 9 — NOTES PAYABLE

Convertible Notes

2019 Lincoln Park Note

On May 20, 2019, the Company entered into a securities purchase agreement with Lincoln Park Capital Fund LLC, an Illinois limited liability company ("Lincoln Park"), pursuant to which the Company agreed to issue and sell to Lincoln Park a senior convertible promissory note in an initial principal amount of \$1,100,000 (the "Lincoln Park Note") at a purchase price of \$1,000,000 (representing an original issue discount of approximately 9.09%), together with warrants to purchase up to 137,500 shares of Common Stock (the "Lincoln Park Warrants") at an exercise price of \$2.00 per share and 137,500 additional warrants on each of the second, fourth and sixth month anniversaries of the securities purchase agreement if any of the balance remains outstanding on such dates. As such, on each of July 23, 2019, September 20, 2019, and November 20, 2019, the Company issued Lincoln Park Warrants to purchase up to 137,500 shares of Common Stock. The Company recorded debt discount in the amount of \$126,257 related to these warrants and amortized \$22,872 as interest expense during the year ended December 31, 2019. The Lincoln Park Note is convertible at any time into shares of Common Stock (the "Conversion Shares") at an initial conversion price equal to the lower of (a) \$5.00 per share and (b) the lower of (i) the lowest intraday sale price of the Common Stock on the applicable conversion date and (ii) the average of the three lowest closing sales prices of the Common Stock during the twelve consecutive trading days ending on and including the trading day immediately preceding the conversion date, subject in the case of this clause (B), to a floor of \$1.00 per share. The Lincoln Park Note contains a clause that allows Lincoln Park to adjust the conversion price if the Company sells shares of Common Stock at a lower price than their conversion price during the 180-days following the date of the Lincoln Park Note. If an event of default under the Lincoln Park Note occurs prior to maturity, the Lincoln Park Note will be convertible into shares of Common Stock at a 15% discount to the applicable conversion price. Outstanding principal under the Lincoln Park Note will not accrue interest, except upon an event of default, in which case interest at a default rate of 18% per annum would accrue until such event of default is cured. The Lincoln Park Note matures on May 21, 2021 and can be paid at prior to the maturity date without any penalty.

On May 21, 2019, the date of the issuance of the Lincoln Park Note, the Company's Common Stock had a market value of \$1.37 per share. The Company determined that the Lincoln Park Note contained a beneficial conversion feature by calculating the amount of shares using the conversion rate of the Lincoln Park Note of \$1.18 per share, (after allocating a portion of the convertible debt to the warrants based on the fair value of the warrants) and then calculating the market value of the shares that would be issued at conversion using the market value of the Company's Common Stock on the date of the Lincoln Park Note. The Company recorded a beneficial conversion feature on the Note of \$166,887 that is amortized and recorded as interest expense over the life of the Lincoln Park Note. The original issue discount of \$100,000 is amortized and recorded as interest expense over the life of the Lincoln Park Note. The Company recorded \$77,842 of interest expense from the amortization of the original issue discount and beneficial conversion feature in year ending December 31, 2019, and had a balance of \$910,955, net of \$70,833 of original debt discount and \$118,211 of beneficial conversion feature, related to the Lincoln Park Note in noncurrent liabilities on its consolidated balance sheet.

In connection with the transactions contemplated by the securities purchase agreement, on May 20, 2019, the Company entered into a registration rights agreement with Lincoln Park, pursuant to which the Company agreed to register the Conversion Shares for resale by Lincoln Park under the Securities Act, if during the six-month period commencing on the date of the Registration Rights Agreement, the Company determines to file a resale registration statement with the Securities and Exchange Commission.

2019 Convertible Debt

On each of March 25, 2019, July 9, 2019, September 25, 2019, and October 11, 2019 the Company issued convertible promissory note agreements to third-party investors and received \$200,000, \$150,000, \$250,000, and \$500,000, respectively, to be used for working capital. The convertible promissory notes bear interest at a rate of 10% per annum and mature on March 25, 2021, July 9, 2021, September 25, 2021, and October 11, 2021, respectively. The balance of the convertible promissory notes and any accrued interest may be converted into shares of Common Stock at the noteholder's option at any time at a purchase price based on the 30-day trailing average closing price of the Common Stock. As of December 31, 2019, the Company had a balance of \$1,100,000 in noncurrent liabilities related to these convertible promissory notes.

On August 12, 2019, the Company entered into the Exchange Agreement whereby one of the 42West Members agreed to take a convertible note instead of cash in exchange for 76,194 Put Rights that had been exercised by one of the 42West Members and not paid. The principal amount of the convertible note is \$702,500, bears interest at a rate of 10% per annum and matures on August 12, 2020. The balance of the convertible note and any accrued interest may be converted into shares of Common Stock at the noteholder's option at any time during the term of the convertible note payable, at a purchase price based on the 30-day trailing average closing price of the Common Stock. See Note 3 (Mergers and Acquisitions) for more information regarding the Exchange Agreement.

2018 Convertible Debt

On July 5, 2018, the Company issued an 8% secured convertible promissory note in the principal amount of \$1.5 million (the "Note") to Pinnacle Family Office Investments, L.P. ("Pinnacle") pursuant to a Securities Purchase Agreement, dated the same date, between the Company and Pinnacle. The Company used the proceeds of the convertible promissory note to finance the Company's acquisition of The Door. The Company's obligations under the Note are secured primarily by a lien on the assets of The Door and Viewpoint.

The Company must pay interest on the principal amount of the convertible promissory note at the rate of 8% per annum in cash on a quarterly basis. The Note matures on January 5, 2020. The Company may prepay the convertible promissory note in whole, but not in part, at any time prior to maturity; however, if the Company voluntarily prepays the convertible promissory note, it must (i) pay Pinnacle a prepayment penalty equal to 10% of the prepaid amount and (ii) issue to Pinnacle warrants to purchase 100,000 shares of Common Stock with an exercise price equal to \$3.25 per share. The convertible promissory note also contains certain customary events of default. The holder may convert the outstanding principal amount of the convertible promissory note into shares of Common Stock at any time at a price per share equal to \$3.25, subject to adjustment for stock dividends, stock splits, dilutive issuances and subsequent rights offerings. The conversion price was adjusted to \$0.78, the purchase price used in the 2019 Public Offering. At the Company's election, upon a conversion of the convertible promissory note, the Company may issue Common Stock in respect of accrued and unpaid interest with respect to the principal amount of the convertible promissory note converted by Pinnacle.

On the date of the Note, the Company's Common Stock had a market value of \$3.65. The Company determined that the Note contained a beneficial conversion feature or debt discount by calculating the number of shares using the conversion rate of the Note of \$3.25 per share, and then calculating the market value of the shares that would be issued at conversion using the market value of the Company's Common Stock on the date of the Note. The Company recorded a debt discount on the Note of \$184,614 that will be amortized and recorded as interest expense over the life of the Note.

On December 4, 2019, Pinnacle converted \$297,936 of the principal on the note to 380,603 shares of the Company at a price of \$0.78 per share.

For years ended December 31, 2019 and 2018, the Company recorded interest expense in its consolidated statement of operations in the amount of \$118,279 and \$58,333 in respect of the Note. For years ended December 31, 2019 and 2018, the Company paid and recorded in its consolidated statement of operations interest in the amount of \$90,000 and \$58,333 in respect of the Note. For years ended December 31, 2019 and 2018, the Company recorded interest expense of \$123,076 and \$61,538 from the amortization of the beneficial conversion of the Note. As of December 31, 2019 and 2018, the Company had a balance of \$1,202,064 and \$1,376,924, net of \$0 and \$123,076 of debt discount, respectively, recorded in current liabilities on its consolidated balance sheet, related to this Note.

2017 Convertible Debt

In 2017, the Company entered into subscription agreements pursuant to which it issued unsecured convertible promissory notes, each with substantially similar terms, for an aggregate principal amount of \$875,000. Each of the convertible promissory notes matures one year from the date of issuance, with the exception of one note in the amount of \$75,000, which matures two years from the date of issuance, and bears interest at a rate of 10% per annum. During 2018, the respective maturity dates of the promissory notes were extended for a period of one year from the original maturity dates and in 2019 were extended for another one year period. The principal and any accrued and unpaid interest of the convertible promissory notes are convertible by the respective holders into shares of Common Stock at a price equal to either (i) the 90-trading day average price per share of Common Stock as of the date the holder submits a notice of conversion or (ii) if an Eligible Offering (as defined in the convertible promissory notes) of Common Stock is made, 95% of the public offering price per share of Common Stock.

On June 25, 2018, one of the holders of a convertible promissory note notified us that they would convert \$250,000 of principal and \$23,425 of accrued interest into 85,299 shares of common stock at a price of \$3.21 per share using the 90-day trading average price per share of common stock as of June 22, 2018. On June 25, 2018, the closing market price of the Company's common stock was \$3.83 per share and the Company recorded a loss on extinguishment of debt in the amount of \$53,271 on its consolidated statements of operation for the year ended December 31, 2018.

On March 21, 2019, the holder of a \$75,000 convertible promissory note elected to convert the note into 53,191 shares of Common Stock on the 90-day trailing trading average price of \$1.41 per share. On March 21, 2019, the closing market price of the Company's common stock was \$1.81. As a result, the Company recorded a loss on extinguishment of debt on its consolidated statement of operations for year ended December 31, 2019 of \$21,276 for the difference between the closing market price and the conversion price of the Common Stock.

For the year ended December 31, 2019, the Company paid interest on these notes in the aggregate amount of \$87,979, and recorded interest expense in the amount of \$96,783 relating to these notes. As of December 31, 2019, and 2018, the Company recorded accrued interest of \$40,803 and \$4,861, respectively, relating to the convertible notes payable. As of December 31, 2019, the Company had balances of \$1,252,000 in current liabilities and \$1,100,000 in noncurrent liabilities on its consolidated balance sheets relating to the 2017 Convertible Debt. As of December 31, 2018, the Company had balances of \$625,000 in current liabilities and \$1,376,924 in noncurrent liabilities on its consolidated balance sheets relating to the 2018 and 2017 Convertible Debt.

Nonconvertible Notes Payable

On July 5, 2012 the Company entered into an unsecured promissory note in the amount of \$300,000 bearing 10% interest per annum and payable on demand with KCF Investments LLC ("KCF"), an entity controlled by Mr. Stephen L Perrone, an affiliate of the Company. On December 10, 2018, the Company agreed to exchange this note, including accrued interest of \$192,233 for a new unsecured promissory note in the amount of \$492,233 that matures on December 10, 2023. This promissory note bears interest of 10% per annum and can be prepaid without a penalty at any time prior to its maturity. The note requires monthly repayments of principal and interest in the amount of \$10,459 throughout the life of the note.

On November 30, 2017, the Company entered into an unsecured promissory note in the amount of \$200,000 that matures on January 15, 2020. The promissory note bears interest of 10% per annum and can be prepaid without a penalty at any time prior to its maturity.

On June 14, 2017, the Company entered into an unsecured promissory note in the amount of \$400,000, with an initial maturity date of June 14, 2019 that was subsequently extended to June 13, 2021. The promissory note bears interest of 10% per annum and can be prepaid without a penalty after the initial six months.

On November 5, 2019, the Company entered into an unsecured promissory note in the amount of \$350,000, maturing on November 4, 2021. The promissory note bears interest of 10% per annum and can be prepaid without a penalty after the initial six months.

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During the year ended December 31, 2019, the Company made interest payments on its nonconvertible promissory notes in the aggregate amount of \$108,059. The Company had a balance of \$8,788 and \$6,315 as of December 31, 2019 and 2018, respectively, of accrued interest recorded in other current liabilities in its consolidated balance sheets, related to these promissory notes. The Company recorded interest expense for the years ended December 31, 2019 and 2018 of \$110,532 and \$90,310, respectively, related to these promissory notes. As of December 31, 2019, the Company had a balance of \$288,237 in current liabilities and \$1,074,122 in noncurrent liabilities on its consolidated balance sheets relating to these nonconvertible notes payable. As of December 31, 2018, the Company had balances of \$479,874 in current liabilities and \$612,359 in noncurrent liabilities on its consolidated balance sheets relating to these nonconvertible promissory notes.

NOTE 10 — LOANS FROM RELATED PARTY

Dolphin Entertainment, LLC (“DE LLC”), an entity wholly owned by the Company’s CEO, William O’Dowd, previously advanced funds for working capital to Dolphin Films. During 2016, Dolphin Films entered into a promissory note with DE LLC (the “DE LLC Note”) in the principal amount of \$1,009,624. Under the terms of the DE LLC Note, the CEO may make additional advancements to the Company, as needed, and may be repaid a portion of the loan, which is payable on demand and bears interest at 10% per annum. Included in the balance of the DE LLC Note are certain script costs and other payables totaling \$594,315 that were owed to DE LLC.

During the years ended December 31, 2019, and 2018, the Company repaid \$0 and \$601,001, respectively, of the principal balance and recorded interest expense of \$110,787, and \$129,384, respectively, relating to the DE LLC Note. As of December 31, 2019, and 2018 the Company had a principal balance of \$1,107,873 and \$1,107,873, respectively and accrued interest of \$415,592 and \$304,888, respectively relating to the DE LLC Note on its consolidated balance sheet.

NOTE 11 — FAIR VALUE MEASUREMENTS

Put Rights

In connection with the 42West Acquisition (see Note 4) on March 30, 2017, the Company entered into the Put Agreements, pursuant to which it granted the Put Rights to the sellers. The Put Rights include the shares issuable as Earn Out Consideration all of which was earned during the year ended December 31, 2017. During the year ended December 31, 2019, the sellers exercised their Put Rights, in accordance with the Put Agreements, and caused the Company to purchase 355,802 shares of Common Stock. Of those 44,740 were exchanged for 385,514 shares of Common Stock, 76,194 were exchanged for convertible promissory note and the \$2,165,500 were paid in cash, including \$275,000 paid in January of 2020. For the year ended December 31, 2018, the sellers exercised their Put Rights, in accordance with the Put Agreements, for an aggregate amount of 339,206 shares of Common Stock for \$3,127,500, including \$375,000 paid in January of 2019.

On March 20, 2018, the Company entered into put agreements with three 42West employees with change of control provisions in their employment agreements. The Company agreed to purchase up to 50% of the shares of Common Stock to be received by the employees in satisfaction of the change of control provision in their employment agreements. During the year ended December 31, 2018, the Company purchased a total of 120,451 shares of Common Stock for an aggregate purchase price of \$1,110,551. The employees have the right, but not the obligation, to cause the Company to purchase an additional 20,246 shares of Common Stock, including shares issuable in respect of the Earn Out Consideration.

The Company records the fair value of the liability in the consolidated balance sheets under the caption “Put Rights” and records changes to the liability against earnings or loss under the caption “Changes in fair value of put rights” in the consolidated statements of operations. The fair value of the Put Rights on the date of acquisition was \$3,800,000. The carrying amount at fair value of the aggregate liability for the Put Rights recorded on the consolidated balance sheets at December 31, 2019 and 2018 is \$3,003,547 and \$5,984,067, respectively, including \$275,000 and \$375,000, respectively, that was exercised but not paid until January 2020 and 2019, respectively. Due to the change in the fair value of the Put Rights for the period in which the Put Rights were outstanding during the year ended December 31, 2019 and 2018, the Company recorded a gain of \$2,880,520 and \$616,943 on the change in fair value of the put rights in the consolidated statement of operations.

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The Company utilized the Black-Scholes Option Pricing Model, which incorporates significant inputs that are not observable in the market, and thus represents a Level 3 measurement as defined in ASC 820. The unobservable inputs utilized for measuring the fair value of the Put Rights reflect management's own assumptions about the assumptions that market participants would use in valuing the Put Rights as of the December 31, 2019 and 2018.

The Company determined the fair value by using the following key inputs to the Black-Scholes Option Pricing Model:

Inputs	As of December 31, 2019	As of December 31, 2018
Equity volatility estimate	64.0 – 70.0%	35 – 59.4%
Discount rate based on US Treasury obligations	1.54% - 1.59%	2.45% - 2.63%

For the Put Rights, which measured at fair value categorized within Level 3 of the fair value hierarchy, the following is a reconciliation of the fair values from January 1, 2018 to December 31, 2019:

Ending fair value balance reported in the consolidated balance sheet at January 1, 2018	\$ 6,226,010
Change in fair value (gain) reported in the statements of operations	(616,943)
Put rights exercised December 2018 paid in January 2019	375,000
Ending fair value at December 31, 2018	<u>\$ 5,984,067</u>
Put rights exercised in December 2018 paid in January 2019	(375,000)
Change in fair value (gain) reported in the statements of operations	(2,880,520)
Put rights exercised December 2019 and not yet paid	275,000
Ending fair value of put rights reported in the consolidated balance sheet at December 31, 2019	<u>\$ 3,003,547</u>

Contingent Consideration

In connection with the Company's acquisition of The Door (See Note 4), the Members have the potential to earn the Contingent Consideration, comprising up to 1,538,462 shares of Common Stock, based on a price per share of \$3.25, and up \$2,000,000 in cash on achievement of adjusted net income targets based on the operations of The Door over the four-year period beginning January 1, 2018.

The Company records the fair value of the liability in the consolidated balance sheets under the caption "Contingent Consideration" and records changes to the liability against earnings or loss under the caption "Changes in fair value of contingent consideration" in the consolidated statements of operations. The fair value of the Contingent Consideration on the date of the acquisition of The Door was \$1,620,000. The carrying amount at fair value of the aggregate liability for the Contingent Consideration recorded on the consolidated balance sheet at December 31, 2019 and 2018 is \$330,000 and \$550,000. In year ended December 31, 2019, the Members of the Door earned \$26,443 of the contingent consideration. Due to the change in the fair value of the Contingent Consideration during year ended December 31, 2019, the Company recorded a gain on the Contingent Consideration of \$193,557 in the consolidated statement of operations.

The Company utilized a Monte Carlo Simulation model, which incorporates significant inputs that are not observable in the market, and thus represents a Level 3 measurement as defined in ASC 820. The unobservable inputs utilized for measuring the fair value of the Contingent Consideration reflect management's own assumptions about the assumptions that market participants would use in valuing the Contingent Consideration as of the acquisition date.

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The Company determined the fair value by using the following key inputs to the Monte Carlo Simulation Model:

Inputs	As of December 31, 2019	As of December 31, 2018
Risk Free Discount Rate (based on US government treasury obligation with a term similar to that of the Contingent Consideration)	1.58% - 1.59%	2.47% - 2.59%
Annual Asset Volatility Estimate	40.0%	65%

For the Contingent Consideration, which measured at fair value categorized within Level 3 of the fair value hierarchy, the following is a reconciliation of the fair values from December 31, 2018 to December 31, 2019:

Beginning fair value balance on the date of The Door merger (July 5, 2018)	1,620,000
Change in fair value (gain) reported in the statements of operations	(1,070,000)
Ending fair value balance reported in the consolidated balance sheet at December 31, 2018	<u>\$ 550,000</u>
Change in fair value (gain) reported in the statements of operations	(193,557)
Reclassified to additional paid in capital	26,443
Ending fair value balance reported in the consolidated balance sheet at December 31, 2019	<u>\$ 330,000</u>

During the years ended December 31, 2019 and 2018, the Company recorded a gain in the change in fair value of contingent consideration in the amount of \$193,557 and \$1,070,000, respectively, on its consolidated statements of operations.

NOTE 12 — CONTRACT LIABILITIES

The Company receives advance payments from customers for public relations projects or as deposits for promotional or brand-support video projects, that it records as contract liabilities. Once the work is performed or the projects are delivered to the customer, the contract liabilities are deemed earned and recorded as revenue. As of December 31, 2019 and 2018, the Company had balances of \$309,880 and \$522,620, respectively, in contract liabilities.

NOTE 13 — VARIABLE INTEREST ENTITIES

VIEs are entities that, by design, either (1) lack sufficient equity to permit the entity to finance its activities without additional subordinated financial support from other parties, or (2) have equity investors that do not have the ability to make significant decisions relating to the entity's operations through voting rights, or do not have the obligation to absorb the expected losses or the right to receive the residual returns of the entity. The most common type of VIE is a special-purpose entity ("SPE"). SPEs are commonly used in securitization transactions in order to isolate certain assets, and distribute the cash flows from those assets to investors. The legal documents that govern the transaction specify how the cash earned on the assets must be allocated to the SPE's investors and other parties that have rights to those cash flows. SPEs are generally structured to insulate investors from claims on the SPE's, assets by creditors of other entities, including the creditors of the seller of the assets.

The primary beneficiary of a VIE is required to consolidate the assets and liabilities of the VIE. The primary beneficiary is the party that has both (1) the power to direct the activities of an entity that most significantly impact the VIE's economic performance; and (2) through its interests in the VIE, the obligation to absorb losses or the right to receive benefits from the VIE that could potentially be significant to the VIE. To assess whether the Company has the power to direct the activities of a VIE that most significantly impact the VIE's economic performance, the Company considers all the facts and circumstances, including its role in establishing the VIE and its ongoing rights and responsibilities.

To assess whether the Company has the obligation to absorb losses or the right to receive benefits from the VIE that could potentially be significant to the VIE, the Company considers all of its economic interests, including debt and equity investments, servicing fees, and derivative or other arrangements deemed to be variable interests in the VIE. This assessment requires that the Company apply judgment in determining whether these interests, in the aggregate, are considered potentially significant to the VIE.

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The Company performs ongoing reassessments of (1) whether entities previously evaluated under the majority voting-interest framework have become VIEs, based on certain triggering events, and therefore would be subject to the VIE consolidation framework, and (2) whether changes in the facts and circumstances regarding the Company's involvement with a VIE cause the Company's consolidation conclusion to change. The consolidation status of the VIEs with which the Company is involved may change as a result of such reassessments. Changes in consolidation status are applied prospectively with assets and liabilities of a newly consolidated VIE initially recorded at fair value unless the VIE is an entity which was previously under common control, which in that case is consolidated based historical cost. A gain or loss may be recognized upon deconsolidation of a VIE depending on the carrying amounts of deconsolidated assets and liabilities compared to the fair value of retained interests and ongoing contractual arrangements.

The Company evaluated certain entities in which it did not have a majority voting interest and determined that it had (1) the power to direct the activities of the entities that most significantly impact their economic performance and (2) had the obligation to absorb losses or the right to receive benefits from these entities. As such the financial statements of Max Steel Productions, LLC and JB Believe, LLC are consolidated in the balance sheets as of December 31, 2019 and 2018, and in the statements of operations and statements of cash flows presented herein for the years ended December 31, 2019 and 2018. These entities were previously under common control and have been accounted for at historical costs for all periods presented.

	Max Steel Productions LLC		JB Believe LLC	
	As of and for the years ended		As of and for the years ended	
	December 31,		December 31,	
	2019	2018	2019	2018
Assets	\$ 7,379,851	\$ 7,978,887	\$ 190,347	\$ 205,725
Liabilities	\$(11,816,966)	\$(11,887,911)	\$ (6,749,914)	\$ (6,741,834)
Revenues	\$ 78,990	\$ 427,153	\$ 7,616	\$ 207,459
Expenses	\$ (607,081)	\$ (1,041,013)	\$ (31,075)	\$ (290)

Max Steel Productions LLC was initially formed for the purpose of recording the production costs of the motion picture *Max Steel*. Prior to the commencement of the production, the Company entered into a Production Service Agreement to finance the production of the film. As described in Note 8, the Production Service Agreement was for a total amount of \$10,419,009 with the lender taking an \$892,619 producer fee. Pursuant to the financing agreements, the lender acquired 100% of the membership interest of Max Steel Productions LLC with the Company controlling the production of the motion picture and having the rights to sell the motion picture.

As of December 31, 2019 and 2018, the Company had a balance in capitalized production costs of \$0 and \$629,585, respectively. For the year ended December 31, 2018, the Company wrote off accounts receivable of \$618,165 and allowance for doubtful accounts of \$227,280, related to the international licensing rights of *Max Steel* and as a result did not have a balance in accounts receivable as of December 31, 2018. For the year ended December 31, 2019, the Company collected \$116,067 of receivables that had previously been written off and recorded the receipt against bad debt expense. All proceeds from the sale of international licensing rights to the motion picture *Max Steel* and certain tax credits are used to repay the amounts due under the Production Service Agreement. As such, the Company will not receive any cash proceeds from the sale of the international licensing rights until the proceeds received from the Production Service Agreement are repaid. During the years ended December 31, 2019 and 2018, the proceeds from the international sales agreements and certain tax credits that were used to repay amounts due under the Production Service Agreement amounted to \$116,067 and \$357,264, respectively. If the amounts due under the Production Service Agreement are not repaid from the proceeds of the international sales, the Company may lose the international distribution rights, in which case it would no longer report the revenues from these territories and would impair the capitalized production costs and accounts receivable. The Company believes that the only recourse to the lender under the Production Service Agreement is to foreclose on the collateral securing the loans, which consists of the foreign distribution rights for *Max Steel*. However, if the lender were to successfully assert that the Company is liable to the lender for the payment of this debt despite the lack of contractual obligation, we do not have sufficient funds to repay this loan, which would have a material adverse effect on our liquidity and financial condition.

As of December 31, 2019 and 2018, there were outstanding balances of \$3,311,198, including accrued interest of \$1,698,280 and \$3,353,741, including accrued interest of \$1,624,754, respectively, related to this debt.

JB Believe LLC, an entity owned by Believe Film Partners LLC, of which the Company owns a 25% membership interest, was formed for the purpose of recording the production costs of the motion picture "*Believe*". The Company was given unanimous consent by the members to enter into domestic and international distribution agreements for the licensing rights of the motion picture, *Believe*, until such time as the Company had been repaid \$3,200,000 for the investment in the production of the film and \$5,000,000 for the P&A to market and release the film in the US. The Company has not been repaid these amounts and as such is still in control of the distribution of the film. For the years ended December 31, 2019 and 2018, the Company recorded revenues of \$7,616 and \$207,459, respectively, related to domestic distribution of *Believe*. The capitalized production costs related to *Believe* were either amortized or impaired in previous years. JB Believe LLC's primary liability is to the Company which it owes \$6,491,834.

NOTE 14 — STOCKHOLDERS' EQUITY

A. Preferred Stock

The Company's Amended and Restated Articles of Incorporation authorize the issuance of 10,000,000 shares of preferred stock. The Board of Directors has the power to designate the rights and preferences of the preferred stock and issue the preferred stock in one or more series.

On February 23, 2016, the Company amended its Articles of Incorporation to designate 1,000,000 preferred shares as "Series C Convertible Preferred Stock" with a \$0.001 par value which may be issued only to an "Eligible Series C Preferred Stock Holder". On May 9, 2017, the Board of Directors of the Company approved the amendment of the Company's articles of incorporation to reduce the designation of Series C Convertible Preferred Stock to 50,000 shares with a \$0.001 par value. The amendment was approved by the Company's shareholders on June 29, 2017 and the Company filed Amended and Restated Articles of Incorporation with the State of Florida (the Second Amended and Restated Articles of Incorporation) on July 6, 2017. Pursuant to the Second Amended and Restated Articles of Incorporation, each share of Series C Convertible Preferred Stock will be convertible into one share of common stock (one half of a share post-split), subject to adjustment for each issuance of common stock (but not upon issuance of common stock equivalents) that occurred, or occurs, from the date of issuance of the Series C Convertible Preferred Stock (the "issue date") until the fifth (5th) anniversary of the issue date (i) upon the conversion or exercise of any instrument issued on the issued date or thereafter issued (but not upon the conversion of the Series C Convertible Preferred Stock), (ii) upon the exchange of debt for shares of common stock, or (iii) in a private placement, such that the total number of shares of common stock held by an "Eligible Class C Preferred Stock Holder" (based on the number of shares of common stock held as of the date of issuance) will be preserved at the same percentage of shares of common stock outstanding held by such Eligible Class C Preferred Stock Holder on such date. An Eligible Class C Preferred Stock Holder means any of (i) DE LLC for so long as Mr. O'Dowd continues to beneficially own at least 90% and serves on the board of directors or other governing entity, (ii) any other entity in which Mr. O'Dowd beneficially owns more than 90%, or a trust for the benefit of others, for which Mr. O'Dowd serves as trustee and (iii) Mr. O'Dowd individually. Series C Convertible Preferred Stock will only be convertible by the Eligible Class C Preferred Stock Holder upon the Company satisfying one of the "optional conversion thresholds". Specifically, a majority of the independent directors of the Board, in its sole discretion, must have determined that the Company accomplished any of the following (i) EBITDA of more than \$3.0 million in any calendar year, (ii) production of two feature films, (iii) production and distribution of at least three web series, (iv) theatrical distribution in the United States of one feature film, or (v) any combination thereof that is subsequently approved by a majority of the independent directors of the Board based on the strategic plan approved by the Board. While certain events may have occurred that could be deemed to have satisfied this criteria, the independent directors of the Board have not yet determined that an optional conversion threshold has occurred. Except as required by law, holders of Series C Convertible Preferred Stock will only have voting rights once the independent directors of the Board determine that an optional conversion threshold has occurred. Only upon such determination, will the Series C Convertible Preferred Stock be entitled or permitted to vote on all matters required or permitted to be voted on by the holders of common stock and will be entitled to that number of votes equal to three votes for the number of Conversion Shares (as defined in the Certificate of Designation) into which such Holder's shares of the Series C Convertible Preferred Stock could then be converted.

The Certificate of Designation also provides for a liquidation value of \$0.001 per share and dividend rights of the Series C Convertible Preferred Stock on parity with the Company's Common Stock.

Effective July 6, 2017, the Company amended its Articles of Incorporation to among other things cancel previous designations of Series A Convertible Preferred Stock and Series B Convertible Preferred Stock

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B. Common Stock

The Company's Articles of Incorporation previously authorized the issuance of 200,000,000 shares of Common Stock. On June 29, 2017, the shareholders of the Company approved the 2017 Plan that replaced the 2012 Plan. On August 7, 2017, the Company filed a registration statement on Form S-8 to register 1,000,000 shares of Common Stock issuable under the Plan. As of December 31, 2018 and 2017, a total of 59,320 shares of restricted stock were issued under the 2017 Plan. The shares of restricted stock were issued on August 21, 2017 and have a vesting period of six months (February 21, 2018) in which the employees were to remain employed by the Company or risk forfeiture of the restricted stock. On February 21, 2018, the vesting period ended and no other stock was issued under the 2017 Plan.

Effective February 23, 2016, the Company amended its Amended Articles of Incorporation to increase the number of authorized shares of its Common Stock from 200,000,000 to 400,000,000. Effective September 14, 2017, the Company amended its Amended and Restated Articles of Incorporation to effectuate a 1:2 reverse stock split. As a result, the number of authorized shares of Common Stock was reduced from 400,000,000 to 200,000,000 shares.

On December 10, December 13 and December 19, 2017 each of the Principal Sellers of 42West exercised put option in the aggregate amount of 18,980 shares of Common Stock and were paid an aggregate of \$525,000 on January 5, 2018.

On January 22, 2018, the underwriters in the 2017 Offering exercised their over-allotment option with respect to 20,750 shares of Common Stock and 175,750 warrants to purchase Common Stock. Warrants were also issued to the underwriters of the 2017 Offering to purchase 1,453 shares of Common Stock at a purchase price of \$4.74 per share. The closing date of the over-allotment option was January 24, 2018, and the Company received \$81,044 of proceeds from the sale.

On February 21, 2018, employees of 42West who had been issued shares of Common Stock under the 2017 Plan returned 17,585 shares of Common Stock in respect of payroll and withholding taxes. The value of the shares returned to the Company was calculated using the market price of the Common Stock on February 21, 2018 of \$3.19 per share.

On March 11, 14 and 21, 2018, the sellers of 42West exercised Put Rights for 183,296 shares of Common Stock and were paid an aggregate amount of \$1,390,000 on April 2, 2018 and \$300,000 on April 10, 2018.

On March 20, 2018, three 42West employees exercised Put Rights for 51,485 shares of Common Stock and were paid an aggregate amount of \$474,680.

On May 8, 12 and 14, 2018, three of the sellers of 42West exercised Put Rights for 32,538 shares of Common Stock and were paid an aggregate amount of \$300,000 on June 1, 2018.

On June 22, 2018, two of the sellers of 42West exercised Put Rights for 16,268 shares of Common Stock and were paid an aggregate amount of \$150,000 on July 10, 2018.

On June 25, 2018, one of the holders of a convertible promissory note notified the Company that it would convert \$273,425 of principal and accrued interest into 85,299 shares of Common Stock, pursuant to the terms of the convertible promissory note.

On July 5, 2018, the Company issued 300,012 shares of Common Stock to the Members of The Door and on August 29, 2018, issued 7,680 shares of Common Stock to one of the advisors to the Merger. The aggregate amount of 307,692 shares of Common Stock is the stock consideration issuable on the Closing Date. See Note 4 for further details on the Merger.

On July 24, 2018, the Company sold 2,000,000 shares of Common Stock in the 2018 Offering. The shares of Common Stock were sold at an offering price of \$3.00 per share. The Company received net proceeds (net after transaction costs and underwriter discount) of approximately \$5.3 million.

On August 1, 2018, the Company issued to employees of 42West with change of control provisions in their employment agreements, an aggregate of 68,966 shares of Common Stock, the net amount, after the allowable puts to pay the federal, state and city employment taxes for their respective share of the second installment to the 42West Acquisition.

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On August 10 and 20, 2018, three of the sellers of 42West exercised Put Rights for 32,538 shares of Common Stock and were paid an aggregate amount of \$300,000 on September 4, 2018.

On August 22, 2018, the underwriters in the 2018 Offering exercised their over-allotment option with respect to 265,000 shares of Common Stock and the Company received proceeds, net of the underwriter discount and expenses, of \$0.7 million.

On September 19, 2018, the Company sold 250,000 shares of Common Stock through a direct registration offering and received \$0.7 million, net of expenses.

On September 21, 24 and 25, 2018, some of the sellers of 42West exercised Put Rights for 21,692 shares of Common Stock and were paid an aggregate amount of \$200,000 on October 10, 2018.

On October 2, 2018, one of the sellers of 42West exercised Put Rights for 6,779 shares of Common Stock and was paid \$62,500 on October 5, 2018.

On October 31, 2018, the Company issued 218,088 shares of Common Stock to the Viewpoint Shareholders as partial consideration to acquire 100% of the shares of Viewpoint. See Note 4 for further details on the acquisition.

On December 5, 11, 13, 15 and 21, 2018, some of the sellers of 42West exercised Put Rights for 46,095 shares of Common Stock and were paid an aggregate amount of \$50,000 on December 13, 2018, \$300,000 on January 4, 2019 and \$75,000 on January 11, 2019.

On January 3, 2019, the Company issued 307,692 shares of its Common Stock to the sellers of The Door pursuant to the Merger Agreement.

On February 7, 2019, one of the sellers of 42West exercised Put Rights for 7,049 shares of Common Stock and was paid an aggregate amount of \$65,000 on February 7, 2019.

On March 11, 2019, one of the sellers of 42West exercised Put Rights for 3,796 shares of Common Stock and was paid an aggregate amount of \$35,000 on March 13, 2019.

On March 12, 2019, one of the sellers of 42West exercised Put Rights for 21,692 shares of Common Stock and was paid an aggregate amount of \$200,000 on April 1, 2019.

On March 20, 2019, one of the sellers of 42West exercised Put Rights for 87,040 shares of Common Stock and was paid an aggregate amount of \$100,000 on April 1, 2019. The remaining \$702,500 was converted to a note payable on August 12, 2019.

On March 21, 2019, one of the sellers of 42West exercised Put Rights for 8,134 shares of Common Stock and was paid an aggregate amount of \$75,000 on April 10, 2019.

