

# SECURITIES & EXCHANGE COMMISSION EDGAR FILING

## EMERGENT CAPITAL, INC.

**Form: 10-Q**

**Date Filed: 2018-11-16**

Corporate Issuer CIK: 1494448

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**Form 10-Q**

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(Mark One)

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the quarterly period ended September 30, 2018

or

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

Commission file number: 001-35064

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**EMERGENT CAPITAL, INC.**

(Exact name of registrant as specified in its charter)

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

**30-0663473**  
(I.R.S. Employer  
Identification No.)

**5355 Town Center Road—Suite 701**  
**Boca Raton, Florida 33486**  
(Address of principal executive offices, including zip code)  
**(561) 995-4200**

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

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

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

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

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

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

As of November 15, 2018, the Registrant had 158,125,928 shares of common stock outstanding.

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**EMERGENT CAPITAL, INC.**  
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## **"Forward Looking" Statements**

As used in this Form 10-Q, "Emergent Capital," "Company," "we," "us," "its," or "our" refer to Emergent Capital, Inc. and its consolidated subsidiary companies, unless the context suggests otherwise.

This Quarterly Report on Form 10-Q contains forward-looking statements that are subject to risks and uncertainties. All statements other than statements of historical fact included in this Quarterly Report on Form 10-Q are forward-looking statements. Forward-looking statements give our current expectations and projections relating to our financial condition, results of operations, plans, objectives, future performance and business. You can identify forward-looking statements by the fact that they do not relate strictly to historical or current facts. These statements may include words such as "anticipate," "estimate," "expect," "project," "plan," "intend," "believe," "may," "will," "should," "can have," "likely and other words and terms of similar meaning in connection with any discussion of the timing or nature of future cash flows, operating or financial performance or other events. These forward-looking statements are not historical facts, and are based on current expectations, estimates and projections about our industry and Company, management's beliefs and certain assumptions made by management, many of which, by their nature, are inherently uncertain and beyond our control. Accordingly, readers are cautioned that any such forward-looking statements are not guarantees of future performance and are subject to certain risks, uncertainties and assumptions that are difficult to predict. Although we believe that the expectations reflected in such forward-looking statements are reasonable as of the date made, results may prove to be materially different. Unless otherwise required by law, we disclaim any obligation to update our view of any such risks or uncertainties or to announce publicly the result of any revisions to the forward-looking statements made in this report.

Factors that could cause our actual results and our financial condition to differ materially from those indicated in our forward-looking statements include, but are not limited to, the following:

- our ability to maintain our rights in the policies that serve as the primary assets of the Company and are the collateral under various debt instruments to which we are a party;
- our ability to obtain future financings on favorable terms, or at all;
- our ability to improve our solvency in a manner acceptable to the lender of the White Eagle Revolving Credit Facility which may impact our ability to receive distributions from policy proceeds from life insurance policies pledged as collateral under the facility;
- our ability to meet our debt service obligations;
- delays in the receipt of death benefits from our portfolio of life insurance policies;
- costs related to obtaining death benefits from our portfolio of life insurance policies;
- our ability to continue to comply with the covenants and other obligations, including the conditions precedent for additional fundings under our revolving credit facility;
- increases in premiums on, or the cost of insurance of, life insurance policies that we own;
- changes to actuarial life expectancy tables;
- changes in general economic conditions, including inflation, changes in interest or tax rates;
- our results of operations;
- our ability to continue to make premium payments on the life insurance policies that we own;
- adverse developments, including financial ones, associated with other litigation and judicial actions;
- inaccurate estimates regarding the likelihood and magnitude of death benefits related to life insurance policies that we own;
- lack of mortalities of insureds of the life insurance policies that we own;
- increases to the discount rates used to value the life insurance policies that we own;
- changes in mortality rates and inaccurate assumptions about life expectancies;
- changes in life expectancy calculation methodologies by third party medical underwriters;
- the effect on our financial condition as a result of any lapse of life insurance policies;
- our ability to sell the life insurance policies we own at favorable prices, if at all;

- adverse developments in capital markets;
- deterioration of the market for life insurance policies and life settlements;
- increased carrier challenges to the validity of our life insurance policies;
- adverse court decisions regarding insurable interest and the obligation of a life insurance carrier to pay death benefits or return premiums upon a successful rescission or contest;
- challenges to the ownership of the policies in our portfolio;
- changes in laws and regulations;
- deterioration in the credit worthiness of the life insurance companies that issue the policies included in our portfolio;
- regulation of life settlement transactions as securities;
- liabilities associated with our legacy structured settlement business;
- our failure to maintain the security of personally identifiable information pertaining to insureds and counterparties;
- disruption of our information technology systems;
- our ability to avoid defaulting under the various credit documents to which we are a party;
- our ability to maintain a listing or quotation on a national securities exchange or other trading platform for our common stock;
- cyber security risks and the threat of data breaches;
- loss of the services of any of our executive officers; and
- the effects of United States involvement in hostilities with other countries and large-scale acts of terrorism, or the threat of hostilities or terrorist acts.

All written and oral forward-looking statements attributable to the Company, or persons acting on its behalf are expressly qualified in their entirety by these cautionary statements. See "Risk Factors" included in our Annual Report on Form 10-K for the year ended December 31, 2017. You should evaluate all forward-looking statements made in this Form 10-Q in the context of these risks and uncertainties. The Company cautions you that the important factors referenced above may not contain all of the factors that are important to you.

**Emergent Capital, Inc.**  
**CONSOLIDATED BALANCE SHEETS**

	September 30, 2018	December 31, 2017*
	(Unaudited)	
	(In thousands except share data)	
<b>ASSETS</b>		
Assets		
Cash and cash equivalents	\$ 2,209	\$ 18,131
Cash and cash equivalents (VIE Note 4)	29,347	13,136
Certificates of deposit	1,016	1,010
Prepaid expenses and other assets	767	617
Prepaid expenses and other assets (VIE Note 4)	48	53
Deposits - other	1,377	1,377
Life settlements, at estimated fair value (Note 15)	1,043	750
Life settlements, at estimated fair value (VIE Note 4 & Note 15)	587,810	566,742
Receivable for maturity of life settlements (VIE Note 4)	48,435	30,045
Fixed assets, net	90	145
Investment in affiliates	2,384	2,384
Total assets	<u>\$ 674,526</u>	<u>\$ 634,390</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Liabilities		
Accounts payable and accrued expenses	\$ 1,831	\$ 2,015
Accounts payable and accrued expenses (VIE Note 4)	1,243	753
Other liabilities	217	451
Other liabilities (VIE Note 4)	48	—
Interest payable - 8.5% Convertible Notes (Note 10)	21	46
8.5% Convertible Notes, net of discount and deferred debt costs (Note 10)	1,160	1,098
Interest payable - 5.0% Convertible Notes (Note 11)	485	1,432
5.0% Convertible Notes, net of discount and deferred debt costs (Note 11)	69,535	68,654
Interest payable - 8.5% Senior Secured Notes (Note 13)	124	132
8.5% Senior Secured Notes, net of deferred debt costs (Note 13)	34,124	33,927
White Eagle Revolving Credit Facility, at estimated fair value (VIE Note 4 & Note 9)	367,931	329,240
Total liabilities	<u>476,719</u>	<u>437,748</u>
Commitments and Contingencies (Note 17)		
Stockholders' Equity		
Common stock (par value \$0.01 per share, 415,000,000 authorized at September 30, 2018 and December 31, 2017; 159,028,458 issued and 158,420,458 outstanding as of September 30, 2018; 158,495,399 issued and 157,887,399 outstanding as of December 31, 2017)	1,590	1,585
Preferred stock (par value \$0.01 per share, 40,000,000 authorized; 0 issued and outstanding as of September 30, 2018 and December 31, 2017)	—	—
Treasury Stock, net of issuance cost (608,000 shares as of September 30, 2018 and December 31, 2017)	(2,534)	(2,534)
Additional paid-in-capital	334,118	333,629
Accumulated deficit	(135,367)	(136,038)
Total stockholders' equity	<u>197,807</u>	<u>196,642</u>
Total liabilities and stockholders' equity	<u>\$ 674,526</u>	<u>\$ 634,390</u>

\* Derived from audited consolidated financial statements.

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

**Emergent Capital, Inc.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)**

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2018	2017	2018	2017
	(in thousands, except share and per share data)			
<b>Income</b>				
Change in fair value of life settlements (Notes 8 & 15)	\$ 29,299	\$ 24,372	\$ 40,219	\$ 53,294
Other income	415	116	649	245
Total income	<u>29,714</u>	<u>24,488</u>	<u>40,868</u>	<u>53,539</u>
<b>Expenses</b>				
Interest expense	7,982	9,773	23,383	25,471
Loss on extinguishment of debt	—	2,018	—	2,018
Change in fair value of White Eagle Revolving Credit Facility (Notes 9 & 15)	6,566	1,163	4,189	11,209
Personnel costs	623	2,040	2,329	4,174
Legal fees	446	821	3,080	2,473
Professional fees	1,755	667	4,654	3,475
Insurance	193	198	590	587
Other selling, general and administrative expenses	398	381	1,370	1,294
Total expenses	<u>17,963</u>	<u>17,061</u>	<u>39,595</u>	<u>50,701</u>
Income (loss) from continuing operations before income taxes	11,751	7,427	1,273	2,838
(Benefit) provision for income taxes	(2,537)	3,210	584	3,210
Net income (loss) from continuing operations	<u>\$ 14,288</u>	<u>\$ 4,217</u>	<u>\$ 689</u>	<u>\$ (372)</u>
<b>Discontinued Operations:</b>				
Income (loss) from discontinued operations before income taxes	(13)	(33)	(18)	(257)
(Benefit) provision for income taxes	—	—	—	—
Net income (loss) from discontinued operations	<u>(13)</u>	<u>(33)</u>	<u>(18)</u>	<u>(257)</u>
Net income (loss)	<u>\$ 14,275</u>	<u>\$ 4,184</u>	<u>\$ 671</u>	<u>\$ (629)</u>
<b>Basic income (loss) per share:</b>				
Continuing operations	\$ 0.09	\$ 0.04	\$ —	\$ (0.01)
Discontinued operations	\$ —	\$ —	\$ —	\$ —
Net income (loss) - basic	<u>\$ 0.09</u>	<u>\$ 0.04</u>	<u>\$ —</u>	<u>\$ (0.01)</u>
<b>Diluted income (loss) per share:</b>				
Continuing operations	\$ 0.07	\$ 0.03	\$ —	\$ (0.01)
Discontinued operations	\$ —	\$ —	\$ —	\$ —
Net income (loss) - diluted	<u>\$ 0.07</u>	<u>\$ 0.03</u>	<u>\$ —</u>	<u>\$ (0.01)</u>
<b>Weighted average shares outstanding:</b>				
Basic	<u>155,872,138</u>	<u>115,462,646</u>	<u>155,824,327</u>	<u>57,580,062</u>
Diluted	<u>210,535,600</u>	<u>137,083,825</u>	<u>174,415,402</u>	<u>57,580,062</u>

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

**Emergent Capital, Inc.**  
**CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY (UNAUDITED)**  
**For the Nine Months Ended September 30, 2018**

	Common Stock		Treasury Stock		Additional Paid-in Capital	Accumulated Deficit	Total
	Shares	Amount	Shares	Amount			
	(in thousands, except share data)						
Balance, January 1, 2018	158,495,399	\$ 1,585	(608,000)	\$ (2,534)	\$ 333,629	\$ (136,038)	\$ 196,642
Net income	—	—	—	—	—	671	671
Issue of common stock, net	25,000	—	—	—	9	—	9
Stock-based compensation	550,000	5	—	—	485	—	490
Retirement of common stock	(41,941)	—	—	—	(5)	—	(5)
Balance, September 30, 2018	159,028,458	\$ 1,590	(608,000)	\$ (2,534)	\$ 334,118	\$ (135,367)	\$ 197,807

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

**Emergent Capital, Inc.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)**

	For the Nine Months Ended September 30,	
	2018	2017
	(In thousands)	
Cash flows from operating activities		
Net income (loss)	\$ 671	\$ (629)
Adjustments to reconcile net income (loss) to net cash used in operating activities:		
Depreciation and amortization	68	78
8.5% Convertible Notes debt modification costs	—	2,537
Amortization of discount and deferred costs for 8.5% Convertible Notes	62	2,413
Amortization of deferred costs for 15.0% Senior Secured Notes	—	184
Amortization of discount and deferred cost for 5.0% Convertible Notes	880	199
Amortization of deferred costs for 8.5% Senior Secured Notes	198	35
Loss on extinguishment of debt	—	2,018
Stock-based compensation expense	485	340
Finance cost and fees withheld by borrower	716	686
Interest Paid in Kind on 8.5% Convertible Notes	—	6,288
Change in fair value of life settlements	(40,219)	(53,294)
Change in fair value of White Eagle Revolving Credit Facility	4,189	11,209
Interest income	(59)	(14)
Deferred tax liability	—	2,332
Change in assets and liabilities:		
Deposits - other	—	(30)
Prepaid expenses and other assets	(100)	142
Accounts payable and accrued expenses	316	1,865
Other liabilities	(186)	(125)
Current tax liability	—	878
Interest payable - 8.5% Convertible Notes	(25)	(2,251)
Interest payable - 5.0% Convertible Notes	(948)	485
Interest payable - 15.0% Senior Secured Notes	—	(213)
Interest payable - 8.5% Senior Secured Notes	(8)	124
Net cash used in operating activities	<u>(33,960)</u>	<u>(24,743)</u>
Cash flows from investing activities		
Purchase of fixed assets, net of disposals	(5)	(4)
Certificate of deposit	—	5,025
Premiums paid on life settlements	(67,577)	(63,101)
Proceeds from maturity of life settlements	68,045	34,373
Net cash provided by/(used in) investing activities	<u>463</u>	<u>(23,707)</u>
Cash flows from financing activities		
Borrowings from White Eagle Revolving Credit Facility	68,383	64,400
Repayment of borrowings under White Eagle Revolving Credit Facility	(34,597)	(17,214)
Proceeds from 8.5% Senior Secured Notes	—	5,000
Proceeds from issue of common stock, net	—	19,188
Payment under finance lease obligations	—	(25)
Borrowings under 15.0% Promissory Note	—	2,763
Payment of Recapitalization Transaction Closing Costs	—	(1,287)
Net cash provided by financing activities	<u>33,786</u>	<u>72,825</u>
Net increase (decrease) in cash and cash equivalents	289	24,375
Cash and cash equivalents, at beginning of the period	31,267	11,318
Cash and cash equivalents, at end of the period	<u>\$ 31,556</u>	<u>\$ 35,693</u>
Supplemental disclosures of cash flow information:		
Cash paid for interest during the period	<u>\$ 23,214</u>	<u>\$ 14,851</u>
Supplemental disclosures of non-cash financing activities:		
Repayment of 15.0 % Senior Secured Notes Principal, Interest and Penalty through Recapitalization Transaction	<u>\$ —</u>	<u>\$ 31,675</u>
Issue of 8.5% Senior Secured Notes through Recapitalization Transaction	<u>\$ —</u>	<u>\$ 30,000</u>
Recapitalization Transaction Closing Cost and Other Costs withheld from Proceeds	<u>\$ —</u>	<u>\$ 4,338</u>
Repayment of 15% Promissory Note Principal and Interest through Recapitalization Transaction	<u>\$ —</u>	<u>\$ 2,799</u>

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

**Emergent Capital, Inc.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)**  
**September 30, 2018**

**(1) Description of Business**

Emergent Capital, Inc. was founded in December 2006 as a Florida limited liability company, Imperial Holdings, LLC, and converted into Imperial Holdings, Inc. on February 3, 2011, in connection with our initial public offering. Effective September 1, 2015, the name was changed to Emergent Capital, Inc. (with its subsidiary companies, the "Company" or "Emergent Capital").

On September 7, 2018, the Board of Directors adopted resolutions to change the Company's fiscal year end, and have the Company cause its direct and indirect subsidiaries change their fiscal year ends, from December 31 to November 30, effective immediately. The Company will file a transition report on Form 10-K in accordance with SEC rules and regulations.

Emergent Capital, through its subsidiary companies, owns a portfolio of 590 life insurance policies, also referred to as life settlements, with a fair value of \$588.9 million and an aggregate death benefit of approximately \$2.8 billion at September 30, 2018. The Company primarily earns income on these policies from changes in their fair value and through death benefits. 588 of these policies, with an aggregate death benefit of approximately \$2.8 billion and a fair value of approximately \$587.8 million at September 30, 2018, are pledged under a \$370.0 million, revolving credit agreement (the "White Eagle Revolving Credit Facility") entered into by the Company's indirect subsidiary, White Eagle Asset Portfolio, LP ("White Eagle"). At September 30, 2018, two policies owned by the Company, with an aggregate death benefit of approximately \$12.0 million and a fair value of \$1.0 million, were not pledged as collateral under the White Eagle Revolving Credit Facility.

**(2) Principles of Consolidation and Basis of Presentation**

The accompanying consolidated financial statements include the accounts of the Company, all of its wholly-owned subsidiary companies and its special purpose entities, with the exception of Imperial Settlements Financing 2010, LLC ("ISF 2010"), an unconsolidated special purpose entity which is accounted for using the cost method of accounting. The special purpose entity was to fulfill specific objectives. All significant intercompany balances and transactions have been eliminated in consolidation, including income from services performed by subsidiary companies in connection with the White Eagle Revolving Credit Facility (as defined below), as detailed herein. Notwithstanding consolidation, as referenced above, White Eagle is the owner of 588 policies, with an aggregate death benefit of approximately \$2.8 billion and an estimated fair value of approximately \$587.8 million at September 30, 2018.

The unaudited consolidated financial statements have been prepared in conformity with the rules and regulations of the SEC for Form 10-Q and therefore do not include certain information, accounting policies, and footnote disclosure information or footnotes necessary for a complete presentation of financial position, results of operations and cash flows in conformity with generally accepted accounting principles. However, all adjustments (consisting of normal recurring accruals), which, in the opinion of management, are necessary for a fair presentation of the financial statements, have been included. Operating results for the three months ended September 30, 2018 are not necessarily indicative of the results that may be expected for future periods or for the year ending December 31, 2018. These interim financial statements should be read in conjunction with the Consolidated Financial Statements and Notes thereto included in Emergent Capital's Annual Report on Form 10-K for the fiscal year ended December 31, 2017.

**Liquidity**

Historically, the Company has incurred substantial losses, which has resulted in an accumulated deficit of approximately \$135.4 million as of September 30, 2018. Cash flows used in operating activities were \$34.0 million for the nine months ended September 30, 2018 and \$34.8 million for the year ended December 31, 2017. As of September 30, 2018, the Company had approximately \$31.6 million of cash and cash equivalents and certificates of deposit of \$1.0 million; of this amount, approximately \$2.2 million is available to pay premiums on the two unencumbered policies and other overhead expenses, with approximately \$29.3 million being restricted by the White Eagle Revolving Credit Facility.

The Company's ability to continue as a going concern is dependent on its ability to meet its liquidity needs through a combination of the receipt of death benefits from life insurance policy maturities, borrowings under the White Eagle Revolving Credit Facility subject to results of ongoing negotiations with the lenders (see below), strategic capital market raises, pledged policy sales (subject to certain asset sale restrictions as documented below) and cash on hand.

As of the filing date of this Form 10-Q, the outstanding principal on the White Eagle Revolving Credit Facility was approximately \$358.6 million, with approximately \$11.4 million undrawn and \$23.0 million received in maturity proceeds awaiting distribution through the waterfall to repay principal and interest. The maximum lender's commitment for the facility is \$370 million. White Eagle's current cash flow forecast indicates a probability that it may reach the limit on its ability to make additional borrowings by the end of December 2018, assuming no further collection of receivables. The timing could be later if any maturity proceeds are received. White Eagle is currently in negotiations with the lender, although no assurance can be given as to any changes to the current terms.

Based on the terms of the White Eagle Revolving Credit Facility, if the making of any advance by the lender would cause the aggregate principal amount of all advances outstanding to exceed the borrowing base, White Eagle can sell policies in an amount sufficient to pay scheduled premiums subject to the lender's approval. The proceeds of any such sale would be distributed through the waterfall, and by virtue of the sale, White Eagle would no longer have to pay premiums on the sold policies. The White Eagle Revolving Credit Facility also allows the lender to make protective advances on pledged policies other than those being contemplated for sale. Any such protective advances made by the lender would be reimbursed to the lender through the waterfall and receives priority over interest payments.

Distributions to the Company from available proceeds through the waterfall under the White Eagle Revolving Credit Facility will vary based on the respective, then current loan to value ratio. Our current cash flow forecast indicates a probability the Company will not participate in the waterfall distributions until July 2019.

As of the filing date of this Form 10-Q, we had approximately \$31.0 million of cash and cash equivalents and certificates of deposit of \$500,000, of this amount, approximately \$2.4 million is available for normal operations, with approximately \$28.1 million being restricted by the White Eagle Revolving Credit Facility. In considering our forecast for the next twelve months and the White Eagle Revolving Credit Facility ongoing negotiations, these facts, aggregated with the current cash balance as of the filing for this Form 10-Q, create a substantial doubt of the Company's ability to meet their financial needs.

#### Subsequent Event

On November 14, 2018, Lamington Road Designated Activity Company (formerly known as Lamington Road Limited), the Company's wholly-owned indirect Irish subsidiary ("Lamington"), and White Eagle General Partner, LLC, the Company's wholly-owned indirect Delaware subsidiary ("WEGP"), filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. See Note 20, "Subsequent Events," of the accompanying consolidated financial statements for further information.

The accompanying consolidated financial statements are prepared on a going concern basis and do not include any adjustments that might result from uncertainty about the Company's ability to continue as a going concern.

#### **Discontinued Operations**

On October 25, 2013, the Company sold substantially all of the assets comprising its structured settlement business. As a result, the Company has discontinued segment reporting and classified its operating results of the structured settlement business, net of income taxes, as discontinued operations. The accompanying consolidated statements of operations for the three months and nine months ended September 30, 2018 and 2017, and the related notes to the consolidated financial statements, reflect the classification of its structured settlement business operating results, net of tax, as discontinued operations. See Note 7, "Discontinued Operations," of the accompanying consolidated financial statements for further information. Unless otherwise noted, the following notes refer to the Company's continuing operations.

#### **Foreign Currency**

The Company owns certain foreign subsidiary companies formed under the laws of Ireland, the Bahamas and Bermuda. These foreign subsidiary companies utilize the U.S. dollar as their functional currency. The foreign subsidiary companies' financial statements are denominated in U.S. dollars and therefore, there are no translation gains and losses resulting from translating the financial statements at exchange rates other than the functional currency. Any gains and losses resulting from foreign currency transactions (transactions denominated in a currency other than the subsidiary companies' functional currency) are included in income. These gains and losses are immaterial to the Company's financial statements.

### Use of Estimates

The preparation of consolidated financial statements, in conformity with accounting principles generally accepted in the United States of America ("GAAP"), requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of income and expenses during the reporting period. Actual results could differ from these estimates and such differences could be material. Significant estimates made by management include income taxes, the valuation of life settlements, the valuation of the debt owing under the White Eagle Revolving Credit Facility, the valuation of equity awards and the valuation of the conversion derivative liability formerly embedded within the Convertible Notes.

### **(3) Recent Accounting Pronouncements**

In April 2015, the FASB issued ASU 2015-05, "Intangibles—Goodwill and Other—Internal-Use Software (Subtopic 350-40): Customer's Accounting for Fees Paid in a Cloud Computing Arrangement, to help entities evaluate the accounting for fees paid by a customer in a cloud computing arrangement (hosting arrangement) by providing guidance for determining when the arrangement includes a software license. If a cloud computing arrangement includes a license to internal-use software, then the software license is accounted for by the customer in accordance with Subtopic 350-40. If a cloud computing arrangement does not include a software license, the entity should account for the arrangement as a service contract. This generally means that the fees associated with the hosting element (service) of the arrangement are expensed as incurred. During the comment period and after the issuance of Update 2015-05, several stakeholders requested that the Board provide additional guidance on the accounting for costs of implementation activities performed in a cloud computing arrangement that is a service contract. In August 2018, the Board released the amendments on the accounting for implementation, setup, and other upfront costs (collectively referred to as implementation costs) apply to entities that are a customer in a hosting arrangement. The amendments in this Update are effective for public business entities for fiscal years beginning after December 15, 2019, and interim periods within those fiscal years. We are currently evaluating the methods and impact of adopting this new standard on our consolidated financial statements.

In February 2016, the FASB issued ASU No. 2016-02, "Leases" (Topic 842). The new guidance establishes the principles to report transparent and economically neutral information about the assets and liabilities that arise from leases. The core principle of Topic 842 is that a lessee should recognize the assets and liabilities that arise from leases. All leases create an asset and a liability for the lessee in accordance with FASB Concepts Statement No. 6, Elements of Financial Statements, and, therefore, recognition of those lease assets and lease liabilities represents an improvement over previous GAAP, which did not require lease assets and lease liabilities to be recognized for most leases. This ASU is effective for annual periods beginning after December 15, 2018, including interim periods within those fiscal years. Early adoption is permitted. We are currently evaluating the methods and impact of adopting this new standard on our consolidated financial statements.

In March 2016, the FASB issued ASU No. 2016-06, "Derivatives and Hedging (Topic 815): Contingent Put and Call Options in Debt Instruments." Topic 815 requires that embedded derivatives be separated from the host contract and accounted for separately as derivatives if certain criteria are met. One of those criteria is that the economic characteristics and risks of the embedded derivatives are not clearly and closely related to the economic characteristics and risks of the host contract (the "clearly and closely related" criterion). The guidance in this ASU intends to resolve the diversity in practice resulting from the application of the existing four-step decision sequence defined in ASC 815-15-25-42 to call (put) options that can accelerate the repayment of principal on a debt instrument if they meet the clearly and closely related criterion by clarifying that an entity is required to perform only the four-step decision sequence. The entity does not have to separately assess whether the event that triggers its ability to exercise the contingent option is itself indexed only to interest rates or credit risk. This ASU is effective for annual periods beginning after December 15, 2017, and interim periods beginning after December 15, 2018. Early adoption is permitted including adoption in an interim period, as long as any adjustment is reflected as of the beginning of the fiscal year that includes the interim period. The Company does not expect that this guidance will have a material impact on its financial position, results of operations or cash flows.

In August 2017, the FASB issued ASU No. 2017-12, "Derivatives and Hedging (Topic 815)," which simplifies and clarifies the accounting and disclosure for hedging activities by more closely aligning the results of cash flow and fair value hedge accounting with the risk management activities of an entity. The amendments in this update are effective for annual periods, and interim periods within those annual periods, beginning after December 15, 2018, with early adoption permitted. We do not expect this standard to have an impact on our consolidated financial position, results of operations or cash flows.

In March 2018, the FASB issued ASU 2018-03, "Technical Corrections and Improvements to Financial Instruments – Overall (Subtopic 825-10): Recognition and Measurement of Financial Assets and Financial Liabilities" to clarify certain aspects of recognition, measurement, presentation, and disclosure of financial instruments. In addition to amending Topic 825, Financial Instruments, the Board added Topic 321, Investments—Equity Securities, and made a number of consequential amendments to the Codification. The amendments in ASU 2018-03 are effective for public business entities for fiscal years beginning after December 15, 2017 and for interim periods within those fiscal years beginning after June 15, 2018. We are currently evaluating the methods and impact of adopting this new standard on our consolidated financial statements.

In February 2018, the FASB issued ASU 2018-02, "Income Statement - Reporting Comprehensive Income (Topic 220): Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income" to address stakeholder concerns about the guidance in current generally accepted accounting principles (GAAP) that requires deferred tax liabilities and assets to be adjusted for the effect of a change in tax laws or rates with the effect included in income from continuing operations in the reporting period that includes the enactment date. The amendments in this update allow a reclassification from accumulated other comprehensive income to retained earnings for stranded tax effects resulting from the Tax Cuts and Jobs Act. The amendments in this Update are effective for all entities for fiscal years beginning after December 15, 2018, and interim periods within those fiscal years. We are currently evaluating the methods and impact of adopting this new standard on our consolidated financial statements.

In June 2018, the FASB issued ASU 2018-07 "Compensation-Stock Compensation (Topic 718) - Improvements to Non-employee Share-Based Payment" primarily to simplify certain provisions within Topic 718 addressing share-based payments for acquiring goods and services from non-employees. The amendments in this update are effective for annual periods beginning after December 31, 2018, with early adoption permitted. We are currently evaluating the impact of adopting this new standard on our consolidated financial statements.

In July 2018, the FASB issued ASU 2018-11, "Targeted Improvements to Leases (Topic 842) primarily to provide another transition method in addition to the existing transition method by allowing entities to initially apply the new leases standard at the adoption date (such as January 1, 2019, for calendar year-end public business entities) and recognize a cumulative-effect adjustment to the opening balance of retained earnings in the period of adoption consistent with preparers' requests. The amendments in this Update address stakeholders' concerns about the requirement for lessors to separate components of a contract by providing lessors with a practical expedient, by class of underlying asset, to not separate non-lease components from the associated lease component, similar to the expedient provided for lessees. The amendments in this Update also clarify which Topic (Topic 842 or Topic 606) applies for the combined component. For entities that have not adopted Topic 842 before the issuance of this Update, the effective date and transition requirements for the amendments in this Update related to separating components of a contract are the same as the effective date and transition requirements in Update 2016-02.