On March 21, 2019, one of the convertible promissory note holders elected to convert a \$75,000 convertible promissory note into 53,191 shares of common stock at a 90-day trailing trading average stock price of \$1.41 per share of Common Stock.

On May 6, 2019, one of the sellers of 42West exercised Put Rights for 5,422 shares of Common Stock and was paid \$50,000 on May 6, 2019.

On May 13, May 16 and May 22, 2019, three of the sellers of 42West exercised Put Rights for an aggregate amount of 37,961 shares of Common Stock and were paid \$350,000 on June 3, 2019.

On June 25, 2019, one of the sellers of 42West exercised Put Rights for 12,527 shares of Common Stock and was paid \$115,500 on June 28, 2019.

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On June 24, 2019, one of the sellers of 42West exercised Put Rights for 8,134 shares of Common Stock and was paid \$75,000 on July 10, 2019.

On June 30, 2019 one of the sellers of 42West exercised Put Rights for 10,846 shares of Common Stock and was paid \$100,000 on July 17, 2019.

On August 12, 2019, one of the sellers of 42West exercised exchanged 44,740 Put Rights for 385,514 shares of Common Stock. On the same day, the same seller exercised Put Rights for 16,269 shares of Common Stock and was paid \$150,000 on September 3, 2019.

On August 19, 2019, one of the sellers of 42West exercised Put Rights for 10,846 shares of Common Stock and was paid \$100,000 on September 3, 2019.

On August 23, 2019, one of the sellers of 42West exercised Put Rights for 10,846 shares of Common Stock and was paid \$100,000.

On September 24, 2019, one of the sellers of 42West exercised Put Rights for 8,134 shares of Common Stock and was paid \$75,000 on October 10, 2019.

On October 21, 2019, the Company sold 2,700,000 shares of Common Stock in the 2019 Offering. The shares of Common Stock were sold at an offering price of \$0.78 per share. The Company received net proceeds (net after transaction costs and underwriter discount) of approximately \$1.8 million.

On November 15, 2019, one of the sellers of 42West exercised Put Rights for 10,846 shares of Common Stock and was paid \$100,000 on November 15, 2019.

On December 3, 2019, the Company issued 314,812 shares of Common Stock to the seller of Shore Fire. See Note 4 for further discussion on the acquisition.

On December 4, 2019, one of the holders of a convertible promissory note notified the Company that it would convert \$297,936 of principal into 380,603 shares of Common Stock, pursuant to the terms of the convertible promissory note.

On December 12, 2019, two of the sellers of 42West exercised Put Rights for 21,692 shares of Common Stock and were each paid an \$100,000 on January 13, 2020 and February 4, 2020.

On December 19, 2019, one of the sellers of 42West exercised Put Rights for 21,692 shares of Common Stock and was paid \$200,000 on December 20, 2019.

On December 27, 2019, one of the sellers of 42West exercised Put Rights for 8,146 shares of Common Stock and was paid \$75,000 on January 13, 2020.

As of December 31, 2019 and 2018, the Company had 17,892,900 and 14,123,157 shares of Common Stock issued and outstanding, respectively.

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NOTE 15 — EARNINGS (LOSS) PER SHARE

The following table sets forth the computation of basic and diluted loss per share:

	Year ended	
	12/31/2019	12/31/2018
Numerator		
Net loss attributable to Dolphin Entertainment stockholders	\$ (1,193,377)	\$ (2,913,321)
Deemed dividend	(301,692)	(158,004)
Net loss attributable to Dolphin Entertainment common share stockholders and numerator for basic earnings per share	\$ (1,495,069)	\$ (3,071,325)
Change in fair value of put rights	(2,880,520)	(616,943)
Numerator for diluted loss per share	<u>\$ (4,375,589)</u>	<u>\$ (3,688,268)</u>
Denominator		
Denominator for basic EPS - weighted-average shares	16,522,924	13,773,395
Effect of dilutive securities:		
Put rights	4,902,582	2,386,091
Denominator for diluted EPS - adjusted weighted-average shares assuming exercise of warrants	<u>21,425,506</u>	<u>16,159,486</u>
Basic loss per share	\$ (0.07)	\$ (0.22)
Diluted loss per share	\$ (0.20)	\$ (0.23)

Basic loss per share is computed by dividing income attributable to the shareholders of Common Stock (the numerator) by the weighted-average number of shares of Common Stock outstanding (the denominator) for the period. Diluted earnings per share assume that any dilutive equity instruments, such as put rights and convertible notes payable were exercised and outstanding Common Stock adjusted accordingly.

In periods when the Put Rights are assumed to have been settled at the beginning of the period in calculating the denominator for diluted loss per share, the related change in the fair value of Put Right liability recognized in the consolidated statements of operations for the period, is added back or subtracted from net income during the period. The denominator for calculating diluted loss per share for the years ended December 31, 2019 and 2018, assumes the Put Rights had been settled at the beginning of the period, and therefore, the related income due to the decrease in the fair value of the Put Right liability during the years ended December 31, 2019 and 2018 is subtracted from net loss.

For the year ended December 31, 2019, the Company excluded certain common stock equivalents such as warrants and shares to be issued for convertible debt in the aggregate of 4,212,962 shares as inclusion would be anti-dilutive.

For the year ended December 31, 2018, the Company included the Common Stock that is issuable in January 2019 in connection with The Door merger as if the shares had been issued on July 5, 2018, in both basic and diluted loss per share since the only contingency to receiving the shares is the passage of time. The Company excluded certain common stock equivalents such as warrants and shares to be issued for convertible debt in the aggregate of 888,251 shares as inclusion would be anti-dilutive.

During the year ended December 31, 2018, the Company adopted ASU 2017-11 that states that when determining whether certain financial instruments should be classified as equity or liabilities, a down round feature no longer precludes equity classification when assessing whether the instrument is indexed to an entity's own stock. For freestanding equity classified financial instruments, the amendments require entities that present earnings per share (EPS) in accordance with Topic 260 to recognize the effect of the down round feature when it is triggered. That effect is treated as a dividend and as a reduction of income available to common shareholders in basic EPS. During the years ended December 31, 2019 and 2018, the Company issued shares of Common Stock at prices below the exercise or conversion price of certain warrants and convertible notes payable that resulted in a repricing of the exercise price or conversion price. As a result, the Company recorded a deemed dividend of \$301,692 and \$158,004, respectively.

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NOTE 16 — WARRANTS

A summary of warrants outstanding at December 31, 2017 and issued exercised and expired during the years ended December 31, 2019 and 2018 is as follows:

Warrants:	Shares	Weighted Avg. Exercise Price
Balance at December 31, 2017	2,912,165	\$ 4.80
Issued	177,203	4.74
Exercised	—	—
Expired	(362,115)	9.87
Balance at December 31, 2018	2,727,253	\$ 3.62
Issued	550,000	2.00
Exercised	—	—
Expired	(1,000,000)	2.29
Balance at December 31, 2019	2,277,253	\$ 3.47

As of December 31, 2016, the Company had outstanding warrants "E" & "F" that were issued to T Squared Investments LLC ("T Squared") in 2010 and 2012. Each of warrants "E" and "F" are exercisable into 175,000 shares of Common Stock, at an exercise price of \$10.00 per share. Pursuant to the terms of warrants "E" and "F", T Squared could continually pay the Company to reduce the exercise price of each of the warrants until such time as the exercise price was \$0.04 per share. During 2010 and 2011, T Squared made payments to the Company in the aggregate amount of \$1,625,000 to reduce the exercise price of warrant "E". On April 13, 2017, T Squared exercised 162,885 warrants using the cashless exercise provision in the warrant agreement and received 162,885 shares of the Common Stock. Since T Squared applied the \$1,625,000 that it had previously paid the Company to pay down the exercise price of the warrants to acquire the 162,885 shares of Common Stock, the exercise price for the remaining 12,115 warrants was recalculated to \$6.20 per share of Common Stock. During the year ended December 31, 2018, T Squared did not exercise warrants "E" and "F" and they expired on December 31, 2018.

On November 4, 2016, the Company issued a Warrant "G", a Warrant "H" and a Warrant "I" to T Squared ("Warrants "G", "H" and "I"). A summary of Warrants "G", "H" and "I" issued to T Squared is as follows:

Warrants:	Number of Shares	Exercise price at December 31, 2019	Exercise price at December 31, 2018	Original Exercise Price	Expiration Date
Warrant "G"	750,000	\$ N/A	\$ 2.29	\$ 10.00	January 31, 2019
Warrant "H"	250,000	\$ N/A	\$ 2.29	\$ 12.00	January 31, 2019
Warrant "I"	250,000	\$ 0.78	\$ 2.29	\$ 14.00	January 31, 2020
	<u>1,250,000</u>				

The Warrants "G", "H" and "I" contain a down round provision providing that, in the event the Company sells grants or issues any Common Stock or options, warrants, or any instrument convertible into shares of Common Stock or equity in any other form at a deemed per share price below the then current exercise price per share of the Warrants "G", "H" and "I", then the then current exercise price per share for the warrants that are outstanding will be reduced to such lower price per share. Under the terms of the Warrants "G", "H" and "I", T Squared has the option to continually pay the Company an amount of money to reduce the exercise price of any of Warrants "G", "H" and "I" until such time as the exercise price of Warrant "G", "H" and/or "I" is effectively \$0.02 per share. At such time when T Squared has paid down the warrants to an exercise price of \$0.02 per share or less, T Squared will have the right to exercise the Warrants "G", "H" and "I" via a cashless provision. Due to the existence of the round down provision, the Warrants "G", "H" and "I" were carried in the consolidated financial statements as derivative liabilities at fair value. However, on July 1, 2018, the Company adopted ASU 2017-11 that states down round provisions no longer preclude equity classification when assessing whether the instrument is indexed to an entity's own stock. As a result, the Company used the modified retrospective approach and recorded a cumulative effect adjustment to retained earnings to classify the instruments as equity. Warrants "G" and "H" were not exercised and expired on January 31, 2019.

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The exercise price of Warrants “G”, “H” and “I” has been reduced by the following transactions: (i) on March 30, 2017, the Company issued shares of Common Stock at a purchase price of \$9.22 per share related to the acquisition of 42West (Note 4); (ii) on December 21, 2017, the Company sold shares of Common Stock at a purchase price of \$4.12 per share as part of the 2017 Offering; (iii) on July 5, 2018, the Company issued shares as partial consideration for the merger with The Door at a purchase price of \$3.25 per share of Common Stock (Note 4); (iv) on July 24, 2018, the Company sold shares of Common Stock at \$3.00 per share as part of the 2018 Offering (v) on October 31, 2018, the Company issued shares of Common Stock at a purchase price of \$2.29 per share as partial consideration for the acquisition of the Viewpoint shares, (vi) the Company sold shares of Common Stock at \$0.78 per share as part of the 2019 Offering, and (vii) on December 3, 2019, the Company issued shares of Common Stock at a purchase price of \$0.64 per share as partial consideration for the acquisition of Shore Fire.

In the 2017 offering, the Company issued 1,215,000 units, each comprising one share of Common Stock, and one warrant exercisable for one share of Common Stock for \$4.74 per share. In addition to the units issued and sold in this 2017 offering, the Company also issued warrants to the underwriters to purchase up to an aggregate of 85,050 shares of Common Stock at a purchase price of \$4.74 per share. On January 22, 2018, the underwriters exercised their over-allotment option with respect to 175,750 warrants to purchase Common Stock at a purchase price of \$4.74 per share. In connection with the exercise of the over-allotment option, the Company issued to the underwriters warrants to purchase an aggregate of 1,453 shares of Common Stock at a purchase price of \$4.74 per share. The Company determined that each of these warrants should be classified as equity and recorded the fair value of the warrants in additional paid in capital.

On each of May 21, July 23, September 20, and November 20, 2019 the Company issued Lincoln Park Warrants to purchase up to 137,500 shares of Common Stock (550,000 total) at a purchase price of \$2.00 per share to Lincoln Park related to the Lincoln Park Note. The Lincoln Park Warrants become exercisable on the six-month anniversary and for a period of five years thereafter. If a resale registration statement covering the shares of Common Stock underlying the Lincoln Park Warrants is not effective and available at the time of exercise, the Lincoln Park Warrants may be exercised by means of a “cashless” exercise formula. The Lincoln Park Warrants had a fair value at issuance of approximately \$220,000. The Company determined that the Lincoln Park Warrants should be classified as equity and recorded the fair value of the warrants as additional debt discount and additional paid in capital.

NOTE 17 — RELATED PARTY TRANSACTIONS

On December 31, 2014, the Company and its CEO renewed his employment agreement for a period of two years commencing January 1, 2015. The agreement stated that the CEO was to receive annual compensation of \$250,000. In addition, the CEO was entitled to an annual discretionary bonus as determined by the Company’s Board of Directors. As part of his agreement, he received a \$1,000,000 signing bonus in 2012 that is recorded in accrued compensation on the consolidated balance sheets. Any unpaid and accrued compensation due to the CEO under this agreement will accrue interest on the principal amount at a rate of 10% per annum from the date of this agreement until it is paid. Even though the employment agreement expired and has not been renewed, the Company has an obligation under the agreement to continue to accrue interest on the unpaid balance. As of December 31, 2019 and 2018, the Company has balances of \$2,625,000 and \$2,625,000, respectively, of accrued compensation and \$1,493,219 and \$1,230,719, respectively, of accrued interest in other current liabilities on its consolidated balance sheets related to Mr. O’Dowd’s employment. The Company recorded interest expense related to the accrued compensation of \$262,500 and \$236,598, respectively, for the years ended December 31, 2019 and 2018 on the consolidated statements of operations.

On March 30, 2017, in connection with the 42West Acquisition, the Company and Mr. O’Dowd, as personal guarantor, entered into four separate Put Agreements with each of the Sellers of 42West, pursuant to which the Company has granted each of the Sellers the right to cause the Company to purchase up to an aggregate of 1,187,094 of their shares of Common Stock received as Consideration for a purchase price equal to \$9.22 per share during certain specified exercise periods up until December 2020, including the put rights allowable for the Earn Out Consideration achieved during the year ended December 31, 2017. Pursuant to the terms of one such Put Agreement between Mr. Allan Mayer, a member of the board of directors of the Company, and the Company, Mr. Mayer exercised Put Rights and caused the Company to purchase 51,518 shares of Common Stock at a purchase price of \$9.22 for an aggregate amount of \$475,000, during the period between March 30, 2017 (42West Acquisition date) and December 31, 2017, of which \$175,000 was paid on January 5, 2018. During the year ended December 31, 2018, Mr. Mayer exercised Put Rights and caused the Company to purchase 101,680 shares of Common Stock at a purchase price of \$9.22 for an aggregate amount of \$937,500, of which \$150,000 was paid on January 4, 2019. During the year ended December 31, 2019, Mr. Mayer exercised Put Rights and caused the Company to purchase 65,076 shares of Common Stock at a purchase price of \$9.22 per share for an aggregate purchase price of \$600,000, of which \$100,000 was paid in January of 2020. In addition, on August 12, 2019, Mr. Mayer entered into an agreement with the Company to exchange 44,740 Put Rights for 385,514 shares of Common Stock.

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On January 3, 2019, in connection with The Door Acquisition, and pursuant to the Merger Agreement, Charles Dougiello, one of the Door Members and Director of the Company was paid \$362,750 and was issued 153,846 shares of Common Stock as consideration for The Door.

NOTE 18 — SEGMENT INFORMATION

The Company operates in two reportable segments, Entertainment Publicity and Marketing Segment and Content Production Segment. The Entertainment Publicity and Marketing segment is composed of 42West, The Door, Viewpoint, and Shore Fire Media and provides clients with diversified services, including public relations, entertainment and hospitality content marketing and strategic marketing consulting. Content Production segment is composed of Dolphin Entertainment and Dolphin Films and engages in the production and distribution of digital content and feature films.

The profitability measure employed by our chief operating decision maker for allocating resources to operating segments and assessing operating segment performance is operating (loss) income. Salaries and related expenses include salaries, bonuses, commissions and other incentive related expenses. Legal and professional expenses primarily include professional fees related to financial statement audits, legal, investor relations and other consulting services, which are engaged and managed by each of the segments. In addition, general and administrative expenses include rental expense and depreciation of property, equipment and leasehold improvements for properties occupied by corporate office employees.

In connection with the acquisitions of 42West, The Door, Viewpoint, and Shore Fire, the Company assigned \$8,361,539 of intangible assets, net of accumulated amortization of \$4,300,494 as of December 31, 2019 and \$9,395,215, net of accumulated amortization of \$2,714,785 as of December 31, 2018 and goodwill of \$17,947,989 as of December 31, 2019 and \$15,922,601 (after goodwill impairment of \$1,857,000) as of December 31, 2018, to the Entertainment Publicity and Marketing segment.

	Year ended December 31, 2019	Year ended December 31, 2018
Revenue:		
Entertainment publicity and marketing segment	\$24,915,261	\$21,916,727
Content production segment	86,606	634,612
Total	\$25,001,867	\$22,551,339
Segment operating loss:		
Entertainment publicity and marketing segment	\$ (823,143)	\$ (1,185,384)
Content production segment	(3,262,012)	(2,963,193)
Total	(4,085,155)	(4,148,577)
Interest expense	(1,206,201)	(1,050,478)
Other income, net	3,679,780	1,195,120
Loss before income taxes	\$ (1,611,576)	\$ (4,003,935)

	As of December 31,	
	2019	2018
Assets:		
Entertainment publicity and marketing segment	\$40,083,491	\$34,372,195
Content production segment	2,488,235	3,617,399
Total assets	\$42,571,726	\$37,989,594

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NOTE 19 — INCOME TAXES

Income Tax Benefit is as follows:

	December 31,	
	2019	2018
Current Income Tax (Benefit) Expense		
Federal	\$ —	\$ 20,986
State	3,974	(100,092)
	<u>\$ 3,974</u>	<u>\$ (79,106)</u>
Deferred Income Tax (Benefit) Expense		
Federal	\$ 607,637	\$ 1,405,925
State	1,381,605	760,503
	<u>\$ 1,989,242</u>	<u>\$ 2,166,428</u>
Change in Valuation (Benefit) Allowance		
Federal	\$ (909,390)	\$ (2,177,189)
State	(1,502,025)	(1,000,747)
	<u>(2,411,415)</u>	<u>(3,177,936)</u>
Income Tax Benefit	<u>\$ (418,199)</u>	<u>\$ (1,090,614)</u>

At December 31, 2019 and 2018, the Company had deferred tax assets and liabilities as a result of temporary differences between financial statement carrying amounts and the tax basis of assets and liabilities. Deferred tax values at December 31, 2019 and 2018, are as follows:

	December 31,	
	2019	2018
Deferred Tax Assets:		
Accrued Expenses	\$ 811,323	\$ 786,750
Interest Expense	479,409	422,407
Lease liability	1,662,623	430,494
Accrued Compensation	728,281	696,235
Intangibles	1,927,358	1,280,126
Other Assets	85,447	78,217
Put Options	(336,584)	434,495
Capitalized Web Costs	—	555,370
Capitalized Production Costs	209,945	192,492
Charitable Contributions	197,284	218,352
Net Operating Losses and Credits	12,072,376	9,402,185
Total Deferred Tax Assets	<u>17,837,462</u>	<u>14,497,123</u>
Deferred Tax Liability:		
Fixed Assets	(83,192)	(105,767)
Right of use asset	(1,363,024)	—
Other Liabilities	(142,960)	(132,313)
Total Deferred Tax Liability	<u>\$ (1,589,176)</u>	<u>\$ (238,080)</u>
Subtotal	16,248,286	14,259,043
Valuation Allowance	<u>(16,227,300)</u>	<u>(14,259,043)</u>
Net Deferred Taxes	<u>\$ 20,986</u>	<u>\$ —</u>

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As of December 31, 2019, the Company has approximately \$43,692,000 of net operating loss carryforwards for U.S. federal income tax purposes that begin to expire in 2028. Federal net operating losses generated after December 31, 2017 have an indefinite life and do not expire. Additionally, the Company has approximately \$25,270,000 of net operating loss carryforwards for Florida state income tax purposes that begin to expire in 2029, approximately \$13,054,000 of California net operating loss carryforwards that begin to expire in 2032, and approximately \$1,780,000 of New York and New York City net operating loss carryforwards that begin to expire in 2038. Utilization of net operating losses and tax credit carryforwards may be subject to an annual limitation provided by the Internal Revenue Code of 1986, as amended, and similar state provisions. Further, a portion of the carryforwards may expire before being applied to reduce future income tax liabilities. In assessing the ability to realize the deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of the deferred tax asset is dependent upon the generation of future taxable income during the periods in which these temporary differences become deductible. Management believes it is more likely than not that the deferred tax asset will not be realized and has recorded a net valuation allowance of \$16,227,300 and \$14,258,043 as of December 31, 2019 and 2018, respectively.

A reconciliation of the federal statutory tax rate with the effective tax rate from continuing operations is as follows:

	2019	2018
Federal Statutory Tax Rate	21.0%	21.0%
Permanent Items Affecting Tax Rate	(2.2)%	2.3%
State Income Taxes, Net of Federal Income Tax Benefit	5.0%	6.6%
Change in State Tax Rate	57.9%	—%
Return to Provision Adjustment	(2.5)%	2.5%
Business Combination	21.7%	19.2%
Other	2.5%	(0.4)%
Change in Valuation Allowance	(78.0)%	(24.3)%
Effective Tax Rate	<u>25.4%</u>	<u>26.9%</u>

As of December 31, 2019 and 2018, the Company does not have any material unrecognized tax benefits and accordingly has not recorded any interest or penalties related to unrecognized tax benefits. The Company does not believe that unrecognized tax benefits will significantly change within the next twelve months. The Company and its subsidiaries file Federal, California, Florida, Illinois, Massachusetts, New York State, and New York City income tax returns. These returns remain subject to examination by taxing authorities for all years after December 31, 2015.

Income taxes are provided for the tax effects of transactions reported in the financial statements and consist of taxes currently due plus deferred taxes related primarily to differences between the basis of certain assets and liabilities for financial and tax reporting. The deferred taxes represent the future tax consequences of those differences, which will either be deductible or taxable when the assets and liabilities are recovered or settled.

NOTE 20 — LEASES

Viewpoint is obligated under an operating lease agreement for office space in Newton, Massachusetts, expiring in March 2021. The lease is secured by a certificate of deposit held by the Company in the amount of \$36,735 and included in restricted cash as of December 31, 2019. The lease provides for increases in rent for real estate taxes and operating expenses and contains a renewal option for an additional five years.

The Door occupies space in New York. An entity wholly owned by the former Members of The Door is obligated under an operating lease agreement for the office space expiring in August 2020. The Company made payments of \$249,305 to the affiliate during the year ended December 31, 2019, related to this lease. The lease is secured by a cash security deposit of approximately \$29,000.

The Door is obligated under an operating lease agreement for office space in Chicago, Illinois, at a fixed rate of \$2,200 per month, expiring in May 2020. The lease is secured by a cash deposit of approximately \$1,500.

42West is obligated under an operating lease agreement for office space in New York, expiring in December 2026. The lease is secured by a standby letter of credit amounting to \$677,354, and provides for increases in rent for real estate taxes and building operating costs. The lease also contains a renewal option for an additional five years.

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42West is obligated under an operating lease agreement for office space in California, expiring in December 2021. The lease is secured by a cash security deposit of \$44,788 and a standby letter of credit in the amount of \$50,000 at December 31, 2019 and, 2018. The lease also provides for increases in rent for real estate taxes and operating expenses, and contains a renewal option for an additional five years, as well as an early termination option effective as of February 1, 2019. Should the early termination option be executed, the Company will be subject to a termination fee in the amount of approximately \$637,000. The Company does not expect to execute such option.

On February 19, 2019, the Company entered into an agreement to lease 3,024 square feet of office space in Coral Gables, Florida. The lease is for a period of 62 months from the commencement date, at a monthly lease rate of \$9,954 with annual increases of 3%. The rent payments are abated for the first four months of the lease after the commencement date, which was October 1, 2019.

The Company was obligated under an operating lease for office space in Los Angeles, California until July 31, 2019. The monthly rent was \$13,746 with annual increases of 3% for years 1 – 3 and 3.5% for the remainder of the lease. The lease was secured by a cash security deposit in the amount of \$32,337. On June 1, 2017, the Company entered into an agreement to sublease the office space in Los Angeles, California. The sublease was effective June 1, 2017 through July 31, 2019 with lease payment as follows: (i) \$14,892 per month for the first twelve months, with the first two months of rent abated and (ii) \$15,338 per month for the remainder of the sublease. The subtenant vacated the premises on July 31, 2019 and the Company's obligations under the sublease and master lease agreements were satisfied. As such, \$30,802 of the security deposit was returned to the Company.

Shore Fire Media is obligated under an operating lease agreement for office space in Brooklyn, New York, expiring in February 2026. The lease is secured by a cash deposit of \$34,490.

Shore Fire Media is obligated under an operating lease agreement for office space in Nashville, Tennessee, expiring July 2020. The lease is secured by a cash deposit of \$1,575.

The amortizable life of the right-of-use asset is limited by the expected lease term. Although certain leases include options to extend the Company did not include these in the right-of-use asset or lease liability calculations because it is not reasonably certain that the options will be executed.

	<u>January 1, 2019</u>	<u>December 31, 2019</u>
Assets		
Right-of-use asset	\$ 7,547,769	\$ 7,435,903
Liabilities		
Current		
Lease liability	\$ 1,394,479	\$ 1,610,022
Noncurrent		
Lease liability	<u>\$ 6,298,437</u>	<u>\$ 6,386,209</u>
Total lease liability	<u>\$ 7,692,916</u>	<u>\$ 7,996,231</u>

The table below shows the lease income and expenses recorded in the consolidated statement of operations incurred during year ended December 31, 2019.

<u>Lease costs</u>	<u>Classification</u>	<u>December 31, 2019</u>
Operating lease costs	Selling, general and administrative expenses	\$ 2,082,769
Operating lease costs	Direct costs	243,444
Sublease income	Selling, general and administrative expenses	(101,392)
Net lease costs		<u>\$ 2,224,821</u>

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Lease Payments

Future minimum payments for operating leases in effect at December 31, 2019 were as follows:

2020	\$ 2,252,799
2021	1,914,945
2022	1,293,707
2023	1,305,358
2024	1,357,335
Thereafter	2,173,036
Total	<u>\$10,297,180</u>

The Company used its incremental borrowing rate on January 1, 2019, deemed to be 8%, to calculate the present value of the lease liabilities and right of use asset.

Rent expense for the years ended December 31, 2019 and 2018 was \$2,224,821 and \$1,566,910, respectively.

NOTE 21 — COMMITMENTS AND CONTINGENCIES

Litigation

On or about January 25, 2010, an action was filed by Tom David against Winterman Group Limited, Dolphin Digital Media (Canada) Ltd., a former wholly owned subsidiary of the Company that has subsequently filed for bankruptcy in Canada and been dissolved ("Dolphin Canada"), Malcolm Stockdale and Sara Stockdale in the Superior Court of Justice in Ontario (Canada) alleging breach of a commercial lease and breach of a personal guaranty. On or about March 18, 2010, Winterman Group Limited, Malcolm Stockdale and Sara Stockdale filed a Statement of Defense and Crossclaim. In the Statement of Defense, Winterman Group Limited, Malcolm Stockdale and Sara Stockdale denied any liability under the lease and guaranty. In the Crossclaim filed against Dolphin Canada, Winterman Group Limited, Malcolm Stockdale and Sara Stockdale seek contribution or indemnity against Dolphin Canada alleging that Dolphin Canada agreed to relieve Winterman Group Limited, Malcolm Stockdale and Sara Stockdale from any and all liability with respect to the lease or the guaranty. On or about March 19, 2010, Winterman Group Limited, Malcolm Stockdale and Sara Stockdale filed a Third-Party Claim against the Company seeking contribution or indemnity against the Company, formerly known as Logica Holdings, Inc., alleging that the Company agreed to relieve Winterman Group Limited, Malcolm Stockdale and Sara Stockdale from any and all liability with respect to the lease or the guaranty. The Third-Party Claim was served on the Company on April 6, 2010. On or about April 1, 2010, Dolphin Canada filed a Statement of Defense and Crossclaim. In the Statement of Defense, Dolphin Canada denied any liability under the lease and in the Crossclaim against Winterman Group Limited, Malcolm Stockdale and Sara Stockdale, Dolphin Canada seeks contribution or indemnity against Winterman Group Limited, Malcolm Stockdale and Sara Stockdale alleging that the leased premises were used by Winterman Group Limited, Malcolm Stockdale and Sara Stockdale for their own use. On or about April 1, 2010, Dolphin Canada also filed a Statement of Defense to the Crossclaim denying any liability to indemnify Winterman Group Limited, Malcolm Stockdale and Sara Stockdale. The ultimate results of these proceedings against the Company cannot be predicted with certainty. On March 23, 2012, Dolphin Canada filed for bankruptcy in Canada. On or about March 12, 2012, the Court served a Status Notice on all the parties indicating that since more than (2) years had passed since a defense in the action had been filed, the case had not been set for trial and the case had not been terminated, the case would be dismissed for delay unless action was taken within ninety (90) days of the date of service of the notice. The Company has learned that no further action was taken in this case by any of the parties and that the case was dismissed.

The Company may be subject to other legal proceedings, claims, and liabilities that arise in the ordinary course of business. In the opinion of management and based upon the advice of its outside counsels, the liability, if any, from all pending litigations is not expected to have a material effect in the Company's financial position, results of operations and cash flows.

Incentive Compensation Plan

On June 29, 2017, the shareholders of the Company approved the 2017 Plan. The 2017 Plan was adopted as a flexible incentive compensation plan that would allow us to use different forms of compensation awards to attract new employees, executives and directors, to further the goal of retaining and motivating existing personnel and directors and to further align such individuals' interests with those of the Company's shareholders. Under the 2017 Plan, the total number of shares of Common Stock reserved and available for delivery under the 2017 Plan (the "Awards"), at any time during the term of the 2017 Plan, will be 1,000,000 shares of Common Stock. The 2017 Plan imposes individual limitations on the amount of certain Awards, in part with the intention to comply with Section 162(m) of the Code. Under these limitations, in any fiscal year of the Company during any part of which the 2017 Plan is in effect, no participant may be granted (i) stock options or stock appreciation rights with respect to more than 300,000 Shares, or (ii) performance shares (including shares of restricted stock, restricted stock units, and other stock based-awards that are subject to satisfaction of performance goals) that the Committee intends to be exempt from the deduction limitations under Section 162(m) of the Code, with respect to more than 300,000 Shares, in each case, subject to adjustment in certain circumstances. The maximum amount that may be paid out to any one participant as performance units that the Committee intends to be exempt from the deduction limitations under Section 162(m) of the Code, with respect to any 12-month performance period is \$1,000,000 (pro-rated for any performance period that is less than 12 months), and with respect to any performance period that is more than 12 months, \$2,000,000. On August 21, 2017, the Company issued 59,320 Shares as Awards to certain employees that vested on February 21, 2018. The Company recorded compensation expense of \$0 and \$20,422 for the years ended December 31, 2019 and 2018. on its consolidated statement of operations.

Employee Benefit Plan

The Company and its wholly owned subsidiaries have 401(K) profit sharing plan that covers substantially all of its employees. The Company's 401(K) plan matches up to 4% of the employee's contribution. The plans match dollar for dollar the first 3% of the employee's contribution and then 50% of contributions up to 5%. There are certain limitations for highly compensated employees. The Company's contributions to these plans for the years ended December 31, 2019 and 2018, were approximately \$292,759 and \$370,343, respectively.

Employment Contracts

As a condition to the Shore Fire Purchase, the Marilyn Laverty, the Shore Fire seller, entered into an employment agreement with the Company to continue as employees after the closing of the Shore Fire Purchase. Ms. Laverty's employment agreement is through December 31, 2022 and may be renewed by Ms. Laverty for two successive one-year terms. The employment agreement defines base compensation and a salary increase and bonus structure based on Shore Fire achieving certain financial targets. Ms. Laverty will serve as Shore Fire's President. The employment agreements contain provisions for termination and as a result of death or disability and entitles the employee to vacations and to participate in all employee benefit plans offered by the Company.

As a condition to the Viewpoint Purchase, two of the Viewpoint Shareholders, Carlo DiPersio and David Shilale have entered into employment agreements with the Company to continue as employees after the closing of the Viewpoint Purchase. Mr. DiPersio's employment agreement is through December 31, 2020 and the contract defines base compensation and a bonus structure based on Viewpoint achieving certain financial targets. Mr. Shilale's employment agreement is for a period of three years from the Viewpoint Closing Date and the contract defines the base compensation and a commission structure based on Viewpoint achieving certain financial targets. The bonus for Mr. Shilale is determined at the sole discretion of the Company's board of directors and management. Neither agreement provides for guaranteed increases to the base salary. The employment agreements contain provisions for termination and as a result of death or disability and entitles the employee to vacations and to participate in all employee benefit plans offered by the Company. On November 1, 2019, the Company and Mr. DiPersio mutually agreed to terminate Mr. DiPersio's employment agreement. The Company agreed to pay Mr. DiPersio's health and dental insurance benefits through December 17, 2023.

Each of the Members has entered into a four-year employment agreement with The Door, pursuant to which each Member has agreed not to transfer any shares of Common Stock received as consideration for the Merger (the "Share Consideration") in the first year following the Viewpoint Closing Date, no more than 1/3 of such Share Consideration in the second year and no more than an additional 1/3 of such Share Consideration in the third year.

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During the year ended December 31, 2017, 42West renewed two senior level management employment agreements and entered into a new senior level management employment agreement, each with a three-year term. The contracts define each individual's base compensation along with salary increases. The employment agreements contain provisions for termination and as a result of death or disability and entitles each of the employees to bonuses, commissions, vacations and to participate in all employee benefit plans offered by the Company.

As a condition to the closing of the 42West Acquisition described in Note 4, each of the three Principal Sellers has entered into employment agreements (the "Employment Agreements") with the Company and will continue as employees of the Company for a three-year term. Each of the Employment Agreements provides for a base salary with annual increases and contain provisions for termination and as a result of death or disability. During the term of the Employment Agreement, the Principal Sellers shall be entitled to participate in all employee benefit plans, practices and programs maintained by the Company as well as are entitled to paid vacation in accordance with the Company's policy. Each of the Employment Agreements contains lock-up provisions pursuant to which each Principal Seller has agreed not to transfer any shares of Common Stock in the first year, no more than 1/3 of the Initial Consideration and Post-Closing Consideration received by such Seller in the second year and no more than an additional 1/3 of the Initial Consideration and Post-Closing Consideration received by such Seller in the third year, following the closing date of the 42West Acquisition.

On April 5, 2018, the Principal Sellers signed amendments to their respective employment agreements that modified the annual bonus provisions. These amendments eliminated the rights of each of them (i) to be eligible to receive in accordance with the provisions of the Company's incentive compensation plan, a cash bonus for the calendar year 2017 if certain performance goals were achieved and (ii) to receive an annual bonus, for each year during the term of each such employment agreement, of \$200,000 in shares of common stock based on the 30-day trading average market price of such common stock. The amendment provides for each of the Principal Sellers to be eligible under the Company's incentive compensation plan to receive annual cash bonuses beginning with the calendar year 2018 based on the achievement of certain performance goals.

Motion Picture Industry Pension Accrual

42West is a contributing employer to the Motion Picture Industry Pension Individual Account and Health Plans (collectively the "Plans"), two multiemployer pension funds and one multiemployer welfare fund, respectively, that are governed by the Employee Retirement Income Security Act of 1974, as amended. The Plans conducted an audit of 42West's books and records for the period June 7, 2011 through August 20, 2016 in connection with the alleged contribution obligations to the Plans. Based on the findings of the audit, 42West is liable for \$314,256 in pension contributions, health and welfare plan contributions and union dues, which the Company has agreed to pay over a period of twelve months beginning in July 30, 2018. During the years ended December 31, 2019 and 2018, the Company made payments in the amount of \$195,448 and \$139,606 related to the settlement of the Plan audit.

NOTE 22 — SUBSEQUENT EVENTS

On January 1, 2020, one of the convertible note holders notified the Company that they were converting the principal balance of \$200,000 of the convertible note into 346,021 shares of our common stock using 30-day average closing market price of \$0.58 per share of common stock.

On January 3, 2020, the Company entered into a securities purchase agreement with Lincoln Park Capital Fund LLC and issued a convertible promissory note with a principal amount of \$1.3 million at a purchase price of \$1.2 million together with warrants to purchase up to 207,588 shares of our common stock at an exercise price of \$0.78 per share (the "2020 Lincoln Park Note"). The securities purchase agreement provides for issuance of warrants to purchase up to 207,588 shares of our common stock on each of the second, fourth and sixth month anniversaries of the securities purchase agreement if the principal balance has not been paid on such dates. The convertible promissory note may be converted at any time into shares of our common stock at an initial conversion price equal to the lower of (A) \$2.00 per share and (B) the lower of (i) the lowest intraday sales price of our common stock on the applicable conversion date and (ii) the average of the three lowest closing sales prices of our common stock during the twelve consecutive trading days including the trading day immediately preceding the conversion date but under no circumstances lower than \$0.78 per share. The convertible promissory note matures on January 3, 2022.

DOLPHIN ENTERTAINMENT, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2019 AND 2018

On January 5, 2020, the convertible note payables maturity date, the Company paid Pinnacle Family Office Investments LP, \$1,231,678, including \$29,614 of accrued interest in full satisfaction of a convertible note payable.

On January 12, 2020, one of the convertible note holders notified the Company that they were converting the principal balance of \$150,000 of the convertible note into 254,326 shares of our common stock using 30-day average closing market price of \$0.59 per share of common stock.

On each of February 3, February 13, February 27, and March 26, 2020, Lincoln Park Capital Fund LLC notified the Company that they were converting \$250,000 of the Lincoln Park Note into 319,366 shares of our common stock.

On February 20, 2020, the Company received a letter from the lender of the production service agreement stating that no sums, debts, liabilities, expenses, opportunity costs, revenues and any other amounts were due from the Max Steel VIE. We are currently evaluating our primary beneficiary status of Max Steel VIE.

On February 27, 2020, one of the sellers of 42West exercised 10,846 for Put Rights and was paid \$100,000.

On March 4, 2020, pursuant to 2020 Lincoln Park Note, the Company issued Series F Warrant to Lincoln Park Capital Fund LLC to purchase up to 207,588 shares of Common Stock at a purchase price of \$0.78 per share. Series F Warrant expires on September 4, 2025.

On March 4, 2020, we issued a convertible promissory note to a third-party investor and received \$500,000. We also agreed to issue a warrant to purchase up to 100,000 shares of our common stock at purchase price of \$0.78 per share. The convertible promissory note bears interest at a rate of 8% per annum and matures on March 4, 2030. The balance of the convertible promissory note and any accrued interest may be converted at the note holder's option at any time at a purchase price \$0.78 per share of our common stock.

On March 18, 2020, the Company issued two convertible promissory note agreements to two, third-party investors and received \$120,000 and \$75,000, respectively, to be used for working capital. The convertible promissory notes bear interest at a rate of 10% per annum and mature on March 18, 2022. The balance of the convertible promissory notes and any accrued interest may be converted into shares of Common Stock at the noteholder's option at any time at a purchase price \$0.7828 per share.

On March 24, 2020, the Company issued a convertible promissory note to a third-party investor for a principal amount of \$560,000 and received \$500,000, net of transaction costs of \$10,000 and original issue discount. The Company also issued 50,000 shares of Common Stock related to this convertible note payable. The maturity date of the convertible promissory note is March 25, 2021 and the balance of the convertible promissory note and any accrued interest may be converted at the noteholder's option at any time at a purchase price \$0.78 per share of our common stock.

On March 27, 2020, the Company received a loan agreement from Bank United to convert the 42West line of credit, with an outstanding principal balance of \$1,200,390, that matured on March 15, 2020, to a one-year term loan amortizable over thirty-six months with an interest rate of prime plus 0.75 percentage points, that as of the date of the report would be 4.00%. The Door will be a co-borrower on the term loan and the loan will be guaranteed by the Company.

On January 30, 2020, the World Health Organization ("WHO") announced a global health emergency because of a new strain of coronavirus originating in Wuhan, China (the "COVID-19 outbreak") and the risks to the international community as the virus spreads globally beyond its point of origin. In March 2020, the WHO classified the COVID-19 outbreak as a pandemic, based on the rapid increase in exposure globally.

The full impact of the COVID-19 outbreak continues to evolve as of the date of this report. As such, it is uncertain as to the full magnitude that the pandemic will have on the Company's financial condition, liquidity, and future results of operations. Management is actively monitoring the situation on its financial condition, liquidity, operations, suppliers, industry, and workforce. Given the daily evolution of the COVID-19 outbreak and the global responses to curb its spread, the Company is not able to estimate the effects of the COVID-19 outbreak on its results of operations, financial condition, or liquidity for fiscal year 2020.

**DESCRIPTION OF THE REGISTRANT'S SECURITIES REGISTERED PURSUANT TO SECTION 12 OF THE SECURITIES EXCHANGE ACT
OF 1934**

Dolphin Entertainment, Inc. (the "Company") has two classes of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended: the Company's common stock, par value \$0.0001 per share (the "Common Stock") and certain warrants to purchase shares of Common Stock (the "Warrants").

Description of Common Stock

The following description of our common stock is based upon our amended and restated articles of incorporation, as amended, our bylaws and applicable provisions of law, in each case as currently in effect. This discussion does not purport to be complete and is qualified in its entirety by reference to our amended and restated articles of incorporation, as amended, and our bylaws, copies of which are filed as exhibits to the Annual Report on Form 10-K to which this description is an exhibit.

Authorized Shares

We are authorized to issue 200,000,000 shares of common stock, par value \$0.015 per share.

Common Stock

The holders of our Common Stock are generally entitled to one vote for each share held on all matters submitted to a vote of the shareholders and do not have any cumulative voting rights. Unless otherwise required by Florida law, once a quorum is present, matters presented to shareholders, except for the election of directors, will be approved by a majority of the votes cast. The election of directors is determined by a plurality of the votes cast.

Holders of our Common Stock are entitled to receive dividends if, as and when declared by the Board out of funds legally available for that purpose, subject to preferences that may apply to any preferred stock that we issue. In the event of our dissolution or liquidation, after satisfaction of all our debts and liabilities and distributions to the holders of any preferred stock that we issued, or may issue in the future, of amounts to which they are preferentially entitled, the holders of Common Stock will be entitled to share ratably in the distribution of assets to the shareholders.

There are no cumulative, subscription or preemptive rights to subscribe for any additional securities which we may issue, and there are no redemption provisions, conversion provisions or sinking fund provisions applicable to the Common Stock. The rights of holders of Common Stock are subject to the rights, privileges, preferences and priorities of any class or series of preferred stock.

Our amended and restated articles of incorporation, as amended and bylaws do not restrict the ability of a holder of our Common Stock to transfer his or her shares of our Common Stock.

All shares of our Common Stock will, when issued, be duly authorized, fully paid and nonassessable. The shares to be issued by us in this offering, and the shares to be issued by us upon exercise of the warrants to be issued in this offering in accordance with the terms of the warrants, will be when issued and paid for, validly issued, fully paid and nonassessable.

Warrants

The warrants were issued in registered form under a warrant agreement between us and our warrant agent. The material provisions of the warrants are set forth herein but are only a summary and are qualified in their entirety by the provisions of the warrant agreement that has been filed as an exhibit to the Annual Report on Form 10-K to which this description is an exhibit.

Each whole warrant entitles the purchaser to purchase one share of our common stock at a price equal to \$4.74 per share at any time for up to three years after the date of the closing of this offering. There are currently 1,390,750 warrants outstanding.

The holder of a warrant will not be deemed a holder of our underlying common stock until the warrant is exercised. No fractional shares will be issued. If a holder would otherwise be entitled to receive a fractional share, the company will pay cash equal to the product of the fraction multiplied by the exercise price in lieu of issuing a fractional share.

Subject to certain limitations as described below the warrants are immediately exercisable and expire on the third anniversary of the date of issuance. Subject to limited exceptions, a holder of warrants will not have the right to exercise any portion of its warrants if the holder, together with its affiliates, would beneficially own in excess of 9.99% of the number of shares of our common stock outstanding immediately after giving effect to the exercise. In addition, a holder may elect to not have the right to exercise any portion its warrants if the holder would beneficially own more than 4.99% of the number of shares of our common stock outstanding immediately after giving effect to the exercise, except that upon at least 61 days' prior notice from the holder to us, the holder may increase the amount of ownership of outstanding stock after exercising the holder's warrants up to 9.99% of the number of shares of our common stock outstanding immediately after giving effect to the exercise.

The exercise price and the number of shares issuable upon exercise of the warrants is subject to appropriate adjustment in the event of recapitalization events, stock dividends, stock splits, stock combinations, reclassifications, reorganizations or similar events affecting our common stock, and also upon any distributions of assets, including cash, stock or other property to our shareholders. The warrant holders must pay the exercise price in cash upon exercise of the warrants, unless such warrant holders are utilizing the cashless exercise provision of the warrants. After the close of business on the expiration date, unexercised warrants will become void.

In addition, in the event we consummate a merger or consolidation with or into another person, or we sell, lease, license, assign, transfer, convey or otherwise dispose of all or substantially all of our assets, or we or another person acquire 50% or more of our outstanding shares of common stock, or other reorganization event in which shares of our common stock are converted or exchanged for securities, cash or other property, or another person acquires 50% of our outstanding common stock through a share purchase or other business combination, then following such event, the holders of the warrants will be entitled to receive upon exercise of the warrants the same kind and amount of securities, cash or property which the holders would have received had they exercised the warrants immediately prior to such fundamental transaction. Any successor to us or surviving entity shall assume the obligations under the warrants. In addition, as further described in the form of warrant filed as an exhibit to the Annual Report on Form 10-K to which this description is an exhibit, in the event of any fundamental transaction completed for cash, or a going private transaction under Rule 13e-3 of the Exchange Act, or involving a person not trading on a national securities exchange, the holders of the warrants will have the right to require us to purchase the warrants for an amount in cash that is determined in accordance with a formula set forth in the warrants.

Upon the holder's exercise of a warrant, we will issue the shares of common stock issuable upon exercise of the warrant within three business days following our receipt of notice of exercise.

Prior to the exercise of any warrants to purchase common stock, holders of the warrants will not have any of the rights of holders of the common stock purchasable upon exercise, including the right to vote or to receive any payments of dividends on the common stock purchasable upon exercise.

Warrant holders may exercise warrants only if the issuance of the shares of common stock upon exercise of the warrants is covered by an effective registration statement, or an exemption from registration is available under the Securities Act of 1933, as amended, or the Securities Act, and the securities laws of the state in which the holder resides. The warrant holders must pay the exercise price in cash upon exercise of the warrants unless there is not an effective registration statement or, if required, there is not an effective state law registration or exemption covering the issuance of the shares underlying the warrants (in which case, the warrants may only be exercised via a "cashless" exercise provision).

Anti-takeover Effects of our Articles of Incorporation

Our amended and restated articles of incorporation, as amended provide that our Board may provide further issuances of preferred stock, in one or more series, to establish the number of shares to be included in each series, to fix the designation, rights, preferences, privileges and restrictions of the shares of each series and to increase or decrease the number of shares of any series of preferred stock, all without any further vote or action by our shareholders. The existence of authorized but unissued and unreserved preferred stock may enable our Board to issue shares to persons friendly to current management, which could render more difficult or discourage an attempt to obtain control of our company by means of a proxy contest, tender offer, merger or otherwise, and thereby protect the continuity of our management.

Indemnification

Both our Articles of Incorporation and Bylaws provide for indemnification of our directors and officers to the fullest extent permitted by the Florida Business Corporation Act.

Listing

Our shares of common stock are currently quoted on the The Nasdaq Capital Market. The symbol for our common stock is "DLPN". Our warrants are currently quoted on The Nasdaq Capital Market under the symbol "DLPNW".

Transfer Agent

The transfer agent and registrar for our common stock is Nevada Agency and Transfer Company.

Warrant Agent

The warrant agent for the warrants is Nevada Agency and Transfer Company.

NEITHER THIS SECURITY NOR THE SECURITIES INTO WHICH THIS SECURITY IS CONVERTIBLE 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 "ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. NOTWITHSTANDING THE FOREGOING, THIS SECURITY AND THE SECURITIES ISSUABLE UPON CONVERSION OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY SUCH SECURITIES. ANY TRANSFEREE OF THIS NOTE SHOULD CAREFULLY REVIEW THE TERMS OF THIS NOTE, INCLUDING SECTIONS 3(c)(iii) AND 18(a) HEREOF. THE PRINCIPAL AMOUNT REPRESENTED BY THIS NOTE AND, ACCORDINGLY, THE SECURITIES ISSUABLE UPON CONVERSION HEREOF MAY BE LESS THAN THE AMOUNTS SET FORTH ON THE FACE HEREOF PURSUANT TO SECTION 3(c)(iii) OF THIS NOTE.

DOLPHIN ENTERTAINMENT, INC.

SENIOR CONVERTIBLE NOTE

Issuance Date: March 4, 2020 (the "**Issuance Date**")

Original Principal Amount: \$500,000

FOR VALUE RECEIVED, Dolphin Entertainment, Inc., a Florida corporation (the "**Company**"), hereby promises to pay to the order of M. Shanken Communications, Inc. or its registered assigns ("**Holder**") the amount set forth above as the Original Principal Amount (as reduced pursuant to the terms hereof pursuant to redemption, conversion or otherwise, the "**Principal**") when due, whether upon the Maturity Date, or upon acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and to pay interest ("**Interest**") on any outstanding Principal at the applicable Interest Rate (as defined below), until the same becomes due and payable, whether upon the Maturity Date, or upon acceleration, conversion, redemption or otherwise (in each case in accordance with the terms hereof). This Senior Convertible Note (including all Senior Convertible Notes issued in exchange, transfer or replacement hereof in accordance with the terms hereof, this "**Note**") is the Note issued pursuant to that certain Securities Purchase Agreement, dated as of March 4, 2020 (the "**Subscription Date**"), by and between the Company and M. Shanken Communications, Inc., as amended from time to time (the "**Securities Purchase Agreement**"). Certain capitalized terms used herein are defined in Section 31.

1. PAYMENTS OF PRINCIPAL; PREPAYMENT. On the Maturity Date, the Company shall pay to the Holder an amount in cash representing all outstanding Principal,

accrued and unpaid Interest and accrued and unpaid Late Charges (as defined in Section 24(c)) on such Principal and Interest. Notwithstanding anything herein to the contrary, with respect to any conversion, redemption or prepayment hereunder, as applicable, the Company shall convert, redeem or prepay, as applicable, First, all accrued and unpaid Interest hereunder, Second, all accrued and unpaid Late Charges on any Principal and Interest hereunder, and Third, after extinguishment of all such accrued and unpaid Interest and Late Charges, if any, all unpaid Principal outstanding hereunder. Subject to (i) the Holder's right to convert this Note in accordance with Section 3, and (ii) the prior written consent of the Holder, which consent may be granted or withheld in the Holder's sole discretion, the Company may prepay all or any portion of the outstanding Principal or accrued and unpaid Interest, if any, and accrued and unpaid Late Charges on such Principal and Interest, if any, under this Note at any time after March 4, 2025 through the Maturity Date, in each case without premium or penalty. If the Holder consents and the Company elects to prepay any amount outstanding hereunder, the Company shall deliver a notice to Holder on or prior to the third (3rd) Business Day prior to the date of such prepayment, during which period, subject to Section 3(d), the Holder may elect to convert all or any portion of this Note, including the amount of this Note to be prepaid by the Company, in accordance with Section 3.

2. INTEREST; INTEREST RATE. The Company shall pay interest to the Holder monthly in cash on the Principal at eight percent (8%) per annum (the "**Standard Rate**") and shall be computed on the basis of a 365/6-day year and the actual number of days elapsed. Interest shall be due and payable in arrears on the 15th calendar day of each month (beginning on March 15th) and on the Maturity Date. From and after the occurrence and during the continuance of any Event of Default, Interest shall accrue hereunder at eighteen percent (18.0%) per annum (the "**Default Rate**," and together with the Standard Rate, the "**Interest Rate**"). In the event that such Event of Default is subsequently cured (and no other Event of Default then exists), Interest shall cease to accrue at the Default Rate as of the calendar day immediately following the date of such cure and shall resume accruing at the Standard Rate. Accrued and unpaid Interest, if any, shall be payable by way of inclusion of such Interest in the Conversion Amount (as defined below) on each Conversion Date (as defined below) in accordance with Section 3(b)(i), or upon any earlier prepayment, redemption in accordance with Section 11 or any required payment upon any Bankruptcy Event of Default (as defined in Section 4(a) below).

3. CONVERSION OF NOTES. At any time after the Issuance Date, this Note shall be convertible into validly issued, fully paid and non-assessable shares of Common Stock (as defined below), on the terms and conditions set forth in this Section 3.

(a) Conversion Right. Subject to the provisions of Section 3(d), at any time or times on or after the Issuance Date, the Holder shall be entitled to convert any portion of the outstanding and unpaid Conversion Amount (as defined below) into validly issued, fully paid and non-assessable shares of Common Stock in accordance with Section 3(c), at the Conversion Rate (as defined below). The Company shall not issue any fraction of a share of Common Stock upon any conversion. If the issuance would result in the issuance of a fraction of a share of Common Stock, the Company shall round such fraction of a share of Common Stock up to the nearest whole share. The Company shall pay any and all transfer, stamp, issuance and similar taxes (except to the extent such tax is in respect of Holder's instructions to issue shares of Common Stock to a Person other

than Holder), costs and expenses (including, without limitation, fees and expenses of the transfer agent of the Company (the “**Transfer Agent**”)) that may be payable with respect to the issuance and delivery of Common Stock upon conversion of any Conversion Amount.

(b) Conversion Rate. The number of shares of Common Stock issuable upon conversion of any Conversion Amount pursuant to Section 3(a) shall be determined by dividing (x) such Conversion Amount by (y) the Conversion Price (the “**Conversion Rate**”).

(i) “**Conversion Amount**” means the sum of (x) the portion of the Principal to be converted, redeemed or otherwise with respect to which this determination is being made and (y) all accrued and unpaid Interest with respect to such portion of the Principal amount and accrued and unpaid Late Charges with respect to such portion of such Principal and such Interest, if any.

(ii) “**Conversion Price**” means, with respect to any Conversion Date or other date of determination, (x) if no Event of Default has occurred prior to the Maturity Date, the Fixed Conversion Price, and (y) if an Event of Default has occurred prior to the Maturity Date, the Event of Default Conversion Price.

(iii) “**Fixed Conversion Price**” means, as of any Conversion Date or other date of determination, \$0.7828, subject to adjustment as provided herein.

(iv) “**Event of Default Conversion Price**” means \$0.6654.

(c) Mechanics of Conversion.

(i) Optional Conversion. To convert any Conversion Amount into shares of Common Stock on any date (a “**Conversion Date**”), the Holder shall deliver (via facsimile or electronic mail), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of conversion in the form attached hereto as Exhibit I (the “**Conversion Notice**”) to the Company. Any Conversion Notice received by the Company in accordance with the terms of this Note after 11:59 p.m., New York time, on any day shall be deemed received by the Company on the next following Trading Day. If required by Section 3(c)(iii), within two (2) Trading Days following a conversion of this Note as aforesaid, the Holder shall surrender this Note to a nationally recognized overnight delivery service for delivery to the Company (or an indemnification undertaking with respect to this Note in the case of its loss, theft or destruction as contemplated by Section 18(b)). On or before the first (1st) Trading Day following the date of receipt of a Conversion Notice, the Company shall transmit by facsimile or electronic mail an acknowledgment of confirmation and representation as to whether such shares of Common Stock are eligible to be resold pursuant to Rule 144 or an effective and available registration statement, in the form attached hereto as Exhibit II, of receipt of such Conversion Notice to the Holder and the Transfer Agent which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein. On or

before the second (2nd) Trading Day following the date on which the Company has received (or is deemed to have received) a Conversion Notice (or such earlier date as required pursuant to the 1934 Act or other applicable law, rule or regulation for the settlement of a trade initiated on the applicable Conversion Date of such shares of Common Stock issuable pursuant to such Conversion Notice) (the “**Share Delivery Deadline**”), the Company shall, (1) after the Resale Eligibility Date and provided that the Transfer Agent is participating in The Depository Trust Company’s (“**DTC**”) Fast Automated Securities Transfer Program, credit such aggregate number of shares of Common Stock to which the Holder shall be entitled pursuant to such conversion to the Holder’s or its designee’s balance account with DTC through its Deposit/Withdrawal at Custodian system, which balance account Holder shall designate in the applicable Conversion Notice, or (2) prior to the Resale Eligibility Date or if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, upon the request of the Holder, issue and send (via reputable overnight courier) to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled pursuant to such conversion. If this Note is physically surrendered for conversion pursuant to Section 3(c)(iii) and the outstanding Principal of this Note is greater than the Principal portion of the Conversion Amount being converted, then the Company shall as soon as practicable and in no event later than two (2) Business Days after receipt of this Note and at its own expense, issue and deliver to the Holder (or its designee) a new Note (in accordance with Section 18(d)) representing the outstanding Principal not converted. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of this Note shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date. Notwithstanding anything to the contrary contained in this Note or the Registration Rights Agreement, after the Resale Eligibility Date, the Company shall cause the Transfer Agent to deliver unlegended shares of Common Stock to the Holder (or its designee) in connection with any sale of Conversion Shares, and for which the Holder has not yet settled.

(ii) Company’s Failure to Timely Convert. If the Company shall fail, for any reason or for no reason, on or prior to the applicable Share Delivery Deadline, either (I) either (x) prior to the Resale Eligibility Date or if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, to issue and deliver to the Holder (or its designee) a certificate (if requested by the Holder) for the number of shares of Common Stock to which the Holder is entitled and register such shares of Common Stock on the Company’s share register, or (y) after the Resale Eligibility Date and if the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, to credit the balance account of the Holder or the Holder’s designee with DTC for such number of shares of Common Stock to which the Holder is entitled upon the Holder’s conversion of this Note (as the case may be) or (II) if a Registration Statement covering the resale of the shares of Common Stock that are the subject of the Conversion Notice (the “**Unavailable Conversion Shares**”) is not available for the resale of such Unavailable Conversion Shares and the Company fails to promptly, but in no event later than as required pursuant to the

Registration Rights Agreement (x) so notify the Holder and (y) deliver the shares of Common Stock electronically without any restrictive legend by crediting such aggregate number of shares of Common Stock to which the Holder is entitled pursuant to such conversion to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system (the event described in the immediately foregoing clause (II) is hereinafter referred as a "**Notice Failure**" and together with the event described in clause (I) above, a "**Conversion Failure**"), then, in addition to all other remedies available to the Holder, (1) the Company shall pay in cash to the Holder on each day after such Share Delivery Deadline that the issuance of such shares of Common Stock is not timely effected an amount equal to 1% of the product of (A) the sum of the number of shares of Common Stock not issued to the Holder on or prior to the Share Delivery Deadline and to which the Holder is entitled, multiplied by (B) the Closing Bid Price on the applicable Conversion Date and (2) on or prior to the second (2nd) Trading Day immediately following such Conversion Failure, the Holder, upon written notice to the Company, may void its Conversion Notice with respect to, and retain or have returned (as the case may be) any portion of this Note that has not been converted pursuant to such Conversion Notice, provided that the voiding of a Conversion Notice shall not affect the Company's obligations to make any payments which have accrued prior to the date of such notice pursuant to this Section 3(c)(ii) or otherwise. In addition to the foregoing, if on or prior to the Share Delivery Deadline and after the Resale Eligibility Date either (A) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, the Company shall fail to issue and deliver to the Holder (or its designee) a certificate and register such shares of Common Stock on the Company's share register or, if the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, the Transfer Agent shall fail to credit the balance account of the Holder or the Holder's designee with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's conversion hereunder or pursuant to the Company's obligation pursuant to clause (II) below or (B) a Notice Failure occurs, and if after such Share Delivery Deadline the Holder purchases (in an open market transaction or otherwise) shares of Common Stock corresponding to all or any portion of the number of shares of Common Stock issuable upon such conversion that the Holder is entitled to receive from the Company and has not timely received from the Company in connection with such Conversion Failure or Notice Failure, as applicable (a "**Buy-In**"), then, in addition to all other remedies available to the Holder, the Company shall, within two (2) Business Days after receipt of the Holder's request and in the Holder's discretion, either: (I) pay cash to the Holder in an amount equal to the Holder's total purchase price (including reasonable brokerage commissions, if any) for the shares of Common Stock so purchased (including, without limitation, by any other Person in respect, or on behalf, of the Holder) (the "**Buy-In Price**"), at which point the Company's obligation to so issue and deliver such certificate (and to issue such shares of Common Stock) or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's conversion hereunder (as the case may be) (and to issue such shares of Common Stock) shall terminate, or (II) promptly

honor its obligation to so issue and deliver to the Holder a certificate or certificates representing such shares of Common Stock or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's conversion hereunder (as the case may be) and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (x) such number of shares of Common Stock multiplied by (y) the price at which the Holder sold such shares of Common Stock in anticipation of the delivery thereof upon such applicable conversion (and if the Holder shall not have sold such shares, the price for purposes of this clause (y) shall equal the Buy-In Price divided by the number of shares of Common Stock described in the immediately preceding clause (x)) (the "**Buy-In Payment Amount**"). Nothing shall limit the Holder's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock (or to electronically deliver such shares of Common Stock) upon the conversion of this Note as required pursuant to the terms hereof. Notwithstanding anything herein to the contrary, with respect to any given Notice Failure and/or Conversion Failure, this Section 3(c)(ii) shall not apply to the Holder to the extent the Company has already paid such amounts in full to such Holder with respect to such Notice Failure and/or Conversion Failure, as applicable, pursuant to the analogous sections of the Securities Purchase Agreement.

(iii) Registration: Book-Entry. The Company shall maintain a register (the "**Register**") for the recordation of the names and addresses of the Holder of this Note and the principal amount of this Note held by the Holder (the "**Registered Note**"). The entries in the Register shall be conclusive and binding for all purposes absent manifest error. The Company and the Holder of the Note shall treat each Person whose name is recorded in the Register as the owner of the Note for all purposes (including, without limitation, the right to receive payments of Principal and Interest hereunder) notwithstanding notice to the contrary. Subject to compliance with applicable securities laws, a Registered Note may be assigned, transferred or sold in whole only by registration of such assignment or sale on the Register. Upon its receipt of a written request to assign, transfer or sell all or part of any Registered Note by the Holder, the Company shall record the information contained therein in the Register and issue a new Registered Note in the same aggregate principal amount as the principal amount of the surrendered Registered Note to the designated assignee or transferee pursuant to Section 18, provided that if the Company does not so record an assignment, transfer or sale (as the case may be) of a Registered Note within two (2) Business Days of such a request, then the Register shall be automatically deemed updated to reflect such assignment, transfer or sale (as the case may be). Notwithstanding anything to the contrary set forth in this Section 3, following conversion of any portion of this Note in accordance with the terms hereof, the Holder shall not be required to physically surrender this Note to the Company unless (A) the full Conversion Amount represented by this Note is being converted (in which event this Note shall be delivered to the Company following conversion thereof as contemplated by Section 3(c)(i)) or (B) the Holder has provided the

Company with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of this Note upon physical surrender of this Note. The Holder and the Company shall maintain records showing the Principal and Interest converted and/or paid (as the case may be) and the dates of such conversions and/or payments (as the case may be) 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 conversion. If the Company does not update the Register to record such Principal and Interest converted and/or paid (as the case may be) and the dates of such conversions, and/or payments (as the case may be) within two (2) Business Days of such occurrence, then the Register shall be automatically deemed updated to reflect such occurrence.

(d) Limitations on Conversions.

(i) Beneficial Ownership. The Company shall not effect the conversion of any portion of this Note, and the Holder shall not have the right to convert any portion of this Note pursuant to the terms and conditions of this Note, and any such conversion shall be null and void and treated as if never made, to the extent that after giving effect to such conversion, the Holder together with the other Attribution Parties collectively would beneficially own in excess of 4.99% (the "**Maximum Percentage**") of the shares of Common Stock outstanding immediately after giving effect to such conversion. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and the other Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable upon conversion of this Note with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (A) conversion of the remaining, nonconverted portion of this Note beneficially owned by the Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants, including, without limitation, the Warrant) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 3(d)(i). For purposes of this Section 3(d)(i), beneficial ownership shall be calculated in accordance with Section 13(d) of the 1934 Act. For purposes of determining the number of outstanding shares of Common Stock the Holder may acquire upon the conversion of this Note without exceeding the Maximum Percentage, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing made by the Company with the SEC, as the case may be, (y) a more recent public announcement by the Company or (z) any other written notice by the Company or the Transfer Agent, if any, setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives a Conversion Notice from the Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall notify the Holder in writing of the number of shares of Common Stock

then outstanding and, to the extent that such Conversion Notice would otherwise cause the Holder's beneficial ownership, as determined pursuant to this Section 3(d)(i), to exceed the Maximum Percentage, the Holder must notify the Company of a reduced number of shares of Common Stock to be purchased pursuant to such Conversion Notice (and, for all purposes of this Note, including, without limitation, for purposes of determining the Share Delivery Deadline, the Conversion Date with respect to such Conversion Notice shall be the date on which the Holder so notifies the Company of such reduced number of shares of Common Stock). For any reason at any time, upon the written request of the Holder, the Company shall within one (1) Business Day confirm in writing or by electronic mail to the Holder the number of shares of Common Stock then outstanding in accordance with information obtained from the Transfer Agent. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Note, by the Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported.

In the event that the issuance of shares of Common Stock to the Holder upon conversion of this Note results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the 1934 Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase (with such increase not effective until the sixty-first (61st) day after delivery of such notice) or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other Person that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Note in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the 1934 Act. No prior inability to convert this Note pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of convertibility. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 3(d)(i) to the extent necessary to correct this paragraph (or any portion of this paragraph) which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 3(d)(i) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Note.

(ii) Principal Market Regulation. The Company shall not issue any shares of Common Stock upon conversion of this Note or otherwise pursuant to the terms of this Note if the issuance of such shares of Common Stock would exceed the

aggregate number of shares of Common Stock which the Company may issue upon conversion or exercise (as the case may be) of this Note and the Warrant or otherwise pursuant to the terms of this Note without breaching the Company's obligations under the rules of The Nasdaq Capital Market (the number of shares which may be issued without violating such rules being 3,869,868, subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the Subscription Date, the "**Exchange Cap**"), except that such limitation shall not apply to the extent that the Company obtains the approval of its shareholders as required by the applicable rules of The Nasdaq Capital Market for issuances of shares of Common Stock upon conversion or exercise (as the case may be) of this Note and the Warrants or otherwise pursuant to the terms of this Note in excess of such amount. In the event that the Company is then prohibited from issuing any shares of Common Stock pursuant to this Section 3(d)(ii) (the "**Exchange Cap Shares**"), in lieu of issuing and delivering such Exchange Cap Shares to the Holder, the Company shall pay cash to the Holder in exchange for the cancellation of such portion of this Note Convertible into such Exchange Cap Shares (the "**Exchange Cap Payment Amount**") at a price equal to the sum of (x) the product of (A) such number of Exchange Cap Shares and (B) the greatest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date the Holder delivers the applicable Conversion Notice with respect to such Exchange Cap Shares to the Company and ending on the date of such payment under this Section 3(d)(ii) and (y) to the extent the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of Exchange Cap Shares, any reasonable brokerage commissions, if any, of the Holder incurred in connection therewith.

4. RIGHTS UPON EVENT OF DEFAULT.

(a) Event of Default. Each of the following events shall constitute an "**Event of Default**" and each of the events in clauses (vii), (viii) and (ix) shall constitute a "**Bankruptcy Event of Default**":

(i) the suspension from trading or the failure of the Common Stock to be trading or listed (as applicable) on an Eligible Market for a period of five (5) consecutive Trading Days;

(ii) the Company's notice, written or oral, to the Holder of this Note or any holder of the Warrant, including, without limitation, by way of public announcement or through any of its agents, at any time, of its intention not to comply, as required, with a request for conversion of the Note into shares of Common Stock that is requested in accordance with the provisions of the Note, or a request for exercise of any Warrant for shares of Common Stock in accordance with the provisions of the Warrant, in each case other than pursuant to Section 3(d);

(iii) except to the extent the Company is in compliance with Section 10(b) below, at any time following the tenth (10th) consecutive day that the Company shall not have reserved for issuance upon conversion of this Note a number of shares

of Common Stock equal to or greater than the Required Reserve Amount;

(iv) the Company's failure to pay to the Holder any amount of Principal, Interest, Late Charges or other amounts when and as due under this Note, and such failure remains uncured for a period of more than five (5) Trading Days;

(v) the Company, on two or more occasions, either (A) fails to cure a Conversion Failure by delivery of the required number of shares of Common Stock within five (5) Trading Days after the applicable Conversion Date or (B) fails to remove any restrictive legend on any certificate or any shares of Common Stock issued to the Holder upon conversion of this Note as and when required by this Note, unless otherwise then prohibited by applicable federal securities laws, and any such failure remains uncured for at least five (5) days;

(vi) default under a bond, debenture, note, mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness (as defined in the Securities Purchase Agreement) for money borrowed by the Company (or by any Subsidiary, the repayment of which the Company has guaranteed or for which the Company is directly responsible or liable as obligor or guarantor), having a principal amount outstanding in excess of \$500,000 (other than Indebtedness which is non-recourse to the Company or its Subsidiaries), which default shall have resulted in such Indebtedness being declared due and payable prior to the date on which it would otherwise have become due and payable, without such Indebtedness having been discharged, or such acceleration having been rescinded or annulled, within a period of thirty (30) days after there shall have been given;

(vii) bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for the relief of debtors shall be instituted by or against the Company or any Significant Subsidiary and, if instituted against the Company or any Significant Subsidiary by a third party, shall not be dismissed or stayed within sixty (60) days of their initiation;

(viii) the commencement by the Company or any Significant 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 Significant 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 Significant 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, or the taking of corporate action by the Company or any Significant Subsidiary in furtherance of any such action;

(ix) the entry by a court of competent jurisdiction of (i) a decree, order, judgment or other similar document in respect of the Company or any Significant 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 Significant 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 Significant 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 Significant 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;

(x) a final judgment or judgments for the payment of money aggregating in excess of \$500,000 are rendered against the Company and/or any of its Significant Subsidiaries and which judgments are not, within thirty (30) days after the entry thereof, bonded, discharged, settled 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 \$500,000 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 Significant Subsidiary (as the case may be) will receive the proceeds of such insurance or indemnity;

(xi) the Company and/or any Significant 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 for borrowed money in excess of \$500,000 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 \$500,000, 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 Significant Subsidiary, which default or

event of default would or is likely to have a Material Adverse Effect (as defined in the Securities Purchase Agreement);

(xii) other than as specifically set forth in another clause of this Section 4(a), any representation or warranty of the Company shall be in any material respect untrue when made or when deemed made (other than the representations or warranties subject to material adverse effect or materiality limitations, which shall not have been untrue in any respect when made or when deemed made) or the Company shall have materially breached any 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 ten (10) consecutive Trading Days;

(xiii) a materially false or inaccurate certification by the Company as to whether any Event of Default has occurred;

(xiv) any material breach or failure in any respect by the Company or any Subsidiary to comply with any provision of Section 13 of this Note;

(xv) any Material Adverse Effect (as defined in the Securities Purchase Agreement) shall have occurred; or

(xvi) any material provision of any Transaction Document shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against the parties thereto in any material respect, or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by the Company or any Subsidiary or any governmental authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof, or the Company or any Subsidiary shall deny in writing that it has any liability or obligation purported to be created under any Transaction Document.