In August 2018, the FASB issued ASU 2018-13, "Disclosure Framework—Changes to the Disclosure Requirements for Fair Value Measurement" which modifies the disclosure requirements on fair value measurements in Topic 820, Fair Value Measurement, based on the concepts in the Concepts Statement, including the consideration of costs and benefits. The following disclosure requirements were removed from Topic 820 among others: 1) The amount of and reasons for transfers between Level 1 and Level 2 of the fair value hierarchy 2) The policy for timing of transfers between levels. The following disclosure requirements were part of the modifications in Topic 820: 1) For investments in certain entities that calculate net asset value, an entity is required to disclose the timing of liquidation of an investee's assets and the date when restrictions from redemption might lapse only if the investee has communicated the timing to the entity or announced the timing publicly. The amendments also clarify that the measurement uncertainty disclosure is to communicate information about the uncertainty in measurement as of the reporting date. Lastly, the following disclosure requirements were added to Topic 820: 1) the changes in unrealized gains and losses for the period included in other comprehensive income for recurring Level 3 fair value measurements held at the end of the reporting period; 2) the range and weighted average of significant unobservable inputs used to develop Level 3 fair value measurements. For certain unobservable inputs, an entity may disclose other quantitative information (such as the median or arithmetic average) in lieu of the weighted average if the entity determines that other quantitative information would be a more reasonable and rational method to reflect the distribution of unobservable inputs used to develop Level 3 fair value measurements. The amendments in this Update are effective for all entities for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019. The amendments on changes in unrealized gains and losses, the range and weighted average of significant unobservable inputs used to develop Level 3 fair value measurements, and the narrative description of measurement uncertainty should be applied prospectively for only the most recent interim or annual period presented in the initial fiscal year of adoption. All other amendments should be applied retrospectively to all periods presented upon their effective date. We are currently evaluating the methods and impact of adopting this new standard on our consolidated financial statements.

## **Adopted Accounting Pronouncements**

In May 2014, the FASB issued Accounting Standards Update ("ASU") No. 2014-09, "Revenue from Contracts with Customers," which converges the FASB and the International Accounting Standards Board ("IASB") standard on revenue recognition. Areas of revenue recognition that will be affected include, but are not limited to, transfer of control, variable consideration, allocation of transfer pricing, licenses, time value of money, contract costs and disclosures. In April 2015, the FASB voted to defer the effective date of the new revenue recognition standard by one year. As a result, the provisions of this ASU are now effective for interim and annual periods beginning after December 15, 2017. This ASU became effective during nine months ended September 30, 2018, but did not have any have a material impact on our financial position, results of operations or cash flows on our consolidated financial statements.

In August 2016, the FASB issued ASU No. 2016-15, "Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments." This ASU provides specific guidance on eight cash flow classification issues that are either unclear or not included in current GAAP. These cash flow classification issues include debt prepayment or debt extinguishment costs, settlement of zero-coupon debt instruments, contingent consideration payments made after a business combination, proceeds from the settlement of insurance claims, proceeds from the settlement of corporate-owned life insurance policies, distributions received from equity method investees, beneficial interests in securitization transactions, and separately identifiable cash flows and application of the predominance principle. The amendments in this update are effective for public business entities for fiscal years beginning after December 15, 2017, and interim periods within those fiscal years. Early adoption is permitted, including adoption in an interim period. If an entity early adopts the amendments in an interim period, any adjustments should be reflected as of the beginning of the fiscal year that includes that interim period. An entity that elects early adoption must adopt all of the amendments in the same period. This ASU became effective during nine months ended September 30, 2018, but did not have any have a material impact on its financial position, results of operations or cash flows on our consolidated financial statements.

In October 2016, the FASB issued ASU No. 2016-16 Income Taxes (Topic 740): Intra-entity transfers of assets other than inventory ("ASU 2016-16"). Current GAAP prohibits the recognition of current and deferred income taxes for an intra-entity asset transfer until the asset has been sold to an outside party. This prohibition on recognition is an exception to the principle of comprehensive recognition of current and deferred income taxes in GAAP. The Board decided that an entity should recognize the income tax consequences of an intra-entity transfer of an asset other than inventory when the transfer occurs. Consequently, the amendments in this update eliminate the exception for an intra-entity transfer of an asset other than inventory. For public business entities, the amendments in this update are effective for annual reporting periods beginning after December 15, 2017. The Company adopted this standard during the nine months ended September 30, 2018 which resulted in the elimination of a deferred income tax charge of \$17.6 million gross related to prior year sales of life settlement policies to its Ireland subsidiaries. The adoption resulted in a reduction of the valuation allowance and had no impact on earnings.

In January 2017, the FASB issued ASU 2017-01, "Business Combinations (Topic 805)," to assist entities with evaluating whether transactions should be accounted for as acquisitions (or disposals) of assets or businesses by clarifying the definition of a business. The definition of a business affects many areas of accounting including acquisition, disposals, goodwill and consolidation. This amendment covers Phase 1 of a three phase project. The update is effective for annual periods beginning after December 15, 2017, including interim periods within those periods. The amendments in this update should be applied prospectively on or after the effective date. This ASU was effective during the period and did not have an impact on our consolidated financial statements.

In May 2017, the FASB issued ASU 2017-09, "Compensation-Stock Compensation (Topic 718): Scope of Modification Accounting" to clarify when to account for a change to the terms or conditions of a share-based payment award as a modification. Under this new guidance, modification accounting is required only if the fair value, the vesting conditions, or the classification of the award (as equity or liability) changes as a result of the change in terms or conditions. The guidance is effective prospectively for annual periods beginning on or after December 15, 2017. This ASU was effective during the period and did not have an impact on our consolidated financial statements.

In March 2018, the FASB issued ASU 2018-05, "Income Taxes (Topic 740): Amendments to SEC Paragraphs Pursuant to SEC Staff Accounting Bulletin No. 118 (SEC Update)" to amend certain SEC material in Topic 740 for the income tax accounting implications of the recently issued Tax Cuts and Jobs Act (Act). ASU 2018-05 is effective upon inclusion in the FASB Codification. We have adopted this ASU and continue to evaluate the impact of the Tax Cuts and Jobs Act on our consolidated financial statements.

#### (4) Consolidation of Variable Interest Entities

The Company evaluates its interests in variable interest entities ("VIEs") on an ongoing basis and consolidates those VIEs in which it has a controlling financial interest and is thus deemed to be the primary beneficiary. A controlling financial interest has both of the following characteristics: (i) the power to direct the activities of the VIE that most significantly impact its economic performance; and (ii) the obligation to absorb losses of the VIE that could potentially be significant to it or the right to receive benefits from the VIE that could be potentially significant to the VIE.

The following table presents the consolidated assets and consolidated liabilities of VIEs for which the Company has concluded that it is the primary beneficiary and which are consolidated in the Company's financial statements as of September 30, 2018 and December 31, 2017, as well as non-consolidated VIEs for which the Company has determined it is not the primary beneficiary (in thousands):

	Primary Beneficiary		Not Primary Beneficiary	
	Consolidated VIE		Non-consolidated VIE	
	Assets	Liabilities	Total Assets	Maximum Exposure To Loss
September 30, 2018	\$ 665,640	\$ 369,222	\$ 2,384	\$ 2,384
December 31, 2017	\$ 609,976	\$ 329,993	\$ 2,384	\$ 2,384

As of September 30, 2018, 588 life insurance policies owned by White Eagle with an aggregate death benefit of approximately \$2.8 billion and an estimated fair value of approximately \$587.8 million were pledged as collateral under the White Eagle Revolving Credit Facility. In accordance with ASC 810, *Consolidation*, the Company consolidated White Eagle in its financial statements for the nine months ended September 30, 2018 and 2017, and the year ended December 31, 2017.

Imperial Settlements Financing 2010, LLC ("ISF 2010"), which was formed as an affiliate of the Company to serve as a special purpose financing entity to allow the Company to sell structured settlements and assignable annuities, is a non-consolidated special purpose financing entity, as well as a non-consolidated VIE for which the Company has determined it is not the primary beneficiary. Approximately \$2.4 million is included in investment in affiliates in the accompanying balance sheet as of September 30, 2018 and December 31, 2017, respectively.

#### (5) Earnings Per Share

As of September 30, 2018 and 2017, there were 159,028,458 and 156,572,976 shares of common stock issued, respectively, and 158,420,458 and 155,964,976 shares of common stock outstanding, respectively. Outstanding shares as of September 30, 2018 and 2017 have been adjusted to reflect 608,000 treasury shares.

Basic net income per share is computed by dividing the net earnings attributable to common shareholders by the weighted average number of common shares outstanding during the period.

Diluted earnings per share is computed by dividing net income attributable to common shareholders by the weighted average number of common shares outstanding, increased to include the number of additional common shares that would have been outstanding if the dilutive potential common shares had been issued. Conversion or exercise of the potential common shares is not reflected in diluted earnings per share unless the effect is dilutive. The dilutive effect, if any, of outstanding common share equivalents is reflected in diluted earnings per share by application of the treasury stock method, and if-converted method as applicable.

The following table reconciles actual basic and diluted earnings per share for the three months and nine months ended September 30, 2018 and 2017 (in thousands except per share data).

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2018(1)	2017(3)	2018(2)	2017(3)(4)
<b>Income (loss) per share:</b>				
<b>Numerator:</b>				
Net income (loss) from continuing operations	\$ 14,288	\$ 4,217	\$ 689	\$ (372)
Net income (loss) from discontinued operations	(13)	(33)	(18)	(257)
Numerator for basic EPS - net income (loss) attributable to common stockholders	\$ 14,275	\$ 4,184	\$ 671	\$ (629)
Add back convertible notes interest	1,306	—	3,862	—
Numerator for diluted earnings per share - net income (loss) attributable to common stockholders	15,581	4,184	4,533	(629)
<b>Basic income (loss) per common share:</b>				
Basic income (loss) from continuing operations	\$ 0.09	\$ 0.04	\$ —	\$ (0.01)
Basic income (loss) from discontinued operations	—	—	—	—
Basic income (loss) per share available to common shareholders	\$ 0.09	\$ 0.04	\$ —	\$ (0.01)
<b>Diluted income (loss) per common share:</b>				
Diluted income (loss) from continuing operations	0.07	\$ 0.03	\$ —	\$ (0.01)
Diluted income (loss) from discontinued operations	—	—	—	—
Diluted income (loss) per share available to common shareholders	\$ 0.07	\$ 0.03	\$ —	\$ (0.01)
<b>Denominator:</b>				
Basic	155,872,138	115,462,646	155,824,327	57,580,062
Diluted	210,535,600	137,083,825	174,415,402	57,580,062

- (1) The computation of diluted EPS does not include 85,000 shares of common stock underlying options, 100,000 shares of stock appreciation rights and 2,000,000 shares of common stock underlying warrants, as the effect of their inclusion would have been anti-dilutive.
- (2) The computation of diluted EPS does not include \$85,000 shares of common stock underlying options, \$100,000 shares of stock appreciation rights, 2,000,000 shares of common stock underlying warrants, and up to 37,918,483 shares of common stock issuable upon conversion of the 5% Convertible Notes (as defined below) and up to 181,249 shares of common stock issuable upon the conversion of the 8.5% Convertible Notes (as defined below), as the effect of their inclusion would have been anti-dilutive.
- (3) The computation of diluted EPS did not include 122,522 shares of restricted stock, 556,827 shares of common stock underlying options, 6,240,521 shares of common stock underlying warrants, up to 37,918,483 shares of common stock issuable upon conversion of the 5% Convertible Notes and up to 181,249 shares of common stock issuable upon conversion of the 8.5% Convertible Notes, as the effect of their inclusion would have been anti-dilutive.
- (4) The computation of diluted EPS did not include 21,621,179 warrants as the effect of their inclusion would have been anti-dilutive.

#### (6) Stock-based Compensation

On June 27, 2017, the shareholders of the Company voted to amend, and the Company amended, the Amended and Restated 2010 Omnibus Incentive Plan (as amended, the "Omnibus Plan") to increase the number of shares authorized for issuance thereunder by 9,900,000 shares. Awards under the Omnibus Plan may consist of incentive awards, stock options, stock appreciation rights, performance shares, performance units, and shares of common stock, restricted stock, restricted stock units or other stock-based awards as determined by the compensation committee of the Company's board of directors. The Omnibus

Plan has an aggregate of 12,600,000 shares of common stock authorized for issuance thereunder, subject to adjustment as provided therein.

### **Options**

As of December 31, 2017, all options to purchase shares of common stock issued by the Company were fully vested. There was no stock-based compensation expense relating to stock options granted under the Omnibus Plan during the three months and nine months ended September 30, 2018 and 2017, respectively.

As of September 30, 2018, options to purchase 85,000 shares of common stock were outstanding under the Omnibus Plan at a weighted average exercise price of \$6.94 per share. The following table presents the activity of the Company's outstanding stock options of common stock for the nine months ended September 30, 2018:

<b><u>Common Stock Options</u></b>	<b><u>Number of Shares</u></b>	<b><u>Weighted Average Exercise Price per Share</u></b>	<b><u>Weighted Average Remaining Contractual Term</u></b>	<b><u>Aggregate Intrinsic Value</u></b>
Options outstanding, January 1, 2018	542,102	\$ 8.75	1.33	\$ —
Options granted	—	—	—	—
Options exercised	—	—	—	—
Options forfeited	(457,102)	\$ 9.09	—	—
Options expired	—	—	—	—
Options outstanding, September 30, 2018	85,000	\$ 6.94	1.68	\$ —
Exercisable at September 30, 2018	85,000	\$ 6.94	1.68	—
Unvested at September 30, 2018	—	—	—	\$ —

As of September 30, 2018, all outstanding stock options had an exercise price above the fair market value of the common stock on that date. There are no remaining unamortized amounts to be recognized on these options.

### **Restricted Stock**

The Company incurred stock-based compensation expense of approximately \$274,000 and \$77,000 relating to restricted stock granted to its board of directors and certain employees during the three months ended September 30, 2018 and 2017, respectively, and approximately \$485,000 and \$340,000 during the nine months ended September 30, 2018 and 2017, respectively.

During the year ended December 31, 2016, the Company granted 65,212 shares of restricted stock to its directors under the Omnibus Plan, which were subject to a one year vesting period that commenced on the date of grant. The fair value of the restricted stock was valued at approximately \$255,000 based on the closing price of the Company's shares on the date prior to the grant date. The Company incurred stock-based compensation expense related to these 65,212 shares of restricted stock of approximately \$0 and \$106,000 during the three months and nine months ended September 30, 2017, respectively. The 65,212 shares of restricted stock vested during the year ended December 31, 2017.

During the year ended December 31, 2016, the Company granted 200,000 shares of restricted stock units to certain employees under the Omnibus Plan, which are subject to a two year vesting period that commenced on the date of grant. The fair value of the unvested restricted stock was valued at approximately \$674,000 based on the closing price of the Company's shares on the day prior to the grant date. The Company incurred stock-based compensation expense of approximately \$0 and \$60,000 related to these 200,000 shares of restricted stock during the three months ended September 30, 2018 and 2017, respectively and \$23,000 and \$217,000 during the nine months ended September 30, 2018 and 2017, respectively. Approximately 20,000 shares of restricted stock were forfeited during the nine months ended September 30, 2018 with the balance of 74,000 shares of restricted stock vested during the nine months ended September 30, 2018.

During the year ended December 31, 2017, the Company granted 51,132 shares of restricted stock to its directors under the Omnibus Plan, which are subject to a one year vesting period that commenced on the date of grant. The fair value of the unvested restricted stock was valued at approximately \$17,000 based on the closing price of the Company's shares on the date

prior to the grant date. The Company incurred stock-based compensation expense related to these 51,132 shares of restricted stock of approximately \$0 during the three months and nine months ended September 30, 2018. Approximately 42,610 shares of restricted stock vested during the year ended December 31, 2017, with 8,522 vested during the three months and nine months September 30, 2018.

During the year ended December 31, 2017, the Company granted 2,000,000 shares of restricted stock units to certain employees under the Omnibus Plan, which are subject to a two year vesting period that commenced on the date of grant. The fair value of the unvested restricted stock was valued at approximately \$745,000 based on the closing price of the Company's shares on the day prior to the grant date. The Company incurred stock-based compensation expense of approximately \$133,000 and \$313,000 related to these 2,000,000 shares of restricted stock during the three months and nine months ended September 30, 2018. All 2,000,000 shares remained unvested at September 30, 2018.

During the nine months ended September 30, 2018, the Company granted 150,000 shares of restricted stock units to certain employees under the Omnibus Plan, with 100,000 shares and 50,000 subject to a two and three year vesting period, respectively, that commenced on the date of grant. The fair value of the unvested restricted stock was valued at approximately \$58,000 based on the closing price of the Company's shares on the day prior to the grant date. The Company incurred stock-based compensation expense of approximately \$6,000 and \$13,000 related to these 150,000 shares of restricted stock during the three months and nine months ended September 30, 2018. All 150,000 shares remained unvested at September 30, 2018.

During the nine months ended September 30, 2018, the Company established an ad hoc Capital Structure Committee, (the "Committee") consisting of members of the board of directors, to undertake a review of the Company's capital structure. As compensation to the sole non-employee member of the Committee, the Company granted 400,000 restricted stock units under the Omnibus Plan, which will vest on the later of (i) September 30, 2018 and (ii) termination of the director's service on the Committee. The fair value of the restricted stock was valued at approximately \$128,000 based on the closing price of the Company's shares on the date prior to the grant date. The Company incurred stock-based compensation expense related to these 400,000 restricted stock units of approximately \$125,000 and \$128,000 during the three months and nine months ended September 30, 2018. The 400,000 restricted stock units vested during the three months and nine months September 30, 2018.

The following table presents the activity of the Company's unvested shares of restricted stock for the nine months ended September 30, 2018 :

<b>Common Unvested Shares</b>	<b>Number of Shares</b>
Outstanding January 1, 2018	2,102,522
Granted	550,000
Vested	(482,522)
Forfeited	(20,000)
Outstanding September 30, 2018	2,150,000

The aggregate intrinsic value of the awards of 150,000 and 2,000,000 shares is \$41,000 and \$395,000, respectively and the remaining weighted average life of these awards is 1.79 years and 1.13 years respectively as of September 30, 2018. As of September 30, 2018, a total of \$437,000 in stock based compensation remained unrecognized.

**Stock Appreciation Rights (SARs)**

During the nine months ended September 30, 2018, the Company issued 100,000 SARs to the sole non-employee member of the Committee, which will expire 10 years after the date the SARs were granted. The SARs will vest on the later of (i) September 30, 2018 and (ii) termination of the director's service on the Committee and have a fair value of \$9,000 on the grant date. Each SAR entitles the holder to receive, upon exercise, an amount equal to the excess of (a) the fair market value per share of stock on the exercise date, over (b) the exercise price, which is \$1.00, being not less than the fair market value per share of stock on the grant date. Upon exercise of the SARs, the stock appreciation amount shall be paid, as determined solely at the discretion of the Company, in (a) whole shares, (b) cash, or (c) a combination of both cash and shares. The Company incurred stock-based compensation expense of \$9,000 related to these 100,000 SARs during the three months and nine months ended September 30, 2018. The 100,000 SARs units vested during the three months and nine months September 30, 2018.

## (7) Discontinued Operations

On October 25, 2013, the Company sold substantially all of the operating assets comprising its structured settlement business to Majestic Opco LLC pursuant to an Asset Purchase Agreement. No structured settlement receivables were sold and no on-balance sheet liabilities were transferred in connection with the sale. On August 18, 2015, the Company sold its remaining structured settlement receivables asset to the buyer of its operating assets.

As a result of the sale of its structured settlements business, the Company reclassified its structured settlement business operating results as discontinued operations in the accompanying Consolidated Statements of Operations for all periods presented.

Operating results related to the Company's discontinued structured settlement business are as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
Total income	\$ —	\$ —	\$ 17	\$ 33
Total expenses	13	33	35	290
Income (loss) before income taxes	(13)	(33)	(18)	(257)
(Benefit) provision for income taxes	—	—	—	—
Net income (loss) from discontinued operations, net of income taxes	\$ (13)	\$ (33)	\$ (18)	\$ (257)

## (8) Life Settlements (Life Insurance Policies)

The Company accounts for policies it acquires using the fair value method in accordance with ASC 325-30-50 *Investments-Other-Investment in Insurance Contracts*. Under the fair value method, the Company recognizes the initial investment at the purchase price. For policies that were relinquished in satisfaction of premium finance loans at maturity, the initial investment is the loan carrying value. For policies purchased in the secondary or tertiary markets, the initial investment is the amount of cash outlay at the time of purchase. At each reporting period, the Company re-measures the investment at fair value in its entirety and recognizes changes in the Statements of Operations in the periods in which the changes occur.

As of September 30, 2018 and December 31, 2017, the Company owned 590 and 608 policies, respectively, with an aggregate estimated fair value of life settlements of \$588.9 million and \$567.5 million, respectively.

The weighted average life expectancy calculated based on death benefit of insureds in the policies owned by the Company at September 30, 2018 was 7.8 years. The following table describes the Company's life settlements as of September 30, 2018 (dollars in thousands):

Remaining Life Expectancy (In Years)*	Number of Life Settlement Contracts	Estimated Fair Value	Face Value
0 - 1	6	\$ 23,575	\$ 28,540
1 - 2	16	37,103	58,465
2 - 3	29	63,772	124,616
3 - 4	42	69,064	164,538
4 - 5	57	99,244	285,847
Thereafter	440	296,095	2,132,646
<b>Total</b>	<b>590</b>	<b>\$ 588,853</b>	<b>\$ 2,794,652</b>

\*Based on remaining life expectancy at September 30, 2018, as derived from reports of third party life expectancy providers, and does not indicate the timing of expected death benefits. See "Life Settlements" in Note 14, "Fair Value Measurements" of the accompanying consolidated financial statements.

The weighted average life expectancy calculated based on death benefit of insureds in the policies owned by the Company at December 31, 2017 was 8.3 years. The following table describes the Company's life settlements as of December 31, 2017 (dollars in thousands):

Remaining Life Expectancy (In Years)*	Number of Life Settlement Contracts	Estimated Fair Value	Face Value
0-1	9	\$ 29,520	\$ 36,474
1-2	13	30,362	42,718
2-3	25	46,609	92,780
3-4	32	68,439	168,946
4-5	60	98,516	281,865
Thereafter	469	294,046	2,257,704
<b>Total</b>	<b>608</b>	<b>\$ 567,492</b>	<b>\$ 2,880,487</b>

\*Based on remaining life expectancy at December 31, 2017, as derived from reports of third party life expectancy providers, and does not indicate the timing of expected death benefits. See "Life Settlements" in Note 15, "Fair Value Measurements" of the accompanying consolidated financial statements.

During the three months ended September 30, 2018 and 2017, the Company experienced maturities of 6 and 3 life insurance policies, respectively, with face amounts totaling \$32.5 million and \$16.5 million, respectively, resulting in a net gain of approximately \$20.1 million and \$11.6 million, respectively.

During the nine months ended September 30, 2018 and 2017, the Company experienced maturities of 18 and 10 life insurance policies with face amounts totaling \$86.4 million and \$59.6 million, respectively, resulting in a net gain of approximately \$48.1 million and \$30.6 million, respectively.

The below is an analysis of policy maturities for the three months and nine months ended September 30, 2018 and 2017.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
Face value	\$ 32,500	\$ 16,500	\$ 86,435	\$ 59,573
Cost*	14,427	2,516	29,518	9,800
Accumulated Change in Fair Value *	(2,018)	2,388	8,826	19,169
Carrying Value	12,409	4,903	38,344	28,969
Gain on Maturities	\$ 20,091	\$ 11,597	\$ 48,091	\$ 30,603
Number of Policies	6	3	18	10

\* Cost includes purchase price and premiums paid into the policy to date of maturity. Accumulated change in fair value is impacted by changes in discount rate, updated life expectancy estimates on the life insurance policy and cost of insurance increase.

Estimated premiums to be paid for each of the five succeeding fiscal years and thereafter to keep the life insurance policies in force as of September 30, 2018, are as follows (in thousands):

Remainder of 2018	\$ 23,649
2019	100,689
2020	103,875
2021	103,316
2022	99,404
Thereafter	794,442
	<u>\$ 1,225,375</u>

The amount of \$1.23 billion noted above represents the estimated total future premium payments required to keep the life insurance policies in force during the life expectancies of all the underlying insured lives and does not give effect to projected receipt of death benefits. The estimated total future premium payments could increase or decrease significantly to the extent that insurance carriers increase the cost of insurance on their issued policies or that actual mortalities of insureds differs from the estimated life expectancies.

## (9) White Eagle Revolving Credit Facility

Effective April 29, 2013, White Eagle entered into a 15-year revolving credit agreement with LNV Corporation, as initial lender, Imperial Finance & Trading, LLC, as servicer and portfolio manager and CLMG Corp., as administrative agent. Proceeds from the initial advance under the facility were used, in part, to retire a bridge facility and to fund a payment to the lender protection insurance provider to release subrogation rights in certain of the policies pledged as collateral for the White Eagle Revolving Credit Facility. On May 16, 2014, White Eagle Asset Portfolio, LLC converted from a Delaware limited liability company to White Eagle Asset Portfolio, LP, a Delaware limited partnership (the "Conversion") and all of its ownership interests were transferred to an indirect, wholly-owned Irish subsidiary of the Company. In connection with the Conversion, the White Eagle Revolving Credit Facility was amended and restated among White Eagle, as borrower, Imperial Finance and Trading, LLC, as the initial servicer, the initial portfolio manager and guarantor, Lamington Road Bermuda Ltd., as portfolio manager, LNV Corporation, as initial lender, the other financial institutions party thereto as lenders, and CLMG Corp., as administrative agent for the lenders. The White Eagle Revolving Credit Facility was amended on November 9, 2015. As amended, the White Eagle Revolving Credit Facility may provide earlier participation in the portfolio cash flows if certain loan to value ("LTV") ratios are achieved. Additionally, the maximum facility limit was reduced from \$300.0 million to \$250.0 million, and the interest rate under the facility was increased by 50 basis points.

On December 29, 2016, White Eagle entered into a Second Amendment to the Amended and Restated Loan and Security Agreement ("White Eagle Second Amendment") and on January 31, 2017, as required by the terms of the White Eagle Second Amendment, White Eagle executed the Second Amended and Restated Loan and Security Agreement, dated January 31, 2017, which consolidated into a single document the amendments evidenced by the White Eagle Amendment and all previous amendments.

As amended, the White Eagle Revolving Credit Facility adjusted the loan-to-value LTV ratios which directed cash flow participation and became subjected to achieving certain financial metrics, as more fully described below under "Amortization & Distributions." Pursuant to the White Eagle Second Amendment, 190 life settlement policies purchased from wholly owned subsidiaries of the Company were pledged as additional collateral under the facility for an additional policy advance of approximately \$71.1 million. The maximum facility limit was increased to \$370.0 million and the term of the facility was extended to December 31, 2031. Additional loan terms and amendment changes are more fully described in the sections that follow.

On October 4, 2017, White Eagle entered into an amendment to the Second Amended and Restated Loan and Security Agreement. The amendment changed the provisions relating to how participation of the proceeds from the maturity of the policies pledged as collateral under the White Eagle Revolving Credit Facility are distributed pursuant to a waterfall. The amendment included an exclusion from the cash interest coverage ratio of at least 2.0:1 for the period of July 1, 2017 through July 28, 2017. As a result of the amendment, the Company was able to participate in the waterfall distribution scheduled during October 2017.

*General and Security.* The White Eagle Revolving Credit Facility provides for an asset-based revolving credit facility backed by White Eagle's portfolio of life insurance policies with an aggregate lender commitment of up to \$370.0 million, subject to borrowing base availability. 588 life insurance policies with an aggregate death benefit of approximately \$2.8 billion and an estimated fair value of approximately \$587.8 million are pledged as collateral under the White Eagle Revolving Credit Facility at September 30, 2018. In addition, the equity interests in White Eagle have been pledged under the White Eagle Revolving Credit Facility.

*Borrowing Base.* Borrowing availability under the White Eagle Revolving Credit Facility is subject to a borrowing base, which at any time is equal to the lesser of (A) the sum of all of the following amounts that have been funded or are to be funded through the next distribution date: (i) the initial advance and all additional advances to acquire additional pledged policies that are not for ongoing maintenance advances, plus (ii) 100% of the sum of the ongoing maintenance costs, plus (iii) 100% of fees and expense deposits and other fees and expenses funded and to be funded as approved by the required lenders, less (iv) any required payments of principal and interest previously distributed and to be distributed through the next distribution date; (B) 75% of the valuation of the policies pledged as collateral as determined by the lenders; (C) 50% of the aggregate face amount of the policies pledged as collateral (excluding certain specified life insurance policies); and (D) the then applicable facility limit. At September 30, 2018, \$6.5 million was undrawn and \$4.7 million was available to borrow under the White Eagle Revolving Credit Facility. The amount available to borrow is calculated based on and limited to the premium payments and expenses if any, that are due as of the calculation date. In essence, the amount available is what is required to pay expenses and keep the policies in force as of the calculation date.