(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 of becoming aware of such Event of Default deliver written notice thereof via facsimile or electronic mail 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, (such earlier date, the “**Event of Default Right Commencement Date**”) and ending (such ending date, the “**Event of Default Right Expiration Date**”, and each such period, an “**Event of Default Redemption Right Period**”) on the fifteenth (15th) Trading Day after the earlier of (x) the date such Event of Default is cured and (y) the Holder’s receipt of an Event of Default Notice that includes (I) a reasonable description of the applicable Event of Default, (II) a certification as to whether, in the opinion of the Company, such Event of Default is capable of being cured and, if applicable, a reasonable description of any existing plans of the Company to cure such Event of Default and (III) a certification as to the date the Event of Default occurred and, if cured

on or prior to the date of such Event of Default Notice, the applicable Event of Default Right Expiration Date, the Holder may require the Company to redeem (regardless of whether such Event of Default has been cured) all or any portion 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 portion of this Note the Holder is electing to redeem. Each portion of this Note subject to redemption by the Company pursuant to this Section 4(b) shall be redeemed by the Company at a price equal to the product of (A) the Conversion Amount to be redeemed multiplied by (B) 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 11. 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. Notwithstanding anything to the contrary in this Section 4, but subject to Section 3(d), until the Event of Default Redemption Price (together with any Late Charges thereon) is paid in full, the Conversion Amount submitted for redemption under this Section 4(b) (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Stock pursuant to the terms of this Note. 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. Any redemption upon an Event of Default shall not constitute an election of remedies by the Holder, and all other rights and remedies of the Holder shall be preserved.

(c) Mandatory Redemption upon Bankruptcy Event of Default. Notwithstanding anything to the contrary herein, and notwithstanding any conversion that is then required or in process, upon any Bankruptcy Event of Default, whether occurring prior to or following the Maturity Date, the Company shall immediately pay to the Holder an amount in cash representing (i) all outstanding Principal, accrued and unpaid Interest and accrued and unpaid Late Charges on such Principal and Interest, multiplied by (ii) the Redemption Premium, in addition to any and all other amounts due hereunder, without the requirement for any notice or demand or other action by the Holder or any other person or entity; provided that the Holder may, in its sole discretion, waive such right to receive payment upon a Bankruptcy Event of Default, in whole or in part, and any such waiver shall not affect any other rights of the Holder hereunder, including any other rights in respect of such Bankruptcy Event of Default, any right to conversion, and any right to payment of the Event of Default Redemption Price or any other Redemption Price, as applicable.

5. RIGHTS UPON FUNDAMENTAL TRANSACTION.

(a) Assumption. The Company shall not enter into or be party to a Fundamental Transaction unless (i) 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(a) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder prior to such Fundamental Transaction, including agreements to deliver to the Holder of this Note in exchange for this Note a security of the Successor Entity (if other than the Company) evidenced by a written instrument substantially similar in form and substance to this Note, including, without limitation, having a principal amount and interest rate equal to the principal amount then outstanding and the interest rate of this Note, respectively, held by the Holder, having similar conversion rights as this Note and having similar ranking and security to this Note, and reasonably satisfactory to the Holder and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market. Upon the occurrence of any Fundamental Transaction, the Successor Entity (if other than the Company) 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. Upon consummation of a Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon conversion or redemption of this Note at any time after the consummation of such Fundamental Transaction, in lieu of the shares of Common Stock or other securities, cash, assets or other property (except such items still issuable under Sections 6 and 15, which shall continue to be receivable thereafter) issuable upon the conversion or redemption of this Note prior to such Fundamental Transaction, such shares of the publicly traded common stock (or their equivalent) of the Successor Entity (including, if applicable, its Parent Entity) which the Holder would have been entitled to receive upon the happening of such Fundamental Transaction had this Note been converted immediately prior to such Fundamental Transaction (without regard to any limitations on the conversion of this Note), as adjusted in accordance with the provisions of this Note. Notwithstanding the foregoing, the Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 5(a) to permit the Fundamental Transaction without the assumption of this Note. The provisions of this Section 5(a) shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the conversion of this Note.

(b) Notice of a Change of Control; Redemption Right. No sooner than twenty (20) Trading Days nor later than ten (10) Trading Days prior to the consummation of a Change of Control (the "**Change of Control Date**"), but not prior to the public announcement of such Change of Control, the Company shall deliver written notice thereof via facsimile or electronic mail and overnight courier to the Holder (a "**Change of Control Notice**"). At any time during the period beginning after the Holder's receipt of a Change of Control Notice or the Holder becoming aware of a Change of Control if a Change of Control Notice is not delivered to the Holder in accordance with the immediately preceding sentence (as applicable) and ending on the later of twenty (20) Trading Days after (A) consummation of such Change of Control or (B) the date of receipt of such Change of Control Notice, the Holder may require the Company to

redeem all or any portion of this Note by delivering written notice thereof (**Change of Control Redemption Notice**) to the Company, which Change of Control Redemption Notice shall indicate the Conversion Amount the Holder is electing to redeem.

The portion of this Note subject to redemption pursuant to this Section 5(b) shall be redeemed by the Company in cash at a price equal to the product of (x) the Change of Control Redemption Premium multiplied by (y) the Conversion Amount being redeemed (the **Change of Control Redemption Price**). Redemptions required by this Section 5(b) shall be made in accordance with the provisions of Section 11 and shall have priority to payments to shareholders in connection with such Change of Control. To the extent redemptions required by this Section 5(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.

Notwithstanding anything to the contrary in this Section 5(b), but subject to Section 3(d), until the Change of Control Redemption Price (together with any Late Charges thereon) is paid in full, the Conversion Amount submitted for redemption under this Section 5(b) (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Stock pursuant to Section 3. In the event of the Company's redemption of any portion of this Note under this Section 5(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 5(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.

6. RIGHTS UPON ISSUANCE OF PURCHASE RIGHTS AND OTHER CORPORATE EVENTS

(a) Purchase Rights. In addition to any adjustments pursuant to Section 7 below, if at any time the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to all or substantially all of the record holders of any class of Common Stock (the **Purchase Rights**), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Note (without taking into account any limitations or restrictions on the convertibility of this Note and assuming for such purpose that the Note was converted at the Conversion Price as of the applicable record date) immediately prior to the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, that to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Purchase Right to the extent of the Maximum Percentage (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Purchase Right (and beneficial ownership) to the extent of any such excess) and such Purchase Right to such extent shall be held in abeyance (and, if such Purchase Right has an expiration date,

maturity date or other similar provision, such term shall be extended by such number of days held in abeyance, if applicable) for the benefit of the Holder until such time or times, if ever, as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be granted such right (and any Purchase Right granted, issued or sold on such initial Purchase Right or on any subsequent Purchase Right held similarly in abeyance (and, if such Purchase Right has an expiration date, maturity date or other similar provision, such term shall be extended by such number of days held in abeyance, if applicable)) to the same extent as if there had been no such limitation).

(b) Other Corporate Events. In addition to and not in substitution for any other rights hereunder, prior to the consummation of any Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a "**Corporate Event**"), the Company shall make appropriate provision to ensure that the Holder will thereafter have the right to receive upon a conversion of this Note, at the Holder's option (i) in addition to the shares of Common Stock receivable upon such conversion, such securities or other assets to which the Holder would have been entitled with respect to such shares of Common Stock had such shares of Common Stock been held by the Holder upon the consummation of such Corporate Event (without taking into account any limitations or restrictions on the convertibility of this Note) or (ii) in lieu of the shares of Common Stock otherwise receivable upon such conversion, such securities or other assets received by the holders of shares of Common Stock in connection with the consummation of such Corporate Event in such amounts as the Holder would have been entitled to receive had this Note initially been issued with conversion rights for the form of such consideration (as opposed to shares of Common Stock) at a conversion rate for such consideration commensurate with the Conversion Rate. Provision made pursuant to the preceding sentence shall be in a form and substance reasonably satisfactory to the Holder. The provisions of this Section 6 shall apply similarly and equally to successive Corporate Events and shall be applied without regard to any limitations on the conversion or redemption of this Note.

7. RIGHTS UPON ISSUANCE OF OTHER SECURITIES

(a) Adjustment of Fixed Conversion Price upon Issuance of Common Stock If and whenever during the 180-day period commencing immediately following the Subscription Date the Company issues or sells, or in accordance with this Section 7(a) is deemed to have issued or sold, any shares of Common Stock (including the issuance or sale of shares of Common Stock owned or held by or for the account of the Company, but excluding any Excluded Securities (as defined in the Securities Purchase Agreement) issued or sold or deemed to have been issued or sold) for cash consideration per share (the "**New Issuance Price**") less than \$0.7828 (the foregoing a "**Dilutive Issuance**"), then, immediately after such Dilutive Issuance, the Fixed Conversion Price then in effect shall be reduced to an amount equal to the New Issuance Price. For all purposes of the foregoing (including, without limitation, determining the adjusted Fixed Conversion Price and the New Issuance Price under this Section 7(a)), the following shall be applicable:

(i) Issuance of Options. If the Company in any manner grants or sells any Options and the lowest price per share for which one share of Common Stock is at any time 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 or otherwise pursuant to the terms thereof is less than \$0.7828, then such share of Common Stock 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 share. For purposes of this Section 7(a)(i), the “lowest price per share for which one share of Common Stock is at any time 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 or otherwise pursuant to the terms thereof” shall be equal to (1) the lower of (x) the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to any one share of Common Stock 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 or otherwise pursuant to the terms thereof and (y) the lowest exercise price set forth in such Option for which one share of Common Stock is issuable (or may become issuable assuming all possible market conditions) upon the exercise of any such Options or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof, minus (2) the sum of all amounts paid or payable to the holder of such Option (or any other Person) with respect to any one share of Common Stock 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 or otherwise pursuant to the terms thereof plus the value of any other consideration consisting of cash, debt forgiveness, assets or any other property received or receivable by, or benefit conferred on, the holder of such Option (or any other Person). Except as contemplated below, no further adjustment of the Fixed Conversion Price shall be made upon the actual issuance of such share of Common Stock or of such Convertible Securities upon the exercise of such Options or otherwise pursuant to the terms thereof or upon the actual issuance of such shares of Common Stock upon conversion, exercise or exchange of such Convertible Securities.

(ii) Issuance of Convertible Securities. If the Company in any manner issues or sells any Convertible Securities and the lowest price per share for which one share of Common Stock is at any time issuable upon the conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof is less than \$0.7828, then such share of Common Stock 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 share. For the purposes of this Section 7(a)(ii), the “lowest price per share for which one share of Common Stock is at any time issuable (or may become issuable assuming all possible market conditions) upon the conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof” shall be equal to (1) the lower of (x) the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to one share of Common Stock upon the issuance or sale of the Convertible Security and

upon conversion, exercise or exchange of such Convertible Security or otherwise pursuant to the terms thereof and (y) the lowest conversion price set forth in such Convertible Security for which one share of Common Stock is issuable upon conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof minus (2) the sum of all amounts paid or payable to the holder of such Convertible Security (or any other Person) with respect to any one share of Common Stock upon the issuance or sale of such Convertible Security plus the value of any other consideration received or receivable consisting of cash, debt forgiveness, assets or other property by, or benefit conferred on, the holder of such Convertible Security (or any other Person). Except as contemplated below, no further adjustment of the Fixed Conversion Price shall be made upon the actual issuance of such shares of Common Stock upon conversion, exercise or exchange of such Convertible Securities or otherwise pursuant to the terms thereof, and if any such issuance or sale of such Convertible Securities is made upon exercise of any Options for which adjustment of the Fixed Conversion Price has been or is to be made pursuant to other provisions of this Section 7(a), except as contemplated below, no further adjustment of the Fixed Conversion Price shall be made by reason of such issuance or sale.

(iii) Change in Option Price or Rate of Conversion With respect to any Options or Convertible Securities issued during the 180-day period commencing immediately following the Subscription Date, if the purchase or exercise price provided for in any Options, 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 shares of Common Stock increases or decreases at any time after the issuance of such Options or Convertible Securities (other than proportional changes in conversion or exercise prices, as applicable, in connection with an event referred to in Section 7(a) below), the Fixed Conversion Price in effect at the time of such increase or decrease shall be adjusted to the Fixed 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 7(a)(iii), if the terms of any Option or Convertible Security that was outstanding as of the Subscription Date are increased or decreased in the manner described in the immediately preceding sentence during the 180-day period commencing immediately following the Subscription Date, then such Option or Convertible Security and the shares of Common Stock 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 7(a) shall be made if such adjustment would result in an increase of the Fixed Conversion Price then in effect.

(iv) Calculation of Consideration Received If any Option and/or Convertible Security and/or Adjustment Right is issued in connection with the issuance or sale or deemed issuance or sale of Common Stock (the "**Primary Security**", and such Option and/or Convertible Security and/or Adjustment Right, the "**Secondary Securities**"), together comprising one integrated transaction (or one or

more transactions if such issuances or sales or deemed issuances or sales of securities of the Company either (A) have at least one investor or purchaser in common, (B) are consummated in reasonable proximity to each other and/or (C) are consummated under the same plan of financing), the aggregate consideration per share of Common Stock with respect to such Primary Security shall be deemed to be equal to the difference of (x) the lowest price per share for which one share of Common Stock was issued (or was deemed to be issued pursuant to Section 7(a)(i) or 7(a)(ii) above, as applicable) in such integrated transaction solely with respect to such Primary Security, minus (y) with respect to such Secondary Securities, the sum of (I) the Black Scholes Consideration Value of each such Option, if any, (II) the fair market value (as determined by the Holder in good faith) or the Black Scholes Consideration Value, as applicable, of such Adjustment Right, if any, and (III) the fair market value (as determined by the Holder) of such Convertible Security, if any, in each case, as determined on a per share basis in accordance with this Section 7(a)(iv). If any shares of Common Stock, 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 Stock, Option or Convertible Security, 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 shares of Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of such consideration received by the Company (for the purpose of determining the consideration paid for such Common Stock, Option or Convertible Security, but not for the purpose of the calculation of the Black Scholes Consideration Value) 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) Trading Days immediately preceding the date of receipt. If any shares of Common Stock, 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, the amount of consideration therefor (for the purpose of determining the consideration paid for such Common Stock, Option or Convertible Security, but not for the purpose of the calculation of the Black Scholes Consideration Value) 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 shares of Common Stock, Options or Convertible Securities (as the case may be). The fair value of any consideration other than cash or publicly traded securities will be determined jointly 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) Trading Days after the tenth (10th) 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.

(v) Record Date. If the Company takes a record of the holders of shares of Common Stock for the purpose of entitling them (A) to receive a dividend or other distribution payable in shares of Common Stock, Options or in Convertible Securities or (B) to subscribe for or purchase shares of Common Stock, Options or Convertible Securities, then such record date will be deemed to be the date of the issuance or sale of the shares of Common Stock 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).

(vi) Floor Price. No adjustment pursuant to this Section 7(a) shall cause the Fixed Conversion Price to be less than \$0.50 (as adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction occurring after the Subscription Date) (the "**Floor Price**").

(b) Adjustment of Fixed Conversion Price upon Subdivision or Combination of Common Stock Without limiting any provision of Section 7(a), if the Company at any time on or after the Subscription Date subdivides (by any stock split, stock dividend, stock combination, recapitalization or other similar transaction) the outstanding shares of Common Stock into a greater number of shares, the Fixed Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. Without limiting any provision of Section 7(a), if the Company at any time on or after the Subscription Date combines (by any stock split, stock dividend, stock combination, recapitalization or other similar transaction) its outstanding shares of Common Stock into a smaller number of shares, the Fixed Conversion Price in effect immediately prior to such combination will be proportionately increased. Any adjustment pursuant to this Section 7(b) shall become effective immediately after the effective date of such subdivision or combination. If any event requiring an adjustment under this Section 7(b) occurs during the period that a Fixed Conversion Price is calculated hereunder, then the calculation of such Fixed Conversion Price shall be adjusted appropriately to reflect such event.

(c) Other Events. In the event that the Company shall take any action to which the provisions hereof are not strictly applicable, or, if applicable, would not operate to protect the Holder from dilution or if any event occurs of the type contemplated by the provisions of this Section 7 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Company's board of directors shall in good faith determine and implement an appropriate adjustment in the Fixed Conversion Price so as to protect the rights of the Holder, provided that no such adjustment pursuant to this Section 7(c) will increase the Fixed Conversion Price as otherwise determined pursuant to this Section 7, provided further that if the Holder does not accept such adjustments as appropriately protecting its interests hereunder against such dilution, then the Company's board of directors and the Holder shall agree, in good faith, upon an independent investment bank of nationally recognized standing to make such appropriate adjustments, whose determination shall be final and binding absent manifest error and whose fees and expenses shall be borne by the Company.

(d) Calculations. All calculations under this Section 7 shall be made by rounding to the nearest cent or the nearest 1/100th of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the disposition of any such shares shall be considered an issue or sale of Common Stock.

(e) Voluntary Adjustment by Company. The Company may at any time during the term of this Note, with the prior written consent of the Holder, reduce the then current Fixed Conversion Price of this Note to any amount and for any period of time deemed appropriate by the board of directors of the Company.

8. [INTENTIONALLY OMITTED]

9. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Articles of Incorporation, as amended, Bylaws, as amended, 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. Without limiting the generality of the foregoing or any other provision of this Note or the other Transaction Documents, the Company (a) shall not increase the par value of any shares of Common Stock receivable upon conversion of this Note above the Conversion Price then in effect, and (b) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the conversion of this Note. Notwithstanding anything herein to the contrary, if after the sixty (60) calendar day anniversary of the Issuance Date, the Holder is not permitted to convert this Note in full for any reason (other than pursuant to restrictions set forth in Section 3(d) hereof), the Company shall use its best efforts to promptly remedy such failure, including, without limitation, obtaining such consents or approvals as necessary to permit such conversion into shares of Common Stock.

10. RESERVATION OF AUTHORIZED SHARES.

(a) Reservation. So long as this Note remains outstanding, the Company shall at all times reserve at least 100% of the number of shares of Common Stock as shall from time to time be necessary to effect the conversion of this Note then outstanding (without regard to any limitations on conversions and assuming this Note remains outstanding until the Maturity Date) (the “**Required Reserve Amount**”).

(b) Insufficient Authorized Shares. If, notwithstanding Section 10(a), and not in limitation thereof, at any time while this Note remains outstanding, the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon conversion of this Note at least a number of shares of Common Stock equal to the Required Reserve Amount (an “**Authorized Share Failure**”), then the Company shall immediately take all action necessary to increase the Company’s authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for this Note.

Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its shareholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall provide each shareholder with a proxy statement and shall use its reasonable best efforts to solicit its shareholders' approval of such increase in authorized shares of Common Stock and to cause its board of directors to recommend to the shareholders that they approve such proposal. In the event that the Company is prohibited from issuing shares of Common Stock pursuant to the terms of this Note due to the failure by the Company to have sufficient shares of Common Stock available out of the authorized but unissued shares of Common Stock (such unavailable number of shares of Common Stock, the "**Authorized Failure Shares**"), in lieu of delivering such Authorized Failure Shares to the Holder, the Company shall pay cash in exchange for the redemption of such portion of the Conversion Amount convertible into such Authorized Failure Shares at a price equal to the sum of (i) the product of (x) such number of Authorized Failure Shares and (y) the greatest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date the Holder delivers the applicable Conversion Notice with respect to such Authorized Failure Shares to the Company and ending on the date of such issuance and payment under this Section 10(a); and (ii) to the extent the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of Authorized Failure Shares, any reasonable brokerage commissions and other out-of-pocket expenses actually incurred, if any, of the Holder incurred in connection therewith. Nothing contained in Section 10(a) or this Section 10(b) shall limit any obligations of the Company under any provision of the Securities Purchase Agreement.

11. REDEMPTIONS.

(a) Mechanics. The Company shall deliver the Event of Default Redemption Price to the Holder in cash within five (5) Business Days after the Company's receipt of the Holder's Event of Default Redemption Notice. If the Holder has submitted a Change of Control Redemption Notice in accordance with Section 5(b), the Company shall deliver the Change of Control Redemption Price to the Holder in cash concurrently with the consummation of such Change of Control if such notice is received prior to the consummation of such Change of Control and within five (5) Business Days after the Company's receipt of such notice otherwise. Notwithstanding anything herein to the contrary, in connection with any redemption hereunder at a time the Holder is entitled to receive a cash payment under any of the other Transaction Documents, at the option of the Holder delivered in writing to the Company, the applicable Redemption Price hereunder shall be increased by the amount of such cash payment owed to the Holder under such other Transaction Document and, upon payment in full or conversion in accordance herewith, shall satisfy the Company's payment obligation under such other Transaction Document. In the event of a redemption of less than all of the Conversion Amount of this Note, the Company shall promptly cause to be issued and delivered to the Holder a new Note (in accordance with Section 18(d)) representing the outstanding Principal which has not been redeemed. In the event that the Company does not pay the

applicable 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 Conversion Amount that was submitted for redemption and for which the applicable Redemption Price (together with any Late Charges thereon) has not been paid. 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 Conversion Amount subject to such notice.

12. VOTING RIGHTS; NO RIGHTS AS SHAREHOLDER. The Holder shall have no voting rights as the holder of this Note, except as required by law (including, without limitation, the Florida Business Corporation Act). This Note, in and of itself, shall not confer upon the Holder any rights as a holder of Common Stock or otherwise as a shareholder of the Company.

13. COVENANTS. Until this Note has been converted, redeemed or otherwise satisfied in accordance with its terms:

(a) Rank. This Note shall constitute a senior general unsecured obligation of the Company, ranking equally in right of payment with all of the existing and future senior Indebtedness of the Company and ranking senior in right of payment to any future Indebtedness of the Company that is expressly made subordinate to this Note by the terms of such Indebtedness.

(b) 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 (other than this Note) whether by way of payment in respect of principal of (or premium, if any) or interest on, such Indebtedness if at the time of such payment 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.

(c) 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 or publicly contemplated to be conducted by the Company and each of its Subsidiaries on the Subscription Date or any business substantially related or incidental thereto.

(d) Preservation of Existence, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, its existence, and its material 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, except to the extent that the failure to become or remain so duly qualified and in good standing would not reasonably be expected to have a Material Adverse Effect.

(e) Maintenance of Properties, Etc. The Company shall reasonably maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its material properties which are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted.

(f) Maintenance of Intellectual Property. The Company will, and will cause each of its Subsidiaries to, take such action as is necessary to maintain the Intellectual Property Rights (as defined in the Securities Purchase Agreement) 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.

(g) 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.

14. [INTENTIONALLY OMITTED]

15. DISTRIBUTION OF ASSETS. In addition to any adjustments pursuant to Section 7, if the Company shall declare or make any dividend or other distributions of its assets (or rights to acquire its assets) to any or all holders of shares of Common Stock, by way of return of capital or otherwise (including without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (the “**Distributions**”), then the Holder will be entitled to such Distributions as if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Note (without taking into account any limitations or restrictions on the convertibility of this Note and assuming for such purpose that the Note was converted at the Conversion Price as of the applicable record date) immediately prior to 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 Stock are to be determined for such Distributions (provided, however, that to the extent that the Holder’s right to participate in any such Distribution would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Distribution to the extent of the Maximum Percentage (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Distribution (and beneficial ownership) to the extent of any such excess) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time or times, if ever, as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be granted such Distribution (and any Distributions declared or made on

such initial Distribution or on any subsequent Distribution held similarly in abeyance) to the same extent as if there had been no such limitation).

16. AMENDING THE TERMS OF THIS NOTE. The prior written consent of the Holder shall be required for any change, waiver or amendment to this Note (other than Section 3(d)(i) which may not be amended, modified or waived hereunder). Any change, waiver or amendment so approved shall be binding upon the Holder and all future holders of this Note.

17. TRANSFER. This Note and any shares of Common Stock issued upon conversion of 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 2(h) of the Securities Purchase Agreement.

18. 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 18(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 18(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 Section 3(c)(iii) following conversion or 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 18(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 18(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 18(a) or Section 18(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.

19. 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. No failure on the part of the Holder to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the Holder of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. In addition, the exercise of any right or remedy of the Holder at law or equity or under this Note or any of the other Transaction Documents shall not be deemed to be an election of Holder's rights or remedies under this Note or at law or in equity. 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, conversion 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 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 Company shall provide all information and documentation to the Holder that is reasonably requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Note (including, without limitation, compliance with Section 7).

20. 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 reasonable 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.

21. CONSTRUCTION; HEADINGS. This Note shall be deemed to be jointly drafted by the Company and the initial Holder and shall not be construed against any such 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. 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 Note instead of just the provision in which they are found. Unless expressly indicated otherwise, all section references are to sections of this Note. Terms used in this Note and not otherwise defined herein, 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.

22. 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. Notwithstanding the foregoing, nothing contained in this Section 22 shall permit any waiver of any provision of Section 3(d).

23. DISPUTE RESOLUTION.

(a) Submission to Dispute Resolution.

(i) In the case of a dispute relating to a Closing Bid Price, a Closing Sale Price, a Conversion Price, a Black Scholes Consideration Value, a VWAP or a fair market value or the arithmetic calculation of a Conversion Rate, or the applicable Redemption Price (as the case may be) (including, without limitation, a dispute relating to the determination of any of the foregoing), the Company or the Holder (as the case may be) shall submit the dispute to the other party via facsimile or electronic mail at any time after the Company or the Holder, as applicable, learned of the circumstances giving rise to such dispute. If the Holder and the Company are unable to promptly resolve such dispute relating to such Closing Bid Price, such Closing Sale Price, such Conversion Price, such Black Scholes Consideration Value, such VWAP or such fair market value, or the arithmetic calculation of such Conversion Rate or such applicable Redemption Price (as the case may be), at any time after the second (2nd) Business Day following such initial notice by the Company or the Holder (as the case may be) of such dispute to the Company or the Holder (as the case may be), then the Holder may, at its sole option, select an independent, reputable investment bank to resolve such dispute.

(ii) The Holder and the Company shall each deliver to such investment bank (A) a copy of the initial dispute submission so delivered in accordance with the first sentence of this Section 23 and (B) written documentation supporting its

position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the tenth (10th) Business Day immediately following the date on which the Holder selected such investment bank (the “**Dispute Submission Deadline**”) (the documents referred to in the immediately preceding clauses (A) and (B) are collectively referred to herein as the “**Required Dispute Documentation**”) (it being understood and agreed that if either the Holder or the Company fails to so deliver all of the Required Dispute Documentation by the Dispute Submission Deadline, then the party who fails to so submit all of the Required Dispute Documentation shall no longer be entitled to (and hereby waives its right to) deliver or submit any written documentation or other support to such investment bank with respect to such dispute and such investment bank shall resolve such dispute based solely on the Required Dispute Documentation that was delivered to such investment bank prior to the Dispute Submission Deadline). Unless otherwise agreed to in writing by both the Company and the Holder or otherwise requested by such investment bank, neither the Company nor the Holder shall be entitled to deliver or submit any written documentation or other support to such investment bank in connection with such dispute (other than the Required Dispute Documentation).

(iii) The Company and the Holder shall cause such investment bank to determine the resolution of such dispute and notify the Company and the Holder of such resolution no later than ten (10) Business Days immediately following the Dispute Submission Deadline. The fees and expenses of such investment bank shall be borne solely by the Company, and such investment bank’s resolution of such dispute shall be final and binding upon all parties absent manifest error.

(b) Miscellaneous. The Company expressly acknowledges and agrees that (i) this Section 23 constitutes an agreement to arbitrate between the Company and the Holder (and constitutes an arbitration agreement) under § 7501, et seq. of the New York Civil Practice Law and Rules (“**CPLR**”) and that the Holder is authorized to apply for an order to compel arbitration pursuant to CPLR § 7503(a) in order to compel compliance with this Section 23, (ii) a dispute relating to a Conversion Price includes, without limitation, disputes as to (A) whether an issuance or sale or deemed issuance or sale of Common Stock occurred under Section 7(a), (B) the consideration per share at which an issuance or deemed issuance of Common Stock occurred, (C) whether any issuance or sale or deemed issuance or sale of Common Stock was an issuance or sale or deemed issuance or sale of Excluded Securities, (D) whether an agreement, instrument, security or the like constitutes and Option or Convertible Security and (E) whether a Dilutive Issuance occurred, (iii) the terms of this Note and each other applicable Transaction Document shall serve as the basis for the selected investment bank’s resolution of the applicable dispute, such investment bank shall be entitled (and is hereby expressly authorized) to make all findings, determinations and the like that such investment bank determines are required to be made by such investment bank in connection with its resolution of such dispute and in resolving such dispute such investment bank shall apply such findings, determinations and the like to the terms of this Note and any other applicable Transaction Documents, (iv) the Holder (and only the Holder), in its sole discretion, shall have the right to submit any dispute described in this Section 23 to any

state or federal court sitting in The City of New York, Borough of Manhattan in lieu of utilizing the procedures set forth in this Section 23 and (v) nothing in this Section 23 shall limit the Holder from obtaining any injunctive relief or other equitable remedies (including, without limitation, with respect to any matters described in this Section 23).

24. 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. Without limiting the generality of the foregoing, the Company will give written notice to the Holder (i) within 24 hours after any adjustment of the Conversion Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (ii) at least ten (10) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, (B) with respect to any grant, issuances, or sales of any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to holders of shares of Common Stock or (C) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation, provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder.

(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 the Holder pursuant to this Note, unless otherwise expressly set forth herein, such payment shall be made in U.S. Dollars by a certified check drawn on the account of the Company and sent via overnight courier service to the Holder at such address as previously provided to the Company in writing (which address, in the case of the initial Holder, shall initially be as set forth in Section 9(f) of the Securities Purchase Agreement), 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 this Note which is not paid when due (except for Interest accruing during the continuance of an Event of Default and to the extent any other such amount due under this Note is simultaneously

accruing interest at the Default Rate hereunder) 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 eighteen percent (18%) per annum from the date such amount was due until the same is paid in full ("**Late Charge**").

25. 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 and discharged, shall be surrendered to the Company for cancellation and shall not be reissued.

26. 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.

27. 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 New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Except as otherwise required by Section 23 above, the Company and the Holder hereby irrevocably submit to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waive, and agree not to assert in any suit, action or proceeding, any claim that they are 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. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein (i) 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 or (ii) shall limit, or shall be deemed or construed to limit, any provision of Section 23. **EACH OF THE HOLDER AND 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.**

28. JUDGMENT CURRENCY.

(a) If for the purpose of obtaining or enforcing judgment against the Company in any court in any jurisdiction it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 28 referred to as the "**Judgment**")

Currency") an amount due in U.S. Dollars under this Note, the conversion shall be made at the Exchange Rate prevailing on the Trading Day immediately preceding:

(i) the date actual payment of the amount due, in the case of any proceeding in the courts of New York or in the courts of any other jurisdiction that will give effect to such conversion being made on such date: or

(ii) the date on which the foreign court determines, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 28(a)(ii) being hereinafter referred to as the "**Judgment Conversion Date**").

(b) If in the case of any proceeding in the court of any jurisdiction referred to in Section 28(a)(ii) above, there is a change in the Exchange Rate prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the applicable party shall pay such adjusted amount as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the Exchange Rate prevailing on the date of payment, will produce the amount of US dollars which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the Exchange Rate prevailing on the Judgment Conversion Date.

(c) Any amount due from the Company under this provision shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of this Note.

29. **SEVERABILITY.** If any provision of this Note 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 Note so long as this Note 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).

30. **MAXIMUM PAYMENTS.** Without limiting Section 9(d) of the Securities Purchase Agreement, 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.

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

(a) “**1933 Act**” means the Securities Act of 1933, as amended, and the rules and regulations thereunder.

(b) “**1934 Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

(c) “**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 7) of shares of Common Stock (other than rights of the type described in Section 6(a) hereof) 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).

(d) “**Affiliate**” means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that “control” of a Person means the power directly or indirectly to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

(e) “**Attribution Parties**” means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Issuance Date, directly or indirectly managed or advised by the Holder’s investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with the Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Company’s Common Stock would or could be aggregated with the Holder’s and the other Attribution Parties for purposes of Section 13(d) of the 1934 Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Maximum Percentage.

(f) “**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 Sale Price of the Common Stock on the Trading 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 Trading Day immediately following the date of issuance of such Option, Convertible Security or Adjustment Right (as the case may be).

(g) **“Bloomberg”** means Bloomberg, L.P.

(h) **“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.

(i) **“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 shares of Common Stock 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.

(j) **“Change of Control Redemption Premium”** means 125%.

(k) **“Closing Bid Price”** and **“Closing Sale Price”** means, for any security as of any date, the last closing bid price and last closing trade price, respectively, for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price (as the case may be) then the last bid price or last trade price, respectively, of such security immediately prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price or last trade price, respectively, is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the “pink sheets” by OTC Markets Group Inc. (formerly Pink Sheets LLC). If the Closing Bid Price or the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Bid Price or the Closing Sale Price (as the case may be) of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 23. All such determinations shall be appropriately adjusted for

any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions applicable during such period.

(l) **“Closing Date”** shall have the meaning set forth in the Securities Purchase Agreement, which date is the date the Company initially issued this Note pursuant to the terms of the Securities Purchase Agreement.

(m) **“Common Stock”** means (i) the Company’s shares of common stock, par value \$0.015 per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

(n) **“Convertible Securities”** means any stock or other security (other than Options) 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 shares of Common Stock.

(o) **“Current Subsidiary”** means any Person in which the Company on the Subscription Date, directly or indirectly, (i) owns the majority of the outstanding voting power of such Person’s voting equity or similar interests of such Person or (ii) controls or operates the business, operations or administration of such Person, and all of the foregoing, collectively, **“Current Subsidiaries”**.

(p) **“Eligible Market”** means The New York Stock Exchange, the NYSE American, The Nasdaq Global Select Market, The Nasdaq Global Market or the Principal Market.

(q) **“Fundamental Transaction”** means (A) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Subject Entity, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company or any of its Significant Subsidiaries to one or more Subject Entities, or (iii) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its Common Stock be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of at least either (x) 50% of the outstanding shares of Common Stock, (y) 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding; or (z) such number of shares of Common Stock such that all Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (iv) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with one or more Subject Entities whereby all such Subject Entities, individually or in the aggregate, acquire, either (x) at

least 50% of the outstanding shares of Common Stock, (y) at least 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all the Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such stock purchase agreement or other business combination were not outstanding; or (z) such number of shares of Common Stock such that the Subject Entities become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (v) reorganize, recapitalize or reclassify its Common Stock, (B) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, allow any Subject Entity individually or the Subject Entities in the aggregate to be or become the “beneficial owner” (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, whether through acquisition, purchase, assignment, conveyance, tender, tender offer, exchange, reduction in outstanding shares of Common Stock, merger, consolidation, business combination, reorganization, recapitalization, spin-off, scheme of arrangement, reorganization, recapitalization or reclassification or otherwise in any manner whatsoever, of either (x) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock, (y) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock not held by all such Subject Entities as of the date of this Note calculated as if any shares of Common Stock held by all such Subject Entities were not outstanding, or (z) a percentage of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock or other equity securities of the Company sufficient to allow such Subject Entities to effect a statutory short form merger or other transaction requiring other shareholders of the Company to surrender their shares of Common Stock without approval of the shareholders of the Company or (C) directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, the issuance of or the entering into any other instrument or transaction structured in a manner to circumvent, or that circumvents, the intent of this definition in which case this definition shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this definition to the extent necessary to correct this definition or any portion of this definition which may be defective or inconsistent with the intended treatment of such instrument or transaction.

(r) “**GAAP**” means United States generally accepted accounting principles, consistently applied.

(s) “**Group**” means a “group” as that term is used in Section 13(d) of the 1934 Act and as defined in Rule 13d-5 thereunder.

(t) “**Indebtedness**” shall have the meaning ascribed to such term in the Securities Purchase Agreement.

(u) “**Maturity Date**” shall mean March 4, 2030; 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 (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 Change of

Control Notice is delivered prior to the Maturity Date, provided further that if a Holder elects to convert some or all of this Note pursuant to Section 3 hereof, and the Conversion Amount would be limited pursuant to Section 3(d) hereunder, the Maturity Date shall automatically be extended until such time as such provision shall not limit the conversion of this Note.

(v) **"New Subsidiary"** means, as of any date of determination, any Person in which the Company after the Subscription Date, directly or indirectly, (i) owns or acquires the majority of the outstanding voting power of such Person's voting equity or similar interests of such Person or (ii) controls or operates the business, operations or administration of such Person, and all of the foregoing, collectively, **"New Subsidiaries"**.

(w) **"Options"** means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(x) **"Parent Entity"** of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock 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.

(y) **"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.

(z) **"Principal Market"** means The Nasdaq Capital Market.

(aa) **"Redemption Notices"** means, collectively, the Event of Default Redemption Notices and the Change of Control Redemption Notices, and each of the foregoing, individually, a **"Redemption Notice."**

(bb) **"Redemption Premium"** means 125%.

(cc) **"Redemption Prices"** means, collectively, Event of Default Redemption Prices and the Change of Control Redemption Prices, and each of the foregoing, individually, a **"Redemption Price."**

(dd) **"Registration Rights Agreement"** means that certain registration rights agreement, dated as of the Subscription Date, by and between the Company and M. Shanken Communications, Inc., as may be amended from time to time.

(ee) **"Resale Eligibility Date"** means earlier of (i) the date the initial Registration Statement (as defined in the Registration Rights Agreement) filed pursuant to the Registration Rights Agreement is declared effective by the SEC (and each prospectus contained therein is available for use on such date), and (ii) the initial date any of the Conversion Shares are eligible to be resold pursuant to Rule 144.

(ff) “**SEC**” means the United States Securities and Exchange Commission or the successor thereto.

(gg) “**Securities Purchase Agreement**” means that certain securities purchase agreement, dated as of the Subscription Date, by and among the Company and M. Shanken Communications, Inc., pursuant to which the Company issued the Note, as such agreement may be amended from time to time.

(hh) “**Significant Subsidiary**” means any Subsidiary that is a “significant subsidiary” (within the meaning of Rule 1-02 of Regulation S-X, promulgated under the 1933 Act).

(ii) “**Subscription Date**” means March 4, 2020.

(jj) “**Subsidiaries**” means, as of any date of determination, collectively, all Current Subsidiaries and all New Subsidiaries, and each of the foregoing, individually, a “**Subsidiary**.”

(kk) “**Subject Entity**” means any Person, Persons or Group or any Affiliate or associate of any such Person, Persons or Group.

(ll) “**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.

(mm) “**Trading Day**” means, as applicable, (x) with respect to all price or trading volume determinations relating to the Common Stock, any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded, provided that “Trading Day” shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the Holder or (y) with respect to all determinations other than price determinations relating to the Common Stock, any day on which The New York Stock Exchange (or any successor thereto) is open for trading of securities.

(nn) “**VWAP**” means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Market (or, if the Principal Market is not the principal trading market for such security, then on the principal securities exchange or securities market on which such security is then traded) during the period beginning at 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by Bloomberg through its “HP” function (set to weighted average) or, if the foregoing does not apply, the dollar volume-weighted average price of such security

in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the “pink sheets” by OTC Markets Group Inc. (formerly Pink Sheets LLC). If the VWAP cannot be calculated for such security on such date on any of the foregoing bases, the VWAP of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 23. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, recapitalization or other similar transaction applicable during such period.

(oo) “**Warrant**” has the meaning ascribed to such term in the Securities Purchase Agreement, and shall include all warrants issued in exchange therefor or replacement thereof.

32. 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 of such receipt or prior to (or simultaneous with) such delivery, as applicable, publicly disclose such material, non-public information on a Current 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 the Holder contemporaneously with delivery (or promptly following receipt by the Company) 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 any of its Subsidiaries. If the Company or any of its Subsidiaries provides material non-public information to the Holder that is not simultaneously filed in a Current Report on Form 8-K and the Holder has not agreed to receive such material non-public information, the Company hereby covenants and agrees that the Holder shall not have any duty of confidentiality to the Company, any of its Subsidiaries or any of their respective officers, directors, employees, affiliates or agents with respect to, or a duty to any of the foregoing not to trade on the basis of, such material non-public information. Nothing contained in this Section 32 shall limit any obligations of the Company, or any rights of the Holder, under Section 4(i) of the Securities Purchase Agreement.

[signature page follows]

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

DOLPHIN ENTERTAINMENT, INC.

By: /s/ William O'Dowd IV
Name: William O'Dowd, IV
Title: Chief Executive Officer

Senior Convertible Note - Signature Page

EXHIBIT I
DOLPHIN ENTERTAINMENT, INC.
CONVERSION NOTICE

Reference is made to the Senior Convertible Note (the "Note") issued to the undersigned by Dolphin Entertainment, Inc., a Florida corporation (the "Company"). In accordance with and pursuant to the Note, the undersigned hereby elects to convert the Conversion Amount of the Note indicated below into shares of Common Stock, as of the date specified below. Capitalized terms used herein and not defined herein shall have the respective meanings set forth in the Note.

Date of Conversion: _____

Aggregate Principal to be converted: _____

Aggregate accrued and unpaid Interest and accrued and unpaid Late Charges with respect to such portion of the Aggregate Principal and such Aggregate Interest to be converted: _____

AGGREGATE CONVERSION AMOUNT TO BE CONVERTED: _____

Please confirm the following information:

Conversion Price: _____

Number of shares of Common Stock to be issued: _____

Please issue the Common Stock into which the Note is being converted to Holder, or for its benefit, as follows:

Check here if requesting delivery as a certificate to the following name and to the following address:

Issue to: _____

Check here if requesting delivery by Deposit/Withdrawal at Custodian as follows:

DTC Participant: _____



DTC Number: _____

Account Number: _____

Date: _____, _____

Name of Registered Holder

By: _____

Name:

Title:

Tax ID: _____

Facsimile: _____

E-mail Address: _____



Exhibit II

ACKNOWLEDGMENT

The Company hereby (a) acknowledges this Conversion Notice, (b) certifies that the above indicated number of shares of Common Stock [are][are not] eligible to be resold by the Holder either (i) pursuant to Rule 144 (subject to the Holder's execution and delivery to the Company of a customary 144 representation letter) or (ii) an effective and available registration statement and (c) hereby directs _____ to issue the above indicated number of shares of Common Stock in accordance with the Transfer Agent Instructions dated _____, 20__ from the Company and acknowledged and agreed to by _____.

DOLPHIN ENTERTAINMENT, INC.

By: _____

Name:

Title:

NEITHER THIS SECURITY NOR THE SECURITIES FOR WHICH THIS SECURITY IS EXERCISABLE HAVE BEEN REGISTERED WITH THE U.S. 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 "ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. NOTWITHSTANDING THE FOREGOING, THIS SECURITY AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY SUCH SECURITIES.

THE NUMBER OF SHARES OF COMMON STOCK ISSUABLE UPON EXERCISE OF THIS WARRANT MAY BE LESS THAN THE AMOUNTS SET FORTH ON THE FACE HEREOF PURSUANT TO SECTION 1(a) OF THIS WARRANT.

DOLPHIN ENTERTAINMENT, INC.

WARRANT TO PURCHASE COMMON STOCK

Series I Warrant No.: 1

Date of Issuance: March 4, 2020 ("**Issuance Date**")

Initial Exercise Date: September 4, 2020 ("**Initial Exercise Date**")

Dolphin Entertainment, Inc., a Florida corporation (the "**Company**"), hereby certifies that, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, M. Shanken Communications, Inc., the registered holder hereof or its permitted assigns (the "**Holder**"), is entitled, subject to the terms set forth below, to purchase from the Company, at the Exercise Price (as defined below) then in effect, upon exercise of this Series I Warrant to Purchase Common Stock (including any Warrants to Purchase Common Stock issued in exchange, transfer or replacement hereof, this "**Warrant**"), at any time or times on or after the Initial Exercise Date, but not after 11:59 p.m., New York time, on the Expiration Date (as defined below), 100,000 (subject to adjustment as provided herein) fully paid and non-assessable shares of Common Stock (as defined below) (the "**Warrant Shares**").

Except as otherwise defined herein, capitalized terms in this Warrant shall have the meanings set forth in Section 17. This Warrant is the Series I Warrant issued pursuant to that certain Securities Purchase Agreement, dated as of March 4, 2020 (the "**Subscription Date**"), by and between the Company and M. Shanken Communications, Inc., as amended from time to time (the "**Securities Purchase Agreement**").

1. EXERCISE OF WARRANT.

(a) Mechanics of Exercise. Subject to the terms and conditions hereof (including, without limitation, the limitations set forth in Section 1(f)), this Warrant may be exercised by the Holder on any day on or after the Initial Exercise Date (each, an “**Exercise Date**”), in whole or in part, by delivery (whether via facsimile or email) of a written notice, in the form attached hereto as **Exhibit A** (the “**Exercise Notice**”), of the Holder’s election to exercise this Warrant. Within one (1) Trading Day following an exercise of this Warrant as aforesaid, the Holder shall deliver payment to the Company of an amount equal to the Exercise Price in effect on the date of such exercise multiplied by the number of Warrant Shares as to which this Warrant was so exercised (the “**Aggregate Exercise Price**”) in cash or via wire transfer of immediately available funds; provided, that the Holder did not notify the Company in such Exercise Notice that such exercise was made pursuant to a Cashless Exercise (as defined in Section 1(d)). The Holder shall not be required to deliver the original of this Warrant in order to effect an exercise hereunder. Execution and delivery of an Exercise Notice with respect to less than all of the Warrant Shares shall have the same effect as cancellation of the original of this Warrant and issuance of a new Warrant evidencing the right to purchase the remaining number of Warrant Shares. Execution and delivery of an Exercise Notice for all of the then-remaining Warrant Shares shall have the same effect as cancellation of the original of this Warrant after delivery of the Warrant Shares in accordance with the terms hereof. On or before the first (1st) Trading Day following the date on which the Company has received an Exercise Notice, the Company shall transmit by facsimile or electronic mail an acknowledgment of confirmation of receipt of such Exercise Notice, substantially in the form attached hereto as **Exhibit B**, to the Holder and the Company’s transfer agent (the “**Transfer Agent**”), which confirmation shall constitute an instruction to the Transfer Agent to process such Exercise Notice in accordance with the terms herein. On or before the second (2nd) Trading Day following the date on which the Company has received such Exercise Notice (or such earlier date as required pursuant to the 1934 Act or other applicable law, rule or regulation for the settlement of a trade of such Warrant Shares initiated on the applicable Exercise Date), the Company shall (i) after the Resale Eligibility Date and provided that the Transfer Agent is participating in The Depository Trust Company (“**DTC**”) Fast Automated Securities Transfer Program, upon the request of the Holder, credit such aggregate number of shares of Common Stock to which the Holder is entitled pursuant to such exercise to the Holder’s or its designee’s balance account with DTC through its Deposit/Withdrawal at Custodian system, which balance account the Holder shall designate in the applicable Exercise Notice or (ii) prior to the Resale Eligibility Date or if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, upon the request of the Holder, issue and send (via reputable overnight courier) to the address as specified in the Exercise Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled pursuant to such exercise. Notwithstanding anything to the contrary contained in this Warrant, after the Resale Eligibility Date, the Company shall cause the Transfer Agent to deliver unlegended shares of Common Stock to the Holder (or its designee) in connection with any sale of Warrant Shares for which the Holder has not yet settled. Upon delivery of an Exercise Notice, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date such Warrant Shares are credited to the Holder’s DTC account or the date of delivery of the certificates evidencing such Warrant Shares (as the case may be). If this Warrant is physically surrendered in connection with any

exercise pursuant to this Section 1(a) and the number of Warrant Shares represented by this Warrant submitted for exercise is greater than the number of Warrant Shares being acquired upon an exercise and upon surrender of this Warrant to the Company by the Holder, then, at the request of the Holder, the Company shall as soon as practicable and in no event later than three (3) Business Days after any exercise and at its own expense, issue and deliver to the Holder (or its designee) a new Warrant (in accordance with Section 7(d)) representing the right to purchase the number of Warrant Shares purchasable immediately prior to such exercise under this Warrant, less the number of Warrant Shares with respect to which this Warrant is exercised. No fractional shares of Common Stock are to be issued upon the exercise of this Warrant, but rather, if any fractional share of Common Stock would otherwise become issuable upon an exercise of this Warrant, the number of shares of Common Stock to be issued shall be rounded up to the nearest whole number. The Company shall pay any and all transfer, stamp, issuance and similar taxes (except to the extent that such tax is in respect of the Holder's instructions to issue Warrant Shares to a Person other than the Holder), costs and expenses (including, without limitation, fees and expenses of the Transfer Agent) that may be payable with respect to the issuance and delivery of Warrant Shares upon exercise of this Warrant. Notwithstanding the foregoing, except in the case where an exercise of this Warrant is validly made pursuant to a Cashless Exercise, the Company's failure to deliver Warrant Shares to the Holder on or prior to the later of (A) two (2) Trading Days after receipt of the applicable Exercise Notice (or such earlier date as required pursuant to the 1934 Act or other applicable law, rule or regulation for the settlement of a trade of such Warrant Shares initiated on the applicable Exercise Date) and (B) one (1) Trading Day after the Company's receipt of the Aggregate Exercise Price (or valid notice of a Cashless Exercise) (such later date, the "**Share Delivery Deadline**") shall not be deemed to be a breach of this Warrant. From the Issuance Date through and including the Expiration Date, the Company shall maintain a transfer agent that participates in the DTC's Fast Automated Securities Transfer Program.

(b) Exercise Price. For purposes of this Warrant, "**Exercise Price**" means, with respect to any Exercise Date or other date of determination, \$0.7828, subject to adjustment as provided herein.

(c) Company's Failure to Timely Deliver Securities. If the Company shall fail, for any reason or for no reason, to issue to the Holder within two (2) Trading Days after receipt of the applicable Exercise Notice, a certificate (if requested by the Holder) for the number of shares of Common Stock to which the Holder is entitled and register such shares of Common Stock on the Company's share register or to credit the Holder's balance account with DTC for such number of shares of Common Stock to which the Holder is entitled upon the Holder's exercise of this Warrant (as the case may be) (a "**Delivery Failure**"), then (other than as set forth in the penultimate sentence of Section 1(a)), in addition to all other remedies available to the Holder, (X) the Company shall pay in cash to the Holder on each day after the Share Delivery Deadline and during such Delivery Failure an amount equal to one percent (1.0%) of the product of (A) the sum of the number of shares of Common Stock not issued to the Holder on or prior to the Share Delivery Deadline and to which the Holder is entitled, multiplied by (B) the Closing Sale Price on the applicable Exercise Date, and (Y) the Holder, upon written notice to the Company, may void its Exercise Notice with respect to, and retain or have returned, as the case may be, any portion of this Warrant that has not been exercised pursuant to such Exercise Notice; provided that the voiding of an Exercise Notice shall not affect the Company's obligations to make any

payments which have accrued prior to the date of such notice pursuant to this Section 1(c) or otherwise. In addition to the foregoing, if on or prior to the Share Delivery Deadline date either (x) the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, and the Company shall fail to issue and deliver to the Holder (or its designee) a certificate and register such shares of Common Stock on the Company's share register or (y) after the Resale Eligibility Date, the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, and the Transfer Agent shall fail to credit the balance account of the Holder or the Holder's designee with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's exercise hereunder or pursuant to the Company's obligation pursuant to clause (ii) below, and if after such Share Delivery Deadline the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of all or any portion of the number of shares of Common Stock issuable upon such exercise that the Holder is entitled to receive from the Company (a "**Buy-In**"), then, in addition to all other remedies available to the Holder, the Company shall, within three (3) Business Days after the Holder's request and in the Holder's discretion, either (i) pay cash to the Holder in an amount equal to the Holder's total purchase price (including reasonable brokerage commissions, if any) for the shares of Common Stock so purchased (including, without limitation, by any other Person in respect, or on behalf, of the Holder) (the "**Buy-In Price**"), at which point the Company's obligation to so issue and deliver such certificate (and to issue such shares of Common Stock) or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of Warrant Shares to which the Holder is entitled upon the Holder's exercise hereunder (as the case may be) (and to issue such Warrant Shares) shall terminate, or (ii) promptly honor its obligation to so issue and deliver to the Holder a certificate or certificates representing such Warrant Shares or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of Warrant Shares to which the Holder is entitled upon the Holder's exercise hereunder (as the case may be) and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of Warrant Shares multiplied by (B) the price at which the Holder sold such shares of Common Stock in anticipation of the delivery thereof upon such applicable exercise (and if the Holder shall not have sold such shares, the price for purposes of this clause (B) shall equal the Buy-In Price divided by the number of shares of Common Stock described in the immediately preceding clause (A) (the "**Buy-In Payment Amount**"). Nothing shall limit the Holder's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock (or to electronically deliver such shares of Common Stock) upon the exercise of this Warrant as required pursuant to the terms hereof.

(d) Cashless Exercise. Notwithstanding anything contained herein to the contrary (other than Section 1(f) below), if at the time of exercise hereof a registration statement is not effective (or the prospectus contained therein is not available for use) for the resale by the Holder of all of the Warrant Shares, then the Holder may, in its sole discretion, exercise this Warrant in whole or in part by means of a "cashless exercise" (a "**Cashless Exercise**") in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (C)] by (A), where:

A= as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 1(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 1(a) hereof on a Trading Day prior to the opening of “regular trading hours” (as defined in Rule 600(b)(64) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise or (z) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg L.P. as of the time of the Holder’s execution of the applicable Notice of Exercise if such Notice of Exercise is executed during “regular trading hours” on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of “regular trading hours” on a Trading Day) pursuant to Section 1(a) hereof or (iii) the VWAP on the date of the applicable Notice of Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is both executed and delivered pursuant to Section 1(a) hereof after the close of “regular trading hours” on such Trading Day.

B = the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

C = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a Cashless Exercise.

If the Warrant Shares are issued in a Cashless Exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the 1933 Act, the Warrant Shares take on the characteristics of the Warrants being exercised. For purposes of Rule 144(d) promulgated under the 1933 Act, as in effect on the Subscription Date, it is intended that the Warrant Shares issued in a Cashless Exercise shall be deemed to have been acquired by the Holder, and the holding period for the Warrant Shares shall be deemed to have commenced, on the date this Warrant was originally issued pursuant to the Securities Purchase Agreement. The Company agrees not to take any position contrary to this Section 1(d). The Holder shall include, together with the Exercise Notice, its calculation of the number of Warrant Shares to be issued in respect of the exercise for which such Exercise Notice is delivered, including a “screen shot” from a Bloomberg L.P. terminal or similar documentation of the applicable VWAP used for such calculation.

(e) Disputes. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the number of Warrant Shares to be issued pursuant to the terms hereof, the Company shall promptly issue to the Holder the number of Warrant Shares that are not disputed and resolve such dispute in accordance with Section 13.

(f) Limitations on Exercises.

(i) Beneficial Ownership Limitations. The Company shall not effect the exercise of any portion of this Warrant, and the Holder shall not have the right to exercise any portion of this Warrant, pursuant to the terms and conditions of this Warrant and any such exercise shall be null and void and treated as if never made, to the extent that after giving effect to such exercise, the Holder together with the other Attribution Parties collectively would beneficially own in excess of 4.99% (the "**Maximum Percentage**") of the shares of Common Stock outstanding immediately after giving effect to such exercise. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and the other Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (A) exercise of the remaining, unexercised portion of this Warrant beneficially owned by the Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company (including, without limitation, any convertible notes, including the Note, or convertible preferred stock or warrants, including any of the other Warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 1(f)(i). For purposes of this Section 1(f)(i), beneficial ownership shall be calculated in accordance with Section 13(d) of the 1934 Act. For purposes of determining the number of outstanding shares of Common Stock the Holder may acquire upon the exercise of this Warrant without exceeding the Maximum Percentage, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing made by the Company with the SEC, as the case may be, (y) a more recent public announcement by the Company or (z) any other written notice by the Company or the Transfer Agent, if any, setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives an Exercise Notice from the Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall (i) notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Exercise Notice would otherwise cause the Holder's beneficial ownership, as determined pursuant to this Section 1(f)(i), to exceed the Maximum Percentage, the Holder must notify the Company of a reduced number of Warrant Shares to be acquired pursuant to such Exercise Notice (the number of shares by which such purchase is reduced, the "**Reduction Shares**") and (ii) as soon as reasonably practicable, the Company shall return to the Holder any exercise price paid by the Holder for the Reduction Shares. For any reason at any time, upon the written request of the Holder, the Company shall within one (1) Business Day confirm in writing or by electronic mail to the Holder the number of shares of Common Stock then outstanding in accordance with information obtained from the Transfer Agent. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder and any

other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to the Holder upon exercise of this Warrant results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the 1934 Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled *ab initio*, and the Holder shall not have the power to vote or to transfer the Excess Shares. As soon as reasonably practicable after the issuance of the Excess Shares has been deemed null and void, the Company shall return to the Holder the exercise price paid by the Holder for the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase (with such increase not effective until the sixty-first (61st) day after delivery of such notice) or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other Person that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Warrant in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the 1934 Act. No prior inability to exercise this Warrant pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of exercisability. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 1(f)(i) to the extent necessary to correct this paragraph or any portion of this paragraph which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 1(f)(i) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Warrant.

(ii) Principal Market Regulation. The Company shall not issue any shares of Common Stock upon exercise of this Warrant if the issuance of such shares of Common Stock would exceed the aggregate number of shares of Common Stock which the Company may issue upon conversion or exercise (as the case may be) of the Note and the Warrants (as defined in the Securities Purchase Agreement) without breaching the Company's obligations under the rules of The Nasdaq Capital Market (the number of shares which may be issued without violating such rules being 3,869,868 subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the Subscription Date, the "**Exchange Cap**"), except that such limitation shall not apply to the extent that the Company obtains the approval of its shareholders as required by the applicable rules of The Nasdaq Capital Market for issuances of shares of Common Stock in excess of such amount. In the event that the Company is then prohibited from issuing any shares of Common Stock pursuant to this Section 1(f)(ii) (the "**Exchange Cap Shares**"), in lieu of issuing and delivering such Exchange Cap Shares to the Holder, the Company shall pay

cash to the Holder in exchange for the cancellation of such portion of this Warrant exercisable into such Exchange Cap Shares (the “**Exchange Cap Payment Amount**”) at a price equal to the sum of (x) the product of (A) such number of Exchange Cap Shares and (B) the greatest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date the Holder delivers the applicable Exercise Notice with respect to such Exchange Cap Shares to the Company and ending on the date of such payment under this Section 1(f)(ii) and (y) to the extent the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of Exchange Cap Shares, any reasonable brokerage commissions, if any, of the Holder incurred in connection therewith.

(g) Reservation of Shares.

(i) Required Reserve Amount. So long as this Warrant remains outstanding, the Company shall at all times keep reserved for issuance under this Warrant a number of shares of Common Stock at least equal to 100% of the maximum number of shares of Common Stock as shall be necessary to satisfy the Company’s obligation to issue shares of Common Stock under the Warrants then outstanding (without regard to any limitations on exercise) (the “**Required Reserve Amount**”); provided that at no time shall the number of shares of Common Stock reserved pursuant to this Section 1(g)(i) be reduced other than proportionally in connection with any exercise or redemption of Warrants or such other event covered by Section 2(a) below. The Required Reserve Amount (including, without limitation, each increase in the number of shares so reserved) shall be allocated pro rata among the holders of the Warrants based on number of shares of Common Stock issuable upon exercise of Warrants held by each holder on the Closing Date (without regard to any limitations on exercise) or increase in the number of reserved shares, as the case may be (the “**Authorized Share Allocation**”). In the event that a holder shall sell or otherwise transfer any of such holder’s Warrants, each transferee shall be allocated a pro rata portion of such holder’s Authorized Share Allocation. Any shares of Common Stock reserved and allocated to any Person which ceases to hold any Warrants shall be allocated to the remaining holders of Warrants, pro rata based on the number of shares of Common Stock issuable upon exercise of the Warrants then held by such holders (without regard to any limitations on exercise).

(ii) Insufficient Authorized Shares. If, notwithstanding Section 1(g)(i) above, and not in limitation thereof, at any time while any of the Warrants remain outstanding, the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve the Required Reserve Amount (an “**Authorized Share Failure**”), then the Company shall immediately take all action necessary to increase the Company’s authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for all the Warrants then outstanding.

Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its shareholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, if necessary in connection with seeking shareholder approval, the Company shall provide

each shareholder with a proxy statement and shall use its reasonable best efforts to solicit its shareholders' approval of such increase in authorized shares of Common Stock and to cause its board of directors to recommend to the shareholders that they approve such proposal. In the event that the Company is prohibited from issuing shares of Common Stock upon an exercise of this Warrant due to the failure by the Company to have sufficient shares of Common Stock available out of the authorized but unissued shares of Common Stock (such unavailable number of shares of Common Stock, the "**Authorization Failure Shares**"), in lieu of delivering such Authorization Failure Shares to the Holder, the Company shall pay cash in exchange for the cancellation of such portion of this Warrant exercisable into such Authorization Failure Shares at a price equal to the sum of (i) the product of (x) such number of Authorization Failure Shares and (y) the greatest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date the Holder delivers the applicable Exercise Notice with respect to such Authorization Failure Shares to the Company and ending on the date of such issuance and payment under this Section 1(g); and (ii) to the extent the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of Authorization Failure Shares, any Buy-In Payment Amount, and brokerage commissions, if any, of the Holder incurred in connection therewith. Nothing contained in this Section 1(g)(ii) shall limit any obligations of the Company under any provision of the Securities Purchase Agreement.

2. ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF WARRANT SHARES. The Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time as set forth in this Section 2.

(a) Stock Dividends and Splits. Without limiting any provision of Section 3 or Section 4, if the Company, at any time on or after the date of the Securities Purchase Agreement, (i) pays a stock dividend on one or more classes of its then outstanding shares of Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock, (ii) subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its then outstanding shares of Common Stock into a larger number of shares or (iii) combines (by combination, reverse stock split or otherwise) one or more classes of its then outstanding shares of Common Stock into a smaller number of shares, then in each such case (a) the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event and (b) the number of Warrant Shares that may be purchased upon exercise of this Warrant shall be increased or decreased proportionately, so that after such adjustment the aggregate Exercise Price payable hereunder for the adjusted number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment (without regard to any limitations on exercise contained herein). Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of shareholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (ii) or (iii) of this paragraph shall become effective immediately after the effective date of such subdivision or combination. If any event requiring an adjustment under this paragraph occurs during the period that an Exercise Price is calculated hereunder, then the calculation of such Exercise Price shall be adjusted appropriately to reflect such event.

(b) Number of Warrant Shares. Simultaneously with any adjustment to the Exercise Price pursuant to Section 2(a), the number of Warrant Shares that may be purchased upon exercise of this Warrant shall be increased or decreased proportionately, so that after such adjustment the aggregate Exercise Price payable hereunder for the adjusted number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment (without regard to any limitations on exercise contained herein).

(c) Other Events. In the event that the Company (or any Subsidiary (as defined in the Securities Purchase Agreement)) shall take any action similar to those set forth in Section 2(a) to which the provisions hereof are not strictly applicable, or, if applicable, would not operate to protect the Holder from dilution or if any event occurs of the type contemplated by the provisions of this Section 2 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Company's board of directors shall in good faith determine and implement an appropriate adjustment in the Exercise Price and the number of Warrant Shares (if applicable) so as to protect the rights of the Holder, provided that no such adjustment pursuant to this Section 2(c) will increase the Exercise Price or decrease the number of Warrant Shares as otherwise determined pursuant to this Section 2, provided further that if the Holder does not accept such adjustments as appropriately protecting its interests hereunder against such dilution, then the Company's board of directors and the Holder shall agree, in good faith, upon an independent investment bank of nationally recognized standing to make such appropriate adjustments, whose determination shall be final and binding absent manifest error and whose fees and expenses shall be borne by the Company.

(d) Calculations. All calculations under this Section 2 shall be made by rounding to the nearest cent or the nearest 1/100th of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the disposition of any such shares shall be considered an issuance or sale of Common Stock.

(e) Voluntary Adjustment By Company. The Company may at any time during the term of this Warrant, with the prior written consent of the Holder, reduce the then current Exercise Price to any amount and for any period of time deemed appropriate by the board of directors of the Company; provided, however, that no adjustment pursuant to this Section 2(e) shall cause the Exercise Price to be less than \$0.50 (as adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction occurring after the Subscription Date).

3. RIGHTS UPON DISTRIBUTION OF ASSETS. In addition to any adjustments pursuant to Section 2 above, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property, options, evidence of indebtedness or any other assets by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "**Distribution**"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common

Stock acquirable upon complete exercise of this Warrant (without regard to any limitations or restrictions on exercise of this Warrant, including without limitation, the Maximum Percentage) 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 shares of Common Stock are to be determined for the participation in such Distribution (provided, however, that to the extent that the Holder's right to participate in any such Distribution would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Distribution to the extent of the Maximum Percentage (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Distribution (and beneficial ownership) to the extent of any such excess) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time or times, if ever, as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be granted such Distribution (and any Distributions declared or made on such initial Distribution or on any subsequent Distribution held similarly in abeyance) to the same extent as if there had been no such limitation).

4. PURCHASE RIGHTS; FUNDAMENTAL TRANSACTIONS.

(a) Purchase Rights. In addition to any adjustments pursuant to Section 2 above, if at any time the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, Warrants, securities or other property pro rata to the record holders of any class of Common Stock (the "**Purchase Rights**"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations or restrictions on exercise of this Warrant, including without limitation, the Maximum Percentage) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issuance or sale of such Purchase Rights (provided, however, that to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Purchase Right to the extent of the Maximum Percentage (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Purchase Right (and beneficial ownership) to the extent of any such excess) and such Purchase Right to such extent shall be held in abeyance for the benefit of the Holder until such time or times, if ever, as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be granted such right (and any Purchase Right granted, issued or sold on such initial Purchase Right or on any subsequent Purchase Right held similarly in abeyance) to the same extent as if there had been no such limitation).

(b) Fundamental Transactions. The Company shall not enter into or be party to a Fundamental Transaction unless (i) the Successor Entity assumes in writing all of the obligations of the Company under this Warrant and the other Transaction Documents (as defined in the Securities Purchase Agreement) in accordance with the provisions of this Section 4(b) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder prior to such Fundamental Transaction, including agreements to deliver

to the Holder in exchange for this Warrant a security of the Successor Entity (if other than the Company) evidenced by a written instrument substantially similar in form and substance to this Warrant, including, without limitation, which is exercisable for a corresponding number of shares of capital stock equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such adjustments to the number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction) and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market. Upon the consummation of each Fundamental Transaction, the Successor Entity (if other than the Company) shall succeed to, and be substituted for (so that from and after the date of the applicable Fundamental Transaction, the provisions of this Warrant 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 Warrant and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of each Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon exercise of this Warrant at any time after the consummation of the applicable Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 3 and 4(a) above, which shall continue to be receivable thereafter)) issuable upon the exercise of this Warrant prior to the applicable Fundamental Transaction, such shares of publicly traded common stock (or its equivalent) of the Successor Entity (including, if applicable, its Parent Entity) which the Holder would have been entitled to receive upon the happening of the applicable Fundamental Transaction had this Warrant been exercised immediately prior to the applicable Fundamental Transaction (without regard to any limitations on the exercise of this Warrant), as adjusted in accordance with the provisions of this Warrant. Notwithstanding the foregoing, and without limiting Section 1(f) hereof, the Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 4(b) to permit the Fundamental Transaction without the assumption of this Warrant. In addition to and not in substitution for any other rights hereunder, prior to the consummation of each Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a "**Corporate Event**"), the Company shall make appropriate provision to ensure that the Holder will thereafter have the right to receive upon an exercise of this Warrant at any time after the consummation of the applicable Fundamental Transaction but prior to the Expiration Date, in lieu of the shares of the Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 3 and 4(a) above, which shall continue to be receivable thereafter)) issuable upon the exercise of the Warrant prior to such Fundamental Transaction, such shares of stock, securities, cash, assets or any other property whatsoever (including warrants or other purchase or subscription rights) which the Holder would have been entitled to receive upon the happening of the applicable Fundamental Transaction had this Warrant been exercised immediately prior to the applicable Fundamental Transaction (without regard to any limitations on the exercise of this

Warrant). Provision made pursuant to the preceding sentence shall be in a form and substance reasonably satisfactory to the Holder.

(c) Black Scholes Value.

(i) Fundamental Transaction Redemption. Notwithstanding the foregoing and the provisions of Section 4(b) above, at the request of the Holder delivered at any time commencing on the earliest to occur of (x) the public disclosure of any Fundamental Transaction and (y) the consummation of any Fundamental Transaction (including, without limitation, a Fundamental Transaction that is publicly disclosed or consummated (as the case may be) prior to the Initial Exercise Date) through the date that is thirty (30) days after the public disclosure of the consummation of such Fundamental Transaction by the Company pursuant to a Current Report on Form 8-K filed with the SEC or other report or statement filed under the 1934 Act or the 1933 Act, the Company or the Successor Entity (as the case may be) shall purchase this Warrant from the Holder by paying to the Holder cash in an amount equal to the Black Scholes Value on or prior to the later of (A) the third (3rd) Business Day immediately following the date of such request from the Holder and (B) the closing date of such Fundamental Transaction.

(d) Application. The provisions of this Section 4 shall apply similarly and equally to successive Fundamental Transactions and Corporate Events and shall be applied as if this Warrant (and any such subsequent warrants) were fully exercisable and without regard to any limitations on the exercise of this Warrant (provided that the Holder shall continue to be entitled to the benefit of the Maximum Percentage, applied however with respect to shares of capital stock registered under the 1934 Act and thereafter receivable upon exercise of this Warrant (or any such other warrant)).

5. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Articles of Incorporation, as amended, Bylaws, as amended, or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issuance 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 Warrant, and will at all times in good faith carry out all the provisions of this Warrant and take all action as may be required to protect the rights of the Holder. Without limiting the generality of the foregoing, the Company (a) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect, and (b) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable shares of Common Stock upon the exercise of this Warrant.

6. WARRANT HOLDER NOT DEEMED A SHAREHOLDER. Except as otherwise specifically provided herein, the Holder, solely in its capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in its capacity as the Holder of this Warrant, any of the rights of a shareholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, receive dividends or subscription

rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which it is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (except upon the Holder's exercise of this Warrant) or as a shareholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company.