*Amortization and Distributions.* Proceeds from the maturity of the policies pledged as collateral under the White Eagle Revolving Credit Facility are distributed pursuant to a waterfall. After distributions for premium payments, fees to service providers and payments of interest, a percentage of the collections from policy proceeds are to be paid to the Company, which will vary depending on the then LTV ratio as illustrated below where the valuation is determined by the lenders:

LTV	Premiums, Interest & Other		Distribution to White Eagle -	
	Fees	Principal	55%	Lender Participation - 45%
N/A	100%	—%	—%	—%
>65%	N/A	100%	—%	—%
50-65%	N/A	70%	16.5%	13.5%
35-50%	N/A	55%	24.8%	20.3%
0-35%	N/A	45%	30.3%	24.8%

Provided that (i) if (a) the Company failed to maintain a cash interest coverage ratio of at least 2.0:1 at any time during the immediately preceding calendar quarter or (b) the Company fails to take steps to improve its solvency in a manner acceptable to the required lenders (as determined in their sole and absolute discretion), then the cash flow sweep percentage to the lenders shall equal one-hundred percent (100%) and (ii) if such distribution date occurs on or after December 29, 2025, then the cash flow sweep percentage shall equal one-hundred percent (100%). As of September 30, 2018, the cash interest coverage ratio was 4.68:1 and the loan to value ratio was 66%, as calculated using the lenders' valuation. It should be noted that although the Company met the required cash interest coverage ratio at quarter end, the loan to value threshold was not met at the end of the quarter, as a result, the Company will not participate in any cash flow sweep subsequent to the quarter end.

The cash interest coverage ratio is the ratio of (i) consolidated cash and cash equivalents maintained by the Company to (ii) the aggregate interest amounts that will be due and payable in cash on (x) the \$35.0 million 8.5% Senior Secured Notes due July 15, 2021 (and any notes issued by the Company or any of its Affiliates in connection with refinancing, replacing, substituting or any similar action with respect to any such notes), the \$75.8 million 5% Convertible Notes due February 15, 2023 (and any notes issued by the Company or any of its Affiliates in connection with refinancing, replacing, substituting or any similar action with respect to any such notes), and the \$1.2 million 8.5% Convertible Notes due February 15, 2019 (and any notes issued by the Company or any of its Affiliates in connection with refinancing, replacing, substituting or any similar action with respect to any such notes) and (y) any additional indebtedness issued by the Company after December 29, 2016, in each case, during the twelve month period following such date of determination. See Note 10, "8.50% Senior Unsecured Convertible Notes", Note 11, "5.0% Senior Unsecured Convertible Notes", Note 12, "15.0% Senior Secured Notes", and Note 13, "8.5% Senior Secured Notes", to the accompanying consolidated financial statements for further information.

With respect to approximately 25% of the face amount of policies pledged as collateral under the White Eagle Revolving Credit Facility, White Eagle has agreed that if policy proceeds that are otherwise due are not paid by an insurance carrier, the foregoing distributions will be altered such that the lenders will receive any "catch-up" payments with respect to amounts that they would have received in the waterfall prior to distributions being made to White Eagle. During the continuance of events of default or unmatured events of default, the amounts from collections of policy proceeds that might otherwise be paid to White Eagle will instead be held in a designated account controlled by the lenders and may be applied to fund operating and third party expenses, interest and principal, "catch-up" payments or percentage payments that would go to the lenders as described above.

Assuming no event of default, funds on account from policy proceeds shall be distributed in specified stages of priority. For the three months and nine months ended September 30, 2018, approximately \$12.8 million and \$44.2 million, respectively, of proceeds received from the maturity of policies pledged under the White Eagle Revolving Credit Facility, were distributed through the waterfall in the following stages of priority (in thousands):

Clause	Amount		Use of Proceeds
	Three Months Ended September 30, 2018	Nine Months Ended September 30, 2018	
First:	\$ 84	\$ 251	Custodian and Securities Intermediary
Second:	—	—	White Eagle - Ongoing Maintenance Cost Reimbursable
Third:	—	—	Administrative Agent - Protective Advances
Fourth:	26	43	Administrative Agent - Administrative Agent Fee and Legal Expense Reimbursement
Fifth:	5,844	16,716	Administrative Agent - Accrued and Unpaid Interest
Sixth:	6,854	26,397	Administrative Agent - Required Amortization
Seventh:	—	—	Administrative Agent - Amortization Shortfall
Eighth:	—	340	Administrative Agent - Participation Interest
Ninth:	—	—	Reserved - \$0
Tenth:	—	—	Administrative Agent Aggregate Unpaid Participation Interest
Eleventh:	—	—	Administrative Agent - Remaining Available Amount After Clause First to Tenth
Twelfth:	—	—	Wilmington Trust - Custodian and Securities Intermediary - Unpaid Fees
Thirteenth:	—	416	Borrower - Any Remaining Available Amount After Clause First to Twelfth
<b>Total Distributions</b>	<b>\$ 12,808</b>	<b>\$ 44,163</b>	

Approximately \$7.8 million of the amount distributed during the nine months ended September 30, 2018 was from maturity proceeds collected during the year ended December 31, 2017.

For the three months and nine months ended September 30, 2017, approximately \$16.2 million and \$28.8 million, respectively, of proceeds received from the maturity of policies pledged under the White Eagle Revolving Credit Facility, were distributed through the waterfall in the following stages of priority (in thousands):

Clause	Amount		Use of Proceeds
	Three Months Ended September 30, 2017	Nine Months Ended September 30, 2017	
First:	\$ 84	\$ 228	Custodian and Securities Intermediary
Second:	—	—	White Eagle - Ongoing Maintenance Cost Reimbursable
Third:	—	—	Administrative Agent - Protective Advances
Fourth:	7	30	Administrative Agent - Administrative Agent Fee and Legal Expense Reimbursement
Fifth:	4,600	11,294	Administrative Agent - Accrued and Unpaid Interest
Sixth:	11,558	17,214	Administrative Agent - Required Amortization
Seventh:	—	—	Administrative Agent - Amortization Shortfall
Eighth:	—	—	Administrative Agent - Participation Interest
Ninth:	—	—	Reserved - \$0
Tenth:	—	—	Administrative Agent Aggregate Unpaid Participation Interest
Eleventh:	—	—	Administrative Agent - Remaining Available Amount After Clause First to Tenth
Twelfth:	—	—	Wilmington Trust - Custodian and Securities Intermediary - Unpaid Fees
Thirteenth:	—	—	Borrower - Any Remaining Available Amount After Clause First to Twelfth
<b>Total Distributions</b>	<b>\$ 16,249</b>	<b>\$ 28,766</b>	

The below is a reconciliation of proceeds collected by the White Eagle Revolving Credit Facility and distributed through the waterfall as shown above (in thousands):

Face value collected in 2017 and distributed in 2018	\$ 7,759
Face value collected and distributed during the nine months ended September 30, 2018	36,045
Face value collected in current quarter	32,000
Other collections*	805
Total waterfall collection	<u>76,609</u>
Less: Total waterfall distribution during the nine months ended September 30, 2018	(44,163)
Less: Early principal repayment during the three and nine months ended September 30, 2018	<u>(8,200)</u>
Total to be distributed subsequent to the quarter ended September 30, 2018	<u>24,246</u>

\*Includes refund of premiums and interest earned on maturity proceeds

*Use of Proceeds.* Generally, ongoing advances may be made for paying premiums on the life insurance policies pledged as collateral and to pay the fees of service providers. Effective with the White Eagle Amendment on November 9, 2015, ongoing advances may no longer be used to pay interest, which will now be paid by White Eagle if there is not otherwise sufficient amounts available from policy proceeds to be distributed to pay interest expense pursuant to the waterfall described above in "Amortization and Distributions." Subsequent advances and the use of proceeds from those advances are at the discretion of the lenders. During the three months and nine months ended September 30, 2018 and 2017, advances for premium payments and fees to service providers amounted to (in thousands):

	Three Months Ended September 30, 2018		Nine Months Ended September 30, 2018	
	2018	2017	2018	2017
Amount drawn for premium payments	\$ 16,577	\$ 21,056	\$ 67,189	\$ 63,305
Amount drawn in fees to service providers	629	631	1,910	1,781
Total amount drawn	<u>\$ 17,206</u>	<u>\$ 21,687</u>	<u>\$ 69,099</u>	<u>\$ 65,086</u>

*Interest.* Borrowings under the White Eagle Revolving Credit Facility bear interest at a rate equal to LIBOR or, if LIBOR is unavailable, the base rate, in each case plus an applicable margin of 4.50%, which was increased from 4.00% pursuant to the November 9, 2015 amendment, and subject to a rate floor component equal to the greater of LIBOR (or the applicable rate) and 1.5%. The base rate under the White Eagle Revolving Credit Facility equals the sum of (i) the weighted average of the interest rates on overnight federal funds transactions or, if unavailable, the average of three federal funds quotations received by the Agent plus 0.75% and (ii) 0.5%. Based on the loan agreement, the LIBOR portion of the interest rate will re-adjust annually, once the floor has exceeded 1.5%. The applicable rate will be dependent on the rate at the last business day of the preceding calendar year. On December 29, 2017, the LIBOR floor increased from 1.69% to 2.11%. The effective rate at September 30, 2018 and 2017 was 6.61% and 6.19%, respectively.

Interest paid during the period is recorded in the Company's consolidated financial statements. Accrued interest is reflected as a component of the estimated fair value of the White Eagle Revolving Credit Facility debt. Total interest expense on the facility during the three months and nine months ended September 30, 2018 and 2017 paid through the waterfall distribution from maturity proceeds or paid directly by White Eagle was as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
Interest paid through waterfall	\$ 5,844	\$ 4,600	\$ 16,716	11,294
Interest paid by White Eagle	—	—	—	782
Participation interest paid through waterfall	—	—	340	—
Total interest expense	<u>\$ 5,844</u>	<u>\$ 4,600</u>	<u>\$ 17,056</u>	<u>\$ 12,076</u>

*Maturity.* Effective with the White Eagle Second Amendment, the term of the White Eagle Revolving Credit Facility expires December 31, 2031, which is also the scheduled commitment termination date (though the lenders' commitments to fund borrowings may terminate earlier in an event of default). The lenders' interests in and rights to a portion of the proceeds of the policies does not terminate with the repayment of the principal borrowed and interest accrued thereon, the termination of the White Eagle Revolving Credit Facility or expiration of the lenders' commitments.

*Covenants/Events of Defaults.* The White Eagle Revolving Credit Facility contains covenants and events of default that are customary for asset-based credit agreements of this type, but also includes cross defaults under the servicing, account control, contribution and pledge agreements entered into in connection with the White Eagle Revolving Credit Facility (including in relation to breaches by third parties thereunder), certain changes in law, changes in control or insolvency or bankruptcy of the Company and relevant subsidiary companies and performance of certain obligations by certain relevant subsidiary companies, White Eagle and third parties. Effective with the White Eagle Second Amendment, and as described above in "Amortization and Distributions", the White Eagle Revolving Credit Facility contains a financial covenant requiring White Eagle to maintain a cash interest coverage ratio of at least 1.75:1 commencing after June 30, 2019. Failure to maintain this ratio for 60 consecutive days after June 30, 2019 constitutes an event of default. There is no cash interest coverage ratio requirement that would result in an event of default prior to this date; however, any failure to maintain a cash interest coverage ratio of at least 2.0:1 does impact the cash flow sweep percentage for proceeds distributed through the waterfall. As of September 30, 2018, the cash interest coverage ratio was 4.68:1. The White Eagle Revolving Credit Facility also contains certain tests relating to asset maintenance, performance and valuation, the satisfaction of which will be determined by the lenders with a high degree of discretion.

*Remedies.* The White Eagle Revolving Credit Facility and ancillary transaction documents afford the lenders a high degree of discretion in their selection and implementation of remedies, including strict foreclosure, in relation to any event of default, including a high degree of discretion in determining whether to foreclose upon and liquidate all or any pledged policies, the interests in White Eagle, and the manner of any such liquidation. White Eagle has limited ability to cure events of default through the sale of policies or the procurement of replacement financing.

The Company elected to account for the debt under the White Eagle Revolving Credit Facility in accordance with ASC 820, *Fair Value Measurements and Disclosures*, ("ASC 820") which includes the 45% interest in policy proceeds to the lender, using the fair value method. The fair value of the debt is the amount the Company would have to pay to transfer the debt to a market participant in an orderly transaction. The Company calculated the fair value of the debt using a discounted cash flow model taking into account the stated interest rate of the credit facility and probabilistic cash flows from the pledged policies. Considerable judgment is required in interpreting market data to develop the estimates of fair value. Accordingly, the Company's estimates are not necessarily indicative of the amounts that the Company, or holders of the instruments, could realize in a current market exchange. The most significant assumptions are the estimates of life expectancy of the insured and the discount rate. The use of different assumptions and/or estimation methodologies could have a material effect on the estimated fair values.

At September 30, 2018, the fair value of the outstanding debt was \$367.9 million and the borrowing base was approximately \$368.3 million, which includes \$363.5 million of outstanding principal. Approximately \$4.7 million was available to borrow under the White Eagle Revolving Credit Facility. Subsequent to the quarter end, approximately \$18.1 million was repaid towards the outstanding principal.

There are no scheduled repayments of principal prior to maturity although payments are due upon the next distribution date following the receipt of death benefits and distributed pursuant to the waterfall as described above. At September 30, 2018, approximately \$24.2 million included in restricted cash and cash equivalents (VIE) was on account with White Eagle awaiting distribution through the waterfall.

#### **(10) 8.50% Senior Unsecured Convertible Notes**

In February 2014, the Company issued \$70.7 million in an aggregate principal amount of 8.50% senior unsecured convertible notes due 2019 (the "Convertible Notes" or "8.5% Convertible Notes"). The Convertible Notes were issued pursuant to an indenture dated February 21, 2014, between the Company and U.S. Bank National Association, as trustee (the "Convertible Note Indenture").

The Convertible Notes are general senior unsecured obligations and rank equally in right of payment with all of the Company's other existing and future senior unsecured indebtedness. The Convertible Notes are effectively subordinate to all of

the Company's secured indebtedness to the extent of the value of the assets collateralizing such indebtedness. The Convertible Notes are not guaranteed by the Company's subsidiaries.

The maturity date of the Convertible Notes is February 15, 2019. The Convertible Notes accrue interest at the rate of 8.50% per annum on the principal amount of the Convertible Notes, payable semi-annually in arrears on August 15 and February 15 of each year .

The Convertible Notes are convertible into shares of common stock at any time prior to the close of business on the second scheduled trading day immediately preceding the maturity date. Initially, the Convertible Notes were convertible into shares of common stock at a conversion rate of 147.9290 shares of common stock per \$1,000 principal amount of Convertible Notes (equivalent to a conversion price of \$6.76 per share of common stock). In the second quarter of 2015, the conversion rate was adjusted to 151.7912 shares of common stock per \$1,000 principal amount of Convertible Notes (equivalent to a conversion price of \$6.59 per share of common stock) in connection with an anti-dilution adjustment triggered by a rights offering that resulted in the issuance of 6,688,433 shares of the Company's common stock.

On and after February 15, 2017 and prior to the maturity date, the Company may redeem for cash all, but not less than all, of the Convertible Notes if the last reported sale price of the Company's common stock equals or exceeds 130% of the applicable conversion price for at least 20 trading days during the 30 consecutive trading day period ending on the trading day immediately prior to the date the Company delivers notice of the redemption. The redemption price will be equal to 100% of the principal amount of the Convertible Notes, plus any accrued and unpaid interest to, but excluding, the redemption date. In addition, if a make-whole fundamental change occurs prior to maturity date, and a holder elects to convert its Convertible Notes in connection therewith, the Company will, in certain circumstances, increase the conversion rate by a number of additional shares of common stock for holders who convert their notes prior to the redemption date.

The Company determined that an embedded conversion option existed in the Convertible Notes that was required to be separately accounted for as a derivative under ASC 815 which required the Company to bifurcate the embedded conversion option, record it as a liability at fair value and record a debt discount by an equal amount. Upon receipt of shareholder approval to issue shares of common stock upon conversion of the Convertible Notes in an amount that exceeded applicable New York Stock Exchange limits for issuances without shareholder approval, the Company reclassified the embedded conversion derivative liability to equity. The Convertible Notes are recorded at accreted value and will continue to be accreted up to the par value of the Convertible Notes at maturity.

On February 14, 2017, the Company solicited consents (the "Consent Solicitation") to issue additional 8.50% Convertible Notes (the "Additional Convertible Notes") in lieu of a cash payment of interest on February 15, 2017 (the "2017 Interest Payment Date") to holders of the Convertible Notes.

On March 14, 2017, the Company issued Additional Convertible Notes for an aggregate principal amount of \$3.5 million following the Company's receipt of the requisite consents of the holders of approximately 98% of the aggregate principal amount of Convertible Notes (the "Consenting Holders"), pursuant to the Consent Solicitation, whereby each Consenting Holder agreed to accept Additional Convertible Notes in lieu of a cash payment of interest on the Convertible Notes due on the 2017 Interest Payment Date. All Additional Convertible Notes issued by the Company to Consenting Holders were issued under the Convertible Note Indenture and such Additional Convertible Notes have identical terms to the existing Convertible Notes. Interest on the Additional Convertible Notes accrued from February 15, 2017.

On March 15, 2017 and May 12, 2017, the Company entered into a series of separate Master Transaction Agreements (the "Master Transaction Agreements") by and among the Company, PJC Investments, LLC, a Texas limited liability company ("PJC") and each such Consenting Holder that is a party to such Master Transaction Agreement regarding a series of integrated transactions with the intent to effect a recapitalization of the Company (the "Transaction") which included, among other transactions, a Convertible Note Exchange Offer and a New Convertible Note Indenture providing for the issuance of New Convertible Notes to be delivered in connection with the Transaction (each as defined in the Master Transaction Agreements).

As part of the Transaction, on April 18, 2017, the Company launched an exchange offer (the "Convertible Note Exchange Offer") to the existing holders of its outstanding Convertible Notes for 5.0% Senior Unsecured Convertible Notes due 2023 (the "New Convertible Notes" or "5% Convertible Notes"). At least 98% of the holders of the Convertible Notes were required to be tendered in the Convertible Note Exchange Offer as a condition to closing the Transaction.

On July 26, 2017, the Company's offer to exchange its outstanding \$74.2 million aggregate principal amount of Convertible Notes for its New Convertible Notes expired. Holders of at least 98% of the holders of the Convertible Notes tendered in the Convertible Note Exchange Offer. On July 28, 2017, the Company consummated a series of integrated

transactions to effect a recapitalization of the Company (the "Transaction Closing") pursuant to the Master Transaction Agreements, which transactions included the consummation of the Convertible Note Exchange Offer. The amount exchanged included approximately \$73.0 million of principal outstanding prior to the exchange and approximately \$2.8 million of interest paid in kind at the exchange date. The outstanding principal amount of the Convertible Notes after the exchange was approximately \$1.2 million.

In connection with the Transaction Closing, the Company entered into a supplemental indenture (the "Supplemental Convertible Note Indenture") to the Convertible Note Indenture governing the Convertible Notes. The purpose of the Supplemental Convertible Note Indenture was to eliminate substantially all of the restrictive covenants, eliminate certain events of default, eliminate the covenant restricting mergers and consolidations and modify certain provisions relating to defeasance contained in the Convertible Note Indenture and the Convertible Notes (collectively, the "Proposed Amendments") promptly after the receipt of the requisite consents for the Proposed Amendments.

The Company performed an assessment of the modification of the Convertible Notes under *ASC 470, Debt*, and determined the transaction is a troubled debt restructuring. The Company did not recognize any gain as a result of the restructuring, therefore, approximately \$7.7 million was reclassified to the New Convertible Notes, including \$6.7 million and \$1.0 million related to debt discount and origination cost, respectively. See Note 11 "5.0% Senior Unsecured Convertible Notes" for a description of the changes in terms of the Convertible Notes.

As of September 30, 2018, the carrying value of the Convertible Notes was \$1.2 million, net of unamortized debt discounts and origination costs of \$30,000 and \$4,000, respectively. These are being amortized over the remaining life of the Convertible Notes using the effective interest method.

During the three months ended September 30, 2018, the Company recorded \$46,000 of interest expense on the Convertible Notes, including \$25,000, \$18,000 and \$3,000 from interest, amortizing debt discounts and origination costs, respectively, compared to interest expense of \$3.4 million during the three months ended September 30, 2017, which included \$2.5 million, \$499,000, \$317,000 and \$47,000 from a onetime debt modification cost, interest, amortizing debt discounts and origination costs, respectively.

During the nine months ended September 30, 2018, the Company recorded \$138,000 of interest expense on the Convertible Notes, including \$76,000, \$54,000 and \$8,000 from interest, amortizing debt discounts and origination costs, respectively, compared to interest expense of \$9.2 million during the nine months ended September 30, 2017, which included \$4.1 million, \$2.5 million, \$2.1 million and \$311,000 from interest, onetime debt modification cost, amortizing debt discounts and origination costs, respectively.

### **(11) 5.0% Senior Unsecured Convertible Notes**

On July 26, 2017, the Company's Convertible Note Exchange Offer expired. Holders of at least 98% of the Convertible Notes tendered in the Convertible Note Exchange Offer.

In connection with the Transaction Closing, the Company caused to be issued the New Convertible Notes in an aggregate amount of approximately \$75.8 million pursuant to an Indenture (the "New Convertible Note Indenture") between the Company and U.S. Bank, National Association, as indenture trustee. The terms of the New Convertible Notes are governed by the New Convertible Note Indenture, which provide, among other things, that the New Convertible Notes are unsecured senior obligations of the Company and will mature on February 15, 2023. The New Convertible Notes bear interest at a rate of 5% per annum from the issue date, payable semi-annually on August 15 and February 15 of each year, beginning on August 15, 2017.

Holders of New Convertible Notes may convert their New Convertible Notes at their option on any day prior to the close of business on the second scheduled trading day immediately preceding February 15, 2023. Upon conversion, the Company will deliver shares of Common Stock, together with any cash payment for any fractional share of Common Stock. The initial conversion rate for the New Convertible Notes denominated in \$1,000 increments will be 500 shares of Common Stock per \$1,000 principal amount of New Convertible Notes, which corresponds to an initial conversion price of approximately \$2.00 per share of Common Stock. The initial conversion rate for the New Convertible Notes denominated in \$1.00 increments will be 0.5 shares of Common Stock per \$1.00 principal amount of New Convertible Notes, which corresponds to an initial conversion price of approximately \$2.00 per share of Common Stock. The conversion rate will be subject to adjustment in certain circumstances.

The Company may redeem, in whole but not in part, the New Convertible Notes at a redemption price of 100% of the principal amount of the New Convertible Notes to be redeemed, plus accrued and unpaid interest and additional interest, if any, if and only if the last reported sale price of the Common Stock equals or exceeds 120% of the conversion price for at least 15 trading days in any period of 30 consecutive trading days. The Company may, at its election, pay or deliver as the case may be, to all Holders of the New Convertible Notes, either (a) solely cash, (b) solely shares of Common Stock, or (c) a combination of cash and shares of Common Stock.

The provisions of the New Convertible Note Indenture include a make-whole provision to compensate the Company's debt holders for the lost option time value and forgone interest payments upon the Company experiencing a Fundamental Change (as defined in the New Convertible Note Indenture). These Fundamental Changes revolve around change in beneficial ownership, the consummation of specified transactions which result in the conversion of common stock into other assets or the sale, transfer or lease of all or substantially all of the Company's assets, a majority change in the composition of the Company's Board of Directors, the Company's stockholders' approval of any plan for liquidation of dissolution of the Company, and the Common Stock ceasing to be listed or quoted on a Trading Market (as defined in the New Convertible Note Indenture). The number of incremental additional shares to be issued as a result of a Fundamental Change is based on a table which calculates the adjustment based on the inputs of time and share value.

The New Convertible Note Indenture provides for customary events of default, which include (subject in certain cases to customary grace and cure periods), among others: nonpayment of principal or interest; breach of covenants or other agreements in the New Convertible Note Indenture; defaults or failure to pay certain other indebtedness; and certain events of bankruptcy or insolvency. Generally, if an event of default occurs and is continuing under the New Convertible Note Indenture, the trustee or the holders of at least 25% in aggregate principal amount of the New Convertible Notes then outstanding may declare all unpaid principal plus accrued interest on the New Convertible Notes immediately due and payable, subject to certain conditions set forth in the New Convertible Note Indenture. In addition, holders of the New Convertible Notes may require the Company to repurchase the New Convertible Notes upon the occurrence of certain designated events at a repurchase price of 100% of the principal amount of the New Convertible Notes, plus accrued and unpaid interest.

The New Convertible Note Indenture, among other things, includes provisions such as the Company's failure to timely file any document or report that is required to be filed with the SEC, as well as a registration statement covering the re-sale by holders of the New Convertible Notes not being declared effective by the SEC; the Company's failure to cure such a default within 14 days after the occurrence will result in the Company being required to pay additional interest in cash.

Additional interest on the New Convertible Notes will accrue with respect to the first 90-day period (or portion thereof) following the restricted transfer triggering date, which is 120 days after the last date on which any securities are originally issued under the New Convertible Note Indenture, if certain circumstances occur resulting in a restricted transfer default. For each day that a restricted transfer default is continuing at a rate equal to 0.25% per annum of the principal amount of New Convertible Notes, which rate will increase by an additional 0.25% per annum of the principal amount of the New Convertible Notes for each subsequent 90-day period (or portion thereof) while a restricted transfer default is continuing until all restricted transfer defaults have been cured, up to a maximum of 0.5% of the principal amount of the securities. Following the cure of all restricted transfer defaults, the accrual of additional interest arising from restricted transfer defaults will cease.

The New Convertible Note Indenture states that the sole remedy for an event of default relating to the failure by the Company to comply with the provisions of the New Convertible Note Indenture requiring timely reporting by the Company and for any failure to comply with Section 314(a)(1) of the Trust Indenture Act shall, for the first 365 days after the occurrence of such an Event of Default, consist exclusively of the right to receive special interest on the New Convertible Notes at an annual rate equal to 0.50% of the principal amount of the New Convertible Notes.

As of September 30, 2018, the carrying value of the New Convertible Notes was \$69.5 million, net of unamortized debt discounts and origination costs of \$5.5 million and \$813,000, respectively. These are being amortized over the remaining life of the New Convertible Notes using the effective interest method.

During the three months ended September 30, 2018, the Company recorded \$1.3 million of interest expense on the New Convertible Notes, including \$948,000, \$272,000 and \$40,000 from interest, amortization of debt discount and origination costs, respectively, compared to interest expense of \$863,000 during the three months ended September 30, 2017, which included \$664,000, \$173,000 and \$26,000 from interest, amortizing debt discounts and origination costs, respectively.

During the nine months ended September 30, 2018, the Company recorded \$3.7 million of interest expense on the New Convertible Notes, including \$2.8 million, \$767,000 and \$114,000 from interest, amortization of debt discount and origination

costs, respectively, compared to interest expense of \$863,000 during the nine months ended September 30, 2017, which included \$664,000, \$173,000 and \$26,000 from interest, amortizing debt discounts and origination costs, respectively.

#### **(12) 15.0% Senior Secured Notes**

On March 11, 2016, the Company, as issuer, entered into an indenture (the "Senior Secured Indenture") with Wilmington Trust Company, as indenture trustee (the "Senior Secured Note Trustee"). The Senior Secured Indenture provided for the issuance of up to \$30.0 million in senior secured notes (the "15.0% Senior Secured Notes"), of which approximately \$21.2 million were issued on the Initial Closing Date with an additional \$8.8 million issued on March 24, 2016. The 15.0% Senior Secured Notes were purchased in private transactions exempt from the registration requirements of the Securities Act of 1933, as amended, under the note purchase agreements with certain accredited investors and/or non U.S. persons, including certain members of the Company's board of directors, management and their affiliates, who purchased approximately \$3.3 million of the 15.0% Senior Secured Notes issued.

All outstanding principal and interest amounts due under the 15.0% Senior Secured Note were repaid and canceled on July 28, 2017 in connection with the consummation of the Transaction Closing. See Note 13, 8.5% Senior Secured Notes to the consolidated financial statements.

As a result of the Transaction Closing, approximately \$2.0 million was expensed as extinguishment related to early repayment of the facility, including \$1.5 million and \$518,000 related to prepayment penalty and write off of origination cost, respectively.

During the three months ended September 30, 2017, the Company recorded approximately \$337,500 of interest on the 15.0% Senior Secured Note.

During the nine months ended September 30, 2017, the Company recorded approximately \$2.8 million of interest on the 15.0% Senior Secured Note which included \$2.6 million of interest and \$184,000 of amortizing debt issuance costs, respectively.

#### **(13) 8.5% Senior Secured Notes**

In connection with the Transaction Closing, the Company and the Senior Secured Note Trustee entered into an Amended and Restated Senior Secured Note Indenture (the "Amended and Restated Senior Secured Indenture") to amend and restate the Senior Secured Indenture between the Company and the Senior Secured Note Trustee following the Company's receipt of requisite consents of the holders of the 15% Senior Secured Notes. Pursuant to the terms of the Amended and Restated Senior Secured Indenture, the Company caused the cancellation of all outstanding 15% Senior Secured Notes and the issuance of 8.5% Senior Secured Notes due 2021 (the "8.5% Senior Secured Notes") in an aggregate amount of \$30.0 million. The Amended and Restated Senior Secured Indenture allows for an aggregate of \$40.0 million of 8.5% Senior Secured Notes to be issued thereunder. On August 11, 2017 and August 14, 2017 the Company issued an additional \$3.5 million and \$1.5 million of 8.5% Senior Secured Notes which resulted in total notes issued of \$35.0 million. The Amended and Restated Senior Secured Indenture provides, among other things, that the 8.5% Senior Secured Notes will be secured senior obligations of the Company and will mature on July 15, 2021. The 8.5% Senior Secured Notes bear interest at a rate of 8.5% per annum, payable quarterly on March 15, June 15, September 15 and December 15 of each year, beginning on September 15, 2017. Certain holders of the Company's securities that are party to Board Designation Agreements (as discussed below), purchased approximately \$24.5 million of the 8.5% Senior Secured Notes that were issued in exchange for 15% Senior Secured Notes during the year ended December 31, 2017.

The Amended and Restated Senior Secured Indenture provides that the 8.5% Senior Secured Notes may be optionally redeemed in full by the Company at any time and must be redeemed in full upon additional issuances of debt by the Company, in each case at a price equal to 100% of the principal amount redeemed plus (i) accrued and unpaid interest thereon up to the date of redemption, and (ii) the Applicable Premium, if any, as defined in the Amended and Restated Senior Secured Indenture. Upon a change of control, the Company will be required to make an offer to holders of the 8.5% Senior Secured Notes to repurchase the 8.5% Senior Secured Notes at a price equal to 107.5% of their principal amount, plus accrued and unpaid interest thereon up to the date of redemption.

The Amended and Restated Senior Secured Indenture contains negative covenants restricting additional debt incurred by the Company, creation of liens on the collateral securing the 8.5% Senior Secured Notes, and restrictions on dividends and

stock repurchases, among other things. The 8.5% Senior Secured Notes are secured by settlement proceeds, if any, received from certain litigation involving the Company, certain notes issued to the Company, and pledges of 65% of the equity interests in Blue Heron Designated Activity Company ("Blue Heron"), OLIPP IV, LLC and Red Reef Alternative Investments, LLC.

On January 10, 2018, the Company commenced the process of appointing a liquidator to liquidate Blue Heron. The completion of liquidation formalities of Blue Heron under Irish law is expected to take several months, and liquidation was still pending at September 30, 2018. Blue Heron is an inactive subsidiary of the Company. In connection with liquidation of Blue Heron, the Company and Wilmington Trust, National Association, as trustee under the Amended and Restated Senior Secured Indenture (the "Trustee"), entered into (i) the First Supplemental Indenture (the "First Supplemental Indenture"), dated as of January 10, 2018, to implement certain amendments to the Indenture and (ii) the Amendment to Pledge and Security Agreement ("Pledge and Security Amendment"), dated as of January 10, 2018, to implement certain amendments to the Pledge and Security Agreement. The First Supplemental Indenture and the Pledge and Security Amendment amend the Indenture and Pledge and Security Agreement, respectively, to: (i) remove from the assets pledged to the secured parties under the Amended and Restated Senior Secured Indenture, 65% of the equity and certain other assets of Blue Heron; and (ii) reflect the pledge by the Company, in favor of the secured parties under the Indenture, of the promissory note dated as of December 29, 2016 in the principal sum of \$69.6 million issued by OLIPP IV, LLC to Blue Heron and subsequently assigned to the Company.

The Amended and Restated Senior Secured Indenture provides for customary events of default which include (subject in certain cases to customary grace and cure periods), among others: nonpayment of principal or interest; breach of covenants or other agreements in the Amended and Restated Senior Secured Indenture; defaults in failure to pay certain other indebtedness; and certain events of bankruptcy or insolvency. Generally, if an event of default occurs and is continuing under the Amended and Restated Senior Secured Indenture, the Senior Secured Note Trustee or the holders of at least 25% in aggregate principal amount of the 8.5% Senior Secured Notes then outstanding may declare the principal of and accrued but unpaid interest, plus a premium, if any, on all the 8.5% Senior Secured Notes immediately due and payable, subject to certain conditions set forth in the Amended and Restated Senior Secured Indenture.

At September 30, 2018, the outstanding principal of the 8.5% Senior Secured Notes was \$35.0 million with a carrying value of \$34.1 million, net of unamortized debt issuance cost of \$876,000.

During the three months ended September 30, 2018, the Company recorded approximately \$828,000 of interest expense on the 8.5% Senior Secured Notes, which includes \$760,000 of interest and \$68,000 of amortizing debt issuance costs, respectively compared to approximately \$546,000 of interest expense on the 8.5% Senior Secured Notes, during the three months ended September 30, 2017, which includes \$511,000 of interest and \$35,000 of amortizing debt issuance costs, respectively.

During the nine months ended September 30, 2018, the Company recorded approximately \$2.5 million of interest expense on the 8.5% Senior Secured Notes, which includes \$2.3 million of interest and \$198,000 of amortizing debt issuance costs, respectively, compared to approximately \$546,000 of interest expense on the 8.5% Senior Secured Notes, during the nine months ended September 30, 2017, which includes \$511,000 of interest and \$35,000 of amortizing debt issuance costs, respectively.

#### **(14) 15.0% Promissory Note**

On May 15, 2017, the Company entered into a \$1.5 million Promissory Note with PJC Investments, LLC (the "Bridge Note"), to provide financing to fund the Company's continued operations with a maturity date of July 3, 2017.

The Bridge Note was amended on June 28, 2017 (the "Amended and Restated Bridge Note") to (i) increase the principal amount under the Bridge Note to \$3.3 million and (ii) extend the maturity date from July 3, 2017 to the earlier of (a) July 28, 2017 or (b) the date on which the Master Transaction Agreements are consummated.

Under the Amended and Restated Bridge Note, the Company may request an advance of funds, and PJC shall make an advance to the Company, provided that (i) the aggregate amount of outstanding advances shall not exceed \$3.3 million and (ii) the Company's proposed budgeted use of proceeds for such advance is reasonably acceptable to PJC.

Advances under the Amended and Restated Bridge Note bear interest at an annual rate of 15.0%.

The Amended and Restated Bridge Note includes certain default provisions customary to bridge financing facilities of this type which are subject to customary grace periods, including, among others, (i) defaults related to payment failures; (ii) failure

to comply with covenants; (iii) any material misrepresentation of fact made or deemed made by or on behalf of the Company; (iv) failure by the Company to comply with any of its obligations under any Master Transaction Agreement; (v) defaults in payment of any indebtedness of the Company that continues after the applicable grace or cure period; (vi) bankruptcy and related events and; (vii) change of control without the prior written consent of PJC. Default interest accrues at an annual rate of 17.0%.

The Amended and Restated Bridge Note contains certain affirmative and negative covenants customary for bridge financing facilities of this type.

In consideration for the Bridge Note and pursuant to a fee letter agreement by and between the Company and PJC dated May 15, 2017, the Company agreed to pay an additional termination fee equal to \$1.5 million in the event that the Company becomes obligated to pay certain termination fees pursuant to certain termination provisions under the Master Transaction Agreements.

The Company drew approximately \$870,000 and \$2.8 million on the Amended and Restated Bridge Note and recorded interest expense of approximately \$25,000 and \$36,000 for the three months and nine months ended September 30, 2017, respectively.

All outstanding principal and interest amounts due under the Amended and Restated Bridge Note were repaid on July 28, 2017 in connection with the Transaction Closing.

**(15) Fair Value Measurements**

The Company carries life settlements and debt under the White Eagle Revolving Credit Facility at fair value as shown in the consolidated balance sheets. Fair value is defined as an exit price, representing the amount 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. As such, fair value is a market based measurement that should be determined based on assumptions that market participants would use in pricing an asset or liability. Fair value measurements are classified based on the following fair value hierarchy:

*Level 1*-Valuation is based on unadjusted quoted prices in active markets for identical assets and liabilities that are accessible at the reporting date. Since valuations are based on quoted prices that are readily and regularly available in an active market, valuation of these products does not entail a significant degree of judgment.

*Level 2*-Valuation is determined from pricing inputs that are other than quoted prices in active markets that are either directly or indirectly observable as of the reporting date. Observable inputs include quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, and interest rates and yield curves that are observable at commonly quoted intervals.

*Level 3*-Valuation is based on inputs that are both significant to the fair value measurement and unobservable. Level 3 inputs include situations where there is little, if any, market activity for the financial instrument. The inputs into the determination of fair value generally require significant management judgment or estimation.

*Assets and liabilities measured at fair value on a recurring basis*

The balances of the Company's assets measured at fair value on a recurring basis as of September 30, 2018, are as follows (in thousands):

	Level 1	Level 2	Level 3	Total Fair Value
Assets:				
Investment in life settlements	\$ —	\$ —	\$ 588,853	\$ 588,853
	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 588,853</u>	<u>\$ 588,853</u>

The balances of the Company's liabilities measured at fair value on a recurring basis as of September 30, 2018 are as follows (in thousands):

	Level 1	Level 2	Level 3	Total Fair Value
Liabilities:				
White Eagle Revolving Credit Facility	\$ —	\$ —	\$ 367,931	\$ 367,931
	\$ —	\$ —	\$ 367,931	\$ 367,931

The balances of the Company's assets measured at fair value on a recurring basis as of December 31, 2017, are as follows (in thousands):

	Level 1	Level 2	Level 3	Total Fair Value
Assets:				
Investment in life settlements	\$ —	\$ —	\$ 567,492	\$ 567,492
	\$ —	\$ —	\$ 567,492	\$ 567,492

The balances of the Company's liabilities measured at fair value on a recurring basis as of December 31, 2017, are as follows (in thousands):

	Level 1	Level 2	Level 3	Total Fair Value
Liabilities:				
White Eagle Revolving Credit Facility	\$ —	\$ —	\$ 329,240	\$ 329,240
	\$ —	\$ —	\$ 329,240	\$ 329,240

The Company categorizes its investment in life settlement portfolio in two classes, non-premium financed and premium financed. In considering the categories, historically, it has generally believed that market participants would require a lower risk premium for policies that were non-premium financed, while a higher risk premium would be required for policies that were premium financed; the Company believes that this risk premium has been declining.

(\$ in thousands)

Quantitative Information about Level 3 Fair Value Measurements

	Fair Value at 9/30/18	Aggregate death benefit at 9/30/18	Valuation Technique	Unobservable Input	Range (Weighted Average)
Non-premium financed	\$ 98,680	\$ 296,226	Discounted cash flow	Discount rate	14.50% - 15.50%
				Life expectancy evaluation	(5.1 years)
Premium financed	\$ 490,173	\$ 2,498,426	Discounted cash flow	Discount rate	14.50% - 21.50%
				Life expectancy evaluation	(8.2 years)
Total Life settlements	\$ 588,853	\$ 2,794,652	Discounted cash flow	Discount rate	15.66%
				Life expectancy evaluation	(7.8 years)
White Eagle Revolving Credit Facility	\$ 367,931	\$ 2,782,652	Discounted cash flow	Discount rate	19.27%
				Life expectancy evaluation	(7.8 years)

Following is a description of the methodologies used to estimate the fair values of assets and liabilities measured at fair value on a recurring basis and within the fair value hierarchy.

*Life settlements*—The Company has elected to account for the life settlement policies it acquires using the fair value method. The Company uses a present value technique to estimate the fair value of its life settlements, which is a Level 3 fair value measurement as the significant inputs are unobservable and require significant management judgment or estimation. The Company currently uses a probabilistic method of valuing life insurance policies, which the Company believes to be the preferred valuation method in the industry. The most significant assumptions are the estimates of life expectancy of the insured and the discount rate.

The Company provides medical records for each insured to life expectancy report providers ("LE providers"). Each LE provider reviews and analyzes the medical records and identifies all medical conditions it feels are relevant to the life expectancy determination of the insured. Debits and credits are assigned by each LE provider to the individual's health based on identified medical conditions which are derived from the experience of mortality attributed to relevant conditions in the portfolio of lives that the LE provider monitors. The health of the insured is summarized by the LE provider into a life assessment of the individual's life expectancy expressed both in terms of months and in mortality factor. The mortality factor represents the degree to which the given life can be considered more or less impaired than a life having similar characteristics (e.g. gender, age, smoking, etc.). For example, a standard insured (the average life for the given mortality table) would carry a mortality rating of 100%. A similar but impaired life bearing a mortality rating of 200% would be considered to have twice the chance of dying earlier than the standard life relative to the LE provider's population. Since each provider's mortality factor is based on its own mortality table, the Company calculates its own factors to apply to the table selected by the Company.

The Company calculates mortality factors so that when applied to the mortality table selected by the Company, the resulting LE equals the LE provided by each LE provider. The resulting mortality factors are then blended to determine a factor for each insured.

A mortality curve is then generated based on the calculated mortality factors and the rates from the Company selected mortality table to generate the best estimated probabilistic cash flow stream. The net present value of the cash flows is then calculated to determine the policy value.

If the insured dies earlier than expected, the return will be higher than if the insured dies when expected or later than expected. The calculation allows for the possibility that if the insured dies earlier than expected, the premiums needed to keep the policy in force will not have to be paid. Conversely, the calculation also considers the possibility that if the insured lives longer than expected, more premium payments will be necessary.

The Company uses the 2015 Valuation Basic tables, smoker distinct ("2015 VBT"), mortality tables developed by the U.S. Society of Actuaries (the "SOA"). The mortality tables are created based on the expected rates of death among different groups categorized by factors such as age and gender. The 2015 VBT is based on a large dataset of insured lives, face amount of policies and more current information and its dataset includes 266 million policies. The experience data in the 2015 VBT dataset includes 2.55 million claims on policies from 51 insurance carriers. Life experiences implied by the 2015 VBT are generally longer for male and female nonsmokers between the ages of 65 and 80, while smokers and insureds of both genders over the age of 85 have significantly lower life expectancies. The table shows lower mortality rates in the earlier select periods at most ages, so while the Company continues to fit the life expectancies from the LE providers to the 2015 VBT, the change in the mortality curve changes the timing of the Company's expected cash flow streams.

Future changes in the life expectancies could have a material adverse effect on the fair value of the Company's life settlements, which could have a material adverse effect on its business, financial condition and results of operations.

#### Life expectancy sensitivity analysis

If all of the insured lives in the Company's life settlement portfolio lived six months shorter or longer than the life expectancies provided by these third parties, the change in estimated fair value would be as follows (dollars in thousands):

<u>Life Expectancy Months Adjustment</u>	<u>Value</u>	<u>Change in Value</u>
+6	\$ 497,328	\$ (91,525)
-	\$ 588,853	\$ —
-6	\$ 686,026	\$ 97,173

#### Discount rate

The discount rate incorporates current information about market interest rates, the credit exposure to the insurance company that issued the life insurance policy and our estimate of the risk premium an investor in the policy would require.

The Company re-evaluates its discount rates at the end of every reporting period in order to reflect the estimated discount rates that could reasonably be used in a market transaction involving the Company's portfolio of life settlements. In doing so, consideration is given to the various factors influencing the rates, including risk tolerance and market activity. The Company

relies on management insight, engages third party consultants to corroborate its assessment, engages in discussions with other market participants and extrapolates the discount rate underlying actual sales of policies. In considering these factors, at September 30, 2018, the Company determined that the weighted average discount rate calculated based on death benefit was 15.66% compared to 15.95% at December 31, 2017.

#### Credit exposure of insurance company

The Company considers the financial standing of the issuer of each life insurance policy. Typically, we seek to hold policies issued by insurance companies that are rated investment grade by the top three credit rating agencies. At September 30, 2018, the Company had 19 life insurance policies issued by three carriers that were rated non-investment grade as of that date. In order to compensate a market participant for the perceived credit and challenge risks associated with these policies, the Company applied an additional 300 basis point risk premium.

The following table provides information about the life insurance issuer concentrations that exceed 10% of total death benefit and 10% of total fair value of the Company's life settlements as of September 30, 2018:

<u>Carrier</u>	<u>Percentage of Total Fair Value</u>	<u>Percentage of Total Death Benefit</u>	<u>Moody's Rating</u>	<u>S&amp;P Rating</u>
Transamerica Life Insurance Company	18.8%	20.9%	A1	AA-
Lincoln National Life Insurance Company	23.3%	19.8%	A1	AA-

#### Estimated risk premium

As of September 30, 2018, the Company owned 590 policies with an estimated fair value of \$588.9 million. Of these 590 policies, 516 were previously premium financed and are valued using discount rates that range from 14.50% to 21.50%. The remaining 74 policies, which are non-premium financed, are valued using discount rates that range from 14.50% to 15.50%. As of September 30, 2018, the weighted average discount rate calculated based on death benefit used in valuing the policies in the Company's life settlement portfolio was 15.66%.

#### Market interest rate sensitivity analysis

The discount rate incorporates current information about market interest rates, the credit exposure to the insurance company that issued the life insurance policy and our estimate of the risk premium an investor in the policy would require. The extent to which the fair value could vary in the near term has been quantified by evaluating the effect of changes in the weighted average discount rate on the death benefit used to estimate the fair value. If the weighted average discount rate was increased or decreased by 1/2 of 1% and the other assumptions used to estimate fair value remained the same, the change in estimated fair value would be as follows (dollars in thousands):

#### Weighted Average Rate Calculated Based on

<u>Death Benefit</u>	<u>Rate Adjustment</u>	<u>Value</u>	<u>Change in Value</u>
15.16%	-0.50%	\$ 603,021	\$ 14,168
15.66%	—	\$ 588,853	\$ —
16.16%	+0.50%	\$ 575,241	\$ (13,612)

Future changes in the discount rates we use to value life insurance policies could have a material effect on the Company's yield on life settlement transactions, which could have a material adverse effect on our business, financial condition and results of our operations.

At the end of each reporting period we re-value the life insurance policies using our valuation model in order to update our estimate of fair value for investments in policies held on our balance sheet. This includes reviewing our assumptions for discount rates and life expectancies as well as incorporating current information for premium payments and the passage of time.

*White Eagle Revolving Credit Facility* — As of September 30, 2018, 588 policies are pledged by White Eagle to serve as collateral for its obligations under the White Eagle Revolving Credit Facility. Absent an event of default under the White Eagle Revolving Credit Facility, ongoing borrowings will be used to pay the premiums on these policies and certain approved third party expenses. As more fully described in Note 9, "White Eagle Revolving Credit Facility," proceeds from the maturity of the

policies pledged as collateral under the White Eagle Revolving Credit Facility are distributed pursuant to a waterfall. After premium payments, fees to service providers and payments of interest, a percentage of the collections from policy proceeds are to be paid to the Company, which will vary depending on the then LTV ratio.

The Company elected to account for the debt under the White Eagle Revolving Credit Facility in accordance with ASC 820, which includes the 45% interest in policy proceeds payable to the lender, using the fair value method. The fair value of the debt is the amount the Company would have to pay to transfer the debt to a market participant in an orderly transaction. We calculated the fair value of the debt using a discounted cash flow model taking into account the stated interest rate of the White Eagle Revolving Credit Facility and probabilistic cash flows from the pledged policies. Accordingly, our estimates are not necessarily indicative of the amounts that we, or holders of the instruments, could realize in a current market exchange. The most significant assumptions are the estimates of life expectancy of the insured and the discount rate. The use of different assumptions and/or estimation methodologies could have a material effect on the estimated fair values.

Life expectancy sensitivity analysis of the White Eagle Revolving Credit Facility

A considerable portion of the fair value of the White Eagle Revolving Credit Facility is determined by the timing of receipt of future policy proceeds. Should life expectancies lengthen such that policy proceeds are collected further into the future, the fair value of this debt will decline. Conversely, should life expectancies shorten, the fair value of this debt will increase. Considerable judgment is required in interpreting market data to develop the estimates of fair value.

If all of the insured lives in the life settlement portfolio pledged under the White Eagle Revolving Credit Facility live six months shorter or longer than the life expectancies used to calculate the estimated fair value of the White Eagle Revolving Credit Facility debt, the change in estimated fair value would be as follows (dollars in thousands):

<u>Life Expectancy Months Adjustment</u>	<u>Fair Value of White Eagle Revolving Credit Facility</u>	<u>Change in Value</u>
+6	\$ 322,244	\$ (45,687)
	\$ 367,931	\$ —
-6	\$ 417,084	\$ 49,153

Future changes in the life expectancies could have a material effect on the fair value of the White Eagle Revolving Credit Facility, which could have a material adverse effect on its business, financial condition and results of operations.

Discount rate of the White Eagle Revolving Credit Facility

The discount rate incorporates current information about market interest rates, credit exposure to insurance companies and the Company's estimate of the return a lender lending against the policies would require.

Market interest rate sensitivity analysis of the White Eagle Revolving Credit Facility

The extent to which the fair value of the White Eagle Revolving Credit Facility could vary in the near term has been quantified by evaluating the effect of changes in the weighted average discount. If the weighted average discount rate were increased or decreased by 1/2 of 1% and the other assumptions used to estimate fair value remained the same, the change in estimated fair value of the White Eagle Revolving Credit Facility as of September 30, 2018 would be as follows (dollars in thousands):

<u>Discount Rate</u>	<u>Rate Adjustment</u>	<u>Fair Value of White Eagle Revolving Credit Facility</u>	<u>Change in Value</u>
18.77%	-0.50 %	\$ 375,101	\$ 7,170
19.27%	—	\$ 367,931	\$ —
19.77%	+0.50 %	\$ 361,006	\$ (6,925)

Future changes in the discount rates could have a material effect on the fair value of the White Eagle Revolving Credit Facility, which could have a material adverse effect on its business, financial condition and results of its operations.

At September 30, 2018, the fair value of the debt was \$367.9 million and the outstanding principal was approximately \$363.5 million.

*Changes in Fair Value*

The following table provides a roll-forward in the changes in fair value for the nine months ended September 30, 2018, for all life settlement assets for which the Company determines fair value using a material level of unobservable (Level 3) inputs, which consists solely of life settlements (in thousands):

<b>Life Settlements:</b>	
Balance, January 1, 2018	\$ 567,492
Purchase of policies	—
Change in fair value	40,219
Matured/lapsed/sold policies	(86,435)
Premiums paid	67,577
Transfers into level 3	—
Transfer out of level 3	—
Balance, September 30, 2018	<u>\$ 588,853</u>
Changes in fair value included in earnings for the period relating to assets held at September 30, 2018	<u>\$ (11,420)</u>

The following table provides a roll-forward in the changes in fair value for the nine months ended September 30, 2018, for the White Eagle Revolving Credit Facility for which the Company determines fair value using a material level of unobservable (Level 3) inputs (in thousands):

<b>White Eagle Revolving Credit Facility:</b>	
Balance, January 1, 2018	\$ 329,240
Draws under the White Eagle Revolving Credit Facility	69,099
Payments on White Eagle Revolving Credit Facility	(34,597)
Unrealized change in fair value	4,189
Transfers into level 3	—
Transfer out of level 3	—
Balance, September 30, 2018	<u>\$ 367,931</u>
Changes in fair value included in earnings for period relating to liabilities held at September 30, 2018	<u>\$ 4,189</u>

The following table provides a roll-forward in the changes in fair value for the nine months ended September 30, 2017, for all assets for which the Company determines fair value using a material level of unobservable (Level 3) inputs, which consists solely of life settlements (in thousands):

<b>Life Settlements:</b>	
Balance, January 1, 2017	\$ 498,400
Purchase of policies	—
Change in fair value	53,294
Matured/sold policies	(59,573)
Premiums paid	63,101
Transfers into level 3	—
Transfers out of level 3	—
Balance, September 30, 2017	<u>\$ 555,222</u>
Changes in fair value included in earnings for the period relating to assets held at September 30, 2017	<u>\$ 19,992</u>

The following table provides a roll-forward in the changes in fair value for the nine months ended September 30, 2017, for the White Eagle Revolving Credit Facility for which the Company determines fair value using a material level of unobservable (Level 3) inputs (in thousands):

White Eagle Revolving Credit Facility:		
Balance, January 1, 2017	\$	257,085
Draws under the White Eagle Revolving Credit Facility		65,086
Payments on White Eagle Revolving Credit Facility		(17,214)
Unrealized change in fair value		11,209
Transfers into level 3		—
Transfer out of level 3		—
Balance, September 30, 2017	\$	316,166
Changes in fair value included in earnings for the period relating to liabilities at September 30, 2017	\$	11,209

There were no transfers of financial assets or liabilities between levels of the fair value hierarchy during the nine months ended September 30, 2018 and 2017.

*Other Fair Value Considerations* - Carrying value of certificate of deposits, prepaid expenses and other assets, receivable for maturity of life settlements, investment in affiliates, 8.5% Senior Secured Notes, 8.5% Senior Unsecured Convertible Notes, 5.0% Senior Unsecured Convertible Notes, accounts payable and accrued expenses approximate fair value due to their short-term maturities and/or low credit risk.

#### (16) Segment Information

On October 25, 2013, the Company sold its structured settlement business, which was previously reported as an operating segment. The operating results related to the Company's structured settlement business have been included in discontinued operations in the Company's Consolidated Statements of Operations for all periods presented and the Company has discontinued segment reporting. See Note 7 "Discontinued Operations" to the accompanying consolidated financial statements for further information. Management views its current operations as one segment.

#### (17) Commitments and Contingencies

##### Lease Agreements

The Company leases office space under a lease that commenced on October 1, 2014. The lease expires on September 30, 2020. The annual base rent is \$253,000, with a provision for a 3% increase on each anniversary of the rent commencement date. Rent expense was approximately \$114,000 and \$84,000 for the three months ended September 30, 2018 and 2017, respectively, \$343,000 and \$296,000 for the nine months ended September 30, 2018 and 2017, respectively.

During the three months ended September 30, 2018, the Company entered into a sublease agreement with a subtenant that commenced on October 1, 2018 and expires on September 15, 2020. The annual base rent of the subtenant is \$78,000.

##### Employment Agreements

The Company has entered into employment agreements with certain of its officers, including with its chief financial officer, whose agreement provides for payments in the event that the executive terminates her employment with the Company due to a material change in the geographic location where the chief financial officer performs her duties or upon a material diminution of her base salary or responsibilities, with or without cause (the "2018 Martinez Agreement"). If the Company terminates the 2018 Martinez Agreement without cause or she resigns with Good Reason (as defined in the 2018 Martinez Agreement), she will be entitled to receive her base salary or \$352,229, whichever is greater, through the twelve (12) months following such termination (the "Martinez Severance Period") as well as any bonus earned but not yet paid. If Ms. Martinez resigns for good reason, she will also be entitled to have the Company continue to pay its portion of healthcare premiums for plans in which she is participating immediately prior to the termination through the Martinez Severance Period. If such termination or resignation occurs within two years after a change in control (as defined in the 2018 Martinez Agreement), then in lieu of receiving her base salary, Ms. Martinez would be entitled to receive (i) accrued vacation days, (ii) a lump sum payment equal to the sum of two times her then base salary, (iii) a portion of her bonus prorated through the termination date that would be due to her when bonus payments are otherwise made for the year in which the termination occurs, (iv) any

unpaid portion of a bonus for the year preceding the termination, and (v) reimbursement of COBRA healthcare costs through the Martinez Severance Period.

On March 13, 2018, the Company entered into an employment agreement with Jack Simony (the "Simony Agreement"), pursuant to which Mr. Simony will continue to serve as Vice President and Chief Investment Officer of the Company. The term of the Simony Agreement commenced on March 13, 2018 and continues for one year, with automatic one-year extensions unless (x) either Mr. Simony or the Company gives written notice not to extend at least sixty (60) days' prior to the end of the then-current term or (y) Mr. Simony's employment is terminated in accordance with the terms of the Simony Agreement. Pursuant to the Simony Agreement, Mr. Simony will receive an annual base salary of \$275,000.

The Simony Agreement further provides that Mr. Simony is entitled to participate in all benefit plans provided to executives of the Company. If the Company terminates Mr. Simony's employment without cause or he resigns with Good Reason (as defined in the Simony Agreement), the Simony Agreement provides that he will be entitled to receive his base salary through the six (6) months following such termination (the "Simony Severance Period") as well as any incentive bonus that has been declared or awarded to him for a prior fiscal year but has not yet been paid. If Mr. Simony resigns for good reason, he will also be entitled to have the Company continue to pay its portion of health care premiums for plans in which he is participating immediately prior to the termination through the Simony Severance Period.

On March 13, 2018, the Company entered into an employment agreement with Harvey Werblowsky (the "Werblowsky Agreement"), pursuant to which Mr. Werblowsky will continue to serve as Vice President, Chief Legal Officer and General Counsel of the Company. The term of the Werblowsky Agreement commenced on March 13, 2018 and continues for one year, with automatic one-year extensions unless (x) either Mr. Werblowsky or the Company gives written notice not to extend at least sixty (60) days' prior to the end of the then-current term or (y) Mr. Werblowsky's employment is terminated in accordance with the terms of the Werblowsky Agreement. Pursuant to the Werblowsky Agreement, Mr. Werblowsky will receive an annual base salary of \$250,000.

The Werblowsky Agreement further provides that Mr. Werblowsky is entitled to participate in all benefit plans provided to executives of the Company. If the Company terminates Mr. Werblowsky's employment without cause or he resigns with Good Reason (as defined in the Werblowsky Agreement), the Werblowsky Agreement provides that he will be entitled to receive his base salary through the six (6) months following such termination (the "Werblowsky Severance Period") as well as any incentive bonus that has been declared or awarded to him for a prior fiscal year but has not yet been paid. If Mr. Werblowsky resigns for good reason, he will also be entitled to have the Company continue to pay its portion of health care premiums for plans in which he is participating immediately prior to the termination through the Werblowsky Severance Period.