7. REISSUANCE OF WARRANTS.

(a) Transfer of Warrant. If this Warrant is to be transferred, the Holder shall surrender this Warrant to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Warrant (in accordance with Section 7(d)), registered as the Holder may request, representing the right to purchase the number of Warrant Shares being transferred by the Holder and, if less than the total number of Warrant Shares then underlying this Warrant is being transferred, a new Warrant (in accordance with Section 7(d)) to the Holder representing the right to purchase the number of Warrant Shares not being transferred.

(b) Lost, Stolen or Mutilated Warrant. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant (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 Warrant, the Company shall execute and deliver to the Holder a new Warrant (in accordance with Section 7(d)) representing the right to purchase the Warrant Shares then underlying this Warrant.

(c) Exchangeable for Multiple Warrants. This Warrant is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Warrant or Warrants (in accordance with Section 7(d)) representing in the aggregate the right to purchase the number of Warrant Shares then underlying this Warrant, and each such new Warrant will represent the right to purchase such portion of such Warrant Shares as is designated by the Holder at the time of such surrender; provided, however, no warrants for fractional shares of Common Stock shall be given.

(d) Issuance of New Warrants. Whenever the Company is required to issue a new Warrant pursuant to the terms of this Warrant, such new Warrant (i) shall be of like tenor with this Warrant, (ii) shall represent, as indicated on the face of such new Warrant, the right to purchase the Warrant Shares then underlying this Warrant (or in the case of a new Warrant being issued pursuant to Section 7(a) or Section 7(c), the Warrant Shares designated by the Holder which, when added to the number of shares of Common Stock underlying the other new Warrants issued in connection with such issuance, does not exceed the number of Warrant Shares then underlying this Warrant), (iii) shall have an issuance date, as indicated on the face of such new Warrant which is the same as the Issuance Date, and (iv) shall have the same rights and conditions as this Warrant.

8. NOTICES

. Whenever notice is required to be given under this Warrant, 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 Warrant (other than the issuance of shares of Common Stock upon exercise in accordance with the terms hereof), including in reasonable detail a description of such action and the reason therefor. Without limiting the generality of the foregoing, the Company will give written notice to the Holder (i) of each adjustment of the Exercise Price and the number of Warrant Shares, not later than 4:00 p.m., New York time, on the Business Day on which such adjustment was made by the Company, setting forth in reasonable detail, and certifying, the calculation of such adjustment(s), (ii) at least five (5) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the shares of Common Stock, (B) with respect to any grants, issuances or sales of any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to holders of shares of Common Stock or (C) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation, provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder, and (iii) at least ten (10) Trading Days prior to the consummation of any Fundamental Transaction. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any of its Subsidiaries, the Company shall simultaneously file such notice with the SEC pursuant to a Current Report on Form 8-K or otherwise disclose such information in any other manner compliant with Regulation FD. If the Company or any of its Subsidiaries provides material non-public information to the Holder that is not simultaneously file a Current Report on Form 8-K and the Holder has not agreed to receive such material non-public information, the Company hereby covenants and agrees that the Holder shall not have any duty of confidentiality to the Company, any of its Subsidiaries or any of their respective officers, directors, employees, Affiliates or agents with respect to, or a duty to any of the foregoing not to trade on the basis of, such material non-public information. It is expressly understood and agreed that the time of execution specified by the Holder in each Exercise Notice shall be definitive and may not be disputed or challenged by the Company absent manifest error.

9. AMENDMENT AND WAIVER. Except as otherwise provided herein, the provisions of this Warrant (other than Section 1(f)(i)) may be amended and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Holder. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

10. SEVERABILITY. If any provision of this Warrant 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 Warrant so long as this Warrant 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).

11. **GOVERNING LAW.** This Warrant shall be governed by and construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Warrant shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each of the Holder and the Company 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 the Company at the address set forth in Section 9(f) of the Securities Purchase Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Each of the Holder and the Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, 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. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. 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. **EACH OF THE HOLDER AND 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 WARRANT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

12. **CONSTRUCTION; HEADINGS.** This Warrant 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 Warrant are for convenience of reference and shall not form part of, or affect the interpretation of, this Warrant. Terms used in this Warrant but defined in the other Transaction Documents shall have the meanings ascribed to such terms on the Closing Date (as defined in the Securities Purchase Agreement) in such other Transaction Documents unless otherwise consented to in writing by the Holder.

13. **DISPUTE RESOLUTION.**

(a) **Submission to Dispute Resolution.**

(i) In the case of a dispute relating to the Exercise Price, the Closing Sale Price, the Bid Price, the Black Scholes Value or the fair market value or the arithmetic calculation of the number of Warrant Shares (as the case may be) (including, without

limitation, a dispute relating to the determination of any of the foregoing), the Company or the Holder (as the case may be) shall submit the dispute to the other party via facsimile or electronic mail at any time after the Company or the Holder, as applicable, learned of the circumstances giving rise to such dispute. If the Holder and the Company are unable to promptly resolve such dispute relating to such Exercise Price, such Closing Sale Price, such Bid Price, such Black Scholes Value or such fair market value or such arithmetic calculation of the number of Warrant Shares (as the case may be), at any time after the second (2nd) Business Day following such initial notice by the Company or the Holder (as the case may be) of such dispute to the Company or the Holder (as the case may be), then the Holder may, at its sole option, select an independent, reputable investment bank to resolve such dispute.

(ii) The Holder and the Company shall each deliver to such investment bank (A) a copy of the initial dispute submission so delivered in accordance with the first sentence of this Section 13 and (B) written documentation supporting its position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the tenth (10th) Business Day immediately following the date on which the Holder selected such investment bank (the “**Dispute Submission Deadline**”) (the documents referred to in the immediately preceding clauses (A) and (B) are collectively referred to herein as the “**Required Dispute Documentation**”) (it being understood and agreed that if either the Holder or the Company fails to so deliver all of the Required Dispute Documentation by the Dispute Submission Deadline, then the party who fails to so submit all of the Required Dispute Documentation shall no longer be entitled to (and hereby waives its right to) deliver or submit any written documentation or other support to such investment bank with respect to such dispute and such investment bank shall resolve such dispute based solely on the Required Dispute Documentation that was delivered to such investment bank prior to the Dispute Submission Deadline). Unless otherwise agreed to in writing by both the Company and the Holder or otherwise requested by such investment bank, neither the Company nor the Holder shall be entitled to deliver or submit any written documentation or other support to such investment bank in connection with such dispute (other than the Required Dispute Documentation).

(iii) The Company and the Holder shall cause such investment bank to determine the resolution of such dispute and notify the Company and the Holder of such resolution no later than ten (10) Business Days immediately following the Dispute Submission Deadline. The fees and expenses of such investment bank shall be borne solely by the Company, and such investment bank’s resolution of such dispute shall be final and binding upon all parties absent manifest error.

(b) Miscellaneous. The Company expressly acknowledges and agrees that (i) this Section 13 constitutes an agreement to arbitrate between the Company and the Holder (and constitutes an arbitration agreement) under the rules then in effect under § 7501, et seq. of the New York Civil Practice Law and Rules (“**CPLR**”) and that the Holder is authorized to apply for an order to compel arbitration pursuant to CPLR § 7503(a) in order to compel compliance with this Section 13, (ii) a dispute relating to the Exercise Price includes, without limitation, disputes as to (A) whether an issuance or sale or deemed issuance or sale of Common Stock occurred under Section 2(b), (B) the consideration per share at which an issuance or deemed issuance of

Common Stock occurred, (C) whether an agreement, instrument, security or the like constitutes and Option or Convertible Security and (D) whether a Dilutive Issuance occurred, (iii) the terms of this Warrant and each other applicable Transaction Document shall serve as the basis for the selected investment bank's resolution of the applicable dispute, such investment bank shall be entitled (and is hereby expressly authorized) to make all findings, determinations and the like that such investment bank determines are required to be made by such investment bank in connection with its resolution of such dispute (including, without limitation, determining (A) whether an issuance or sale or deemed issuance or sale of Common Stock occurred under Section 2(b), (B) the consideration per share at which an issuance or deemed issuance of Common Stock occurred, (C) whether an agreement, instrument, security or the like constitutes and Option or Convertible Security and (D) whether a Dilutive Issuance occurred) and in resolving such dispute such investment bank shall apply such findings, determinations and the like to the terms of this Warrant and any other applicable Transaction Documents, (iv) the Holder (and only the Holder), in its sole discretion, shall have the right to submit any dispute described in this Section 13 to any state or federal court sitting in The City of New York, Borough of Manhattan in lieu of utilizing the procedures set forth in this Section 13 and (v) nothing in this Section 13 shall limit the Holder from obtaining any injunctive relief or other equitable remedies (including, without limitation, with respect to any matters described in this Section 13).

14. REMEDIES, CHARACTERIZATION, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant and 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 right of the Holder to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Warrant. 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, exercises 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 of this Warrant shall be entitled, in addition to all other available remedies, to 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 Company shall provide all information and documentation to the Holder that is reasonably requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Warrant (including, without limitation, compliance with Section 2 hereof). The issuance of shares and certificates for shares as contemplated hereby upon the exercise of this Warrant shall be made without charge to the Holder or such shares for any issuance tax or other costs in respect thereof, provided that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than the Holder or its agent on its behalf.

15. PAYMENT OF COLLECTION, ENFORCEMENT AND OTHER COSTS. If (a) this Warrant 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 Warrant or to enforce the provisions of this Warrant or (b) there occurs any bankruptcy, reorganization, receivership of the company or other proceedings affecting company creditors' rights and involving a claim under this Warrant, then the Company shall pay the reasonable 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.

16. TRANSFER. Subject to applicable laws, this Warrant may be offered for sale, sold, transferred or assigned without the consent of the Company.

17. CERTAIN DEFINITIONS. For purposes of this Warrant, the following terms shall have the following meanings:

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

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

(c) **"Affiliate"** means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that "control" of a Person means the power directly or indirectly to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

(d) **"Attribution Parties"** means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Issuance Date, directly or indirectly managed or advised by the Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with the Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Company's Common Stock would or could be aggregated with the Holder's and the other Attribution Parties for purposes of Section 13(d) of the 1934 Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Maximum Percentage.

(e) **"Bid Price"** means, for any security as of the particular time of determination, the bid price for such security on the Principal Market as reported by Bloomberg as of such time of determination, or, if the Principal Market is not the principal securities exchange or trading market for such security, the bid price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg as of such time of determination, or if the foregoing does not apply, the bid price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg as of such time of determination, or, if no bid price is reported for such security by Bloomberg as of

such time of determination, the average of the bid prices of any market makers for such security as reported in the “pink sheets” by OTC Markets Group Inc. (formerly Pink Sheets LLC) as of such time of determination. If the Bid Price cannot be calculated for a security as of the particular time of determination on any of the foregoing bases, the Bid Price of such security as of such time of determination shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 13. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

(f) **“Black Scholes Value”** means the value of the unexercised portion of this Warrant remaining on the date of the Holder’s request pursuant to Section 4(c)(i), which value is 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 greater of (1) the highest Closing Sale Price of the Common Stock during the period beginning on the Trading Day immediately preceding the announcement of the applicable Fundamental Transaction (or the consummation of the applicable Fundamental Transaction, if earlier) and ending on the Trading Day of the Holder’s request pursuant to Section 4(c)(i) and (2) the sum of the price per share being offered in cash in the applicable Fundamental Transaction (if any) plus the value of the non-cash consideration being offered in the applicable Fundamental Transaction (if any), (ii) a strike price equal to the Exercise Price in effect on the date of the Holder’s request pursuant to Section 4(c)(i), (iii) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the greater of (1) the remaining term of this Warrant as of the date of the Holder’s request pursuant to Section 4(c)(i) and (2) the remaining term of this Warrant as of the date of consummation of the applicable Fundamental Transaction or as of the date of the Holder’s request pursuant to Section 4(c)(i) if such request is prior to the date of the consummation of the applicable Fundamental Transaction, (iv) a zero cost of borrow and (v) an expected volatility equal to the greater of 100% and the 30 day volatility obtained from the “HVT” function on Bloomberg (determined utilizing a 365 day annualization factor) as of the Trading Day immediately following the earliest to occur of (A) the public disclosure of the applicable Fundamental Transaction, (B) the consummation of the applicable Fundamental Transaction and (C) the date on which the Holder first became aware of the applicable Fundamental Transaction (including, without limitation, a Fundamental Transaction that is publicly disclosed, consummated or of which the Holder first becomes aware (as the case may be) prior to the Initial Exercise Date).

(g) **“Bloomberg”** means Bloomberg, L.P.

(h) **“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.

(i) **“Closing Sale Price”** means, for any security as of any date, the last closing trade price for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing trade price, then the last trade price of such security immediately prior to 4:00:00 p.m., New York

time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last trade price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing does not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no last trade price is reported for such security by Bloomberg, the average of the ask prices of any market makers for such security as reported in the “pink sheets” by OTC Markets Group Inc. (formerly Pink Sheets LLC). If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 13. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction effected during the applicable calculation period.

(j) **“Common Stock”** means (i) the Company’s shares of common stock, \$0.015 par value per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

(k) **“Convertible Securities”** means any stock or other security (other than Options) 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 shares of Common Stock.

(l) **“Eligible Market”** means the New York Stock Exchange, the NYSE American, The Nasdaq Global Select Market, The Nasdaq Global Market or the Principal Market (or any nationally recognized successor to any of the foregoing).

(m) **“Expiration Date”** means the date that is the last day of the sixth (6th) month following the fifth (5th) anniversary of the Issuance Date or, if such date falls on a day other than a Trading Day or on which trading does not take place on the Principal Market (a **“Holiday”**), the next date that is not a Holiday.

(n) **“Fundamental Transaction”** means (A) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Subject Entity, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company or any of its “significant subsidiaries” (as defined in Rule 1-02 of Regulation S-X) to one or more Subject Entities, or (iii) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its Common Stock be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of at least either (x) 50% of the outstanding shares of Common Stock, (y) 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding; or (z) such number of shares of Common Stock such that all Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such

purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (iv) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with one or more Subject Entities whereby all such Subject Entities, individually or in the aggregate, acquire, either (x) at least 50% of the outstanding shares of Common Stock, (y) at least 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all the Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such stock purchase agreement or other business combination were not outstanding; or (z) such number of shares of Common Stock such that the Subject Entities become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (v) reorganize, recapitalize or reclassify its Common Stock, (B) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, allow any Subject Entity individually or the Subject Entities in the aggregate to be or become the “beneficial owner” (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, whether through acquisition, purchase, assignment, conveyance, tender, tender offer, exchange, reduction in outstanding shares of Common Stock, merger, consolidation, business combination, reorganization, recapitalization, spin-off, scheme of arrangement, reorganization, recapitalization or reclassification or otherwise in any manner whatsoever, of either (x) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock, (y) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock not held by all such Subject Entities as of the date of this Warrant calculated as if any shares of Common Stock held by all such Subject Entities were not outstanding, or (z) a percentage of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock or other equity securities of the Company sufficient to allow such Subject Entities to effect a statutory short form merger or other transaction requiring other shareholders of the Company to surrender their shares of Common Stock without approval of the shareholders of the Company or (C) directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, the issuance of or the entering into any other instrument or transaction structured in a manner to circumvent, or that circumvents, the intent of this definition in which case this definition shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this definition to the extent necessary to correct this definition or any portion of this definition which may be defective or inconsistent with the intended treatment of such instrument or transaction.

(o) “**Group**” means a “group” as that term is used in Section 13(d) of the 1934 Act and as defined in Rule 13d-5 thereunder.

(p) “**Note**” has the meaning ascribed to such term in the Securities Purchase Agreement, and shall include all notes issued in exchange therefor or replacement thereof.

(q) “**Options**” means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(r) “**Parent Entity**” of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock 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.

(s) **“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.

(t) **“Principal Market”** means the The Nasdaq Capital Market (or any nationally recognized successor thereto).

(u) **“Resale Eligibility Date”** means earlier of (i) the date a registration statement filed by the Company under the 1933 Act, covering the resale of the Warrant Shares by the Holder, is declared effective by the SEC (and each prospectus contained therein is available for use on such date), and (ii) the initial date any of the Warrant Shares are eligible to be resold pursuant to Rule 144.

(v) **“SEC”** means the United States Securities and Exchange Commission or the successor thereto.

(w) **“Subject Entity”** means any Person, Persons or Group or any Affiliate or associate of any such Person, Persons or Group.

(x) **“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.

(y) **“Trading Day”** means, as applicable, (x) with respect to all price or trading volume determinations relating to the Common Stock, any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded, provided that “Trading Day” shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the Holder or (y) with respect to all determinations other than price determinations relating to the Common Stock, any day on which The New York Stock Exchange (or any successor thereto) is open for trading of securities.

(z) **“VWAP”** means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Market (or, if the Principal Market is not the principal trading market for such security, then on the principal securities exchange or securities market on which such security is then traded) during the period beginning at 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by Bloomberg through its “HP” function (set to weighted average) or, if the foregoing does not apply, the dollar volume-

weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC). If the VWAP cannot be calculated for such security on such date on any of the foregoing bases, the VWAP of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 13. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, recapitalization or other similar transaction during such period.

[signature page follows]

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

DOLPHIN ENTERTAINMENT, INC.

By: /s/ William O'Dowd IV
Name: William O'Dowd, IV
Title: Chief Executive Officer

EXERCISE NOTICE

TO BE EXECUTED BY THE REGISTERED HOLDER TO EXERCISE THIS
WARRANT TO PURCHASE COMMON STOCK

DOLPHIN ENTERTAINMENT, INC.

The undersigned holder hereby elects to exercise the Warrant to Purchase Common Stock No. _____ (the "Warrant") of Dolphin Entertainment, Inc., a Florida corporation (the "Company"), as specified below. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Warrant.

1. Form of Exercise Price. The Holder intends that payment of the Aggregate Exercise Price shall be made as:

- a "Cash Exercise" with respect to _____ Warrant Shares; and/or
- a "Cashless Exercise" with respect to _____ Warrant Shares.

In the event that the Holder has elected a Cashless Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the Holder hereby represents and warrants that this Exercise Notice was executed by the Holder at _____ [a.m.][p.m.] on the date set forth below. Additionally, if the Holder has elected a Cashless Exercise, attached as Annex A to this Exercise Notice is the Holder's calculation of the number of Warrant Shares to be issued in respect of the exercise for which such Exercise Notice is delivered, including a "screen shot" from a Bloomberg L.P. terminal or similar documentation of the applicable VWAP used for such calculation.

2. Payment of Exercise Price. In the event that the Holder has elected a Cash Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the Holder shall pay the Aggregate Exercise Price in the sum of \$_____ to the Company in accordance with the terms of the Warrant.

3. Delivery of Warrant Shares. The Company shall deliver to Holder, or its designee or agent as specified below, _____ shares of Common Stock in accordance with the terms of the Warrant. Delivery shall be made to Holder, or for its benefit, as follows:

Check here if requesting delivery as a certificate to the following name and to the following address:

Issue to: _____



Check here if requesting delivery by Deposit/Withdrawal at Custodian as follows:

DTC Participant: _____

DTC Number: _____

Account Number: _____

Date: _____, _____

Name of Registered Holder

By: _____

Name:

Title:

Tax ID: _____

Facsimile: _____

E-mail Address: _____



ACKNOWLEDGMENT

The Company hereby acknowledges this Exercise Notice and hereby directs _____ to issue the aboveindicated number of shares of Common Stock in accordance with the Transfer Agent Instructions dated _____, 20__, from the Company and acknowledged and agreed to by _____.

DOLPHIN ENTERTAINMENT, INC.

By: _____

Name:

Title:

SECURITIES PURCHASE AGREEMENT

This **SECURITIES PURCHASE AGREEMENT** (the “**Agreement**”), effective as of March 4, 2020, is by and between Dolphin Entertainment, Inc., a Florida corporation (the “**Company**”), and M. Shanken Communications, Inc., a New York corporation (the “**Investor**”).

RECITALS

A. The Company and the Investor 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(b) of Regulation D (“**Regulation D**”) as promulgated by the United States Securities and Exchange Commission (the “**SEC**”) under the 1933 Act.

B. The Company has authorized the issuance of a senior convertible note in the original principal amount of \$500,000, in the form attached hereto as **Exhibit A** (the “**Note**”), which Note shall be convertible into shares of Common Stock (as defined below) (as converted, collectively, the “**Conversion Shares**”), in accordance with the terms of the Note.

C. The Investor wishes to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement, (i) the original principal amount of the Note, and (ii) a Series I Warrant, in the form attached hereto as **Exhibit B** (the “**Warrant**”), to initially purchase an aggregate of up to 100,000 shares of Common Stock (collectively, the **Warrant Shares**”), at an exercise price of \$0.7828 per share (subject to adjustment as provided in the Series I Warrant).

D. At the Closing (as defined below), the parties hereto shall execute and deliver a Registration Rights Agreement, in the form attached hereto as **Exhibit C** (the “**Registration Rights Agreement**”), pursuant to which the Company has agreed to provide certain registration rights with respect to the Registrable Securities (as defined in the Registration Rights Agreement) under the 1933 Act and the rules and regulations promulgated thereunder, and applicable state securities laws.

E. The Note, the Conversion Shares, the Warrant and the Warrant Shares are collectively referred to herein as the “**Securities**.”

F. The parties have agreed that, among other things, the obligation to repay the Note shall be an unsecured obligation of the Company.

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 Investor hereby agree as follows:

1. PURCHASE AND SALE OF NOTE AND WARRANT.

(a) Note and Warrant. 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 Investor, and the Investor shall purchase from the Company on the Closing Date (as defined below), the Note and the Warrant.

(b) Closing. The closing (the “**Closing**”) of the purchase of the Note and the Warrant by the Investor shall occur at the offices of K&L Gates LLP, 200 S. Biscayne Blvd., Suite 3900, Miami, FL 33134, or at such other place or at such other time or on such other date as the Company and the Investor mutually may agree in writing (and provided that Closing may take place by the electronic exchange of those documents required hereunder to be delivered at Closing). The date and time of the Closing (the “**Closing Date**”) shall be 10:00 a.m., New York time, on the first (^{1st}) 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 Investor). 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 and the Warrant to be purchased by the Investor hereunder (the “**Purchase Price**”) shall be \$500,000.

(d) Payment of Purchase Price; Delivery of Note and Warrant. On the Closing Date, (i) the Investor shall pay the Purchase Price to the Company for the Note and the Warrant by wire transfer of immediately available funds in accordance with the Company’s written wire instructions (less the amounts withheld pursuant to Section 4(g)) and (ii) the Company shall deliver to the Investor (A) the Note and (B) the Warrant, in each case duly executed on behalf of the Company and registered in the name of the Investor or its designee.

2. INVESTOR’S REPRESENTATIONS AND WARRANTIES.

The Investor represents and warrants to the Company that:

(a) Organization; Authority. The Investor 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 to which it is a party and otherwise to carry out its obligations hereunder and thereunder.

(b) No Public Sale or Distribution. The Investor is acquiring the Securities in the ordinary course of its business, 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; provided, however, by making the representations herein, the Investor does not agree, or make any representation or warranty, to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or an exemption under the 1933 Act. The Investor does not presently have any agreement or understanding, directly or indirectly, with any Person to distribute any of the Securities.

(c) Accredited Investor Status. At the time the Investor was offered the Securities, it was, and as of the date hereof it is, and at Closing it will be, an “accredited investor” as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7) or (a)(8) under the 1933 Act.

(d) Experience of Investor. The Investor, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the investment in the Securities, and has so evaluated the merits and risks of such investment. The Investor is able to bear the economic risk of an investment in the Securities and is able to afford a complete loss of such investment. The Investor acknowledges and agrees that the Company has not made any representations or warranties with respect to the Securities or the transactions contemplated hereby other than those specifically set forth in Section 3, and the Investor acknowledges and agrees that it has relied solely upon the representations and warranties contained in Section 3 in determining whether to enter into this Agreement and the other Transaction Documents and to consummate the transactions contemplated hereby and thereby.

(e) Reliance on Exemptions. The Investor understands that the Securities are 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 Investor's compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Investor set forth herein in order to determine the availability of such exemptions and the eligibility of the Investor to acquire the Securities.

(f) Information. The Investor 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 Securities which have been requested by the Investor. The Investor and its advisors, if any, have been afforded the opportunity to ask questions of the Company and has received answers, satisfactory in all respect to the Investor, to all such questions. The Investor understands that its investment in the Securities involves a high degree of risk. The Investor 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 Securities, and the Investor acknowledges and agrees that the Company has not provided to the Investor any accounting, legal, tax or other advice in respect of the transactions contemplated by the Transaction Documents, including the offer, purchase and sale of the Securities.

(g) No Governmental Review. The Investor 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 Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(h) Transfer or Resale. The Investor understands that except as provided in the Registration Rights Agreement and Section 4(h) hereof: (i) the Securities have not been and are not being registered under the 1933 Act or any state or other securities laws, and may not be offered for sale, sold, assigned or transferred unless (A) subsequently registered thereunder, or (B) the Investor shall have delivered to the Company (if requested by the Company) an opinion of counsel to the Investor, in a form and substance reasonably acceptable to the Company, to the effect that such Securities to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from such registration, or (C) the Investor provides the Company with reasonable assurance that, at the time of any sale of such sale of transfer, such Securities may be legally sold, assigned or transferred pursuant to Rule 144 or Rule 144A promulgated under the 1933 Act (or a successor rule thereto) (collectively, "**Rule 144**"); (ii) any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144, and further, if Rule 144 is not applicable, any resale of the Securities 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 Securities under the

1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder.

(i) Validity; Enforcement. This Agreement has been duly and validly authorized, executed and delivered on behalf of the Investor and constitutes the legal, valid and binding obligations of the Investor enforceable against the Investor 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.

(j) No Conflicts. The execution, delivery and performance by the Investor of this Agreement and the consummation by the Investor of the transactions contemplated hereby will not (i) result in a violation of the organizational documents of the Investor, (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 Investor 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 Investor, 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 Investor to perform its obligations hereunder.

(k) Residency. The Investor is a resident of the State of New York.

(l) Certain Trading Activities. The Investor represents and warrants to the Company that at no time prior to the date of this Agreement has any of the Investor, its agents, representatives or affiliates engaged in or effected, in any manner whatsoever, directly or indirectly, any (i) "short sale" (as such term is defined in Rule 200 of Regulation SHO of the Securities Exchange Act of 1934, as amended (the "**1934 Act**")) of the Common Stock or (ii) hedging transaction, which establishes a net short position with respect to the Common Stock.

(m) General Solicitation. The Investor is not purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar.

(n) Manipulation of Price. Since the time that the Investor was first contacted by the Company or its agent regarding the investment in the Company contemplated herein, the Investor has not, and, to the knowledge of the Investor, no Person acting on its behalf has, directly or indirectly, (i) taken any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to the Investor that, as of the date hereof and as of the Closing Date:

(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 authority 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 reasonably be expected to have a Material Adverse Effect (as defined below). As used in this Agreement, "**Material Adverse Effect**" means any material adverse effect on: (i) the business, properties, assets, liabilities, operations (including results thereof), condition (financial or otherwise) or currently anticipated prospects of the Company and its Subsidiaries, taken as a whole, excluding any effect that results or arises primarily from (A) any change in the United States or foreign economies or securities or financial markets in general that does not have a disproportionate effect on the Company and its Subsidiaries, taken as a whole, (B) any change that generally affects the industry in which the Company and its Subsidiaries operate that does not have a disproportionate effect on the Company and its Subsidiaries, taken as a whole, (C) any change arising in connection with earthquakes, hostilities, acts of war, sabotage or terrorism or military actions or any escalation or material worsening of any such hostilities, acts of war, sabotage or terrorism or military actions existing as of the date hereof, or (D) any change in applicable laws or accounting rules that does not have a disproportionate effect on the Company and its Subsidiaries, taken as a whole; (ii) the enforceability of any Transaction Document; or (iii) the Company's ability to perform in any material respect on a timely basis any of its obligations under any Transaction Document to be performed as of the date of determination. The Company owns, directly or indirectly, all of the capital stock or other equity interests of each Subsidiary free and clear of any liens (except as disclosed in the SEC Documents, as such term is defined below), and all of the issued and outstanding shares of capital stock of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities. "**Subsidiaries**" means any Person in which the Company, directly or indirectly, (A) owns any of the outstanding capital stock or holds any equity or similar interest of such Person such that such Person is required by GAAP to be included in the Company's consolidated financial statements or (B) controls or operates all or any part of the business, operations or administration of such Person, and each of the foregoing, is individually referred to herein as a "**Subsidiary**".

(b) Authorization; Enforcement; Validity. The Company has the requisite 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, the issuance of the Warrant and the reservation for issuance and issuance of the Warrant Shares upon exercise of the Warrant) have been duly authorized by the Company's board of directors and (other than (i) the filing with the SEC of one or more Registration Statements in accordance with the requirements of the Registration Rights Agreement, (ii) the filing of a Form D with the SEC, (iii) the filing of a Notice of Additional Listing with The Nasdaq Capital Market (the "**Principal Market**") and (iv) any other filings as may be required by any state securities agencies) no further filing, consent or authorization is required by the Company, its board of directors or its shareholders. 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 (or upon execution and delivery thereof by the Company will constitute) the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their 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, the Warrant, the Registration Rights Agreement, the Irrevocable Transfer Agent Instructions (as defined below) and each of the other agreements and instruments entered into and delivered at Closing by any of the parties hereto in connection with the transactions contemplated hereby and thereby, as may be amended from time to time in accordance with their respective terms.

(c) Issuance of Securities. The issuance of the Note and the Warrant 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 100% of the sum of (i) the maximum number of Conversion Shares issuable upon conversion of the Note (assuming for purposes hereof that the Note is convertible at the Standard Conversion Price (as defined in the Note) and without taking into account any limitations on the conversion of the Note set forth therein) and (ii) the maximum number of Warrant Shares issuable upon exercise of the Warrant (without taking into account any limitations on the exercise of the Warrant set forth therein). Upon conversion in accordance with the Note, exercise in accordance with the Warrant, the Conversion Shares and the Warrant Shares, respectively, 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 Stock. Subject to the accuracy of the representations and warranties of the Investor in this Agreement, the offer, issuance and sale by the Company of the Securities to the Investor under this Agreement and the other Transaction Documents, as applicable, are exempt from registration under the 1933 Act under Section 4(a)(2) of the 1933 Act and Rule 506(b) of Regulation D. "**Common Stock**" means (i) the Company's shares of common stock, \$0.015 par value per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

(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 and the reservation for issuance and issuance of the Conversion Shares issuable upon conversion of the Note, the issuance of the Warrant and the reservation for issuance and issuance of the Warrant Shares issuable upon exercise of the Warrant) will not (i) result in a violation of the Company's Articles of Incorporation, as amended and as in effect on the date hereof (including, without limitation, any certificate of designation contained therein) (the "**Charter**"), the Company's bylaws, as amended and as in effect on the date hereof (the "**Bylaws**"), the certificate of incorporation, certificate of formation, memorandum of association, articles of association, bylaws or other organizational documents of any of the Company's Subsidiaries, or any capital stock or other securities of the Company or 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 of the Principal Market and including all applicable foreign, federal and state laws, 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, other than, in the case of clause (ii) or (iii) above, such conflicts, defaults, violations or rights that would 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 (i) the filing with the SEC of one or more Registration Statements in accordance with the requirements of the Registration Rights Agreement, (ii) the filing of a Form D with the SEC, (iii) the filing of a Notice of Additional Listing with the Principal Market and (iv) any other filings as may be required by any state securities agencies), 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, other than such consents that have been obtained prior to the Closing Date. 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. Except as disclosed in the SEC Documents, the Company is not in violation of the requirements of the Principal Market and has no knowledge of any facts or circumstances which would reasonably lead to delisting or suspension of the Common Stock in the foreseeable future.

(f) Acknowledgment Regarding Investor's Purchase of Securities. The Company acknowledges and agrees that the Investor 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 Investor is not (i) an officer or director of the Company or any of its Subsidiaries, (ii) an "affiliate" (as defined in Rule 144) of the Company or any of its Subsidiaries or (iii) to its knowledge, a "beneficial owner" of more than 10% of the shares of Common Stock (as defined for purposes of Rule 13d-3 of the 1934 Act). The Company further acknowledges that the Investor 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 Investor 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 Investor's purchase of the

Securities. The Company further represents to the Investor 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 and its 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, in each case with respect to Person's retained by the Company and acting on its behalf, relating to or arising out of the transactions contemplated by the Transaction Documents. The Company shall pay, and hold the Investor harmless against, any liability, loss or expense (including, without limitation, attorney's fees and out-of-pocket expenses) arising in connection with any such claim. Neither the Company nor any of its Subsidiaries has engaged any placement agent or other agent in connection with the offer and sale of any of the Securities contemplated by the Transaction Documents.

(h) No Integrated Offering. None of the Company, its Subsidiaries or any of their affiliates, nor 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 shareholders of the Company under any applicable shareholder approval provisions, including, without limitation, under the rules and regulations of the Principal Market and under the rules and regulations of any other 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 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, whether through integration with any prior offering of securities of the Company or otherwise.

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

(j) Application of Takeover Protections: Rights Agreement. The Company and its board of directors have taken all necessary action, if any, 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 Charter, Bylaws or other organizational documents or the laws of the jurisdiction of its incorporation or otherwise which is or could become applicable to the Investor as a result of the transactions contemplated by this Agreement, including, without limitation, the Company's issuance of the Securities and the Investor's ownership of the Securities. The Company and its board of directors have taken all necessary action, if any, in order to render inapplicable any shareholder rights plan or similar arrangement relating to accumulations of beneficial ownership of shares of Common Stock or a change in control of the Company or any of its Subsidiaries.

(k) SEC Documents: Financial Statements. During the one (1) year prior to the date hereof, the Company has timely filed all reports, schedules, forms, proxy statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the 1934 Act (all of the foregoing filed prior to the date hereof and all exhibits and appendices included therein and financial statements, notes and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the "**SEC Documents**"). The Company has delivered to the Investor or its representatives true, correct and complete copies of each of the SEC Documents not available on the EDGAR system. As of their respective dates, to the Company's knowledge, the SEC Documents complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of their respective dates, the financial statements of the Company included in the SEC Documents complied in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto as in effect as of the time of filing. Such financial statements have been prepared in accordance with generally accepted accounting principles, consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly presented in all material respects the financial position of the Company as of the respective dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments which were not material, either individually or in the aggregate). The Company is not contemplating amending or restating any of the financial statements (including without limitation, any notes or any letter of any independent accountant of the Company with respect thereto) included in any of the SEC Documents (the "**Financial Statements**"). No facts or circumstances currently exist that would require the Company to amend or restate any of the Financial Statements in order for each of the Financial Statements to have been in compliance with generally accepted accounting principles and applicable law (including, without limitation, the rules and regulations of the SEC) as of their respective dates. The Company has not been informed by its registered independent public company accounting firm that it recommends that the Company amend or restate any of the Financial Statements or that there is any need for the Company to amend or restate any of the Financial Statements.