The Company does not have any general policies regarding the use of employment agreements, but has and may, from time to time, enter into such a written agreement to reflect the terms and conditions of employment of a particular named executive officer, whether at the time of hire or thereafter.

### **Litigation**

In accordance with applicable accounting guidance, the Company establishes an accrued liability for litigation and regulatory matters when those matters present loss contingencies that are both probable and estimable. In such cases, there may be an exposure to loss in excess of any amounts accrued. When a loss contingency is not both probable and estimable, the Company does not establish an accrued liability. As a litigation or regulatory matter develops, the Company, in conjunction with any outside counsel handling the matter, evaluates on an ongoing basis whether such matter presents a loss contingency that is probable and estimable. If, at the time of evaluation, the loss contingency related to a litigation or regulatory matter is not both probable and estimable, the matter will continue to be monitored for further developments that would make such loss contingency both probable and estimable. When a loss contingency related to a litigation or regulatory matter is deemed to be both probable and estimable, the Company will establish an accrued liability with respect to such loss contingency and record a corresponding amount of litigation-related expense. The Company will then continue to monitor the matter for further developments that could affect the amount of any such accrued liability.

### **Sun Life**

On April 18, 2013, Sun Life Assurance Company of Canada ("Sun Life") filed a complaint against the Company and several of its affiliates in the United States District Court for the Southern District of Florida, entitled *Sun Life Assurance Company of Canada v. Imperial Holdings, Inc., et al.* ("Sun Life Case"), asserting, among other things, that at least 28 life insurance policies issued by Sun Life and owned by the Company through certain of its subsidiary companies were invalid. The

Sun Life complaint, as amended, asserted the following claims: (1) violations of the federal Racketeer Influenced and Corrupt Organizations ("RICO") Act, (2) conspiracy to violate the RICO Act, (3) common law fraud, (4) aiding and abetting fraud, (5) civil conspiracy to commit fraud, (6) tortious interference with contractual obligations, and (7) a declaration that the policies issued were void. Following the filing of a motion by the Company to dismiss the Sun Life Case, on December 9, 2014, counts (2), (4), (5), (6) and (7) of the Sun Life Case were dismissed with prejudice. The Company then filed a motion for summary judgment on the remaining counts. On February 4, 2015, the Court issued an order (the "Order") granting the Company's motion for summary judgment on counts (1) and (3), resulting in the Company prevailing on all counts in the Sun Life Case.

On July 29, 2013, the Company filed a separate complaint against Sun Life in the United States District Court for the Southern District of Florida, captioned *Imperial Premium Finance, LLC v. Sun Life Assurance Company of Canada* ("Imperial Case"), which was subsequently consolidated with the Sun Life Case. The Imperial Case asserted claims against Sun Life for breach of contract, breach of the covenant of good faith and fair dealing, and fraud, and sought a judgment declaring that Sun Life is obligated to comply with the promises made by it in certain insurance policies. The Imperial complaint also sought compensatory damages amounting to at least \$30.0 million and an award of punitive damages. On August 23, 2013, Sun Life moved to dismiss the complaint, but the Court denied Sun Life's motion in early 2015. Subsequently, on February 26, 2015, Sun Life appealed the denial to the United States Court of Appeals for the Eleventh Circuit. The Company moved to dismiss Sun Life's appeal and, on December 17, 2015, the Court of Appeals ruled in favor of the Company, dismissing Sun Life's appeal. The Imperial Case therefore returned to the District Court.

On September 22, 2016, however, the District Court granted summary judgment in favor of Sun Life on the entirety of the Imperial Case. Subsequently, on January 12, 2017, the Company appealed the District Court's decision, and on January 24, 2017, Sun Life filed its own notice of appeal. As part of these two appeals, the Court of Appeals will review every dispositive order issued by the District Court throughout the consolidated case. Per the Court of Appeals, oral argument will be scheduled in the near future.

In January 2018, oral argument was held in the Eleventh Circuit Court of Appeals. In September 2018, the Circuit Court ruled that Florida is the jurisdiction for all the Sun Life cases.

#### **Other Litigation**

Other litigation is defined as smaller claims or litigations that are neither individually nor collectively material. It does not include lawsuits that relate to collections.

The Company is party to various other legal proceedings that arise in the ordinary course of business, separate from normal course accounts receivable collections matters. Due to the inherent difficulty of predicting the outcome of these litigations and other legal proceedings, the Company cannot predict the eventual outcome of these matters, and it is reasonably possible that some of them could be resolved unfavorably to the Company. As a result, it is possible that the Company's results of operations or cash flows in a particular fiscal period could be materially affected by an unfavorable resolution of pending litigation or contingencies. However, the Company believes that the resolution of these other proceedings will not, based on information currently available, have a material adverse effect on the Company's financial position or results of operations.

#### **(18) Stockholders' Equity**

The Company has reserved an aggregate of 12,600,000 shares of common stock under its Omnibus Plan, pursuant to which, as of September 30, 2018, options to purchase 85,000 shares of common stock granted to existing employees were outstanding, 100,000 shares of stock appreciation rights had been granted to directors and were vested during the three months ended September 30, 2018, 633,215 shares of restricted stock had been granted to directors with 408,522 shares vested during the three months ended September 30, 2018 and 2,270,000 shares of restricted stock units had been granted to certain employees, with a total of 2,150,000 shares subject to vesting. Approximately 120,000 shares have been vested since granted. There were 9,511,785 securities remaining for future issuance under the Omnibus Plan as of September 30, 2018.

On September 1, 2015, the Company announced that its Board of Directors authorized a \$10.0 million share and note repurchase program. The program had a two-year expiration date, and authorized the Company to repurchase up to \$10.0 million of its common stock and/or its Convertible Notes due 2019. During 2015, the Company purchased 608,000 shares for a total cost of approximately \$2.5 million, which is an average cost of \$4.17 per share, including transaction fees. As of December 31, 2017, the repurchase program has terminated.

## Warrants

On February 11, 2011, three shareholders received warrants that may be exercised for up to a total of 4,240,521 shares of the Company's common stock at a weighted average exercise price of \$14.51 per share. The warrants expired seven years after the date of issuance during the nine months ended September 30, 2018.

In connection with a settlement of class action litigation arising in connection with the investigation by the U.S. Attorney's Office for District of New Hampshire ("USAO") into the Company's now legacy premium finance business (the "USAO Investigation"), the Company issued warrants to purchase 2,000,000 shares of the Company's stock into an escrow account in April of 2014. The estimated fair value as of the measurement date of such warrants was \$5.4 million, which is included in stockholders' equity. The warrants were distributed in October 2014 and have a five-year term from the date they were distributed to the class participants with an exercise price of \$10.75. The Company is obligated to file a registration statement to register the shares underlying the warrants with the SEC if shares of the Company's common stock have an average daily trading closing price of at least \$8.50 per share for a 45 day period. The warrants will be exercisable upon effectiveness of the registration statement.

On July 28, 2017, in connection with the recapitalization transaction, the Company issued common stock purchase warrants to certain investors to purchase up to an aggregate of 42,500,000 shares of the Company's common stock at an exercise price of \$0.20 per share (the "Warrant Shares"). The warrants shall vest and become exercisable as follows: (i) with respect to 17,500,000 Warrant Shares, immediately upon the issuance of the warrants, and (ii) with respect to the remaining 25,000,000 Warrant Shares, at later times tied to the conversion of the Company's Convertible Notes and New Convertible Notes (each as defined below) outstanding on July 28, 2017 into shares of the Company's common stock or, if earlier, upon the date that all Convertible Notes or New Convertible Notes are no longer outstanding. The warrants have an eight year term. The Warrant are subject to anti-dilution adjustment provisions.

## Recapitalization Transactions

On July 28, 2017, the Company consummated a series of integrated transactions to effect a recapitalization of the Company (the "Transaction Closing") pursuant to the Master Transaction Agreements.

### Common Stock Purchase Agreement

In connection with the Transaction Closing, the Company entered into a Common Stock Purchase Agreement (the "Stock Purchase Agreement") by and among the Company, PJC, certain investors jointly designated by PJC and Triax Capital Advisors LLC, a New York limited liability company ("Triax"), to be party to the Stock Purchase Agreement (collectively, the "Common Stock Investors"), and certain Convertible Note Holders that were a party to the Stock Purchase Agreement (collectively, the "Convertible Note Holder Purchasers," and together with PJC and the Common Stock Investors, the "Purchasers"). Pursuant to the Stock Purchase Agreement, the Company issued and sold to the Purchasers 115,000,000 shares (the "Stock Purchase Agreement Shares") of the Company's Common Stock at a price of \$0.20 per share for an aggregate purchase price of \$23.0 million, of which PJC and the Common Stock Investors purchased 75,000,000 Stock Purchase Agreement Shares for an aggregate purchase price of \$15.0 million and the Convertible Note Holder Purchasers, pursuant to the previously announced rights offering which expired on July 26, 2017, purchased 40,000,000 Stock Purchase Agreement Shares for an aggregate purchase price of \$8.0 million, of which PJC purchased 19,320,038 shares in connection with the exercise of rights assigned to it by certain Convertible Note Holder Purchasers. The Stock Purchase Agreement contained customary representations, warranties, and covenants.

In August 2017, the Company entered into a Securities Purchase Agreement (the "Securities Purchase Agreement") by and between the Company and Brennan Opportunities Fund I LP ("Brennan"). Pursuant to the Securities Purchase Agreement, Brennan purchased from the Company 12,500,000 shares (the "Brennan Shares") of Common Stock at a price of \$0.40 per share for an aggregate purchase price of \$5.0 million.

### Articles Amendment

Effective on July 17, 2017, the Company filed an Articles of Amendment to Articles of Incorporation (the "Articles Amendment") to increase the authorized Common Stock from 80,000,000 shares to 415,000,000 shares. As previously disclosed, the Articles Amendment was approved by the Company's shareholders at the Company's 2017 Annual Meeting. The adoption of the Articles Amendment results in a greater number of shares of Common Stock available for issuance.

## Change in Significant Holders

As a result of the consummation of the Master Transaction Agreements, on the date of the Transaction Closing, a change in significant holders of the Company's common stock occurred. PJC and Triax, together with certain of their affiliates, acquired beneficial ownership of approximately 38.9% of the then outstanding Common Stock, based on their aggregate acquisition of 39,320,038 shares of Common Stock and warrants to purchase 27,150,000 shares of Common Stock. Other investors designated by PJC and Triax acquired beneficial ownership of approximately 43.6% of the then outstanding Common Stock, based on their aggregate acquisition of 55,000,000 shares of Common Stock and warrants to purchase 13,350,000 shares of Common Stock. Additionally, pursuant to the Board Designation Agreements, PJC and Triax designated two of seven directors to the Company's Board, two other investors designated a third new director and a fourth new director, and a fifth new director was designated by a holder of New Convertible Notes, collectively resulting in a change in the majority of the Company's Board.

## **(19) Income Taxes**

The Company's provision for income taxes from continuing operations is estimated to result in an annual effective tax rate of 0.0% for the nine months ended September 30, 2018 and 2017, respectively. The Company's quarterly effective income tax rates are based upon the Company's annual estimated tax rate. The Company's annual estimated tax rate varies based upon the Company's expected annual federal taxable earnings, as well as on a mix of taxable earnings in the various state and foreign jurisdictions.

Based on the Company's evaluation, a deferred tax valuation allowance was established against its net deferred tax assets. In its evaluation, management considers taxable loss carryback availability, expectations of sufficient future taxable income, trends in earnings, existence of taxable income in recent years, the future reversal of temporary differences, and available tax planning strategies that could be implemented, if required. Valuation allowances are established based on the consideration of all available evidence using a more likely than not standard. This valuation allowance was determined to be necessary as an offset to the full amount of the federal and state deferred tax asset. During the Nine Months Ended September 30, 2018, the Company does not expect that position to change and therefore is not recording any income tax benefit.

On December 22, 2017 the United States enacted the Tax Cuts and Jobs Act ("TCJA"). Under ASC 740, Income Taxes, the effects of new legislation are recognized upon enactment. Accordingly, Management has reviewed the legislation and addressed the provisions that are most relevant to its business, including the required accounting under ASC 740. Due to the complexities inherent in the tax law changes, the SEC released Staff Accounting Bulletin (SAB) No. 118 on December 22, 2017, to address the application of ASC 740 where a Company does not have the requisite information available, prepared or analyzed in reasonable detail to properly account for items under the TCJA. The SAB has provided that where a Company can make a reasonable estimate, it should record that estimate and make appropriate disclosures with updates during a measurement period of no more than a year from enactment.

The guidance provided by SAB 118 was applied to the Transition Tax enacted by the TCJA. The Company made its best estimate of the impact of the Transition Tax as of December 31, 2017 and concluded that no cash tax obligation would arise from the Transition Tax. During the quarter ended September 30, 2018, the Company changed its U.S. tax year from December 31<sup>st</sup> to November 30<sup>th</sup> and filed federal and state tax returns for the initial short year ended November 30, 2017. For the tax year ended November 30, 2017, the Company recognized a taxable dividend as it related to the Special Dividend Note issued on July 28, 2017 from Lamington Road, Ltd. ("Lamington"), its wholly-owned Irish subsidiary. The taxable dividend represented Lamington's undistributed and previously untaxed accumulated earnings and profits ("E&P") of \$45.4 million. As a result of the reduction in tax earnings and profits from the taxable dividend and Lamington's loss activities through the applicable earnings and profits measurement date of December 31, 2017, Lamington has an earnings and profits deficit. Consequently, the Company has determined that it will not be subject to the Transition Tax.

The TCJA enacted Section 245A that eliminates U.S. federal income tax on dividends received from foreign subsidiaries of domestic corporations under a new participation exemption. However, the TCJA also created a new regime under Section 951A referred to as the Global Intangible Low-Tax Income (GILTI). In general, under the GILTI, income earned in excess of a deemed return on tangible assets held by a controlled foreign corporation must be included as U.S. taxable income on a current basis by its U.S. shareholders. The GILTI is effective for tax years beginning after December 31, 2017. As applied to the Company, the GILTI will be effective for the Company's tax year that begins December 1, 2018. The Company is in the process of exploring tax planning strategies to mitigate or eliminate the potential impacts of the GILTI.

On January 10, 2018 the FASB provided guidance on how to account for deferred tax assets and liabilities expected to reverse in future years as GILTI. The FASB provided that a Company may either (1) elect to treat taxes due on future U.S. inclusions of GILTI as a current-period expense when incurred or (2) factor such amounts into the Company's measurement of its deferred taxes. For ASC 740 purposes, the Company intends to adopt an accounting policy to treat any future GILTI inclusion as a current-period expense instead of providing for U.S. deferred taxes on all temporary differences related to future GILTI items.

In October 2016, the FASB issued ASU No. 2016-16 Income Taxes (Topic 740): Intra-entity transfers of assets other than inventory ("ASU 2016-16"). Current GAAP prohibits the recognition of current and deferred income taxes for an intra-entity asset transfer until the asset has been sold to an outside party. This prohibition on recognition is an exception to the principle of comprehensive recognition of current and deferred income taxes in GAAP. The Board decided that an entity should recognize the income tax consequences of an intra-entity transfer of an asset other than inventory when the transfer occurs. Consequently, the amendments in this update eliminate the exception for an intra-entity transfer of an asset other than inventory. For public business entities, the amendments in this update are effective for annual reporting periods beginning after December 15, 2017. The Company adopted this standard in the March 31, 2018 reporting period which resulted in the elimination of a deferred income tax charge of \$17.6 million, gross related to prior year sales of life settlement policies to its Ireland subsidiaries. The adoption resulted in a reduction of the valuation allowance and had no impact on earnings.

The Company and its subsidiary companies are subject to U.S. federal income tax, as well as to income tax in Florida and other states and foreign jurisdictions in which it operates.

## **(20) Subsequent Events**

### Voluntary Petitions for Relief Under Chapter 11

On November 14, 2018, Lamington Road Designated Activity Company (formerly known as Lamington Road Limited), the Company's wholly-owned indirect Irish subsidiary ("Lamington"), and White Eagle General Partner, LLC, the Company's wholly-owned indirect Delaware subsidiary ("WEGP"), filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. The Chapter 11 cases are being administered under case numbers 18-12615 and 18-12614, respectively (together, the "Chapter 11 Cases"). Lamington is the limited partner and owns 99.99%, and WEGP is the general partner and owns 0.01%, of White Eagle. In its capacity as general partner, WEGP manages the affairs of White Eagle.

The commencement of the Chapter 11 Cases would constitute defaults and events of default under the terms of the Company's Amended and Restated Senior Secured Indenture and the New Convertible Note Indenture. However, such defaults and events of default and their consequences were waived in advance of the Chapter 11 Cases by holders of a majority of the outstanding principal amounts of each of the 8.5% Senior Secured Notes and the New Convertible Notes, and consequently, the Company believes that no defaults, events of default or acceleration of the payment obligations thereunder, including principal or accrued interest, occurred under either the Amended and Restated Senior Secured Indenture or the New Convertible Note Indenture. The commencement of the Chapter 11 Cases constitutes an event of default under the White Eagle Revolving Credit Facility, resulting in the principal and accrued interest due from White Eagle thereunder becoming immediately due and payable. Lamington and WEGP have pledged their respective interests in White Eagle to secure its obligations under the White Eagle Revolving Credit Facility. Any efforts by LNV Corporation, the lender under the White Eagle Revolving Credit Facility ("LNV"), or CLMG Corp., the administrative agent under the White Eagle Revolving Credit Facility ("CLMG"), to enforce such pledges by Lamington and WEGP of their respective interests in White Eagle in connection with the White Eagle Revolving Credit Facility are automatically stayed as a result of the commencement of the Chapter 11 Cases and LNV's and CLMG's rights of enforcement in respect of the White Eagle Revolving Credit Facility are subject to the applicable provisions of the Bankruptcy Code. In addition, on November 15, 2018, White Eagle, LNV and CLMG entered into an Agreement Regarding Rights and Remedies (the "Standstill Agreement"), pursuant to which LNV and CLMG agreed to refrain from exercising their rights and remedies in connection with the White Eagle Revolving Credit Facility, subject to the terms and provisions of the Standstill Agreement, until 12:00 p.m. noon Pacific time on November 26, 2018, to facilitate negotiations.

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

*The following discussion summarizes the significant factors affecting the consolidated operating results, financial condition, liquidity, and cash flows of our Company as of and for the periods presented below and should be read in conjunction with the financial statements and accompanying notes included with this Quarterly Report on Form 10-Q. This discussion contains forward-looking statements that are based on the beliefs of our management, as well as assumptions made by, and information currently available to, our management. Actual results could differ materially from those discussed in or implied by forward-looking statements as a result of various factors. See "Forward-Looking Statements."*

## **Business Overview**

Incorporated in Florida, Emergent Capital owns a portfolio of 590 life insurance policies, also referred to as life settlements, with a fair value of approximately \$588.9 million and an aggregate death benefit of approximately \$2.8 billion at September 30, 2018. The Company primarily earns income on its life insurance policies from changes in their fair value and through death benefits.

The Company has incurred substantial losses and reported negative cash flows from operating activities of \$34.0 million for the nine months ended September 30, 2018 and \$34.8 million for the year ended December 31, 2017. As of September 30, 2018, we had approximately \$31.6 million of cash and cash equivalents and certificates of deposit of \$1.0 million; of this amount, approximately \$2.2 is available to pay premiums on the two unencumbered policies and other overhead expenses, with approximately \$29.3 million being restricted by the White Eagle Revolving Credit Facility.

## **Liquidity**

The Company's ability to continue as a going concern is dependent on its ability to meet its liquidity needs through a combination of the receipt of death benefits from life insurance policy maturities, borrowings under the White Eagle Revolving Credit Facility subject to results of ongoing negotiations with the lenders (see below), strategic capital market raises, policy sales (subject to certain asset sale restrictions) and cash on hand.

As of the filing date of this Form 10-Q, we had approximately \$31.0 million of cash and cash equivalents and certificates of deposit of \$500,000, of this amount, approximately \$2.4 million is available for normal operations, with approximately \$28.1 million being restricted by the White Eagle Revolving Credit Facility. In considering our forecast for the next twelve months and the White Eagle Revolving Credit Facility ongoing negotiations with the lender, these facts, aggregated with the current cash balance as of the filing for this Form 10-Q creates a substantial doubt of the Company's ability to meet their financial needs.

The accompanying consolidated financial statements are prepared on a going concern basis and do not include any adjustments that might result from uncertainty about the Company's ability to continue as a going concern.

## **Recent Events**

On January 22, 2018, the Company entered into a stock purchase agreement (the "Agreement") with SB Holdings, Inc., a California corporation ("Holdings"), and Sherman, Clay & Co., an Indiana corporation and wholly-owned Subsidiary of Holdings ("Sherman, Clay") pursuant to which the Company agreed to purchase all of the issued and outstanding capital stock of Sherman, Clay from Holdings for an initial purchase price of 18,000,000 shares (the "Initial Shares") of the Company's common stock of which 2,700,000 shares will be held back for up to 18 months from closing to offset potential indemnified claims. The initial purchase price is subject to increase pursuant to earn-outs based on financial performance during the first year after the acquisition closes (the "Additional Shares") and, together with the Initial Shares, the "Consideration Shares") as provided for in the Agreement.

The Agreement contains standard representations and warranties related to each party, and may be terminated prior to the closing under certain circumstances. The closing of the purchase of Sherman, Clay under the Agreement (the "Purchase") is subject to a number of closing conditions, including certain regulatory approvals and obtaining financing for working capital and general corporate purposes.

In connection with the consummation of the Purchase, the Company also agreed to, among other things, enter into a registration rights agreement pursuant to which it will register the resale of the Consideration Shares.

On July 10, 2018, Company, Holdings and Sherman, Clay & Co. entered into a letter agreement (the "Letter") terminating the Agreement. The termination was effected by mutual written consent of the Parties pursuant to Section 7.01 of the Agreement, without any liability, obligation or penalty incurred by any Party.

During the nine months ended September 30, 2018, the Company received approval for shares of its common stocks to be traded on the OTCQX® Best Market. Trading on the OTCQX commenced on May 29, 2018 and will continue to trade under the ticker symbol "EMGC."

On September 7, 2018, the Board of Directors adopted resolutions to change the Company's fiscal year end, and have the Company cause its direct and indirect subsidiaries change their fiscal year ends, from December 31 to November 30, effective immediately. The Company will file a transition report on Form 10-K in accordance with SEC rules and regulations.

### **Revolving Credit Facility Events**

Our indirect subsidiary, White Eagle, is the owner of 588 life insurance policies with an aggregate death benefit of approximately \$2.8 billion and a fair value of approximately \$587.8 million at September 30, 2018. White Eagle pledged its policies as collateral to secure borrowings made under the White Eagle Revolving Credit Facility, which is used, among other things, to pay premiums on the life insurance policies owned by White Eagle. Borrowings under the White Eagle Revolving Credit Facility fund the payment of premiums on the life insurance policies that have been pledged as collateral for the White Eagle Revolving Credit Facility. See "Management's Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources."

During the nine months ended September 30, 2018, 18 life insurance policies with face amounts totaling \$86.4 million matured, resulting in a net gain of approximately \$48.1 million. The gains related to these maturities are included in income from changes in the fair value of life settlements in the consolidated statements of operations for the nine months ended September 30, 2018. All policy maturities during the quarter served as collateral under the White Eagle Revolving Credit Facility. Proceeds from maturities totaling \$68.0 million were received during the nine months ended September 30, 2018, with \$24.2 million awaiting distribution through the waterfall. Approximately \$44.2 million inclusive of \$7.8 million collected during the year ended December 31, 2017, was utilized to repay borrowings, interest and expenses under the White Eagle Revolving Credit Facility for the nine months ended September 30, 2018. Assuming we recognize no policy maturities, our estimated premiums for the remainder of 2018 would be \$23.8 million. White Eagle would be eligible to borrow approximately \$23.8 million of this amount to pay premiums on policies secured by the White Eagle Revolving Credit Facility with approximately \$38,000 in estimated premiums required to maintain the policies not pledged as collateral under the White Eagle Revolving Credit Facility as of September 30, 2018.

### **Critical Accounting Policies**

#### ***Critical Accounting Estimates***

The preparation of the financial statements requires us to make judgments, estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of income and expenses during the reporting period. We base our judgments, estimates and assumptions on historical experience and on various other factors that are believed to be reasonable under the circumstances. Actual results could differ materially from these estimates under different assumptions and conditions. We evaluate our judgments, estimates and assumptions on a regular basis and make changes accordingly. We believe that the judgments, estimates and assumptions involved in the accounting for income taxes, the valuation of life settlements, the valuation of the debt owing under the White Eagle Revolving Credit Facility have the greatest potential impact on our financial statements and accordingly believe these to be our critical accounting estimates.

### **Fair Value Measurement Guidance**

We follow ASC 820, *Fair Value Measurements and Disclosures*, which defines fair value as an exit price representing the amount that would be received if an asset were sold or that would be paid to transfer a liability in an orderly transaction between market participants at the measurement date. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or liability. As a basis for considering such assumptions, the guidance establishes a three-level fair value hierarchy that prioritizes the inputs used to measure fair value. Level 1 relates to quoted prices in active markets for identical assets or liabilities. Level 2 relates to observable inputs other than quoted prices included in Level 1. Level 3 relates to unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. Our investments in life insurance policies and Revolving Credit Facility debt are considered Level 3 as there is currently no active market where we are able to observe quoted prices for identical assets/liabilities and our valuation model incorporates significant inputs that are not observable. See Note 15, "Fair Value Measurements" of the notes to Consolidated Financial Statements for a discussion of our fair value measurement.

### **Fair Value Option**

We have elected to account for life settlements using the fair value method. The fair value of the asset is the estimated amount that would be received to sell an asset in an orderly transaction between market participants at the measurement date. We calculate the fair value of the asset using a present value technique to estimate the fair value of its life settlements. The Company currently uses a probabilistic method of valuing life insurance policies, which the Company believes to be the preferred valuation method in the industry. The most significant assumptions are the estimates of life expectancy of the insured and the discount rate. See Note 8, "Life Settlements (Life Insurance Policies)" and Note 15, "Fair Value Measurements" of the notes to Consolidated Financial Statements for further information.

We have elected to account for the debt under the White Eagle Revolving Credit Facility, which includes the interest in policy proceeds to the lender, using the fair value method. The fair value of the debt is the estimated amount that would have to be paid to transfer the debt to a market participant in an orderly transaction. We calculated the fair value of the debt using a discounted cash flow model taking into account the stated interest rate of the credit facility and probabilistic cash flows from the pledged policies. Considerable judgment is required in interpreting market data to develop the estimates of fair value. Accordingly, our estimates are not necessarily indicative of the amounts that we, or holders of the instruments, could realize in a current market exchange. The most significant assumptions are the estimates of life expectancy of the insured and the discount rate. The use of assumptions and/or estimation methodologies could have a material effect on the estimated fair values.

### **Income Recognition**

Our primary sources of income are in the form of changes in fair value of life settlements and gains on life settlements, net. Our income recognition policies for this source of income is as follows:

- *Changes in Fair Value of Life Settlements*—When we acquire certain life insurance policies, we initially record these investments at the transaction price, which is the fair value of the policy for those acquired upon relinquishment or the amount paid for policies acquired for cash. The fair value of the investment in insurance policies is evaluated at the end of each reporting period. Changes in the fair value of the investment based on evaluations are recorded as changes in fair value of life settlements in our consolidated statement of operations. The fair value is determined on a discounted cash flow basis that incorporates current life expectancy assumptions. The discount rate incorporates current information about market interest rates, the credit exposure to the insurance company that issued the life insurance policy and our estimate of the risk premium an investor in the policy would require. The Company recognizes income from life settlement maturities on the date we are in receipt of death notice or verified obituary of the insured. This income is the difference between the death benefits and fair values of the policy at the time of maturity.

### **Deferred Debt Costs**

Deferred debt costs include costs incurred in connection with acquiring and maintaining debt arrangements. These costs are directly deducted from the carrying amount of the liability in the consolidated balance sheets, are amortized over the life of the related debt using the effective interest method and are classified as interest expense in the accompanying consolidated statement of operations. These deferred costs are related to the Company's 8.5% Convertible Notes, 5% Convertible Notes and 8.5% Senior Secured Notes. The Company did not recognize any deferred debt costs on the White Eagle Revolving Credit Facility given all costs were expensed due to electing the fair value option in valuing the White Eagle Revolving Credit Facility.

### **Income Taxes**

We account for income taxes in accordance with ASC 740, *Income Taxes*. Under ASC 740, deferred income taxes are determined based on the estimated future tax effects of differences between the financial statement and tax basis of assets and liabilities given the provisions of enacted tax laws. Deferred income tax provisions and benefits are based on changes to the assets or liabilities from year to year. In providing for deferred taxes, we consider tax regulations of the jurisdictions in which we operate, estimates of future taxable income and available tax planning strategies. If tax regulations, operating results or the ability to implement tax-planning strategies varies, adjustments to the carrying value of the deferred tax assets and liabilities may be required. Valuation allowances are based on the "more likely than not" criteria of ASC 740.

The accounting for uncertain tax positions guidance under ASC 740 requires that we recognize the financial statement benefit of a tax position only after determining that the relevant tax authority would more likely than not sustain the position following an audit. For tax positions meeting the more-likely-than-not threshold, the amount recognized in the financial statements is the largest benefit that has a greater than 50 percent likelihood of being realized upon ultimate settlement with the relevant tax authority. We recognize interest and penalties (if any) on uncertain tax positions as a component of income tax expense.