(l) Absence of Certain Changes. Since the date of the Company's most recent audited financial statements contained in the SEC Documents, there has been no material adverse change and no material adverse development in the business, assets, liabilities, properties, operations (including results thereof), condition (financial or otherwise) or currently anticipated prospects of the Company or any of its Subsidiaries. Since the date of the Company's most recent audited financial statements contained in the SEC Documents, neither the Company nor any of its Subsidiaries has (i) declared or paid any dividends, (ii) sold any material amount of assets, individually or in the aggregate, outside of the ordinary course of business or (iii) made any material capital expenditures, individually or in the aggregate, 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 and its Subsidiaries, individually and on a consolidated basis, are not, and after giving effect to the transactions contemplated hereby to occur at the Closing will not be, Insolvent (as defined below). "Insolvent" means, (I) with respect to the Company and its Subsidiaries, on a consolidated basis, (i) the present fair saleable value of the Company's and its Subsidiaries' assets is less than the amount required to pay the Company's and its Subsidiaries' total Indebtedness (as defined below), (ii) the Company and its Subsidiaries are unable to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured or (iii) the Company and its Subsidiaries intend to incur or believe that they will incur debts that would be beyond their ability to pay as such debts mature; and (II) with respect to the Company and each Subsidiary, individually, (i) the present fair saleable value of the Company's or such Subsidiary's (as the case may be) assets is less than the amount required to pay its total Indebtedness, (ii) the Company or such Subsidiary (as the case may be) is unable to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured or (iii) the Company or such Subsidiary (as the case may be) intends to incur or believes that it will incur debts that would be beyond its respective ability to pay as such debts mature. Neither the Company nor any of its Subsidiaries has 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 or such Subsidiary's remaining assets constitute unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted.

(m) No Undisclosed Events, Liabilities, Developments or Circumstances. No event, liability, development or circumstance has occurred or exists, or is currently reasonably expected to occur or exist with respect to the Company, any of its Subsidiaries or any of their respective businesses, properties, liabilities, currently anticipated prospects, operations (including results thereof) or condition (financial or otherwise), that (i) would be required to be disclosed by the Company under applicable securities laws in any of the SEC Documents and which has not been so disclosed, (ii) would reasonably be expected to have a material adverse effect on the Investor's investment hereunder or (iii) would reasonably be expected to 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 articles of incorporation (or similar governing document), any certificate of designation, preferences or rights of any other outstanding series of preferred stock of the Company or any such Subsidiary. 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 would not, individually or in the aggregate, reasonably be expected to 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. There is no agreement, commitment, judgment, injunction, order or decree binding upon the Company or any of its Subsidiaries or to which the Company or any of its Subsidiaries is a party which has or would reasonably be expected to have the effect of prohibiting or materially impairing any business practice of the Company or any of its Subsidiaries, any acquisition of property by the Company or any of its Subsidiaries or the conduct of business by the Company or any of its Subsidiaries as currently conducted other than such effects, individually or in the aggregate, which have not had and would not reasonably be expected to have a Material Adverse Effect on the Company or any of its Subsidiaries.

(o) Foreign Corrupt Practices. Neither the Company nor any of its Subsidiaries nor 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 compliance in all material respects with all applicable requirements of the Sarbanes-Oxley Act of 2002 and all applicable rules and regulations promulgated by the SEC thereunder.

(q) Transactions With Affiliates. Except as disclosed in the SEC Documents, 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. As of the date hereof, the authorized capital stock of the Company consists of (i) 200,000,000 shares of Common Stock, of which, 19,359,020 shares are issued and outstanding and 7,769,075 shares are reserved for issuance pursuant to Convertible Securities (as defined below) (other than the Note and the Warrant) and (ii) 10,000,000 shares of preferred stock, par value \$0.001 per share, of which, 50,000 shares of Series C Preferred Stock are issued and outstanding. No shares of Common Stock are held in treasury. All of such outstanding shares are duly authorized and have been, or upon issuance will be, validly issued and are fully paid and non-assessable. Except as disclosed in the SEC Documents, (i) 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) there are no outstanding options, warrant, 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 (except pursuant to the Registration Rights Agreement); (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 Securities; (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 required to be disclosed in the SEC Documents which are not so disclosed in the SEC Documents, 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 SEC Documents contain true, correct and complete copies of the Charter and the Bylaws and disclose the material 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 Stock) or any of its Subsidiaries.

(s) Indebtedness and Other Contracts. Neither the Company nor any of its Subsidiaries (i) except as disclosed in the SEC Documents, has any outstanding Indebtedness (as defined below), (ii) is in violation of any contract, agreement or instrument that would 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, 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. (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 and trade payables), (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 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 (provided that, in the case of this clause (G), such indebtedness shall be limited to the lower of (x) the principal amount of such indebtedness and (y) the value of the property securing such indebtedness), and (H) all Contingent Obligations in respect of indebtedness 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 identified in clauses (A) through (G) above 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 disclosed in the SEC Documents, there is no action, suit, proceeding, inquiry or investigation before or by the Principal Market, 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 Stock 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 by the SEC involving the Company, any of its Subsidiaries or any current or former director or 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 (as defined in Rule 501(f) promulgated under the 1933 Act) 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. 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) 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. 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 three years from the date of this Agreement, except in any case in which such expiration, termination or abandonment would not reasonably be expected to have a Material Adverse Effect. 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 pending, or to the knowledge of the Company, currently 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.

(x) 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 would 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.

(y) 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.

(z) Tax Status. The Company and each of its Subsidiaries (i) has timely made or filed all material 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 material 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 in accordance with GAAP. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction. 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**").

(aa) Internal Accounting and Disclosure Controls. Except as disclosed in the SEC Documents, the Company maintains internal control over financial reporting (as such term is defined in Rule 13a-15(f) under the 1934 Act) 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. Except as disclosed in the SEC Documents, the Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the 1934 Act) that are effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the 1934 Act is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the SEC.

(bb) 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 required to be disclosed by the Company in its SEC Documents and is not so disclosed or that otherwise would be reasonably likely to have a Material Adverse Effect.

(cc) Investment Company Status. The Company is not, and upon consummation of the sale of the Securities will not be, an "investment company," an affiliate of an "investment company," a company controlled by an "investment company" or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company" as such terms are defined in the Investment Company Act of 1940, as amended.

(dd) U.S. Real Property Holding Corporation. Neither the Company nor any of its Subsidiaries is, or has ever been, 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 Investor's request.

(ee) Transfer Taxes. On the Closing Date, all stock transfer taxes which are required to be paid in connection with the issuance, sale and transfer of the Securities to be sold to the Investor 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.

(ff) Bank Holding Company Act. Neither the Company nor any of its Subsidiaries is subject to the Bank Holding Company Act of 1956, as amended (the "**BHCA**") and to regulation by the Board of Governors of the Federal Reserve System (the "**Federal Reserve**"). Neither the Company nor any of its Subsidiaries or affiliates owns or controls, directly or indirectly, five percent (5%) or more of the outstanding shares of any class of voting securities or twenty-five percent (25%) or more of the total equity of a bank or any equity that is subject to the BHCA and to regulation by the Federal Reserve. Neither the Company nor any of its Subsidiaries or affiliates exercises a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.

(gg) Shell Company Status. The Company is not, and has never been, an issuer identified in, or subject to, Rule 144(i).

(hh) Public Utility Holding Act. None of the Company nor any of its Subsidiaries is a "holding company," or an "affiliate" of a "holding company," as such terms are defined in the Public Utility Holding Act of 2005.

(ii) Federal Power Act. None of the Company nor any of its Subsidiaries is subject to regulation as a "public utility" under the Federal Power Act, as amended.

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

(kk) Real Property. Each of the Company and its Subsidiaries holds good title to all real property, leases in real property, or other interests in real property owned or held by the Company or any of its Subsidiaries (the "**Real Property**") owned by the Company or any of its Subsidiaries (as applicable). The Real Property is free and clear of all mortgages, defects, claims, liens, pledges, charges, taxes, rights of first refusal, encumbrances, security interests and other encumbrances (collectively "**Encumbrances**"), except for Encumbrances that would not be reasonably expected to have a Material Adverse Effect.

(ll) 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 adequate for the uses to which they are being put 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.

(mm) 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 or agents 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, 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.

(nn) 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.

(oo) Registration Rights. No holder of securities of the Company has rights to the registration of any securities of the Company because of the transactions contemplated by the Transaction Documents, including, without limitation, the issuance of the Securities hereunder, which would expose the Company to material liability or any Investor to any liability or that would impair the Company's ability to consummate the issuance and sale of the Securities in the manner, and at the times, contemplated hereby, which rights have not been waived by the holder thereof as of the date hereof.

(pp) Management. During the prior two (2) year period ending on the day immediately preceding the date hereof, to the knowledge of the Company, no current officer or director of the Company has been the subject of:

(i) a petition under bankruptcy laws or any other insolvency or moratorium law or the appointment by a court of a receiver, fiscal agent or similar officer for such Person, or any partnership in which such Person was a general partner at or within two years before the filing of such petition or such appointment, or any corporation or business association of which such Person was an executive officer at or within two years before the time of the filing of such petition or such appointment;

(ii) a conviction in a criminal proceeding (ii) a named subject of a pending criminal proceeding (excluding traffic violations that do not relate to driving while intoxicated or driving under the influence);

(iii) any order, judgment or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining any such Person from, or otherwise limiting, the following activities:

(1) acting as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, floor broker, leverage transaction merchant, any other Person regulated by the United States Commodity Futures Trading Commission or an associated Person of any of the foregoing, or as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated Person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(2) engaging in any type of business practice; or

(3) engaging in any activity in connection with the purchase or sale of any security or commodity or in connection with any violation of securities laws or commodities laws;

(iv) any order, judgment or decree, not subsequently reversed, suspended or vacated, of any authority barring, suspending or otherwise limiting for more than sixty (60) days the right of any such Person to engage in any activity described in the preceding sub paragraph, or to be associated with Persons engaged in any such activity;

(v) a finding by a court of competent jurisdiction in a civil action or by the SEC or other authority to have violated any securities law, regulation or decree and the judgment in such civil action or finding by the SEC or any other authority has not been subsequently reversed, suspended or vacated; or

(vi) a finding by a court of competent jurisdiction in a civil action or by the Commodity Futures Trading Commission to have violated any federal commodities law, and the judgment in such civil action or finding has not been subsequently reversed, suspended or vacated.

(qq) Stock Option Plans. Since January 1, 2015, each stock option granted by the Company was granted (i) in accordance with the terms of the applicable stock option plan of the Company or outside of the Company's stock option plan as an inducement to employment or the engagement as a director of the Company and (ii) with an exercise price at least equal to the fair market value of the Common Stock on the date such stock option would be considered granted under generally accepted accounting principles and applicable law. No stock option granted under the Company's stock option plan has been backdated. Since January 1, 2015, the Company has not knowingly granted, and there is no, and has been, no policy or practice of the Company to knowingly grant stock options prior to, or otherwise knowingly coordinate the grant of stock options with, the release or other public announcement of material information regarding the Company or any of its Subsidiaries or any of its or their respective financial results or prospects.

(rr) No Disagreements with Accountants and Lawyers. There are no material disagreements of any kind presently existing 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 reasonably affect the Company's ability to perform any of its obligations under any of the Transaction Documents.

(ss) Ranking of Note. The Note shall constitute a senior general unsecured obligation of the Company, ranking equally in right of payment with all of the existing and future senior Indebtedness of the Company and ranking senior in right of payment to any future Indebtedness of the Company that is expressly made subordinate to the Note by the terms of such Indebtedness.

(tt) XBRL. The interactive data in eXtensible Business Reporting Language (**XBRL**) included or incorporated by reference in the SEC Documents fairly presents the information called for in all material respects and has been prepared in all material respects in accordance with the SEC's rules and guidelines applicable thereto.

(uu) Accountants. BDO USA, LLP, whose report dated April 15, 2019 relating to the financial statements of the Company is filed with the SEC as part of the Company's Annual Report on Form 10-K for the year ended December 31, 2018, is and during the periods covered by its report was an independent registered public accounting firm within the meaning of the 1933 Act and the Public Company Accounting Oversight Board (United States).

(vv) Listing and Maintenance Requirements. The Common Stock is registered pursuant to Section 12(b) of the 1934 Act, and the Company has taken no action designed to, or which to its knowledge is likely to have the effect of, terminating the registration of the Common Stock under the 1934 Act nor has the Company received any notification that the SEC is contemplating terminating such registration. Except as disclosed in the SEC Documents, the Company is not in violation in any material respect of any of the rules, regulations or requirements of the Principal Market and has no knowledge of any facts or circumstances that would reasonably lead to delisting or suspension of the Common Stock by the Principal Market in the foreseeable future. Except as disclosed in the SEC Documents, during the two years prior to the date hereof, (i) the Common Stock has been listed or designated for quotation on the Principal Market, (ii) trading in the Common Stock has not been suspended by the SEC or the Principal Market and (iii) the Company has received no communication, written or oral, from the SEC or the Principal Market regarding the suspension or delisting of the Common Stock from the Principal Market. The Common Stock is currently eligible for electronic transfer through the Depository Trust Company ("**DTC**") or another established clearing corporation and the Company is current in payment of the fees to DTC (or such other established clearing corporation) in connection with such electronic transfer.

(ww) No Disqualification Events. None of the Company, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Company participating in the offering hereunder, any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the 1933 Act) connected with the Company in any capacity at the time of sale (each, an "**Issuer Covered Person**") is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) of Regulation D (a "**Disqualification Event**"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3) of Regulation D. The Company has exercised reasonable care to determine whether any Issuer Covered Person is subject to a Disqualification Event. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e) of Regulation D, and has furnished to the Investor a copy of any disclosures provided thereunder.

(xx) Disclosure. The Company confirms that neither it nor any other Person acting on its behalf has provided the Investor or its agents or counsel with any information that constitutes material, non-public information concerning 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 Investor will rely on the foregoing representations in effecting transactions in securities of the Company. All disclosure provided to the Investor regarding the Company and its Subsidiaries (taken as a whole), 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 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. The press releases disseminated by the Company during the twelve (12) months preceding the date of this Agreement, taken as a whole, were true and correct in all material respects as of their respective dates. 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.

4. COVENANTS.

(a) Reasonable Best Efforts. The Investor 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) Form D and Blue Sky. The Company shall file a Form D with the SEC with respect to the Securities as required under Regulation D and to provide a copy thereof to the Investor promptly after such filing. The Company shall, on or before the Closing Date, take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to, qualify the Securities for sale to the Investor at the Closing pursuant to this Agreement under applicable securities or "Blue Sky" laws of the states of the United States (or to obtain an exemption from such qualification), and shall provide evidence of any such action so taken to the Investor on or prior to the Closing Date. Without limiting any other obligation of the Company under this Agreement, the Company shall timely make all filings and reports relating to the offer and sale of the Securities required under all applicable securities laws (including, without limitation, all applicable federal securities laws and all applicable "Blue Sky" laws), and the Company shall comply with all applicable federal, foreign, state and local laws, statutes, rules, regulations and the like relating to the offering and sale of the Securities to the Investor.

(c) Reporting Status. Until the date on which the Investor shall have sold all of the Registrable Securities (the **Reporting Period**), the Company shall file all reports required to be filed with the SEC pursuant to the 1934 Act, and the Company shall not terminate its status as an issuer required to file reports under the 1934 Act even if the 1934 Act or the rules and regulations thereunder would no longer require or otherwise permit such termination. At any time during the Reporting Period, if the Company (i) shall fail for any reason to satisfy the current public information requirement under Rule 144(c) or (ii) has been or becomes an issuer described in Rule 144(i)(1)(i), and the Company shall fail to satisfy any condition set forth in Rule 144(i)(2) (a "**Public Information Failure**") then, in addition to the Investor's other available remedies, the Company shall pay to the Investor, in cash, as partial liquidated damages and not as a penalty, by reason of any delay in or restriction of its ability to sell any Conversion Shares or the Warrant Shares (solely in the event that the Investor in fact shall have been unable to effect a sale of the Conversion Shares or the Warrant Shares), an amount in cash equal to one percent (1.00%) of the original principal amount of the Note on the day of a Public Information Failure and on every thirtieth (30th) day (prorated for periods totaling less than thirty days) thereafter until the earlier of (a) the date such Public Information Failure is cured and (b) such time that such public information is no longer required for the Investor to transfer all of the Registrable Securities pursuant to Rule 144. The payments to which the Investor shall be entitled pursuant to this Section 4(c) are referred to herein as "**Public Information Failure Payments**." Public Information Failure Payments shall be paid on the earlier of (i) the last day of the calendar month during which such Public Information Failure Payments are incurred and (ii) the third (3rd) Business Day after the event or failure giving rise to the Public Information Failure Payments is cured. In the event the Company fails to make Public Information Failure Payments in a timely manner, such Public Information Failure Payments

shall bear interest at the rate of one-half percent (0.50%) per month (prorated for partial months) until paid in full. Nothing herein shall limit the Investor's right to pursue actual damages for the Public Information Failure, and the Investor shall have the right to pursue all remedies available to it at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief.

(d) Use of Proceeds. The Company shall use the proceeds from the sale of the Securities for general working capital and other corporate purposes.

(e) Financial Information. As long as any portion of the Note or the Warrant remains outstanding, the Company agrees to send the following to the Investor during the Reporting Period unless the following are filed with the SEC through EDGAR and are available to the public through the EDGAR system, (i) within one (1) Business Day after the filing thereof with the SEC, a copy of its Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q, any Current Reports on Form 8-K and any registration statements (other than on Form S-8) or amendments filed pursuant to the 1933 Act 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.

(f) Listing. The Company shall promptly secure the approval for listing of all of the Registrable Securities upon any Eligible Market (subject to official notice of issuance) (but in no event later than the Closing Date) and shall maintain such listing of all Registrable Securities from time to time issuable under the terms of the Transaction Documents on any Eligible Market. The Company shall maintain the Common Stock's listing on the Principal Market, the New York Stock Exchange, the NYSE American, The Nasdaq Global Select Market or The Nasdaq Global Market (each, an "**Eligible Market**"). Neither the Company nor any of its Subsidiaries shall take any action which could be reasonably expected to result in the delisting or suspension of the Common Stock on an Eligible Market. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 4(f).

(g) Fees. The Company shall reimburse the Investor for all reasonable costs and expenses incurred by it or its affiliates in connection with the transactions contemplated by the Transaction Documents. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, transfer agent fees, DTC fees or broker's commissions (other than for Persons engaged by the Investor) relating to or arising out of the transactions contemplated by the Transaction Documents to be consummated at Closing. The Company shall pay, and hold the Investor 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 Securities to the Investor.

(h) 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 Investor 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 Investor 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. The Company hereby agrees, at the sole cost and expense of the Investor, 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 Investor.

(i) Disclosure of Transactions and Other Material Information.

(i) Disclosure of Transaction. The Company shall, on or before 9:00 a.m., New York time, on the second (2nd) Business Day after the date of this Agreement, (i) issue a press release (the “**Press Release**”) reasonably acceptable to the Investor disclosing all the material terms of the transactions contemplated by the Transaction Documents, and (ii) file with the SEC a Current Report on Form 8-K reasonably acceptable to the Investor describing all the material terms of the transactions contemplated by the Transaction Documents in the form required by the 1934 Act and attaching all the material Transaction Documents (including, without limitation, this Agreement (and all schedules to this Agreement), and the form of Warrant) (including all attachments, the “**8-K Filing**”). The Company shall permit the Investor to review and comment upon the Press Release and the 8-K Filing within a reasonable time prior to their filing with the SEC, the Company shall give reasonable consideration to all such comments, and the Company shall not issue the Press Release or file the 8-K Filing with the SEC in a form to which the Investor reasonably objects. The Investor shall furnish to the Company such information regarding itself, the Securities beneficially owned by it and the intended method of distribution thereof, including any arrangement between the Investor and any other Person relating to the sale or distribution of the Securities, as shall be reasonably requested by the Company in connection with the preparation and issuance of the Press Release and the preparation and filing of the 8-K Filing, and shall otherwise cooperate with the Company as reasonably requested by the Company in connection with the preparation and issuance of the Press Release and the preparation and filing of the 8-K Filing with the SEC. From and after the issuance of the Press Release, the Company represents to the Investor that it shall have publicly disclosed all material, non-public information delivered to the Investor by the Company or any of its Subsidiaries, or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Transaction Documents. In addition, effective upon the issuance of the Press Release, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, agents, employees or Affiliates on the one hand, and the Investor or any of its Affiliates on the other hand, shall terminate (unless otherwise agreed between such parties in separate written confidentiality or similar agreements, the terms of which shall not otherwise be modified by this provision). The Company and the Investor shall consult with each other in issuing any other press releases with respect to the transactions contemplated by the Transaction Documents, and neither the Company nor the Investor shall issue any such press release nor otherwise make any such public statement without the prior consent of the Company, with respect to any press release of the Investor, or without the prior consent of the Investor, with respect to any press release of the Company, which consent shall not unreasonably be withheld or delayed, except if such disclosure is required by law, in which case the disclosing party shall promptly provide the other party with prior notice of

such public statement or communication. Notwithstanding the foregoing, the Company shall not publicly disclose the name of the Investor, or include the name of the Investor in any filing with the SEC or any regulatory agency or Trading Market, without the prior written consent of the Investor (which may be granted or withheld in the Investor's sole discretion), except (x) to the extent such disclosure is required by applicable U.S. federal securities laws in connection with the filing with the SEC of (1) fully executed copies of this Agreement and the Registration Rights Agreement (and the other Transaction Documents) with the SEC as exhibits to the 8-K Filing and pursuant to incorporation by reference in any subsequently filed report or registration statement with the SEC and (2) any Registration Statement registering under the 1933 Act any Registrable Securities for resale by the Investor as contemplated by the Registration Rights Agreement and (y) to the extent such disclosure is required by applicable law or Trading Market regulations.

(ii) Limitations on Disclosure. The Company shall not, and the Company shall cause each of its Subsidiaries and each of its and their respective officers, directors, employees and agents not to, provide the Investor with any material, non-public information regarding the Company or any of its Subsidiaries from and after the issuance of the Press Release and the 8-K Filing without the express prior written consent of the Investor (which may be granted or withheld in the Investor's sole discretion). To the extent that the Company delivers any material, non-public information to the Investor without the Investor's consent, the Company expressly acknowledges and agrees that the Investor shall not have (unless expressly agreed to by the Investor after the date hereof in a written definitive and binding agreement executed by the Company and the Investor) any duty of confidentiality with respect to, or a duty not to trade on the basis of, any such material, non-public information regarding the Company or any of its Subsidiaries.

(iii) Other Confidential Information; Disclosure Failures; Disclosure Delay Payments In addition to other remedies set forth in this Section 4(i), and without limiting anything set forth in any other Transaction Document, at any time after the Closing Date if the Company, any of its Subsidiaries, or any of their respective officers, directors, employees or agents, provides the Investor with material non-public information relating to the Company or any of its Subsidiaries (each, the "**Confidential Information**"), the Company shall, on or prior to the applicable Required Disclosure Date (as defined below), publicly disclose such Confidential Information in a manner compliant with Regulation FD or on a Current Report on Form 8-K or another report or statement filed with the SEC under the 1934 Act or the 1933 Act (each, a "**Disclosure**"). From and after such Disclosure, the Company shall have disclosed all Confidential Information provided to the Investor by the Company or any of its Subsidiaries or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Transaction Documents. In addition, effective upon such Disclosure, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates, employees or agents, on the one hand, and any of the Investor or any of its affiliates, on the other hand, shall terminate. In the event that the Company fails to effect such Disclosure on or prior to the Required Disclosure Date and the Investor shall have possessed Confidential Information for at least ten (10) consecutive Trading Days (as defined in the Note) (each, a "**Disclosure Failure**"), then, as partial relief for the damages to the Investor by reason of any such delay in, or reduction of, its ability to buy or sell shares of Common Stock after such Required Disclosure Date (which remedy shall not be exclusive of any other remedies available at law or in equity), the Company shall pay to the Investor an amount in

cash equal to one percent (1.00%) of the original principal amount of the Note (a **Disclosure Delay Payment Date**): (i) on the date of such Disclosure Failure and (ii) on every thirty (30) day anniversary such Disclosure Failure until the earlier of (x) the date such Disclosure Failure is cured and (y) such time as all such non-public information provided to the Investor shall cease to be Confidential Information (as evidenced by a certificate, duly executed by an authorized officer of the Company to the foregoing effect) (such earlier date, as applicable, a **Disclosure Cure Date**). Following the initial Disclosure Delay Payment for any particular Disclosure Failure, without limiting the foregoing, if a Disclosure Cure Date occurs prior to any thirty (30) day anniversary of such Disclosure Failure, then such Disclosure Delay Payment (prorated for such partial month) shall be made on the third (3rd) Business Day after such Disclosure Cure Date. The payments to which an Investor shall be entitled pursuant to this Section 4(i)(iii) are referred to herein as **Disclosure Delay Payments.** In the event the Company fails to make Disclosure Delay Payments in a timely manner in accordance with the foregoing, such Disclosure Delay Payments shall bear interest at the rate of one-half percent (0.5%) per month (prorated for partial months) until paid in full. Nothing herein shall limit the Investor's right to pursue actual damages for the Disclosure Failure, and the Investor shall have the right to pursue all remedies available to it at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief.

(iv) For the purpose of this Agreement, **Required Disclosure Date** means (x) if the Investor authorized the delivery of such Confidential Information, either (I) if the Company and the Investor have mutually agreed upon a date (as evidenced by an e-mail or other writing) of Disclosure of such Confidential Information, such agreed upon date or (II) otherwise, the seventh (7th) calendar day after the date the Investor first received any Confidential Information (provided, that if such 7th calendar day is not a Trading Day, then on the next succeeding Trading Day) or (y) if the Investor did not authorize the delivery of such Confidential Information, the first (1st) Business Day after the Company, any of its Subsidiaries, or any of their respective officers, directors, employees or agents, provided the Investor with such Confidential Information.

(j) Prohibition of Short Sales and Hedging Transactions. During the term of this Agreement, the Investor and its agents, representatives and affiliates shall not in any manner whatsoever enter into or effect, directly or indirectly, any (i) "short sale" (as such term is defined in Rule 200 of Regulation SHO of the 1934 Act) of the Common Stock or (ii) hedging transaction, which establishes a net short position with respect to the Common Stock.

(k) Reservation of Shares. So long as any portion of the Note or the Warrant remains outstanding, the Company shall take all action necessary to at all times have authorized, and reserved for the purpose of issuance, no less than (i) the number of shares of Common Stock required to be reserved for issuance to effect the conversion of the Note in full under Section 8 of the Note (without taking into account any limitations on the conversion of the Note set forth therein) and (ii) the number of shares of Common Stock required to be reserved for issuance to effect the exercise of the outstanding Warrant in full under Section 1(g) of the Warrant (without taking into account any limitations on the exercise of the Warrant set forth therein) (collectively, the “**Required Reserve Amount**”). If at any time the number of shares of Common Stock authorized and reserved for issuance is not sufficient to meet the Required Reserve Amount, the Company will promptly take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of shareholders to authorize additional shares to meet the Company's obligations pursuant to the Transaction Documents, in the case of an insufficient number of authorized shares, obtain shareholder approval of an increase in such authorized number of shares, and voting the management shares of the Company in favor of an increase in the authorized shares of the Company to ensure that the number of authorized shares is sufficient to meet the Required Reserve Amount.

(l) 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, either individually or in the aggregate, in a Material Adverse Effect.

(m) Variable Rate Transaction. So long as any portion of the Note or the Warrant remains outstanding, without the prior written consent of the Investor (which may be delayed, conditioned or withheld in the Investor's sole discretion), the Company and each Subsidiary shall be prohibited from effecting or entering into an agreement to effect any issuance by the Company or any of its Subsidiaries of Common Stock or Convertible Securities (or a combination of units thereof) involving an “equity line of credit”, or other similar offering of Common Stock or Convertible Securities, whereby the Company may sell Common Stock or Convertible Securities at a future determined price, other than (A) pursuant to an agreement or transaction between the Company and the Investor and (B) pursuant to an “at-the-market offering” of Common Stock by the Company exclusively through a registered broker-dealer acting as agent of the Company pursuant to a written agreement between the Company and such registered broker-dealer. The Investor shall be entitled to obtain injunctive relief against the Company and its Subsidiaries to preclude any such issuance, which remedy shall be in addition to any right to collect damages, without the necessity of showing economic loss and without any bond or other security being required. For the elimination of doubt (and without, by negative implication or otherwise, expanding the prohibition contained in this Section 4(m)), this Section 4(m) shall not prohibit the Company or any of its Subsidiaries from entering into any agreement to effect the issuance by the Company or any of its Subsidiaries of Common Stock or Convertible Securities whereby the Company may sell Common Stock or Convertible Securities at a future determined price to any Person (or to the equity holders of a Person), in each case pursuant to any merger, consolidation, business combination, or asset purchase transaction approved by the Board of Directors or a majority of the members of a committee of directors established for such purpose, provided that any such issuance shall only be to a Person (or to the equity holders of a Person) which is, itself or through its subsidiaries, an operating company or an asset in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities.

(n) No Frustration. So long as any portion of the Note or the Warrant remains outstanding, neither the Company nor any of its affiliates or Subsidiaries, nor any of its or their respective officers, employees, directors, agents or other representatives, will, without the prior written consent of the Investor (which consent may be withheld, delayed or conditioned in the Investor's sole discretion), effect, enter into, amend the terms of, extend the maturity or term of, or announce or recommend to its shareholders any covenant, agreement, plan, arrangement or transaction (or issue, amend or waive any security of the Company or any agreement with respect to any Indebtedness) that would or would reasonably be expected to prohibit, limit, restrict, delay, conflict with or impair the ability or right of the Company to timely perform its obligations under this Agreement, the Note or the Warrant, including, without limitation, the obligation of the Company to timely (i) deliver shares of Common Stock to any of the Investors or their respective affiliates in accordance with this Agreement, the Note and the Warrant and (ii) repay in cash all outstanding principal and other amounts outstanding under the Note at maturity or at any other times when payments are required to be made in cash pursuant to the terms of the Note.

(o) 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.

(p) Conversion/Exercise Procedures. The form of Conversion Notice (as defined in the Note) included in the Note sets forth the totality of the procedures required of the Investor in order to convert the Note. The form of Exercise Notice (as defined in the Warrant) included in the Warrant sets forth the totality of the procedures required of the Investor in order to exercise the Warrant. No legal opinion or other information or instructions shall be required of the Investor to convert any portion of the Note or to exercise any portion of the Warrant. The Company shall honor conversions of the Note and shall deliver the applicable number of Conversion Shares in accordance with the terms, conditions and time periods set forth in the Note. The Company shall honor exercises of the Warrant and shall deliver the applicable number of Warrant Shares in accordance with the terms, conditions and time periods set forth in the Warrant. Without limiting the preceding sentences, no ink-original Conversion Notice or Exercise Notice shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Conversion Notice or Exercise Notice form be required in order to convert any portion of the Note or to exercise any portion of the Warrant, as applicable.

(q) General Solicitation. None of the Company, any of its affiliates (as defined in Rule 501(b) under the 1933 Act) or any person acting on behalf of the Company or such affiliate will solicit any offer to buy or offer or sell the Securities by means of any form of general solicitation or general advertising within the meaning of Regulation D, including: (i) any advertisement, article, notice or other communication published in any newspaper, magazine or similar medium or broadcast over television or radio; and (ii) any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

(r) Integration. None of the Company, its Subsidiaries, their affiliates nor any Person acting on their behalf will take any action or steps that would (i) require registration of the offer, issuance or sale of the Securities under the 1933 Act, or (ii) cause the offer, issuance or sale of the Securities to be integrated with any other offering of securities of the Company (including, without limitation, any prior or other offering of securities of the Company or otherwise).

(s) Notice of Disqualification Events. The Company will notify the Investor in writing, prior to the Closing Date of (i) any Disqualification Event relating to any Issuer Covered Person and (ii) any event that has occurred and would, with the passage of time, reasonably be expected to become a Disqualification Event relating to any Issuer Covered Person, in each case of which it is aware.

(t) Closing Documents. On or prior to the thirtieth (30th) calendar day after the Closing Date, the Company agrees to deliver, or cause to be delivered, to the Investor a complete closing set of the executed Transaction Documents and any other document required to be delivered to any party pursuant to Section 7 hereof or otherwise. Delivery of such closing set may be made in electronic form.

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 determine from time to time), a register for the Note and the Warrant in which the Company shall record the name and address of the Person in whose name the Note and the Warrant have been issued (including the name and address of each transferee to the extent the Company has knowledge of such transferee), the principal amount of the Note held by such Person, the number of Conversion Shares issuable upon conversion of the Note and the number of Warrant Shares issuable upon exercise of the Warrant held by such Person. The Company shall keep the register available during regular business hours for inspection by the Investor or its legal representatives; provided, that the Investor provide the Company with reasonable advance notice of such inspection.

(b) Legends. The Investor understands that the Securities have been issued (or will be issued in the case of the Conversion Shares and the Warrant Shares) 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(d) below, the Securities 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 stock certificates):

[NEITHER THIS SECURITY NOR THE SECURITIES [FOR][INTO] WHICH THIS SECURITY IS [EXERCISABLE] [CONVERTIBLE] HAVE BEEN][THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT 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 UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THIS SECURITY AND THE SECURITIES ISSUABLE UPON [EXERCISE][CONVERSION] OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT

OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY SUCH SECURITIES.

(c) Removal of Legends. Certificates evidencing Securities shall not be required to contain the legend set forth in Section 5(b) above or any other legend (i) while a registration statement (including a Registration Statement) covering the resale of such Securities is effective under the 1933 Act, (ii) following any sale of such Securities pursuant to Rule 144 (assuming the transferor is not an affiliate of the Company), (iii) if such Securities are eligible to be sold, assigned or transferred under Rule 144 (provided that the Investor provides the Company with reasonable assurances that such Securities are eligible for sale, assignment or transfer under Rule 144 which shall not include an opinion of counsel), (iv) in connection with a sale, assignment or other transfer (other than under Rule 144), provided that the Investor provides the Company with an opinion of counsel to the Investor, in form and substance reasonably acceptable to the Company, to the effect that such sale, assignment or transfer of the Securities may be made without registration under the applicable requirements of the 1933 Act or (v) if such legend is 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 two (2) Trading Days following the delivery by the Investor to the Company or the Company's transfer agent (with notice to the Company) of a legended certificate representing such Securities (endorsed or with stock powers attached, signatures guaranteed, and otherwise in form necessary to affect the reissuance and/or transfer, if applicable), together with any other deliveries from the Investor as may be required above in this Section 5(c), as directed by the Investor, either: (A) provided that the Company's transfer agent is participating in the DTC Fast Automated Securities Transfer Program and such Securities are Conversion Shares or Warrant Shares, credit the aggregate number of shares of Common Stock to which the Investor shall be entitled to the Investor's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system or (B) if the Company's transfer agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver at the Company's expense (via reputable overnight courier) to the Investor, a certificate representing such Securities that is free from all restrictive and other legends, registered in the name of the Investor or its designee (the date by which such credit is so required to be made to the balance account of the Investor's or the Investor's nominee with DTC or such certificate is required to be delivered to the Investor pursuant to the foregoing is referred to herein as the "**Required Delivery Date**").