On December 22, 2017, the United States enacted the Tax Cuts and Jobs Act ("TCJA"). TCJA created a new regime under Section 951A referred to as the Global Intangible Low-Tax Income (GILTI). In general, under the GILTI, income earned in excess of a deemed return on tangible assets held by a controlled foreign corporation must be included as U.S. taxable income on a current basis by its U.S. shareholders. The GILTI is effective for tax years beginning after December 31, 2017. As applied to the Company, the GILTI will be effective for the Company's tax year that begins December 1, 2018. The Company is in the process of exploring tax planning strategies to mitigate or eliminate the potential impacts of the GILTI. On January 10, 2018, the FASB provided guidance on how to account for deferred tax assets and liabilities expected to reverse in future years as GILTI. The FASB provided that a Company may either (1) elect to treat taxes due on future U.S. inclusions of GILTI as a current-period expense when incurred or (2) factor such amounts into the Company's measurement of its deferred taxes. For ASC 740 purposes, the Company has adopted an accounting policy to treat any future GILTI inclusion as a current-period expense instead of providing for U.S. deferred taxes on all temporary differences related to future GILTI items.

### **Stock-Based Compensation**

We have adopted ASC 718, *Compensation—Stock Compensation*. ASC 718 addresses accounting for share-based awards, including stock options, restricted stock, performance shares and warrants, with compensation expense measured using fair value and recorded over the requisite service or performance period of the award. The fair value of equity instruments will be determined based on a valuation using an option pricing model that takes into account various assumptions that are subjective. Key assumptions used in the valuation will include the expected term of the equity award taking into account both the contractual term of the award, the effects of expected exercise and post-vesting termination behavior, expected volatility, expected dividends and the risk-free interest rate for the expected term of the award. Compensation expense associated with performance shares is only recognized to the extent that it is probable the performance measurement will be met.

### ***Held-for-sale and discontinued operations***

The Company reports a business as held-for-sale when management has approved or received approval to sell the business and is committed to a formal plan, the business is available for immediate sale, the business is being actively marketed, the sale is anticipated to occur during the ensuing year and certain other specified criteria are met. A business classified as held-for-sale is recorded at the lower of its carrying amount or estimated fair value less cost to sell. If the carrying amount of the business exceeds its estimated fair value, a loss is recognized. Depreciation is not recorded on assets of a business classified as held-for-sale. Assets and liabilities related to a business classified as held-for-sale are segregated in the Consolidated Balance Sheet and major classes are separately disclosed in the notes to the Consolidated Financial Statements commencing in the period in which the business is classified as held-for-sale. The Company reports the results of operations of a business as discontinued operations if the business is classified as held-for-sale, the operations and cash flows of the business have been or will be eliminated from the ongoing operations of the Company as a result of a disposal transaction and the Company will not have any significant continuing involvement in the operations of the business after the disposal transaction. The results of discontinued operations are reported in Discontinued Operations in the Consolidated Statement of Operations for current and prior periods commencing in the period in which the business meets the criteria of a discontinued operation, and include any gain or loss recognized on closing or adjustment of the carrying amount to fair value less cost to sell. During the fourth quarter of 2013, the Company sold substantially all of our structured settlements business. As a result, the Company has classified its structured settlement operating results as discontinued operations.

### ***Foreign Currency***

The Company owns certain foreign subsidiaries formed under the laws of Ireland, Bahamas and Bermuda. These foreign subsidiaries utilize the U.S. dollar as their functional currency. The foreign subsidiaries' financial statements are denominated in U.S. dollars and therefore, there are no translation gains and losses resulting from translating the financial statements at exchange rates other than the functional currency. Any gains and losses resulting from foreign currency transactions (transactions denominated in a currency other than the subsidiaries' functional currency) are included in income. These gains and losses are immaterial to the Company's financial statements.

### ***Accounting Changes***

Note 3, "*Recent Accounting Pronouncements*," of the Notes to Consolidated Financial Statements discusses accounting standards adopted in 2018, as well as accounting standards recently issued but not yet required to be adopted and the expected impact of these changes in accounting standards. Any material impact of adoption is discussed in Management's Discussion and Analysis of Financial Condition and Results of Operations and in the Notes to the Consolidated Financial Statements.

**Selected Operating Data (dollars in thousands):**

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
<b>End of Period — Policies Owned</b>				
Number of policies owned	590	611	590	611
Average age of insured	84.1	83.2	84.1	83.2
Average death benefit per policy	\$ 4,737	\$ 4,726	\$ 4,737	\$ 4,726
Average Life Expectancy — Calculated LE (Years)	7.8	8.5	7.8	8.5
Aggregate Death Benefit	\$ 2,794,652	\$ 2,887,827	\$ 2,794,652	\$ 2,887,827
Aggregate fair value	\$ 588,853	\$ 555,222	\$ 588,853	\$ 555,222
Monthly premium — average per policy	\$ 13.9	\$ 11.8	\$ 13.9	\$ 11.8
<b>Period Maturities</b>				
Number of policies matured	6	3	18	10
Average age of insured at maturity	87.1	80.3	85.6	82.6
Average life expectancy - Calculated LE (Years)	4.7	6.8	4.7	4.4
Aggregate death benefit	\$ 32,500	\$ 16,500	\$ 86,435	\$ 59,573
Gains on maturity	\$ 20,091	\$ 11,597	\$ 48,091	\$ 30,603
Proceeds collected	\$ 32,000	\$ 8,200	\$ 68,045	\$ 34,373

**Results of Operations**

The following is our analysis of the results of operations for the periods indicated below. This analysis should be read in conjunction with our financial statements, including the related notes to the financial statements. Our results of operations are discussed below in two parts: (i) our consolidated results of continuing operations and (ii) our results of discontinued operations.

**Results of Continuing Operations**

**Three Months Ended September 30, 2018 Compared to Three Months Ended September 30, 2017**

Net loss from continued operations for the quarter ended September 30, 2018 was \$14.3 million as compared to a net loss of \$4.2 million for the same period last year. The following is our analysis of net loss for the period.

	Three Months Ended September 30,				
	2018	2017	Change	% Change	
Income	\$ 29,714	\$ 24,488	\$ 5,226	21%	increase
Expenses	17,963	17,061	902	5%	increase
(Benefit) provision for income taxes	(2,537)	3,210	(5,747)	—%	decrease
<b>Net income (loss)</b>	<b>\$ 14,288</b>	<b>\$ 4,217</b>	<b>\$ 10,071</b>	<b>239%</b>	<b>increase</b>

Income from continuing operations for the three months ended September 30, 2018 was mainly comprised of a gain on maturity of six policies with a net gain of approximately \$20.1 million compared to a net gain on maturity of \$11.6 million of three policies for the same period in 2017.

Total expenses from continuing operations for the three months ended September 30, 2018 were mainly comprised of interest expense on the White Eagle Revolving Credit Facility of \$5.8 million, \$1.3 million on the 5% Convertible Notes, \$828,000 on the 8.5% Senior Secured Notes and \$46,000 on the 8.5% Convertible Notes.

Our income for the three months ended September 30, 2018 was impacted by a net tax benefit of approximately \$2.5 million which includes an estimated tax expense of approximately \$584,000 which represents cash taxes paid during the period and reversal of estimated tax expense from prior quarter of approximately \$3.1 million.

Total expenses from continuing operations for the three months ended September 30, 2017 were mainly comprised of interest expense on the White Eagle Revolving Credit Facility of \$4.6 million, \$3.4 million on the 8.5% Convertible Notes, \$863,000 on the 5% Convertible Notes, \$337,500 on the 15.0% Senior Secured Notes, \$546,000 on the 8.5% Senior Secured Notes; \$2.0 million loss on extinguishment of debt and a change in the fair value of the White Eagle Revolving Credit Facility of \$1.2 million.

Income for the three months ended September 30, 2017 was impacted by a tax expense of approximately \$3.2 million which comprised estimated cash taxes to be paid of approximately \$878,000 and deferred tax expense of approximately \$2.3 million.

During the three months ended September 30, 2017, Lamington issued a promissory note to Markley in a principal amount of \$57.0 million. The amount represents distributions of earnings from Lamington's share of profits of White Eagle, to satisfy the Profit Participation Note issued by Markley to Lamington Road (the "Special Dividend Note"). Management is currently estimating that for tax purposes the issuance of the Special Dividend Note will result in approximately \$878,000 of U.S. cash taxes.

On July 28, 2017, as part of a series of integrated transactions to effectuate a recapitalization of the Company, the Company experienced an ownership change as described under Section 382 of the Internal Revenue Code. As a result of the ownership change, a significant amount of the Company's cumulative U.S. net operating loss carryforwards became unavailable to offset future taxable income. The elimination of this tax attribute, together with a reassessment of the Company's need for a valuation allowance and other movements in its deferred taxes, placed the Company in a net deferred tax liability position. The change resulted in a deferred income tax expense of approximately \$2.3 million.

See Note 19, "Income Taxes," to the accompanying consolidated financial statements for further information.

*Change in fair value of life settlements (in thousands)*

	Three Months Ended September 30,				
	2018	2017	Change	% Change	
Change in fair value of life settlements	\$ 29,299	\$ 24,372	\$ 4,927	20%	increase

During the quarter ended September 30, 2018, six life insurance policies with face amounts totaling \$32.5 million matured compared to three policies with face amounts of \$16.5 million for the same period in 2017. The net gain of these maturities was \$20.1 million and \$11.6 million and is recorded as a change in fair value of life settlements in the consolidated statements of operations for the quarters ended September 30, 2018 and 2017, respectively. Of the maturities during the quarter ended September 30, 2018, all served as collateral under the White Eagle Revolving Credit Facility. Proceeds from maturities totaling \$32.0 million were received during the quarter ended September 30, 2018. Approximately \$12.8 million in policy proceeds were utilized to repay interest and credit facility expenses under the White Eagle Revolving Credit Facility during the quarter ended September 30, 2018. The Company recorded a \$48.4 million receivable for maturity of life settlements at September 30, 2018 relating to policies pledged under the White Eagle Revolving Credit Facility.

Other items impacting the change in fair value include updated life expectancies procured by the Company in respect to the insureds' lives and maturities. The updated life expectancy reports implied that in aggregate, the insureds' health decreased, therefore, shortening their life expectancies relative to the prior life expectancies.

The Company re-evaluates its discount rates at the end of each reporting period in order to reflect the estimated discount rates that could reasonably be used in a market transaction involving the Company's portfolio of life settlements. In doing so, consideration is given to the various factors influencing the rates, including risk tolerance, market activity, credit exposure of the insurance company that issued the life insurance policy, and the estimated risk premium an investor in the policy would require, among other factors. In considering these factors, at September 30, 2018, the Company determined that the weighted average discount rate calculated based on death benefit was 15.66%, compared to 15.95% at December 31, 2017, which is lower than the rate at September 30, 2017 of 15.93%.

As of September 30, 2018, we owned 590 policies with an estimated fair value of \$588.9 million compared to 608 policies with an estimated fair value of \$567.5 million at December 31, 2017, an increase in estimated fair value of \$21.4

million. Of the 590 policies, 588 policies were pledged pursuant to the White Eagle Revolving Credit Facility. There were no policy acquisitions during the three months ended September 30, 2018 and September 30, 2017. As of September 30, 2018, the aggregate death benefit of our life settlements was approximately \$2.8 billion.

Of these 590 policies owned as of September 30, 2018, 516 were previously premium financed and are valued using discount rates that range from 14.50% – 21.50%. The remaining 74 policies are valued using discount rates that range from 14.50% – 15.50%.

See Note 15, "Fair Value Measurements," to the accompanying consolidated financial statements for further information.

*Expenses (in thousands)*

	Three Months Ended September 30,				
	2018	2017	Change	% Change	
Interest expense	\$ 7,982	\$ 9,773	\$ (1,791)	(18)%	decrease
Loss on extinguishment of debt	—	2,018	(2,018)	100 %	decrease
Change in fair value of White Eagle Revolving Credit Facility	6,566	1,163	5,403	465 %	increase
SG&A expenses	3,415	4,107	(692)	(17)%	decrease
<b>Total Expense</b>	<b>\$ 17,963</b>	<b>\$ 17,061</b>	<b>\$ 902</b>	<b>5 %</b>	<b>increase</b>

*Interest expense (in thousands)*

	Three Months Ended September 30,				
	2018	2017	Change	% Change	
White Eagle Revolving Credit Facility	\$ 5,844	\$ 4,599	\$ 1,245	27 %	increase
8.5% Convertible Notes	46	3,400	(3,354)	(99)%	decrease
5% Convertible Notes	1,260	863	397	100 %	increase
15.0% Senior Secured Notes	—	338	(338)	(100)%	decrease
8.5% Senior Secured Notes	828	546	282	100 %	increase
15.0% Promissory Note	—	25	(25)	100 %	decrease
Other	3	2	1	50 %	increase
<b>Total Interest Expense</b>	<b>\$ 7,982</b>	<b>\$ 9,773</b>	<b>\$ (1,791)</b>	<b>(18)%</b>	<b>decrease</b>

Outstanding debt for the quarter ended September 30, 2018 included \$363.5 million of outstanding principal on the White Eagle Revolving Credit Facility, \$1.2 million of 8.5% Convertible Notes, \$75.8 million of 5% Convertible Notes and \$35.0 million of 8.5% Senior Secured Notes.

The White Eagle Revolving Credit Facility interest expense shows an increase of approximately \$1.2 million which is attributable to additional draws under the facility as well as an increase in the interest rate at December 31, 2017. Based on the White Eagle Revolving Credit Facility loan agreement, the LIBOR portion of the interest rate will re-adjust annually once the floor has exceeded 1.5%. The applicable rate will be dependent on the rate on the last business day of the preceding calendar year. At September 30, 2018, the applicable LIBOR rate was 2.11%.

The Company recorded \$46,000 of interest expense on the 8.5% Convertible Notes, including \$25,000, \$18,000 and \$3,000 from interest, amortizing debt discounts and origination costs, respectively, during the three months ended September 30, 2018.

During the three months ended September 30, 2018, the Company recorded \$1.3 million of interest expense on the 5% Convertible Notes, including \$948,000, \$272,000 and \$40,000 from interest, amortization of debt discount and origination costs, respectively.

During the three months ended September 30, 2018, the Company recorded approximately \$828,000 of interest expense on the 8.5% Senior Secured Notes, which includes \$760,000 of interest and \$68,000 of amortizing debt issuance costs.

Of the interest expense of \$9.8 million for the three months ended September 30, 2017, approximately \$4.6 million of interest expense was attributable to the White Eagle Revolving Credit Facility. The increase in interest expense resulted from an increase in the principal balance of the facility and an increase in the LIBOR floor from 1.5% to 1.69% at September 30, 2017.

The Company recorded approximately \$3.4 million of interest expense on the 8.5% Convertible Notes, which included \$2.5 million, \$499,000, \$317,000 and \$47,000 from a onetime debt modification cost, interest, amortizing debt discounts and origination costs, respectively, during the three months ended September 30, 2017.

The Company recorded approximately \$863,000 on the 5% Convertible Notes, which included \$664,000, \$173,000 and \$26,000 from interest, amortization of debt discount and origination costs, respectively, during the three months ended September 30, 2017, respectively.

The Company recorded approximately \$337,500 of interest expense on the 15.0% Senior Secured Notes during the three months ended September 30, 2017. The debt was fully repaid during the year ended December 31, 2017.

The Company recorded approximately \$546,000 of interest expense on the 8.5% Senior Secured Notes, during the three months ended September 30, 2017 which includes \$511,000 of interest and \$35,000 of amortizing debt issuance costs, respectively, during the three months ended September 30, 2017.

See Notes 9, "White Eagle Revolving Credit Facility," 10, "8.50% Senior Unsecured Convertible Notes," 11, "5.0% Senior Unsecured Convertible Notes," 12, "15.0% Senior Secured Notes," and 13 "8.5% Senior Secured Notes," to the accompanying consolidated financial statements for further information.

*Loss on extinguishment of debt (in thousands)*

	Three Months Ended September 30,				
	2018	2017	Change	% Change	
Loss on extinguishment of debt	\$ —	\$ 2,018	\$ (2,018)	100%	decrease

During the three months ended September 30, 2017, approximately \$2.0 million was recorded in loss on the extinguishment of debt for the 15.0% Senior Secured Notes, including \$1.5 million and \$518,000 related to prepayment penalty and write off of origination cost, respectively.

*Change in fair value of Revolving Credit Facility (in thousands)*

	Three Months Ended September 30,				
	2018	2017	Change	% Change	
White Eagle Revolving Credit Facility	\$ 6,566	\$ 1,163	\$ 5,403	465%	increase

At September 30, 2018, the White Eagle Revolving Credit Facility incurred a loss of approximately \$6.6 million compared to a loss of \$1.2 million for the same period in 2017. The loss in 2018 and 2017 are attributable to a combination of offsetting factors as discussed below.

During the three months ended September 30, 2018, the fair value of the White Eagle Revolving Credit Facility was impacted by increased borrowings, the shortening of life expectancies of certain insureds' underlying policies pledged under the White Eagle Revolving Credit Facility and a slight increase in the discount rate used to value the facility.

During the three months ended September 30, 2017, the fair value was also impacted by increased borrowings and the lengthening of life expectancies certain insureds' underlying policies pledged under the White Eagle Revolving Credit Facility and a slight increase in the discount rates.

The White Eagle Revolving Credit Facility is valued at September 30, 2018 using a discount rate of 19.27% compared to 18.33% for the three months ended September 30, 2017.

See Note 15, "Fair Value Measurements," to the accompanying consolidated financial statements for further information.

*Selling, general, and administrative expenses (in thousands)*

	Three Months Ended September 30,				
	2018	2017	Change	% Change	
Personnel costs	\$ 623	\$ 2,040	\$ (1,417)	(69)%	decrease
Legal fees	446	821	(375)	(46)%	decrease
Professional fees	1,755	667	1,088	163 %	increase
Insurance	193	198	(5)	(3)%	decrease
Other SG&A expenses	398	381	17	4 %	increase
<b>Total SG&amp;A Expenses</b>	<b>\$ 3,415</b>	<b>\$ 4,107</b>	<b>\$ (692)</b>	<b>(17)%</b>	<b>decrease</b>

The decrease in operating expenses was primarily a result of a decrease in personnel costs of \$1.4 million, a decrease in legal expense of \$375,000 offset by an increase in professional fees of \$1.1 million and an increase in other operating expenses of \$17,000.

On August 3, 2017 and August 11, 2017, as a reduction in force, the Company reduced its headcount from 20 employees to 12 employees, and included in this reduction in force were two of the Company's executive officers. During the three months ended September 30, 2017, the Company recognized a onetime severance cost of approximately \$1.0 million related to this reduction, the amounts are included in personnel cost and are being paid over a period of twelve months.

#### **Results of Discontinued Operations**

##### **Three Months Ended September 30, 2018 Compared to Three Months Ended September 30, 2017**

	Three Months Ended September 30,				
	2018	2017	Change	% Change	
Total income	\$ —	\$ —	\$ —	— %	
Total expenses	13	33	(20)	(61)%	decrease
Income (loss) before income taxes	(13)	(33)	20	(61)%	decrease
<b>Net income (loss), net of income taxes</b>	<b>\$ (13)</b>	<b>\$ (33)</b>	<b>\$ 20</b>	<b>(61)%</b>	<b>decrease</b>

Net loss from our discontinued structured settlement operations for the quarter ended September 30, 2018 was \$13,000 compared to a net loss of \$33,000 for the same quarter in 2017. There was \$0 income from our discontinued structured settlement operations for the quarters ended September 30, 2018 and 2017.

Total expenses from our discontinued structured settlement operations were \$13,000 for the quarter ended September 30, 2018 compared to \$33,000 during the same period in 2017.

## Results of Continuing Operations

### Nine Months Ended September 30, 2018 Compared to Nine Months Ended September 30, 2017

Net income from continued operations for the nine months ended September 30, 2018 was \$689,000 compared to \$372,000 for the same period last year. The following is our analysis for the period.

	Nine Months Ended September 30,				
	2018	2017	Change	% Change	
Income	\$ 40,868	\$ 53,539	\$ (12,671)	(24)%	decrease
Expenses	39,595	50,701	(11,106)	(22)%	decrease
Provision for income taxes	584	3,210	(2,626)	(82)%	decrease
<b>Net income/(loss)</b>	<b>\$ 689</b>	<b>\$ (372)</b>	<b>\$ 1,061</b>	<b>(285)%</b>	<b>increase</b>

Income for the nine months ended September 30, 2018 was comprised mainly of a gain on maturity of eighteen life settlements of \$48.1 million compared to a net gain of \$30.6 million on maturity of ten life settlements during the same period in 2017. Income for the nine months ended September 30, 2018 was negatively impacted by updated life expectancies procured by the Company in respect to the insureds' lives and maturities.

Total expenses from continuing operations for the nine months ended September 30, 2018 were mainly comprised of interest expense on the White Eagle Revolving Credit Facility of \$16.7 million; \$3.7 million on the 5% Convertible Notes; \$2.5 million on the 8.5% Senior Secured Notes; \$138,000 on the 8.5% Convertible Notes and a change in the fair value of the White Eagle Revolving Credit Facility of \$4.2 million.

Our income for the nine months ended September 30, 2018 was impacted by tax expense of approximately \$584,000 relating to cash taxes paid during the period.

During the nine months ended September 30, 2017, Lamington issued a promissory note to Markley in a principal amount of \$57.0 million. The amount represents distributions of earnings from Lamington's share of profits of White Eagle, to satisfy the Profit Participation Note issued by Markley to Lamington Road (the "Special Dividend Note"). Management is currently estimating that for tax purposes the issuance of the Special Dividend Note will result in approximately \$878,000 of U.S. cash taxes.

On July 28, 2017, as part of a series of integrated transactions to effectuate a recapitalization of the Company, the Company experienced an ownership change as described under Section 382 of the Internal Revenue Code. As a result of the ownership change, a significant amount of the Company's cumulative U.S. net operating loss carryforwards became unavailable to offset future taxable income. The elimination of this tax attribute, together with a reassessment of the Company's need for a valuation allowance and other movements in its deferred taxes, placed the Company in a net deferred tax liability position. The change resulted in a deferred income tax expense of approximately \$2.3 million.

See Note 19, "Income Taxes" to the accompanying consolidated financial statements for further information.

### Change in fair value of life settlements (in thousands)

	Nine Months Ended September 30,				
	2018	2017	Change	% Change	
Change in fair value of life settlements	\$ 40,219	\$ 53,294	\$ (13,075)	(25)%	decrease

During the nine months ended September 30, 2018, eighteen life insurance policies with face amounts totaling \$86.4 million matured compared to ten policies with face amounts totaling \$59.6 million for the same period in 2017. The net gain of these maturities was \$48.1 million and \$30.6 million for 2018 and 2017, respectively, and is recorded as a change in fair value of life settlements in the consolidated statements of operations for the nine months ended September 30, 2018 and 2017. All eighteen of the maturities served as collateral under the White Eagle Revolving Credit Facility. Proceeds from maturities totaling \$68.0 million were received during the nine months ended September 30, 2018. Of this amount, approximately \$44.2 million inclusive of approximately \$7.8 million collected during the year ended December 31, 2017 was utilized to repay borrowings, interest and credit facility expenses under the White Eagle Revolving Credit Facility. The Company also recorded a \$48.4 million receivable for maturity of life settlements at September 30, 2018 relating to policies pledged under the White Eagle Revolving Credit Facility.

Other items impacting the change in fair value include updated life expectancies procured by the Company in respect to the insureds' lives and maturities. The updated life expectancy reports implied that in aggregate, the insureds' health improved, therefore, lengthening their life expectancies relative to the prior life expectancies.

The Company re-evaluates its discount rates at the end of each reporting period in order to reflect the estimated discount rates that could reasonably be used in a market transaction involving the Company's portfolio of life settlements. In doing so, consideration is given to the various factors influencing the rates, including risk tolerance, market activity, credit exposure of the insurance company that issued the life insurance policy, and the estimated risk premium an investor in the policy would require, among other factors.

At September 30, 2018, the Company determined that the weighted average discount rate calculated based on death benefit was 15.66%, compared to 15.95% at December 31, 2017, which is lower than the rate at September 30, 2017 of 15.93%.

As of September 30, 2018, we owned 590 policies with an estimated fair value of \$588.9 million compared to 608 policies with a fair value of \$567.5 million at December 31, 2017, an increase of \$21.4 million. Of the 590 policies, 588 policies were pledged to the White Eagle Revolving Credit Facility. As of September 30, 2018 the aggregate death benefit of our life settlements was approximately \$2.8 billion.

Of the 590 policies owned as of September 30, 2018, 516 were previously premium financed and are valued using discount rates that range from 14.50% to 21.50%. The remaining 74 policies are valued using discount rates that range from 14.50% to 15.50%.

See Note 15, Fair Value Measurements," to the accompanying consolidated financial statements for further information.

*Expenses (in thousands)*

	Nine Months Ended September 30,				
	2018	2017	Change	% Change	
Interest expense	\$ 23,383	\$ 25,471	\$ (2,088)	(8)%	decrease
Loss on extinguishment of debt	—	2,018	(2,018)	100 %	decrease
Change in fair value of Revolving Credit Facility	4,189	11,209	(7,020)	(63)%	decrease
SG&A expenses	12,023	12,003	20	— %	increase
<b>Total Expense</b>	<b>\$ 39,595</b>	<b>\$ 50,701</b>	<b>\$ (11,106)</b>	<b>(22)%</b>	<b>decrease</b>

*Interest expense (in thousands)*

	Nine Months Ended September 30,				
	2018	2017	Change	% Change	
White Eagle Revolving Credit Facility	\$ 16,716	\$ 12,075	\$ 4,641	38 %	increase
8.5% Convertible Notes	138	9,160	(9,022)	(98)%	decrease
5% Convertible Notes	3,724	863	2,861	332 %	increase
15.0% Senior Secured Notes	—	2,784	(2,784)	(100)%	decrease
8.5% Senior Secured Notes	2,454	546	1,908	349 %	increase
15.0% Promissory Note	—	36	(36)	(100)%	decrease
Participation Interest - White Eagle Revolving Credit Facility	340	—	340	100 %	increase
Other	11	7	4	57 %	increase
<b>Total Interest Expense</b>	<b>\$ 23,383</b>	<b>\$ 25,471</b>	<b>\$ (2,088)</b>	<b>(8)%</b>	<b>decrease</b>

Outstanding debt for the nine months ended September 30, 2018 included \$363.5 million of outstanding principal on the White Eagle Revolving Credit Facility, \$1.2 million of 8.5% Convertible Notes, \$75.8 million of 5% Convertible Notes and \$35.0 million of 8.5% Senior Secured Notes.

The Company's outstanding debt increased by \$54.3 million from \$421.3 million at September 30, 2017 to \$475.6 million at September 30, 2018. The increase is attributable to a net increase in principal of \$54.3 million on the White Eagle Revolving Credit Facility.

Of the interest expense of \$23.4 million for the nine months ended September 30, 2018, approximately \$16.7 million represents interest paid on the White Eagle Revolving Credit Facility. The increase in interest expense resulted from an increase in the principal balance of the facility and an increase in the LIBOR floor from 1.69% to 2.11% at September 30, 2018.

Interest expense on the 8.5% Convertible Notes totaled \$138,000, including \$76,000, \$54,000 and \$8,000 from interest, amortizing debt discounts and origination costs, respectively during the nine months ended September 30, 2018.

The Company recorded \$1.3 million of interest expense on the 5% Convertible Notes, including \$948,000, \$272,000 and \$40,000 from interest, amortization of debt discount and origination costs, during the nine months ended September 30, 2018, respectively.

The Company recorded approximately \$2.5 million of interest expense on the 8.5% Senior Secured Notes, during the nine months ended September 30, 2018 which includes \$2.3 million of interest and \$198,000 of amortizing debt issuance costs, respectively.

Of the interest expense of \$25.5 million for the nine months ended September 30, 2017, approximately \$12.1 million of interest expense was attributable to the White Eagle Revolving Credit Facility. The increase in interest expense resulted from an increase in the principal balance of the facility and an increase in the LIBOR floor from 1.5% to 1.69% at September 30, 2017.

Interest expense on the 8.5% Convertible Notes totaled \$9.2 million, including \$4.1 million, \$2.5 million, \$2.1 million and \$311,000 representing interest, one time debt modification cost, amortization of debt discount and issuance costs, respectively during nine months ended September 30, 2017.

The Company recorded approximately \$863,000 of interest expense on the 5% Convertible Notes which included \$664,000, \$173,000 and \$26,000 from interest, amortizing debt discounts and origination costs, respectively, during the nine months ended September 30, 2017.

The Company recorded approximately \$546,000 of interest expense on the 8.5% Senior Secured Notes, which includes \$511,000 of interest and \$35,000 of amortizing debt issuance costs, respectively during the nine months ended September 30, 2017.

We recorded \$2.8 million of interest expense on the 15.0% Senior Secured Notes, including \$2.6 million, and \$184,000, from interest and amortizing debt issuance costs, respectively, during the nine months ended September 30, 2017.

See Notes 9, "White Eagle Revolving Credit Facility," 10, "8.50% Senior Unsecured Convertible Notes," 11, "5% Senior Unsecured Convertible Notes," 12, "15.0% Senior Secured Notes," 13, "8.5% Senior Secured Notes," and 14, "15.0% Promissory Note," to the accompanying consolidated financial statements for further information.

*Loss on extinguishment of debt (in thousands)*

	Nine Months Ended September 30,				
	2018	2017	Change	% Change	
Loss on extinguishment of debt	\$ —	\$ 2,018	\$ (2,018)	(100)%	decrease

During the nine months ended September 30, 2017, approximately \$2.0 million was recorded in loss on the extinguishment of debt for the 15.0% Senior Secured Notes, including \$1.5 million and \$518,000 related to prepayment penalty and write off of origination cost, respectively.

*Change in fair value of Revolving Credit Facility (in thousands)*

	Nine Months Ended September 30,				
	2018	2017	Change	% Change	
White Eagle Revolving Credit Facility	\$ 4,189	\$ 11,209	\$ (7,020)	(63)%	decrease

During the nine months ended September 30, 2018, the White Eagle Revolving Credit Facility incurred a loss of approximately \$4.2 million compared to a loss of \$11.2 million for the same period in 2017. The loss in 2018 and loss 2017 are attributable to a combination of offsetting factors as discussed below.

During the nine months ended September 30, 2018, the fair value of the White Eagle Revolving Credit Facility was impacted by increased borrowings, the lengthening of life expectancies of certain insureds' underlying policies pledged under the White Eagle Revolving Credit Facility and a slight increase in the discount rate used to value the facility.

During the nine months ended September 30, 2017, the fair value was also impacted by increased borrowings offset by the shortening of life expectancy estimates for the policies pledged under the White Eagle Revolving Credit Facility, and a decrease in the discount rate.

See Note 15, "Fair Value Measurements," to the accompanying consolidated financial statements for further information.

*Selling, general, and administrative expenses (in thousands)*

	Nine Months Ended September 30,				
	2018	2017	Change	% Change	
Personnel costs	\$ 2,329	\$ 4,174	\$ (1,845)	(44)%	decrease
Legal fees	3,080	2,473	607	25 %	increase
Professional fees	4,654	3,475	1,179	34 %	increase
Insurance	590	587	3	1 %	increase
Other SG&A	1,370	1,294	76	6 %	increase
<b>Total SG&amp;A Expenses</b>	<b>\$ 12,023</b>	<b>\$ 12,003</b>	<b>\$ 20</b>	<b>— %</b>	<b>increase</b>

The increase in SG&A expenses was primarily a result of an increase in legal expense of \$607,000, an increase in professional fees of \$1.2 million, offset by a decrease in personnel cost of \$1.8 million.

On August 3, 2017 and August 11, 2017, as a reduction in force, the Company reduced its headcount from 20 employees to 12 employees, included in this reduction in force were two of the Company's executive officers. During the nine months ended September 30, 2017, the Company recognized a onetime severance cost of approximately \$1.0 million related to this reduction, which amounts are being paid over a period of twelve months.

### Results of Discontinued Operations

#### Nine Months Ended September 30, 2018 Compared to Nine Months Ended September 30, 2017

	Nine Months Ended September 30,				
	2018	2017	Change	% Change	
Total income (loss)	\$ 17	33	\$ (16)	(48)%	decrease
Total expenses	35	290	(255)	(88)%	decrease
Income (loss) before income taxes	(18)	(257)	(275)	107 %	decrease
Income tax benefit	—	—	—	— %	
<b>Net income (loss), net of income taxes</b>	<b>\$ (18)</b>	<b>\$ (257)</b>	<b>\$ 239</b>	<b>(93)%</b>	<b>decrease</b>

Net loss from our discontinued structured settlement operations for the nine months ended September 30, 2018 was \$18,000 as compared to a net loss of \$257,000 for the same period in 2017. Total income from our discontinued structured settlement operations was \$17,000 compared to \$33,000 for the nine months ended September 30, 2018 and 2017, respectively.

Total expenses from our discontinued structured settlement operations were \$35,000 for the nine months ended September 30, 2018 compared to \$290,000 incurred during the same period in 2017.

### Liquidity and Capital Resources

Our consolidated financial statements have been prepared assuming the realization of assets and the satisfaction of liabilities in the normal course of business, as well as continued compliance with the covenants contained in the White Eagle Revolving Credit Facility, the indentures governing our 8.5% Convertible Notes, 5% Convertible Notes, 8.5% Senior Secured Notes and other financing arrangements.

The payment of premiums to maintain the life insurance policies represents our most significant requirement for cash disbursement. On a quarterly basis, we calculate the minimum premium payments required to maintain the policies in-force. Over time, as an insured ages, the relevant premium payments will increase. Nevertheless, the probability we will actually be required to pay the premium decreases as mortality becomes more likely. In addition to premiums, we incur policy servicing costs, including updated medical records, updated life expectancies and securities intermediaries fees; in most cases, these amounts are determined by the number of policies we own. The majority of these costs relates to the 588 policies pledged as collateral under the White Eagle Revolving Credit Facility, and as a result, we are able to pay these cost through draws under the facility.

At September 30, 2018, we had approximately \$31.6 million of cash and cash equivalents and certificates of deposit of \$1.0 million. Of this amount, approximately \$2.2 million was available to pay premiums on two policies that have not been pledged as collateral under the White Eagle Revolving Credit Facility and for other overhead expenses, with approximately \$29.3 million restricted to the White Eagle Revolving Credit Facility. We expect to meet our liquidity needs for the foreseeable future, to the extent we are able to do so, primarily through a combination of the receipt of death benefits from life insurance policy maturities, borrowings under the White Eagle Revolving Credit Facility, policy sales (subject to the asset sale restrictions in our debt arrangements) cash on hand and board member capital commitments (see discussion on liquidity below).

For the nine months ended September 30, 2018, we paid \$67.6 million in premiums to maintain our policies in force. Of this amount, approximately \$67.5 million was paid by White Eagle through its borrowings. While the liquidity risk associated with the policies that have been pledged as collateral under the White Eagle Revolving Credit Facility has been mitigated, any distributions from available proceeds under the White Eagle Revolving Credit Facility will vary based on the respective, then

current loan to value ratio. Accordingly, there can be no assurance as to when proceeds from maturities of the policies pledged as collateral under the White Eagle Revolving Credit Facility will be distributed to the Company. Additionally, White Eagle cannot borrow under the facility to pay interest. To the extent there are insufficient collections from policy proceeds to cover these amounts, these required payments will stress our available cash. Assuming no policy maturities, as of September 30, 2018, we expect to pay \$38,000 in premiums during the remainder of 2018 on the two policies that have not been pledged under the White Eagle Revolving Credit Facility. As of September 30, 2018, the cash interest coverage ratio was 4.68:1 and the loan to value ratio was 66%, as calculated using the lenders' valuation. It should be noted that although the Company met the required cash interest coverage ratio at quarter end, the loan to value threshold was not met at the end of the quarter, and as a result, the Company will not participate in any cash flow sweep subsequent to the quarter end.

The following table illustrates the total amount of face value of life insurance policies owned, the trailing 12- months of life insurance policy maturities realized and premiums paid on our portfolio. The trailing 12-month maturities/premium coverage ratio indicates the ratio of policy maturities realized to premiums paid over the trailing 12-month period from our portfolio of life insurance policies.

Quarter End Date	Portfolio Face Amount (\$)	12-Month Trailing Maturities Realized (\$)	12-Month Trailing Premiums Paid (\$)	12-Month Trailing Maturities/Premiums Coverage Ratio (%)
March 31, 2015	3,001,987	27,188	57,723	47%
June 30, 2015	2,982,416	63,768	59,990	106%
September 30, 2015	2,997,903	67,468	63,124	107%
December 31, 2015	2,979,352	67,403	64,923	104%
March 31, 2016	2,969,670	67,195	66,049	102%
June 30, 2016	2,966,388	34,815	67,843	51%
September 30, 2016	2,953,796	43,915	69,430	63%
December 31, 2016	2,946,511	37,460	71,681	52%
March 31, 2017	2,908,876	62,330	75,609	82%
June 30, 2017	2,903,899	63,353	79,378	80%
September 30, 2017	2,887,827	67,053	82,032	82%
December 30, 2017	2,880,487	67,176	84,751	79%
March 31, 2018	2,852,803	57,026	86,561	66%
June 30, 2018	2,826,863	78,039	87,650	89%
September 30, 2018	2,794,652	94,039	89,263	105%

We believe that the life insurance policy maturities we receive will continue to increase over time in relation to the premiums we are required to pay on the remaining policies in the portfolio but do expect that our portfolio cash flow on a period-to-period basis will remain inconsistent given its dependence on actual maturities.

At September 30, 2018, we had \$75.8 million, \$35 million and \$1.2 million and in aggregate principal amount of outstanding 5% Convertible Notes, 8.5% Senior Secured Notes and 8.5% Convertible Notes, which accrue interest at 5.0%, 8.5%, and 8.5%, respectively. Interest on the 5.0% Convertible Notes and the 8.5% Convertible Notes are due semi-annually while interest on the 8.5% Senior Secured Notes is due quarterly.

### **Liquidity**

The Company's ability to continue as a going concern is dependent on its ability to meet its liquidity needs through a combination of the receipt of death benefits from life insurance policy maturities, borrowings under the White Eagle Revolving Credit Facility subject to results of ongoing negotiations with the lender (see below), strategic capital market raises, policy sales (subject to certain asset sale restrictions) and cash on hand.

As of the filing date of this Form 10-Q, the outstanding principal on the White Eagle Revolving Credit Facility was approximately \$358.6 million, with approximately \$11.4 million undrawn and \$23.0 million received in maturity proceeds awaiting distribution through the waterfall to repay principal and interest. The maximum lender's commitment for the facility is \$370 million. White Eagle's current cash flow forecast indicates a probability that it may reach the limit on its ability to make

additional borrowings by the end of December 2018, assuming no further collection of receivables. The timing could be later if any maturity proceeds are received. White Eagle is currently in negotiations with the lender, although no assurance can be given as to any changes to the current terms.

Based on the terms of the White Eagle Revolving Credit Facility, if the making of any advance by the lender would cause the aggregate principal amount of all advances outstanding to exceed the borrowing base, White Eagle can sell policies in an amount sufficient to pay scheduled premiums subject to the lender's approval. The proceeds of any such sale would be distributed through the waterfall, and by virtue of the sale, White Eagle would no longer have to pay premiums on the sold policies. The White Eagle Revolving Credit Facility also allows the lender to make protective advances on pledged policies other than those being contemplated for sale. Any such protective advances made by the lender would be reimbursed to the lender through the waterfall and receives priority over interest payments.

Distributions to the Company from available proceeds through the waterfall under the White Eagle Revolving Credit Facility will vary based on the respective, then current loan to value ratio. Our current cash flow forecast indicates a probability the Company will not participate in the waterfall distributions until July 2019.

As of the filing date of this Form 10-Q, we had approximately \$31.0 million of cash and cash equivalents and certificates of deposit of \$500,000, of this amount, approximately \$2.4 million is available for normal operations, with approximately \$28.1 million being restricted by the White Eagle Revolving Credit Facility. In considering our forecast for the next twelve months and the White Eagle Revolving Credit Facility ongoing negotiations with the lender, these facts, aggregated with the current cash balance as of the filing for this Form 10-Q creates a substantial doubt of the Company's ability to meet their financial needs.

#### Subsequent Event

On November 14, 2018, Lamington Road Designated Activity Company (formerly known as Lamington Road Limited), the Company's wholly-owned indirect Irish subsidiary ("Lamington"), and White Eagle General Partner, LLC, the Company's wholly-owned indirect Delaware subsidiary ("WEGP"), filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. See Note 20, "Subsequent Events," of the accompanying consolidated financial statements for further information.

#### **Financing Arrangements Summary**

##### *White Eagle Revolving Credit Facility*

White Eagle is the borrower under a \$370.0 million revolving credit facility, with Imperial Finance and Trading, LLC, as the initial servicer, the initial portfolio manager and guarantor, Lamington Road Bermuda Ltd., as portfolio manager, LNV Corporation, as initial lender, the other financial institutions party thereto as lenders, and CLMG Corp., as administrative agent for the lenders.

Borrowing availability under the White Eagle Revolving Credit Facility is subject to a borrowing base, which, among other items, is capped at 75% of the valuation of the policies pledged as collateral. This loan to value calculation is determined by the lenders with a high degree of discretion. At September 30, 2018, \$6.5 million was undrawn and \$4.7 million was available to borrow under the White Eagle Revolving Credit Facility. For a discussion of the calculation of the facility's borrowing base availability, see Note 9, "White Eagle Revolving Credit Facility—Borrowing Base & Availability" of the accompanying consolidated financial statements for further information.

At September 30, 2018, the fair value of the debt under the White Eagle Revolving Credit Facility was \$367.9 million, the borrowing base was approximately \$368.3 million, including \$363.5 million in outstanding principal. Interest calculated as LIBOR (subject to a floor of 1.5%) plus an applicable margin of 4.5% is due quarterly. Interest totaling \$17.1 million inclusive of approximately \$340,000 in participation interest was paid during the nine months ended September 30, 2018 from policy proceeds. There are no scheduled repayments of principal prior to maturity although payments are due upon receipt of death benefits and distributed pursuant to the waterfall. At September 30, 2018, approximately \$24.2 million included in cash and cash equivalents -VIE was on account with White Eagle for distribution through the waterfall.

Based on the White Eagle Revolving Credit Facility loan agreement, the LIBOR portion of the interest rate will re-adjust annually once the floor has exceeded 1.5%. The applicable rate will be dependent on the rate at the last business day of the preceding calendar year. Future increase in LIBOR could have a material adverse effect on the Company's financial position and results of operations. At September 30, 2018, LIBOR was 2.11%.

#### 8.50% Senior Unsecured Convertible Notes

At September 30, 2018, there was \$1.2 million in aggregate principal amount of the Company's 8.50% Senior Unsecured Convertible Notes due 2019 outstanding (the "Convertible Notes"). For a description of the Convertible Notes see Note 10, "8.50% Senior Unsecured Convertible Notes," of the accompanying consolidated financial statements for further information.

#### 5.0% Senior Unsecured Convertible Notes

At September 30, 2018, there was \$75.8 million in aggregate principal amount of the Company's 5.0% Senior Unsecured Convertible Notes due 2023 outstanding (the "New Convertible Notes" or "5% Convertible Notes"). For a description of the New Convertible Notes see Note 11, "5.0% Senior Unsecured Convertible Notes," of the accompanying consolidated financial statements for further information.

#### 8.5% Senior Secured Notes

At September 30, 2018, there was \$35.0 million in aggregate principal amount of the Company's 8.5% Senior Secured Notes due 2021 outstanding (the "8.5% Senior Secured Notes"). For a description of the 8.5% Senior Secured Notes see Note 13, "8.5% Senior Secured Notes," of the accompanying consolidated financial statements for further information.

### Cash Flows

#### Cash Flows

The following table summarizes our cash flows from operating, investing and financing activities for the nine months ended September 30, 2018 and 2017 (in thousands):

	<b>Nine Months Ended September 30,</b>	
	<b>2018</b>	<b>2017</b>
<b>Statement of Cash Flows Data:</b>		
Total cash (used in) provided by:		
Operating activities	\$ (33,960)	\$ (24,743)
Investing activities	463	(23,707)
Financing activities	33,786	72,825
Increase (decrease) in cash and cash equivalents	<u>\$ 289</u>	<u>\$ 24,375</u>

#### Operating Activities

During the nine months ended September 30, 2018, operating activities used cash of \$34.0 million. Our net gain of \$672,000 was adjusted for the following: change in fair value of life settlement gain of \$40.2 million that is mainly attributable to maturities of eighteen policies; change in fair value of the White Eagle Revolving Credit Facility loss of \$4.2 million that is mainly attributable to increased borrowings, increase in life expectancies of certain insureds underlying policies pledged as collateral in the facility and a slight increase in the discount rate; and a net negative change in the components of operating assets and liabilities of \$951,000. This \$951,000 change in operating assets and liabilities is partially attributable to a \$948,000 decrease in interest payable on the 5% convertible notes, a \$186,000 decrease in other liabilities, a \$100,000 increase in prepaid and other assets and a \$316,000 increase in accounts payable and accrued expenses.

During the nine months ended September 30, 2017, operating activities used cash of \$24.7 million. Our net loss of \$629,000 was adjusted for the following: 8.5% Convertible Notes debt modification cost of \$2.5 million; amortization of discount and deferred cost for the 8.5% Convertible Notes of \$2.4 million; change in fair value of life settlement gain of \$53.3 million that is mainly attributable to maturities of ten policies; change in fair value of the White Eagle Revolving Credit Facility loss of \$11.2 million that is mainly attributable to increased borrowings offset by the shortening of life expectancies of

certain insureds underlying policies pledged as collateral in the facility and a slight decrease in the discount rate; interest paid in kind on the 8.5% Convertible Notes of \$6.3 million; loss on extinguishment of debt of \$2.0 million; deferred tax liability of \$2.3 million and a net positive change in the components of operating assets and liabilities of \$876,000. This \$876,000 change in operating assets and liabilities is partially attributable to a \$2.3 million decrease in interest payable for the 8.5% Convertible Notes, a \$142,000 decrease in prepaid and other assets, a \$878,000 increase in current tax liability, a \$485,000 increase in interest payable for the 5% Convertible Notes and a \$1.9 million increase in accounts payable and accrued expenses.

#### ***Investing Activities***

Net cash provided by investing activities for the nine months ended September 30, 2018 was \$463,000 and includes proceeds of \$68.0 million from the maturity of life settlements, offset by \$67.6 million for premiums paid on life settlements.

Net cash used in investing activities for the nine months ended September 30, 2017 was \$23.7 million and includes proceeds of \$34.4 million from the maturity of life settlements and redemption proceeds of \$5.0 million from certificates of deposit. This was offset by \$63.1 million for premiums paid on life settlements.

#### ***Financing Activities***

Net cash provided by financing activities for the nine months ended September 30, 2018 was \$33.8 million and includes \$68.4 million of borrowings from the White Eagle Revolving Credit Facility, offset by \$34.6 million in repayment of borrowings under the White Eagle Revolving Credit Facility.

Net cash provided by financing activities for the nine months ended September 30, 2017 was \$72.8 million and includes \$64.4 million of borrowings from the White Eagle Revolving Credit Facility \$19.2 million net proceeds from the issuance of common stock, \$5.0 million proceeds from the 8.5% Senior Secured Notes and \$2.8 million of borrowings from the Amended and Restated Bridge Note. These were offset by \$17.2 million in repayment under the White Eagle Revolving Credit Facility and \$1.3 million recapitalization of closing costs.

#### ***Inflation***

Our assets and liabilities are, and will be in the future, interest-rate sensitive in nature. As a result, interest rates may influence our performance far more than inflation. Changes in interest rates do not necessarily correlate with inflation or changes in inflation rates. We do not believe that inflation had any material impact on our results of operations in the periods presented in our financial statements presented in this report.

#### ***Off-Balance Sheet Arrangements***

At September 30, 2018, there were no off-balance sheet arrangements between us and any other entity that have, or are reasonably likely to have, a current or future effect on our financial condition, changes in financial condition, revenue or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to shareholders.

### **Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

Market risk is the risk of potential economic loss principally arising from adverse changes in the fair value of financial instruments. The major components of market risk are credit risk, interest rate risk and foreign currency risk. As of September 30, 2018, we did not hold a material amount of financial instruments for trading purposes.

#### **Credit Risk**

Credit risk consists primarily of the potential loss arising from adverse changes in the financial condition of the issuers of the life insurance policies that we own. Although we may purchase life settlements from carriers rated below investment grade, to limit our credit risk, we generally only purchase life settlements from companies that are investment grade.

The following table provides information about the life insurance issuer concentrations that exceed 10% of total death benefit and 10% of total fair value of our life settlements as of September 30, 2018:

<b>Carrier</b>	<b>Percentage of Total Fair Value</b>	<b>Percentage of Total Death Benefit</b>	<b>Moody's Rating</b>	<b>S&amp;P Rating</b>
Transamerica Life Insurance Company	18.8%	20.9%	A1	AA-
Lincoln National Life Insurance Company	23.3%	19.8%	A1	AA-

#### ***Interest Rate Risk***

At September 30, 2018, fluctuations in interest rates did not impact interest expense in the life finance business. The White Eagle Revolving Credit Facility accrues interest at LIBOR plus an applicable margin. LIBOR is subject to a floor of 1.5%.

Based on the White Eagle Revolving Credit Facility loan agreement, the LIBOR portion of the interest rate will re-adjust annually once the floor has exceeded 1.5%. The applicable rate will be dependent on the rate at the last business day of the preceding calendar year. At September 30, 2018, the applicable LIBOR rate was 2.11%.

Future increases in LIBOR could have a material adverse effect on the Company's financial position and results of operations. Increases in LIBOR above the floor provided in the White Eagle Revolving Credit Facility will also affect the calculation of the fair value of the debt under the White Eagle Revolving Credit Facility. Additional increases in interest rates may impact the rates at which we are able to obtain financing in the future.

We earn income on the changes in fair value of the life insurance policies we own. However, if the fair value of the life insurance policies we own decreases, we record this reduction as a loss.

As of September 30, 2018, we owned life settlements with a fair value of \$588.9 million. A rise in interest rates could potentially have an adverse impact on the sale price if we were to sell some or all of these assets, which could also decrease the borrowing base available to White Eagle under the applicable White Eagle Revolving Credit Facility. There are several factors that affect the market value of life settlements, including the age and health of the insured, investors' demand, available liquidity in the marketplace, duration and longevity of the policy, and interest rates. We currently do not view the risk of a decline in the sale price of life settlements due to normal changes in interest rates as a material risk.

#### ***Foreign Currency Exchange Rate Risk***

Changes in the exchange rate between transactions denominated in a currency other than our foreign subsidiaries' functional currency are immaterial to our operating results. Exposure to foreign currency exchange rate risk may increase over time as our business evolves.

#### **Item 4. CONTROLS AND PROCEDURES**

##### **Evaluation of Disclosure Controls and Procedures**

Our management, with the participation of our chief executive officer and chief financial officer, conducted an evaluation of our disclosure controls and procedures, as such term is defined under Rules 13a-15(e) and 15d-15(e) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Based on this evaluation, our chief executive officer and chief financial officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this Quarterly Report on Form 10-Q.

## Limitations on Controls

Our disclosure controls and procedures and internal control over financial reporting are designed to provide reasonable assurance of achieving their objectives as specified above. Management does not expect, however, that our disclosure controls and procedures or our internal controls over financial reporting will prevent or detect all error and fraud. Any control system, no matter how well designed and operated, is based on certain assumptions and can provide only reasonable, not absolute, assurance that its objectives will be met. Further, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, within the Company have been detected.

## Changes in Internal Control Over Financial Reporting

There was no change in our internal control over financial reporting during our most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## PART II—OTHER INFORMATION

### Item 1. *Litigation*

For a description of developments to legal proceedings during the nine months ended September 30, 2018, see "Litigation" under Note 17, "Commitments and Contingencies" to our consolidated financial statements.

### Item 1A. *Risk Factors*

Our risk factors have not changed materially from those disclosed in our Annual Report on Form 10-K filed for the year ended December 31, 2017.

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

None

### Item 3. *Default Upon Senior Securities*

None.

### Item 4. *Mine Safety Disclosures*

None.

### Item 5. *Other Information*

None

## EXHIBIT INDEX

Exhibit Number	Exhibit Description	Form	Exhibit	Filing Date	Filed/ Furnished Herewith	SEC File #
3.1	<a href="#">Amended and Restated Bylaws of the Registrant, as amended.</a>				*	
	<a href="#">Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>				*	
31.1	<a href="#">Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>				*	
31.2	<a href="#">Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>				*	
32.1	<a href="#">Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>				**	
32.2	<a href="#">Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>				**	
101	Interactive Data Files				*	
101.INS	XBRL Instance Document				*	
101.SCH	XBRL Taxonomy Extension Schema Document				*	
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document				*	
101.DEF	XBRL Taxonomy Definition Linkbase Document				*	
101.LAB	XBRL Taxonomy Extension Label Linkbase Document 10.1 & 10.2				*	
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document				*	

\* Filed herewith.

\*\* Furnished herewith.

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

/s/ Miriam Martinez

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Miriam Martinez

Date November 16, 2018

**Emergent Capital, Inc.**

Chief Financial Officer

(Principal Financial Officer)

**AMENDED AND RESTATED BYLAWS  
OF  
EMERGENT CAPITAL, INC.  
(a Florida corporation)  
As of September 1, 2015**

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## ARTICLE 1

### DEFINITIONS

Section 1.1 Definitions. The following terms shall have the following meanings for purposes of these bylaws:

“Act” means the Florida Business Corporation Act, as it may be amended from time to time, or any successor legislation thereto.

“Deliver” or “delivery” means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery and electronic transmission.

“Distribution” means a direct or indirect transfer of money or other property (except shares in the corporation) or an incurrence of indebtedness by the corporation to or for the benefit of shareholders in respect of any of the corporation’s shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

“Electronic transmission” or “electronically transmitted” means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient. For purposes of proxy voting, the term includes, but is not limited to, facsimile transmission, telegrams, cablegrams, telephone transmissions and transmissions through the Internet.

“Notice” means written notice and includes, but is not limited to, notice by electronic transmission. Notice shall be effective if given by a single written notice to shareholders who share an address, to the extent permitted by the Act.

“Principal office” means the office (within or without the State of Florida) where the corporation’s principal executive offices are located, as designated in the annual report filed with the Florida Department of State.

“Significant Violation” means a breach of fiduciary duty arising from a material violation of a United States federal or state law or a regulation promulgated by the United States federal or state government.

“Substantially Participated” means (i) personal involvement in a violation of law by a relevant individual and does not encompass a violation asserted against the corporation itself and (ii) that the relevant individual knowingly or recklessly engaged in a Significant Violation.

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## **ARTICLE 2**

### **OFFICES**

Section 2.1 Principal and Business Offices. The corporation may have such principal and other business offices, either within or without the State of Florida, as the Board of Directors may designate or as the business of the corporation may require from time to time.

Section 2.2 Registered Office. The registered office of the corporation required by the Act to be maintained in the State of Florida may but need not be identical with the principal office if located in the State of Florida, and the address of the registered office may be changed from time to time by the Board of Directors or by the registered agent. The business office of the registered agent of the corporation shall be identical to such registered office.

## **ARTICLE 3**

### **SHAREHOLDERS**

Section 3.1 Annual Meeting. The annual meeting of shareholders for the election of directors and the conduct of such other business as may properly come before the meeting in accordance with these bylaws shall be held at such place and time on such day, other than a legal holiday, as the Chief Executive Officer of the corporation in each such year determines; provided, that if the Chief Executive Officer does not act, the Board of Directors shall determine the place, time and date of such meeting. If the election of directors shall not be held on the day fixed as herein provided for any annual meeting of shareholders, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of shareholders as soon thereafter as is practicable. At any annual meeting of the shareholders, only such nominations of persons for election to the Board of Directors shall be made, and only such other business shall be conducted or considered, as shall have been properly brought before the meeting. For nominations to be properly made at an annual meeting, and proposals of other business to be properly brought before an annual meeting, nominations and proposals of other business must be (a) specified in the corporation's notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (b) otherwise properly made at the annual meeting, by or at the direction of the Board of Directors or (c) otherwise properly requested to be brought before the annual meeting by a shareholder of the corporation in accordance with these bylaws. For nominations of persons for election to the Board of Directors or proposals of other business to be properly requested by a shareholder to be made at an annual meeting, a shareholder must (i) be a shareholder of record at the time of giving of notice of such annual meeting by or at the direction of the Board of Directors and at the time of the annual meeting, (ii) be entitled to vote at such annual meeting and (iii) comply with the procedures set forth in these bylaws as to such business or nomination. The immediately preceding sentence shall be the exclusive means for a shareholder to make nominations or other business proposals (other than matters properly brought under Rule 14a-8 or Rule 14a-11 under the Securities Exchange Act of

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1934, as amended (the "Exchange Act") and included in the corporation's notice of meeting) before an annual meeting of shareholders.

Section 1.

Special Meetings.

(a) Call by Directors. Special meetings of shareholders, for any purpose or purposes, may be called by the Board of Directors, the Chair of the Board or the Lead Director (if any).

(b) Call by Shareholders. The corporation shall call a special meeting of shareholders in the event that the holders of at least fifty percent (50%) of all of the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting (the "Requisite Percentage") sign, date, and deliver to the Secretary one or more written demands for the meeting describing one or more purposes for which it is to be held. ("Special Meeting Request"). The corporation shall give notice of such a Special Meeting Request within sixty days after the date that the demand is delivered to the corporation. Nominations of persons for election to the Board of Directors may be made at a special meeting of shareholders at which directors are to be elected pursuant to the corporation's notice of meeting (a) by or at the direction of the Board of Directors or (b) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any shareholder of the corporation who (i) is a shareholder of record at the time of giving of notice of such special meeting and at the time of the special meeting, (ii) is entitled to vote at the meeting and (iii) complies with the procedures set forth in these Bylaws as to such nomination. The immediately preceding sentence shall be the exclusive means for a shareholder to make nominations or other business proposals before a special meeting of shareholders (other than matters properly brought under Rule 14a-8 or Rule 14a-11 under the Exchange Act and included in the corporation's notice of meeting).