(d) Failure to Timely Deliver: Buy-In. If the Company fails to (i) issue and deliver (or cause to be delivered) to the Investor by the Required Delivery Date a certificate representing the Securities so delivered to the Company by the Investor that is free from all restrictive and other legends or (ii) credit the balance account of the Investor's or the Investor's nominee with DTC for such number of Conversion Shares or Warrant Shares so delivered to the Company, then, in addition to all other remedies available to the Investor, the Company shall pay in cash to the Investor on each day after the Required Delivery Date that the issuance or credit of such shares is not timely effected an amount equal to one percent (1.0%) of the original principal amount of the Note. In addition to the foregoing, if the Company fails to so properly deliver such unlegended certificates or so properly credit the balance account of the Investor's or the Investor's nominee with DTC by the Required Delivery Date, and if on or after the Required Delivery Date the Investor (or any other Person in respect, or on behalf, of the Investor) purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Investor of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock, that the Investor so anticipated receiving from the Company without any restrictive legend, then, in addition to all other remedies available to the Investor, the Company shall, within three (3) Trading Days after the Investor's request and in the Investor's sole discretion, either (i) pay cash to the Investor in an amount equal to the Investor's total purchase price (including brokerage commissions and other out-of-pocket expenses actually incurred by the Investor, if any) for the shares of Common Stock so purchased (including brokerage commissions and other out-of-pocket expenses actually incurred by the Investor, if any) (the "**Buy-In Price**"), at which point the Company's obligation to so deliver such certificate or credit the Investor's balance account shall terminate and such shares shall be cancelled, or (ii) promptly honor its obligation to so deliver to the Investor a certificate or certificates or credit the Investor's DTC account representing such number of shares of Common Stock that would have been so delivered if the Company timely complied with its obligations hereunder and pay cash to the Investor in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Conversion Shares or Warrant Shares (as the case may be) that the Company was required to deliver to the Investor by the Required Delivery Date multiplied by (B) the lowest Closing Sale Price (as defined in the Note) of the Common Stock on any Trading Day during the period commencing on the date of the delivery by the Investor to the Company of the applicable Conversion Shares or Warrant Shares (as the case may be) and ending on the date of such delivery and payment under this clause (ii).

(f) FAST Compliance. So long as any portion of the Note or the Warrant remains outstanding, the Company shall maintain a transfer agent that participates in the DTC Fast Automated Securities Transfer Program.

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

(a) The obligation of the Company hereunder to issue and sell the Note and the Warrant to the Investor at the Closing, is subject to the satisfaction, at or before the 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 Investor with prior written notice thereof:

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

(ii) The Investor shall have delivered to the Company the Purchase Price (less the amounts withheld pursuant to Section 4(g)) for the Note and the Warrant being purchased by the Investor 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 Investor 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 Investor 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 the Investor at or prior to the Closing Date.

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

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

(i) The Company shall have duly executed and delivered to the Investor this Agreement, the Registration Rights Agreement and each of the other Transaction Documents to which it is a party, including, without limitation, the Note in the original principal amount of \$500,000, duly executed on behalf of the Company and registered in the name of the Investor or its designee, and the Warrant, duly executed on behalf of the Company and registered in the name of the Investor or its designee.

(ii) The Company shall have delivered to the Investor a certificate evidencing the good standing of the Company issued by the Department of State of the State of Florida as of a date within ten (10) days prior to the Closing Date.

(iii) The Company shall have delivered to the Investor a certificate, in the form reasonably acceptable to the Investor, 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 the Investor and (ii) the Charter and Bylaws.

(iv) Each and every representation and warranty of the Company shall be true and correct 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 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. The Investor shall have received a certificate, executed by the Chief Executive Officer of the Company, dated as of the Closing Date, to the foregoing effect.

(v) The Company shall have delivered to the Investor a letter from the Company's transfer agent certifying the number of shares of Common Stock outstanding on the Closing Date immediately prior to the Closing.

(vi) The Common Stock (A) shall be listed on the Principal Market and (B) at any time from the date hereof to the Closing Date, shall not have been suspended by the SEC or the Principal Market from trading on the Principal Market nor shall suspension by the SEC or the Principal Market have been threatened, either (I) in writing by the SEC or the Principal Market or (II) by falling below the minimum maintenance requirements of the Principal Market.

(vii) At any time from the date hereof to the Closing Date, trading in securities generally as reported by Bloomberg L.P. shall not have been suspended or limited, or minimum prices shall not have been established on securities whose trades are reported by such service, or on the Principal Market, nor shall a banking moratorium have been declared either by the United States or New York State authorities nor shall there have occurred any material outbreak or escalation of hostilities or other national or international calamity of such magnitude in its effect on, or any material adverse change in, any financial market which, in each case, in the reasonable judgment of the Investor, makes it impracticable or inadvisable to purchase the Note and the Warrant at the Closing.

(viii) The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the Securities, including without limitation, those required by the Principal Market.

(ix) No statute, regulation, order, decree, writ, ruling or injunction shall have been enacted, entered, promulgated, threatened or endorsed by any court or governmental authority of competent jurisdiction which prohibits the consummation of or which would materially modify or delay any of the transactions contemplated by the Transaction Documents.

(x) No action, suit or proceeding before any arbitrator or any court or governmental authority shall have been commenced or threatened, and no inquiry or investigation by any governmental authority shall have been commenced or threatened, against the Company or any Subsidiary, or any of the officers, directors or affiliates of the Company or any Subsidiary, seeking to restrain, prevent or change the transactions contemplated by the Transaction Documents, or seeking material damages in connection with such transactions.

(xi) Since the date of execution of this Agreement, no event or series of events shall have occurred that reasonably would have or result in a Material Adverse Effect.

(xii) All of the Conversion Shares that may be issued upon the full conversion of the Note, without regard to any limitations on conversion set forth in the Note, and all of the Warrant Shares that may be issued upon the full exercise of the Warrant, without regard to any limitations on exercise set forth in the Warrant, in each case shall have been approved for listing on the Principal Market as of the Closing Date, subject only to notice of issuance.

(xiii) All reports, schedules, registrations, forms, statements, information and other documents required to have been filed by the Company with the SEC pursuant to the reporting requirements of the 1934 Act, including all material required to have been filed pursuant to Section 13(a) or 15(d) of the 1934 Act, shall have been filed with the SEC under the 1934 Act.

(xiv) No condition, occurrence, state of facts or event that would constitute an Event of Default (as such term is defined in the Note) shall exist on the date of this Agreement or on the Closing Date.

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

8. TERMINATION.

In the event that the Closing shall not have occurred within ten (10) days after the date hereof, then the Investor 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 Investor to any other party; provided, however, the right to terminate its obligations under this Agreement pursuant to this Section 8 shall not be available to the Investor if the failure of the transactions contemplated by this Agreement to have been consummated by such date is the result of the Investor's breach of this Agreement; and provided, further that no such termination shall affect any obligation of the Company under this Agreement to reimburse the Investor for the expenses described in Section 4(g) above. 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 New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, 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 Investor from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Investor or to enforce a judgment or other court ruling in favor of the Investor or (iii) limit, or be deemed to limit, any provision of Section 23 of the Note or Section 13 of the Warrant. **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) or similar 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 Investor, 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 Investor, or collection by the Investor 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 the Investor, 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 the Investor, the amount of interest or any other amounts which would constitute unlawful amounts required to be paid or actually paid to the Investor 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 the Investor 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 Investor, the Company 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 Investor has entered into with, or any instruments the Investor has received from, the Company or any of its Subsidiaries prior to the date hereof with respect to any prior investment made by the Investor 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 Investor 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 Investor, and all such agreements and instruments shall continue in full force and effect. Except as specifically set forth herein or therein, neither the Company nor the Investor 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 Investor, 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 Investor and holders of Securities, 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 Securities then outstanding or (2) imposes any obligation or liability on the Investor without the Investor’s prior written consent (which may be granted or withheld in the Investor’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 Investor 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 Investor and holders of Securities, 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 Securities then outstanding (unless a party gives a waiver as to itself only) or (2) imposes any obligation or liability on the Investor without the Investor’s prior written consent (which may be granted or withheld in the Investor’s sole discretion). The Company has not, directly or indirectly, made any agreements with the Investor 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 Investor 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 Investor to enter into this Agreement, the Company expressly acknowledges and agrees that (i) no due diligence or other investigation or inquiry conducted by the Investor, any of its advisors or any of its representatives shall affect the Investor’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 disclosed in the SEC Documents,” nothing contained in the SEC Documents shall affect the Investor’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:

Dolphin Entertainment, Inc.
150 Alhambra Circle, Suite 1200
Coral Gables, Florida 33134
E-mail address: billodowd@dolphinentertainment.com
Attention: Chief Executive Officer

With a copy (for informational purposes only) to:

K&L Gates LLP
200 S. Biscayne Boulevard, Suite 3900
Miami, Florida 33131
Telephone: (305) 539-3306
Facsimile: (305) 358-7095
E-mail address: clayton.parker@klgates.com
Attention: Clayton E. Parker, Esq.

If to the Transfer Agent:

Nevada Agency and Transfer Company
50 West Liberty Street, Suite 880
Reno, NV 89501
Telephone: (775) 322-0626
Facsimile: (775) 322-5623
E-mail: tiffany@natco.com
Attention: Tiffany Baxter

If to the Investor:

M. Shanken Communications, Inc.
825 Eighth Ave., 33rd Floor
New York, New York 10019
Telephone: (212) 684-4224 or 5354
E-mail: mshanken@mshanken.com
Attention: Marvin Shanken

With a copy (for informational purposes only) to:

Reed Smith LLP
599 Lexington Ave., 22nd Floor
New York, New York 10022
Telephone: (212) 549-0241
Facsimile: (212) 521-5450
E-mail address: hkozlov@reedsmith.com
Attention: Herbert F. Kozlov, Esq.

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 permitted assigns, including, as contemplated below, any assignee or transferee of any of the Securities. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Investor (which may be granted or withheld in the sole discretion of the Investor), 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 Investor may assign some or all of its rights hereunder in connection with any assignment or transfer of any of its Securities without the consent of the Company (provided that the Investor provides the Company with prompt notice of such assignment), in which event such assignee or transferee (as the case may be) shall be deemed to be an Investor 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. In consideration of the Investor's execution and delivery of the Transaction Documents and acquiring the Securities 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 Investor and each holder of any Securities 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 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 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 Securities, (iii) any disclosure properly made by the Investor pursuant to Section 4(i), or (iv) the status of the Investor or holder of the Securities 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). 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. Except as otherwise set forth herein, the mechanics and procedures with respect to the rights and obligations under this Section 9(k) shall be the same as those set forth in Section 6 of the Registration Rights Agreement.

(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, shares of Common Stock and any other numbers in this Agreement that relate to the Common Stock shall be automatically adjusted for stock splits, stock dividends, stock combinations and other similar transactions that occur with respect to the Common Stock after the date of this Agreement. It is expressly understood and agreed that for all purposes of this Agreement, and without implication that the contrary would otherwise be true, neither transactions nor purchases nor sales shall include the location and/or reservation of borrowable shares of Common Stock.

(m) Remedies. The Investor and each holder of any Securities 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 applicable 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 fails to perform, observe, or discharge any or all of its obligations under the Transaction Documents, any remedy at law may prove to be inadequate relief to the Investor. The Company therefore agrees that the Investor 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 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 Investor 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 Investor 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; Currency(p). To the extent that the Company makes a payment or payments to the Investor hereunder or pursuant to any of the other Transaction Documents or the Investor 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. Unless otherwise expressly indicated, all dollar amounts referred to in this Agreement and the other Transaction Documents are in United States Dollars ("**U.S. Dollars**"), and all amounts owing under this Agreement and all other Transaction Documents 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 Agreement, the U.S. Dollar exchange rate as published in the Wall Street Journal on the relevant date of calculation.

(p) Judgment Currency.

(i) If for the purpose of obtaining or enforcing judgment against the Company in connection with this Agreement or any other Transaction Document in any court in any jurisdiction it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 9(p) referred to as the **“Judgment Currency”**) an amount due in US Dollars under this Agreement, the conversion shall be made at the Exchange Rate prevailing on the Trading Day immediately preceding:

(1) the date actual payment of the amount due, in the case of any proceeding in the courts of New York or in the courts of any other jurisdiction that will give effect to such conversion being made on such date: or

(2) the date on which the foreign court determines, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 9(p)(i)(1) being hereinafter referred to as the **“Judgment Conversion Date”**).

(ii) If in the case of any proceeding in the court of any jurisdiction referred to in Section 9(p)(i)(1) above, there is a change in the Exchange Rate prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the applicable party shall pay such adjusted amount as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the Exchange Rate prevailing on the date of payment, will produce the amount of US Dollars which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the Exchange Rate prevailing on the Judgment Conversion Date.

(iii) Any amount due from the Company under this provision shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of this Agreement or any other Transaction Document.

(q) Liquidated Damages. The Company's obligations to pay any liquidated damages or other amounts owing under the Transaction Documents is a continuing obligation of the Company and shall not terminate until all unpaid liquidated damages and other amounts have been paid notwithstanding the fact that the instrument or security pursuant to which such partial liquidated damages or other amounts are due and payable shall have been canceled.

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

COMPANY:

DOLPHIN ENTERTAINMENT, INC.

By: /s/ William O'Dowd IV

Name: William O'Dowd, IV

Title: Chief Executive Officer



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

INVESTOR:

M. SHANKEN COMMUNICATIONS, INC.

By: /s/Marvin Shanken

Name: Marvin Shanken

Title: Chief Executive Officer

REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (this “**Agreement**”) is made and entered into as of March 4, 2020, between by and among Dolphin Entertainment, Inc., a Florida corporation (the “**Company**”), and M. Shanken Communications, Inc., a New York corporation (the “**Investor**”).

In connection with the Securities Purchase Agreement, dated as of March 4, 2020, entered into by the Company and the Investor (the “**Securities Purchase Agreement**”), the Company has agreed, upon the terms and subject to the conditions of the Securities Purchase Agreement, to issue and sell to the Investor a senior convertible note in the original principal amount of \$500,000, in the form attached to the Securities Purchase Agreement as **Exhibit A** (the “**Note**”), which Note shall be convertible into shares of Common Stock (as defined below) (as converted, collectively, the “**Conversion Shares**”), in accordance with the terms of the Note, together with warrants to purchase Common Stock.

To induce the Investor to consummate the transactions contemplated by the Securities Purchase Agreement, the Company has agreed to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the “**1933 Act**”), and applicable state securities laws.

The Company and the Investor hereby agrees as follows:

Section 1 Definitions. Capitalized terms used and not otherwise defined herein that are defined in the Securities Purchase Agreement shall have the respective meanings given such terms in the Securities Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

“**Common Stock**” means (i) the Company’s shares of common stock, par value \$0.015 per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

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

“**Prospectus**” means the prospectus included in a Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated by the SEC pursuant to the 1933 Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

“Registrable Securities” means, as of any date of determination, (a) all Conversion Shares then issuable upon conversion in full of the Note (assuming on such date the Note is converted in full without regard to any conversion limitations therein), and (b) any securities issued or then issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing; provided, however, that any such Registrable Securities shall cease to be Registrable Securities for so long as (x) a Registration Statement with respect to the sale of such Registrable Securities is declared effective by the SEC under the 1933 Act and such Registrable Securities have been disposed of in accordance with such effective Registration Statement, (y) such Registrable Securities have been previously sold in accordance with Rule 144 or otherwise or (z) such Registrable Securities are, as of the applicable date of determination of Registrable Securities status, then eligible for resale without volume or manner-of-sale restrictions and without the need for current public information pursuant to Rule 144(c)(1) as set forth in a written opinion letter to such effect from counsel to the Company, addressed, delivered and acceptable to the company’s transfer agent and to the Investor (assuming that such securities and any securities issuable upon exercise, conversion or exchange of which, or as a dividend upon which, such securities were issued or are issuable, were at no time held by any Affiliate of the Company), as reasonably determined by the Company, upon the advice of counsel to the Company.

“Registration Statement” means any registration statement covering the resale of any Registrable Securities, including (in each case) the Prospectus, amendments and supplements to any such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in any such registration statement.

“Rule 144” means Rule 144 promulgated by the SEC pursuant to the 1933 Act, as such rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC having substantially the same effect as such rule.

“Rule 415” means Rule 415 promulgated by the SEC pursuant to the 1933 Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the SEC having substantially the same purpose and effect as such Rule.

“SEC” means the United States Securities and Exchange Commission.

Section 2 Registration Statement Requirements.

(a) If, from date hereof until 180 days after the date hereof, there is not an effective Registration Statement covering all of the Registrable Securities and the Company shall determine to prepare and file with the SEC a Registration Statement relating to an offering for the account of others under the 1933 Act of any of the Company’s equity securities, other than on Form S-4 or Form S-8 (each as promulgated under the 1933 Act) or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with the Company’s stock option or other employee benefit plans, then the Company shall deliver to the Investor a written notice of such

determination and, if within fifteen (15) days after the date of the Investor's receipt of such notice, the Investor shall so request in writing, the Company shall include in such Registration Statement all or any part of such Registrable Securities the Investor requests to be registered; provided, however, that the Company shall not be required to register any Registrable Securities pursuant to this Section 2 that are the subject of a then effective Registration Statement. Following the effective date of each Registration Statement filed in accordance herewith, the Company shall file with the SEC in accordance with Rule 424 under the 1933 Act the final Prospectus to be used in connection with sales pursuant to such Registration Statement.

(b) If the staff of the SEC (the "**Staff**") or the SEC seeks to characterize any offering pursuant to a Registration Statement filed pursuant to this Agreement as constituting an offering of securities that does not permit such Registration Statement to become effective and be used for resales by the Investor on a delayed or continuous basis under Rule 415 at then-prevailing market prices (and not fixed prices) (or as otherwise may be reasonably acceptable to the Investor), or if after the filing of a Registration Statement with the SEC pursuant to this Section 2, the Company is otherwise required by the Staff or the SEC to reduce the number of Registrable Securities included in such Registration Statement, then the Company shall reduce the number of Registrable Securities to be included in such Registration Statement (with the prior consent, not to be unreasonably withheld, of the Investor as to the specific Registrable Securities to be removed therefrom) until such time as the Staff and the SEC shall so permit such Registration Statement to become effective and be used as aforesaid.

(c) In addition, in the event that the Staff or the SEC requires the Investor seeking to resell securities under a Registration Statement filed pursuant to this Agreement to be specifically identified as an "underwriter" in order to permit such Registration Statement to become effective, and the Investor does not consent to being so named as an underwriter in such Registration Statement, then, in each such case, the Company shall reduce the total number of Registrable Securities to be registered on behalf of the Investor, until such time as the Staff or the SEC does not require such identification or until the Investor accepts such identification and the manner thereof. If notwithstanding any such reduction, the Staff or the SEC still requires that the Investor be specifically identified as an "underwriter" in order to permit such Registration Statement to be declared effect, the Investor may, at its option, elect to have no Registrable Securities of the Investor be included in such Registration Statement.

Section 3 Registration Procedures.

(a) If and whenever the Company is required by the provisions of Section 2 to effect the registration of any Registrable Securities under the 1933 Act, the Company will, as expeditiously as possible:

- (i) subject to the timelines provided in this Agreement, prepare and file the Registration Statement with the SEC, with respect to such Registrable Securities and use its reasonable best efforts to cause such Registration Statement to become and remain effective for the period of the distribution contemplated thereby (determined as herein provided), respond as promptly as commercially practicable to any comments received from the SEC with respect to a Registration Statement or any amendment thereto

and file any pre-effective amendments with respect to a Registration Statement as promptly as reasonable possible, and promptly provide to the Investor copies of all filings and SEC letters of comment (provided that the Company shall excise any information contained therein which would constitute material non-public information regarding the Company or any subsidiary) and notify the Investor (by telecopier or by e-mail address provided by the Investor) on or before the second business day thereafter that the Company receives notice that (i) the SEC has no comments or no further comments on the registration statement, and (ii) the registration statement has been declared effective;

- (ii) prepare and file with the SEC such amendments and supplements to such Registration Statement and the prospectus used in connection therewith as may be necessary to keep such Registration Statement effective and prepare and file with the SEC such additional Registration Statements as may be required hereunder and to keep each additional Registration Statement effective;
- (iii) furnish to the Investor such number of copies of the Registration Statement and the prospectus included therein (including each preliminary prospectus) as the Investor reasonably may request in order to facilitate the public sale or their disposition of the securities covered by such Registration Statement or make them electronically available;
- (iv) use its reasonable best efforts to register or qualify the Registrable Securities covered by such Registration Statement under the securities or "Blue Sky" laws of such jurisdictions as the Investor shall reasonably request in writing, provided, however, that the Company shall not for any such purpose be required to qualify to transact business as a foreign corporation in any jurisdiction where it is not so qualified or to consent to service of process in any such jurisdiction;
- (v) if applicable, list the Registrable Securities covered by such Registration Statement with the principal market or exchange on which the Common Stock is then listed;
- (vi) promptly notify the Investor of the Company's becoming aware that a prospectus relating thereto is required to be delivered under the 1933 Act, of the happening of any event or passage of time of which the Company has knowledge as a result of which the prospectus contained in such Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing or the financial statements included therein ineligible for inclusion or which becomes subject to a SEC, state or other governmental order suspending the effectiveness of the Registration Statement covering any of the Registrable Securities; and

- (vii) reasonably cooperate with any broker-dealer through which the Investor proposes to resell its Registrable Securities in effecting a filing with the FINRA Corporate Financing Department pursuant to FINRA Rule 5110, as requested by the Investor.

(b) The Investor hereby covenants that it will not sell any Registrable Securities pursuant to such prospectus during the period commencing at the time at which the Company gives the Investor notice of the suspension of the use of such prospectus in accordance with this Section 3(b) and ending at the time the Company gives the Investor notice that the Investor may thereafter effect sales pursuant to the prospectus, or until the Company delivers to the Investor or files with the SEC an amended or supplemented prospectus.

Section 4 Provision of Documents. It shall be a condition precedent to the obligations of the Company to complete the registration pursuant to this Agreement with respect to the Registrable Securities of the Investor that the Investor shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it, as shall be reasonably required to effect and maintain the effectiveness of the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request.

Section 5 Expenses. All expenses incurred by the Company in complying with Section 2, including, without limitation, all registration and filing fees, printing expenses (if required), fees and disbursements of counsel and independent public accountants for the Company, fees and expenses (including reasonable counsel fees) incurred by the Company in connection with complying with state securities or "Blue Sky" laws, fees of the Financial Industry Regulatory Authority, Inc. ("**FINRA**") in connection with any filing with FINRA pursuant to FINRA Rule 5110 that may be required to be made by any broker through which the Investor intends to make sales of Registrable Securities, transfer taxes, and fees of transfer agents and registrars, are called "**Registration Expenses**." The Company will pay all Registration Expenses in connection with any Registration Statement described in Section 2.

Section 6 Indemnification.

(a) In the event any Registrable Securities are included in any Registration Statement under this Agreement, to the fullest extent permitted by law, the Company will, and hereby does, indemnify, hold harmless and defend the Investor, each of its directors, officers, shareholders, members, partners, employees, agents, advisors, representatives (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding the lack of such title or any other title) and each Person, if any, who controls the Investor within the meaning of Section 15 of the 1933 Act or Section 20 of the Securities Exchange Act of 1934 Act, as amended (the "**1934 Act**") and each of the directors, officers, shareholders, members, partners, employees, agents, advisors, representatives (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding the lack of such title or any other title) of such controlling Persons (each, an "**Investor Party**" and collectively, the "**Investor Parties**"), against any losses, obligations, claims, damages, liabilities, contingencies, judgments, fines, penalties, charges, costs (including, without limitation, court costs, reasonable attorneys' fees, costs of defense and investigation), amounts paid in settlement or expenses, joint or several,

(collectively, "**Claims**") incurred in investigating, preparing or defending any action, claim, lawsuit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the SEC, whether pending or threatened, whether or not an Investor Party is or may be a party thereto ("**Indemnified Damages**"), to which any of them may become subject insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in a Registration Statement or any post-effective amendment thereto or in any filing made in connection with the qualification of the offering under the securities or other "Blue Sky" laws of any jurisdiction in which Registrable Securities are offered ("**Blue Sky Filing**"), or the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading or (ii) any untrue statement or alleged untrue statement of a material fact contained in any prospectus (as amended or supplemented) or in any prospectus supplement or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading (the matters in the foregoing clauses (i) and (ii) being, collectively, "**Violations**"). Subject to Section 6(c), the Company shall reimburse the Investor Parties, promptly as such expenses are incurred and are due and payable, for any reasonable legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(a) shall not apply to a Claim by an Investor Party arising out of or based upon a Violation which occurs in reliance upon and in conformity with information furnished in writing to the Company by the Investor or such Investor Party for such Investor Party expressly for use in connection with the preparation of such Registration Statement, prospectus or prospectus supplement or any such amendment thereof or supplement thereto. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of an Investor Party and shall survive the transfer of any of the Registrable Securities by the Investor pursuant to Section 8(f).

(b) In connection with any Registration Statement in which the Investor is participating, the Investor agrees to indemnify, hold harmless and defend, to the same extent and in the same manner as is set forth in Section 6(a), the Company, each of its directors, each of its officers who signs the Registration Statement and each Person, if any, who controls the Company within the meaning of the 1933 Act or the 1934 Act (each, an "**Company Party**"), against any Claim or Indemnified Damages to which any of them may become subject, under the 1933 Act, the 1934 Act or otherwise, insofar as such Claim or Indemnified Damages arise out of or are based upon any Violation, in each case, to the extent, and only to the extent, that such Violation occurs in reliance upon and in conformity with written information relating to the Investor or any Investor Party furnished to the Company by the Investor or any Investor Party expressly for use in connection with such Registration Statement; and, subject to Section 6(c) and the below provisos in this Section 6(b), the Investor will reimburse a Company Party any legal or other expenses reasonably incurred by such Company Party in connection with investigating or defending any such Claim; provided, however, the indemnity agreement contained in this Section 6(b) and the agreement with respect to contribution contained in Section 7 shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Investor, which consent shall not be unreasonably withheld, conditioned or delayed, provided further that the Investor shall be liable

under this Section 6(b) for only that amount of a Claim or Indemnified Damages as does not exceed the net proceeds to the Investor as a result of the applicable sale of Registrable Securities pursuant to such Registration Statement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Company Party and shall survive the transfer of any of the Registrable Securities by the Investor pursuant to Section 8(f).

(c) Promptly after receipt by an Investor Party or Company Party (as the case may be) under this Section 6 of notice of the commencement of any action or proceeding (including, without limitation, any governmental action or proceeding) involving a Claim, such Investor Party or Company Party (as the case may be) shall, if a Claim in respect thereof is to be made against any indemnifying party under this Section 6, deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and such Investor Party or Company Party (as the case may be); provided, however, an Investor Party or Company Party (as the case may be) shall have the right to retain its own counsel with the fees and expenses of such counsel to be paid by the indemnifying party if: (i) the indemnifying party has agreed in writing to pay such fees and expenses; (ii) the indemnifying party shall have failed promptly to assume the defense of such Claim and to employ counsel reasonably satisfactory to such Investor Party or Company Party (as the case may be) in any such Claim; or (iii) the named parties to any such Claim (including, without limitation, any impleaded parties) include both such Investor Party or Company Party (as the case may be) and the indemnifying party, and such Investor Party or Company Party (as the case may be) shall have been advised by counsel that a conflict of interest is likely to exist if the same counsel were to represent such Investor Party or Company Party and the indemnifying party (in which case, if such Investor Party or Company Party (as the case may be) notifies the indemnifying party in writing that it elects to employ separate counsel at the expense of the indemnifying party, then the indemnifying party shall not have the right to assume the defense thereof on behalf of the indemnified party and such counsel shall be at the expense of the indemnifying party, provided further that in the case of clause (iii) above the indemnifying party shall not be responsible for the reasonable fees and expenses of more than one (1) separate legal counsel for all Investor Parties or Company Parties (as the case may be). The Company Party or Investor Party (as the case may be) shall reasonably cooperate with the indemnifying party in connection with any negotiation or defense of any such action or Claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to such Company Party or Investor Party (as the case may be) which relates to such action or Claim. The indemnifying party shall keep the Company Party or Investor Party (as the case may be) reasonably apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent; provided, however, the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Company Party or Investor Party (as the case may be), 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 Company Party or Investor Party (as the case may be) of a release from all liability in respect to such Claim or litigation, and such settlement shall not include any admission as to fault on the part of the Company Party. For the avoidance of doubt, the immediately preceding sentence shall

apply to Sections 6(a) and 6(b) hereof. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Company Party or Investor Party (as the case may be) 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 indemnifying party promptly following the commencement of any such action shall not relieve such indemnifying party of any liability to such Investor Party or Company Party (as the case may be) under this Section 6, except to the extent that the indemnifying party is materially and adversely prejudiced in its ability to defend such action.

(d) No Person involved in the sale of Registrable Securities who is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) in connection with such sale shall be entitled to indemnification from any Person involved in such sale of Registrable Securities who is not guilty of fraudulent misrepresentation.

(e) The indemnification required by this Section 6 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 Damages are incurred; provided that the Investor shall promptly reimburse the Company for all such payments to the extent a court of competent jurisdiction determines that any Investor Party was not entitled to such payments.

(f) The indemnity and contribution agreements contained herein shall be in addition to (i) any cause of action or similar right of the Company Party or Investor Party against the indemnifying party or others, and (ii) any liabilities the indemnifying party may be subject to pursuant to the law; provided, however, that the Company shall not be obligated to pay an Investor Party for Indemnified Damages associated with a particular Claim under this Section 6 if the Company has already paid such Investor Party such Indemnified Damages under Section 7 of the Securities Purchase Agreement.

Section 7 Contribution. To the extent any indemnification by an indemnifying party is prohibited or limited by law, the indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 6 to the fullest extent permitted by law; provided, however: (i) no contribution shall be made under circumstances where the maker would not have been liable for indemnification under the fault standards set forth in Section 6 of this Agreement, (ii) no Person involved in the sale of Registrable Securities which Person is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) in connection with such sale shall be entitled to contribution from any Person involved in such sale of Registrable Securities who was not guilty of fraudulent misrepresentation; and (iii) contribution by any seller of Registrable Securities shall be limited in amount to the amount of net proceeds received by such seller from the applicable sale of such Registrable Securities pursuant to such Registration Statement. Notwithstanding the provisions of this Section 7, the Investor shall not be required to contribute, in the aggregate, any amount in excess of the amount by which the net proceeds actually received by the Investor from the applicable sale of the Registrable Securities subject to the Claim exceeds the amount of any damages that the Investor has otherwise been required to pay, or would otherwise be required to pay under Section 6(b), by reason of such untrue or alleged untrue statement or omission or alleged omission.

Section 8 Miscellaneous.

(a) Remedies. In the event of a breach by the Company or by the Investor of any of their respective obligations under this Agreement, the Investor or the Company, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, shall be entitled to specific performance of its rights under this Agreement. Each of the Company and the Investor agrees that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall not assert or shall waive the defense that a remedy at law would be adequate.

(b) Compliance. The Investor covenants and agrees that it will comply with the prospectus delivery requirements of the 1933 Act as applicable to it or an exemption therefrom in connection with sales of Registrable Securities pursuant to a Registration Statement.

(c) Amendments and Waivers. No provision of this Agreement may be (i) amended other than by a written instrument signed by both parties hereto or (ii) waived other than in a written instrument signed by the party against whom enforcement of such waiver is sought. Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof.

(d) Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be delivered as set forth in the Securities Purchase Agreement.

(e) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties. The Company may not assign (except by merger) its rights or obligations hereunder without the prior written consent of the Investor. The Investor may assign its rights hereunder if: (i) the Investor agrees in writing with such transferee or assignee (as the case may be) to assign all or any portion of such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such transfer or assignment (as the case may be); (ii) the Company is, within a reasonable time after such transfer or assignment (as the case may be), furnished with written notice of (a) the name and address of such transferee or assignee (as the case may be), and (b) the securities with respect to which such registration rights are being transferred or assigned (as the case may be); (iii) immediately following such transfer or assignment (as the case may be) the further disposition of such securities by such transferee or assignee (as the case may be) is restricted under the 1933 Act or applicable state securities laws if so required; (iv) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence such transferee or assignee (as the case may be) agrees in writing with the Company to be bound by all of the provisions contained herein; (v) such transfer or assignment (as the case may be) shall have been made in accordance with the applicable requirements of the Securities Purchase Agreement and the Note; and (vi) such transfer or assignment (as the case may be) shall have been conducted in accordance with all applicable federal and state securities laws. The term "Investor" in this Agreement shall also include all such permitted transferees and assignees.

(f) Execution and Counterparts. This Agreement may be executed in two or more counterparts, all of which when taken together 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, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file (or similar data file), such signature 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 facsimile or “.pdf” (or similar format) signature page were an original thereof.

(g) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be determined in accordance with the provisions of the Securities Purchase Agreement.

(h) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their reasonable best efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(i) Headings. The headings in this Agreement are for convenience only, do not constitute a part of the Agreement and shall not be deemed to limit or affect any of the provisions hereof.

(Signature Pages Follow)

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

COMPANY:

DOLPHIN ENTERTAINMENT, INC.

By: /s/ William O'Dowd IV

Name: William O'Dowd, IV

Title: Chief Executive Officer



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

INVESTOR:

M. SHANKEN COMMUNICATIONS, INC.

By: /s/Marvin Shanken

Name: Marvin Shanken

Title: Chief Executive Officer

SUBSIDIARIES OF DOLPHIN ENTERTAINMENT, INC.

42WEST LLC
THE DOOR MARKETING GROUP LLC
VIEWPOINT COMPUTER ANIMATION INCORPORATED
SHORE FIRE MEDIA, LTD
CYBERGEDDON PRODUCTIONS LLC
DOLPHIN WOODSTOCK PRODUCTIONS, LLC
DOLPHIN 10KW PRODUCTIONS LLC
DOLPHIN JOAT PRODUCTIONS LLC
DOLPHIN FILMS INC

(The following are subsidiaries of Dolphin Films, Inc.)

YOUNGBLOOD PRODUCTIONS LLC
DOLPHIN MAX STEEL HOLDINGS LLC
DOLPHIN JB BELIEVE FINANCING LLC
DOLPHIN ASK ME PRODUCTIONS LLC
DOLPHIN SPINNING THE GLOBE LLC
THE WISHING SEASON PRODUCTIONS LLC
DOLPHIN CP PRODUCTIONS LLC
DOLPHIN THE WALL PRODUCTIONS LLC
THATH PRODUCTION, LLC

Consent of Independent Registered Public Accounting Firm

Dolphin Entertainment, Inc.
Coral Gables, Florida

We hereby consent to the incorporation by reference in the Registration Statements on Form S3 (No. 333-222847) and Form S-8 (No. 333-219770) of Dolphin Entertainment, Inc. of our report dated March 30, 2020, relating to the consolidated financial statements, which appears in this Form 10-K. Our report contains an explanatory paragraph regarding the Company's ability to continue as a going concern.

/s/BDO USA, LLP
Miami, Florida
March 30, 2020

CHIEF EXECUTIVE OFFICER
CERTIFICATION PURSUANT TO SECTION 302

I, William O'Dowd IV, Chief Executive Officer, certify that:

1. I have reviewed this Annual Report on Form 10-K of Dolphin Entertainment, 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-5(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.

Date: March 30, 2020

/s/ William O'Dowd IV

William O'Dowd IV
Chief Executive Officer

CHIEF FINANCIAL OFFICER
CERTIFICATION PURSUANT TO SECTION 302

I, Mirta A Negrini, Chief Financial Officer, certify that:

1. I have reviewed this Annual Report on Form 10-K of Dolphin Entertainment, 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 Registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

Date: March 30, 2020

/s/ Mirta A Negrini

Mirta A Negrini
Chief Financial Officer

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

In connection with the accompanying Annual Report of Dolphin Entertainment, Inc. (the "Company") on Form 10-K for the year ended December 31, 2019, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, William O'Dowd IV, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

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

By: /s/ William O'Dowd IV
William O'Dowd IV
Chief Executive Officer
March 30, 2020

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

In connection with the accompanying Annual Report of Dolphin Entertainment, Inc. (the "Company") on Form 10-K for the year ended December 31, 2019, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Mirta A Negrini, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

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

By: /s/ Mirta A Negrini
Mirta A Negrini
Chief Financial Officer
March 30, 2020