(c) Notwithstanding the foregoing provisions of this Section 3.2, a special meeting requested by shareholders pursuant to Section 3.2(b) shall not be held if (i) the Special Meeting Request does not comply with this Article 3; (ii) the Special Meeting Request relates to an item of business that is not a proper subject for shareholder action under applicable law; (iii) the Special Meeting Request is received by the corporation during the period commencing 90 days prior to the first anniversary of the date of the immediately preceding annual meeting and ending on the date of the next annual meeting; (iv) an annual or special meeting of shareholders that included a substantially similar item of business ("Similar Business") (as determined in good faith by the Board of Directors) was held not more than 120 days before the Special Meeting Request was received by the Secretary; (v) the Board of Directors has called or calls for an annual or special meeting of shareholders to be held within 90 days after the Special Meeting Request is received by the Secretary and the Board of Directors determines in good faith that the business to be conducted at such meeting includes the Similar Business; (vi) such Special Meeting Request was made in a manner that involved a violation of Regulation 14A under the Securities Exchange Act of 1934, as amended, or other applicable law; or (vii) two or more special meetings of shareholders called pursuant to the request of shareholders have been held within the 12-month period before the Special Meeting Request was received by the Secretary. For purposes of this Article 3, the nomination, election or removal of directors shall be deemed to be Similar Business with respect to all items of business involving the nomination, election or

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removal of directors, changing the size of the Board of Directors and filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors.

(d) Any shareholder may revoke such shareholder's participation in a Special Meeting Request at any time by written revocation delivered to the Secretary and if, following any such revocation, there are outstanding un-revoked requests from shareholders holding less than the Requisite Percentage in accordance with this Section 3, the Board of Directors may, in its discretion, cancel the special meeting. If none of the requesting shareholders appears or sends a duly authorized agent to present the business to be presented for consideration that was specified in the Special Meeting Request, the corporation need not present such business for a vote at such special meeting.

Business conducted at a special meeting requested by shareholders pursuant to Article 3 shall be limited to the matters described in the applicable Special Meeting Request; provided that nothing herein shall prohibit the Board of Directors from submitting matters to the shareholders at any such special meeting requested by shareholders.

Section 3.3 Place of Meeting. The Board of Directors may designate any place, either within or without the State of Florida, as the place of meeting for any annual or special meeting of shareholders. If no designation is made, the place of meeting shall be the principal office of the corporation.

#### Section 3.4 Notice of Meeting.

(e) Content and Delivery. Written notice stating the date, time, and place of any meeting of shareholders and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten days nor more than sixty days before the date of the meeting by or at the direction of the Chief Executive Officer, the President or the Secretary, or the officer or persons duly calling the meeting, to each shareholder of record entitled to vote at such meeting and to such other persons as required by the Act. Unless the Act requires otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called. If mailed, notice of a meeting of shareholders shall be deemed to be delivered when deposited in the United States mail, addressed to the shareholder at his or her address as it appears on the stock record books of the corporation, with postage thereon prepaid.

(f) Notice of Adjourned Meetings. If an annual or special meeting of shareholders is adjourned to a different date, time, or place, the corporation shall not be required to give notice of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment; provided, however, that if a new record date for an adjourned meeting is or must be fixed, the corporation shall give notice of the adjourned meeting to persons who are shareholders as of the new record date who are entitled to notice of the meeting.

(g) No Notice Under Certain Circumstances. Notwithstanding the other provisions of this Section, no notice of a meeting of shareholders need be given to a shareholder if: (1) an annual report and proxy statement for two consecutive annual meetings of shareholders, or (2)

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all, and at least two, checks in payment of dividends or interest on securities during a twelve-month period have been sent by first-class, United States mail, addressed to the shareholder at his or her address as it appears on the share transfer books of the corporation, and returned undeliverable. The obligation of the corporation to give notice of a shareholders' meeting to any such shareholder shall be reinstated once the corporation has received a new address for such shareholder for entry on its share transfer books.

### Section 3.5 Waiver of Notice.

(h) Written Waiver. A shareholder may waive any notice required by the Act or these bylaws before or after the date and time stated for the meeting in the notice. The waiver shall be in writing and signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records. Neither the business to be transacted at nor the purpose of any regular or special meeting of shareholders need be specified in any written waiver of notice.

(i) Waiver by Attendance. A shareholder's attendance at a meeting, in person or by proxy, waives objection to all of the following: (1) lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and (2) consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

### Section 3.6 Fixing of Record Date.

(j) General. The Board of Directors may fix in advance a date as the record date for the purpose of determining shareholders entitled to notice of a shareholders' meeting, entitled to vote, or take any other action. In no event may a record date fixed by the Board of Directors be a date preceding the date upon which the resolution fixing the record date is adopted or a date more than seventy days before the date of meeting or action requiring a determination of shareholders.

(k) Special Meeting. The record date for determining shareholders entitled to demand a special meeting shall be the close of business on the date the first shareholder delivers his or her demand to the corporation.

(l) Absence of Board Determination for Shareholders' Meeting. If the Board of Directors does not determine the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting, such record date shall be the close of business on the day before the first notice with respect thereto is delivered to shareholders.

(m) Adjourned Meeting. A record date for determining shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the Board of Directors fixes a new record date, which it must do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

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### Section 3.7 Shareholders' List for Meetings.

(n) Preparation and Availability. After a record date for a meeting of shareholders has been fixed, the corporation shall prepare an alphabetical list of the names of all of the shareholders entitled to notice of the meeting. The list shall be arranged by class or series of shares, if any, and show the address of and number of shares held by each shareholder. Such list shall be available for inspection by any shareholder for a period of ten days prior to the meeting or such shorter time as exists between the record date and the meeting date, and continuing through the meeting, at the corporation's principal office, at a place identified in the meeting notice in the city where the meeting will be held, or at the office of the corporation's transfer agent or registrar, if any. A shareholder or his or her agent or attorney may, on written demand, inspect the list, subject to the requirements of the Act, during regular business hours and at his or her expense, during the period that it is available for inspection pursuant to this Section. The corporation shall make the shareholders' list available at the meeting and any shareholder or his or her agent or attorney may inspect the list at any time during the meeting or any adjournment thereof.

(o) Prima Facie Evidence. The shareholders' list is prima facie evidence of the identity of shareholders entitled to examine the shareholders' list or to vote at a meeting of shareholders.

(p) Failure to Comply. If the requirements of this Section have not been substantially complied with, or if the corporation refuses to allow a shareholder or his or her agent or attorney to inspect the shareholders' list before or at the meeting, on the demand of any shareholder, in person or by proxy, who failed to get such access, the meeting shall be adjourned until such requirements are complied with.

(q) Validity of Action Not Affected. Refusal or failure to prepare or make available the shareholders' list shall not affect the validity of any action taken at a meeting of shareholders.

Section 3.8 Conduct of Meetings by Remote Communication. The Board of Directors may adopt guidelines and procedures for shareholders and proxy holders not physically present at a special meeting of shareholders to participate in the meeting, be deemed present in person, vote, communicate and read or hear the proceedings of the meeting substantially concurrently with such proceedings, all by means of remote communication. The Board of Directors may adopt procedures and guidelines for the conduct of a special meeting solely by means of remote communication rather than holding the meeting at a designated place.

### Section 3.9 Quorum.

(r) What Constitutes a Quorum. Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. If the corporation has only one class of stock outstanding, such class shall constitute a separate voting group for purposes of this Section. Except as otherwise provided in the Act, a

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majority of the votes entitled to be cast on the matter shall constitute a quorum of the voting group for action on that matter.

(s) Presence of Shares. Once a share is represented for any purpose at a meeting, other than for the purpose of objecting to holding the meeting or transacting business at the meeting, it is considered present for purposes of determining whether a quorum exists for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for the adjourned meeting.

(t) Adjournment in Absence of Quorum. Where a quorum is not present, the holders of a majority of the shares represented and who would be entitled to vote at the meeting if a quorum were present may adjourn such meeting from time to time.

Section 3.10 Voting of Shares. Except as provided in the Articles of Incorporation or the Act, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a meeting of shareholders.

Section 3.11 Vote Required.

(u) Matters Other Than Election of Directors. If a quorum exists, except in the case of the election of directors, action on a matter shall be approved if the votes cast favoring the action exceed the votes cast opposing the action, unless the Act or the Articles of Incorporation require a greater number of affirmative votes.

(v) Election of Directors. Each director shall be elected by a plurality of the votes cast by the shares entitled to vote in the election of directors at a meeting at which a quorum is present. Each shareholder who is entitled to vote at an election of directors has the right to vote the number of shares owned by him or her for as many persons as there are directors to be elected. Shareholders do not have a right to cumulate their votes for directors.

Section 3.12 Conduct of Meeting. The Chair of the Board of Directors, and in his or her absence, the Lead Director (if any), and in his or her absence, the President, and in his or her absence, a Vice President in the order provided under the Section of these bylaws titled "Vice Presidents," and in their absence, any person chosen by the shareholders present shall call a shareholders' meeting to order and shall act as presiding officer of the meeting, and the Secretary of the corporation shall act as secretary of all meetings of the shareholders, but, in the absence of the Secretary, the presiding officer may appoint any other person to act as secretary of the meeting. The presiding officer of the meeting shall have broad discretion in determining the order of business at a shareholders' meeting. The presiding officer's authority to conduct the meeting shall include, but in no way be limited to, recognizing shareholders entitled to speak, calling for the necessary reports, stating questions and putting them to a vote, calling for nominations, and announcing the results of voting. The presiding officer also shall take such actions as are necessary and appropriate to preserve order at the meeting. The rules of parliamentary procedure need not be observed in the conduct of shareholders' meetings;

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however, meetings shall be conducted in accordance with accepted usage and common practice with fair treatment to all who are entitled to take part.

Section 3.13 Inspectors of Election. Inspectors of election may be appointed by the Board of Directors to act at any meeting of shareholders at which any vote is taken. If inspectors of election are not so appointed, the presiding officer of the meeting may, and on the request of any shareholder shall, make such appointment. The inspectors of election shall determine the number of shares outstanding, the voting rights with respect to each, the shares represented at the meeting, the existence of a quorum, and the authenticity, validity, and effect of proxies; receive votes, ballots, consents, and waivers; hear and determine all challenges and questions arising in connection with the vote; count and tabulate all votes, consents, and waivers; determine and announce the result; and do such acts as are proper to conduct the election or vote with fairness to all shareholders. No inspector, whether appointed by the Board of Directors or by the person acting as presiding officer of the meeting, need be a shareholder.

Section 3.14 Proxies.

(w) Appointment. At all meetings of shareholders, a shareholder or attorney-in-fact for a shareholder may vote the shareholder's shares in person or by proxy. If an appointment form expressly provides, any proxy holder may appoint, in writing, a substitute to act in his or her place. A shareholder or attorney-in-fact for a shareholder may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by electronic transmission. Any type of electronic transmission appearing to have been, or containing or accompanied by such information or obtained under such procedures to reasonably ensure that the electronic transmission was, transmitted or authorized by such person is a sufficient appointment, subject to the verification requested by the corporation under Section 3.16 of these bylaws and Section 607.0724, Florida Statutes. The appointment may be signed by any reasonable means, including, but not limited to, facsimile or electronic signature. Any copy, facsimile transmission or other reliable reproduction of the writing or electronic transmission of the appointment may be substituted or used in lieu of the original writing or electronic transmission for any purpose for which the original writing or electronic transmission could be used if the copy, facsimile transmission or other reproduction is a complete reproduction of the entire original writing or electronic transmission.

(x) When Effective. An appointment of a proxy is effective when received by the Secretary or other officer or agent of the corporation authorized to tabulate votes. An appointment is valid for up to eleven months unless a longer period is expressly provided in the appointment form. An appointment of a proxy is revocable by the shareholder unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest.

Section 3.15 Shareholder Nominations and Proposals. Any shareholder nomination or proposal for action at a forthcoming shareholder meeting must be delivered to the corporation in accordance with all applicable laws and regulations, including, without limitation, by the deadline for submitting shareholder proposals pursuant to Securities Exchange Commission

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Regulations Sections 240.14a-8 and 240.14a-11. The presiding officer at any shareholder meeting shall not be required to recognize any proposal or nomination which did not comply with such deadline.

Section 3.16 Representative Claims. Except where a private right of action at a lower threshold than that required by this bylaw is expressly authorized by applicable statute, a current or prior shareholder or group of shareholders (collectively, a "Claiming Shareholder") may not initiate a claim in a court of law on behalf of (1) the corporation and/or (2) any class of current and/or prior shareholders against the corporation and/or against any director and/or officer of the corporation in his or her official capacity, unless the Claiming Shareholder, no later than the date the claim is asserted, delivers to the Secretary written consents by beneficial shareholders owning at least 3% of the outstanding shares of the corporation as of (i) the date the claim was discovered (or should have been discovered) by the Claiming Shareholder or (ii), if on behalf of a class consisting only of prior shareholders, the last date on which a shareholder must have held shares to be included in the class.

Section 3.17 Acceptance of Instruments Showing Shareholder Action. If the name signed on a vote, waiver, consent or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, may accept the vote, waiver, consent or proxy appointment and give it effect as the act of a shareholder. If the name signed on a vote, waiver, consent or proxy appointment does not correspond to the name of a shareholder, the corporation, if acting in good faith, may accept the vote, waiver, consent or proxy appointment and give it effect as the act of the shareholder if any of the following apply:

- (i) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;
  - (ii) The name signed purports to be that of a administrator, executor, guardian, personal representative, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation is presented with respect to the vote, consent, waiver, consent or proxy appointment;
  - (iii) The name signed purports to be that of a receiver or trustee in bankruptcy, or assignee for the benefit of creditors of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation is presented with respect to the vote, consent, waiver, consent or proxy appointment;
  - (iv) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder is presented with respect to the vote, waiver, consent or proxy appointment; or
  - (v) Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all co-owners.
- The corporation may reject a vote, waiver, consent or proxy appointment if the Secretary or other officer or agent of the corporation who is authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.
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## ARTICLE 4

### **BOARD OF DIRECTORS**

Section 4.1 General Powers and Number. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, the Board of Directors, a majority of whom shall be Independent Directors. The number of directors shall be established from time to time by resolution of the Board of Directors, but no such resolution shall increase or decrease the number of directors by more than one without the approval of shareholders pursuant to Section 3.11(a). Initially, the Board shall be comprised of seven (7) directors. For purposes of this section, "Independent Director" shall mean a person other than an officer or employee of the corporation or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

Section 4.2 Qualifications. Directors must be natural persons who are eighteen years of age or older but need not be residents of this state or shareholders of the corporation.

Section 4.3 Term of Office. The term of each director shall expire at the next annual meeting of shareholders following his or her election or until his or her successor is elected and qualifies.

Section 4.4 Removal. Subject to the rights of the holders, if any, of preferred stock of the corporation to elect additional directors under the specified circumstances, any director may be removed at any time, but only for cause, upon the affirmative vote of the holders of a 66 2/3% of the combined voting power of the then outstanding shares of stock of the corporation entitled to vote generally in the election of directors, voting together as a single class.

A director may be removed by the shareholders or directors only at a meeting called for the purpose of removing him or her, and the meeting notice must state that the purpose or one of the purposes of the meeting is the removal of directors.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office

#### Section 4.5 Resignation.

(y) Except as contemplated in Section 4.5(b), a director may resign at any time by delivering written notice to the Board of Directors or its Chair or to the corporation. Such resignation shall be effective when the notice is delivered unless the notice specifies a later effective date.

(z) As a condition to being nominated to the Board of Directors or re-nominated for continued service on the Board of Directors, as the case may be, each incumbent director or director nominee must, in addition to providing any other deliverables required by these bylaws, sign and deliver to the Board of Directors an irrevocable letter of resignation, in a form

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satisfactory to the Board of Directors, with such letter being deemed tendered as of the date of the Board of Director's determination referred to below. The letter of resignation will be limited and conditioned upon (i) a finding by the majority of the disinterested members of the Board of Directors, in accordance with the procedure set out below, that, in connection with the performance of his or her duties as a director of the corporation, the director either Substantially Participated in a Significant Violation, or recklessly disregarded his or her duty to exercise reasonable oversight and (ii) the acceptance of the resignation by the disinterested members of the Board of Directors. Whether a director's conduct is subject to this provision will be reviewed by the disinterested members of the Board of Directors, who will determine (i) whether the director's action or failure to act falls within conduct described above; and (ii) whether to accept or reject the resignation, or whether other action should be taken. The resignation, if accepted, will be effective at the time the disinterested members of the Board of Directors accept it.

#### Section 4.6 Vacancies.

(aa) Who May Fill Vacancies. Except as provided below, whenever any vacancy occurs on the Board of Directors, including a vacancy resulting from an increase in the number of directors, it may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board of Directors, or by the shareholders at a special meeting called in accordance with Section 3.2 of these bylaws. Any director elected in accordance with the preceding sentence shall hold office until the next annual meeting of the corporation. If the directors first fill a vacancy, the shareholders shall have no further right with respect to that vacancy, and if the shareholders first fill the vacancy, the directors shall have no further rights with respect to that vacancy.

(ab) Directors Elected by Voting Groups. Whenever the holders of shares of any voting group are entitled to elect a class of one or more directors by the provisions of the Articles of Incorporation, vacancies in such class may be filled by holders of shares of that voting group or by a majority of the directors then in office elected by such voting group or by a sole remaining director so elected. If no director elected by such voting group remains in office, unless the Articles of Incorporation provide otherwise, directors not elected by such voting group may fill vacancies.

(ac) Prospective Vacancies. A vacancy that will occur at a specific later date, because of a resignation effective at a later date or otherwise, may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

Section 4.7 Compensation. The Board of Directors, irrespective of any personal interest of any of its members, may establish reasonable compensation of all directors for services to the corporation as directors, officers, or otherwise, or may delegate such authority to an appropriate committee. The Board of Directors also shall have authority to provide for or delegate authority to an appropriate committee to provide for reasonable pensions, disability or death benefits, and other benefits or payments, to directors, officers, and employees and to their families, dependents, estates, or beneficiaries on account of prior services rendered to the corporation by such directors, officers, and employees.

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Section 4.8 Regular Meetings. A regular meeting of the Board of Directors shall be held without other notice than this bylaw immediately after the annual meeting of shareholders and each adjourned session thereof. The place of such regular meeting shall be the same as the place of the meeting of shareholders which precedes it, or such other suitable place as may be announced at such meeting of shareholders. The Board of Directors may provide, by resolution, the date, time, and place, either within or without the State of Florida, for the holding of additional regular meetings of the Board of Directors without notice other than such resolution.

Section 4.9 Special Meetings. Special meetings of the Board of Directors may be called by the Chair of the Board, the Lead Director (if any), the President or one-third of the members of the Board of Directors. The person or persons calling the meeting may fix any place, either within or without the State of Florida, as the place for holding any special meeting of the Board of Directors, and if no other place is fixed, the place of the meeting shall be the principal office of the corporation in the State of Florida.

Section 4.10 Notice. Special meetings of the Board of Directors must be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting.

Section 4.11 Waiver of Notice. Notice of a meeting of the Board of Directors need not be given to any director who signs a waiver of notice either before or after the meeting. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting and waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when a director states, at the beginning of the meeting or promptly upon arrival at the meeting, any objection to the transaction of business because the meeting is not lawfully called or convened.

Section 4.12 Quorum and Voting. A quorum of the Board of Directors consists of a majority of the number of directors prescribed by these bylaws. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the Board of Directors. A director who is present at a meeting of the Board of Directors or a committee of the Board of Directors when corporate action is taken is deemed to have assented to the action taken unless: (a) he or she objects at the beginning of the meeting (or promptly upon his or her arrival) to holding it or transacting specified business at the meeting; or (b) he or she votes against or abstains from the action taken.

#### Section 4.13 Conduct of Meetings.

(ad) Presiding Officer. The Board of Directors shall elect from among its members a Chair of the Board of Directors, who shall preside at meetings of the Board of Directors. If the Chair is an employee of the corporation, the Board of Directors shall elect from among its members a Lead Director, who shall preside at executive sessions of the Board at which employees of the corporation or any of its subsidiaries shall not be present. The Chair, and in his or her absence, the Lead Director, and in his or her absence, the President, and in his or her

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absence, any director chosen by the directors present, shall call meetings of the Board of Directors to order and shall act as presiding officer of the meeting.

(ae) Minutes. The Secretary of the corporation shall act as secretary of all meetings of the Board of Directors but in the absence of the Secretary, the presiding officer may appoint any other person present to act as secretary of the meeting. Minutes of any regular or special meeting of the Board of Directors shall be prepared and distributed to each director.

(af) Adjournments. A majority of the directors present, whether or not a quorum exists, may adjourn any meeting of the Board of Directors to another time and place. Notice of any such adjourned meeting shall be given to the directors who are not present at the time of the adjournment and, unless the time and place of the adjourned meeting are announced at the time of the adjournment, to the other directors.

(ag) Participation by Conference Call or Similar Means. The Board of Directors may permit any or all directors to participate in a regular or a special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Section 4.14 Committees. The Board of Directors, by resolution adopted by a majority of the full Board of Directors, shall designate from among its members an Audit Committee, a Compensation Committee, a Nominating and Corporate Governance Committee and one or more other committees each of which, to the extent provided in such resolution and in any charter adopted by the Board of Directors for any committee, shall have and may exercise all the authority of the Board of Directors, except that no such committee shall have the authority to:

- (i) approve or recommend to shareholders actions or proposals required by the Act to be approved by shareholders;
  - (ii) fill vacancies on the Board of Directors or any committee thereof;
  - (iii) adopt, amend, or repeal these bylaws;
  - (iv) authorize or approve the reacquisition of shares unless pursuant to a general formula or method specified by the Board of Directors; or
  - (v) authorize or approve the issuance or sale or contract for the sale of shares, or determine the designation and relative rights, preferences, and limitations of a voting group except that the Board of Directors may authorize a committee (or a senior executive officer of the corporation) to do so within limits specifically prescribed by the Board of Directors.
- Each committee must have two or more members, who shall serve at the pleasure of the Board of Directors. The Board of Directors, by resolution adopted in accordance with this Section, may designate one or more directors as alternate members of any such committee, who may act in the place and stead of any absent member or members at any meeting of such committee. The Board of Directors may adopt a charter for any such committee specifying requirements with respect to committee chairs and membership, responsibilities of the committee, the conduct of meetings and business of the committee and such other matters as the Board may designate. In the absence of a committee charter or a provision of a committee charter governing such matters, the
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provisions of these bylaws which govern meetings, notice and waiver of notice, and quorum and voting requirements of the Board of Directors apply to committees and their members as well.

Section 4.15 Lead Director. If the Board of Directors appoints a Lead Director to preside at executive sessions of the Board of Directors, the Board of Directors may assign to the Lead Director by resolutions such additional duties as the Board of Directors determines, in its discretion, including acting as a liaison between the Board of Directors and the officers of the corporation and assisting in the setting of agendas for meetings of the Board of Directors.

Section 4.16 Action Without Meeting. Any action required or permitted by the Act to be taken at a meeting of the Board of Directors or a committee thereof may be taken without a meeting if the action is taken by all members of the Board or of the committee. The action shall be evidenced by one or more written consents describing the action taken, signed by each director or committee member and retained by the corporation. Such action shall be effective when the last director or committee member signs the consent, unless the consent specifies a different effective date. A consent signed under this Section has the effect of a vote at a meeting and may be described as such in any document.

## **ARTICLE 5**

### **OFFICERS**

Section 5.1 Number. The principal officers of the corporation shall be a Chief Executive Officer, a President, the number of Executive Vice Presidents, Senior Vice Presidents and Vice Presidents as authorized from time to time by the Board of Directors, a Secretary, and a Treasurer, each of whom shall be elected by the Board of Directors. The Board of Directors shall designate from among the officers it elects those who shall be the executive officers of the corporation responsible for all policy making functions, under the direction of the Board of Directors. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board of Directors. The Board of Directors may also authorize any duly appointed officer to appoint one or more officers or assistant officers. The same individual may simultaneously hold more than one office.

Section 5.2 Election and Term of Office. The officers of the corporation to be elected by the Board of Directors shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of the shareholders. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as is practicable. Each officer shall hold office until his or her successor shall have been duly elected or until his or her prior death, resignation, or removal.

Section 5.3 Removal. The Board of Directors may remove any officer and, unless restricted by the Board of Directors, an officer may remove any officer or assistant officer appointed by that officer, at any time, with or without cause and notwithstanding the contract rights, if any, of the officer removed. The appointment of an officer does not of itself create contract rights.

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Section 5.4 Resignation. An officer may resign at any time by delivering notice to the corporation. The resignation shall be effective when the notice is delivered, unless the notice specifies a later effective date and the corporation accepts the later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, the pending vacancy may be filled before the effective date but the successor may not take office until the effective date.

Section 5.5 Vacancies. A vacancy in any principal office because of death, resignation, removal, disqualification, or otherwise, shall be filled as soon thereafter as practicable by the Board of Directors for the unexpired portion of the term.

Section 5.6 Chief Executive Officer. The Chief Executive Officer shall be the principal executive officer of the corporation and, subject to the direction of the Board of Directors, shall in general supervise all of the business operations and affairs of the corporation, the daily operations of which shall be under the control of the President. The Chief Executive Officer shall have authority, subject to such rules as may be prescribed by the Board of Directors, to direct the President in the performance of the President's duties. The Chief Executive Officer shall have authority, subject to such rules as may be prescribed by the Board of Directors, to appoint such agents and employees of the corporation as he or she shall deem necessary, to prescribe their powers, duties and compensation, and to delegate authority to them. Such agents and employees shall hold office at the discretion of the Chief Executive Officer. The Chief Executive Officer shall have authority to sign certificates for shares of the corporation the issuance of which shall have been authorized by resolution of the Board of Directors, and to execute and acknowledge, on behalf of the corporation, all deeds, mortgages, bonds, contracts, leases, reports, and all other documents or instruments necessary or proper to be executed in the course of the corporation's regular business, or which shall be authorized by resolution of the Board of Directors; and except as otherwise provided by law or the Board of Directors, the Chief Executive Officer may authorize the President, any Vice President or other officer or agent of the corporation to execute and acknowledge such documents or instruments in his or her place and stead. In general, he or she shall perform all duties as may be prescribed by the Board of Directors from time to time.

Section 5.7 President. The President shall be the principal operating officer of the corporation and, subject to the direction of the Board of Directors and the Chair, shall in general supervise and control all of the business and affairs of the corporation. If the Chair of the Board is not present, the President shall preside at all meetings of the Board of Directors and shareholders. The President shall have authority, subject to such rules as may be prescribed by the Board of Directors, to appoint such agents and employees of the corporation as he or she shall deem necessary, to prescribe their powers, duties and compensation, and to delegate authority to them. Such agents and employees shall hold office at the discretion of the President. The President shall have authority, subject to such rules as may be prescribed by the Board of Directors and/or the Chair, to sign certificates for shares of the corporation the issuance of which shall have been authorized by resolution of the Board of Directors, and to execute and acknowledge, on behalf of the corporation, all deeds, mortgages, bonds, contracts, leases, reports, and all other documents or instruments necessary or proper to be executed in the course of the corporation's regular business, or which shall be authorized by resolution of the Board of

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Directors; and, except as otherwise provided by law or the Board of Directors or the Chair, the President may authorize any Vice President or other officer or agent of the corporation to execute and acknowledge such documents or instruments in his or her place and stead. In general he or she shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

Section 5.8 Vice Presidents. The Board of Directors may appoint one or more Executive Vice Presidents, Senior Vice Presidents and other Vice Presidents, prescribe their powers and duties, and specify to which other officer a Vice President should report. The Board of Directors may authorize the President to appoint one or more Vice Presidents, to prescribe their powers, duties and compensation, and to delegate authority to them.

Section 5.9 Secretary. The Secretary shall: (a) keep, or cause to be kept, minutes of the meetings of the shareholders and of the Board of Directors (and of committees thereof) in one or more books provided for that purpose (including records of actions taken by the shareholders or the Board of Directors (or committees thereof) without a meeting); (b) be custodian of the corporate records and of the seal of the corporation, if any, and if the corporation has a seal, see that it is affixed to all documents the execution of which on behalf of the corporation under its seal is duly authorized; (c) authenticate the records of the corporation; (d) maintain a record of the shareholders of the corporation, in a form that permits preparation of a list of the names and addresses of all shareholders, by class or series of shares and showing the number and class or series of shares held by each shareholder; (e) have general charge of the stock transfer books of the corporation; and (f) in general perform all duties incident to the office of Secretary and have such other duties and exercise such authority as from time to time may be delegated or assigned by the President or by the Board of Directors.

Section 5.10 Treasurer. The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the corporation; (b) maintain appropriate accounting records; (c) receive and give receipts for moneys due and payable to the corporation from any source whatsoever, and deposit all such moneys in the name of the corporation in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of these bylaws; and (d) in general perform all of the duties incident to the office of Treasurer and have such other duties and exercise such other authority as from time to time may be delegated or assigned by the President or by the Board of Directors. If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board of Directors shall determine.

Section 5.11 Assistant Secretaries and Assistant Treasurers. There shall be such number of Assistant Secretaries and Assistant Treasurers as the Board of Directors may from time to time authorize. The Assistant Treasurers shall respectively, if required by the Board of Directors, give bonds for the faithful discharge of their duties in such sums and with such sureties as the Board of Directors shall determine. The Assistant Secretaries and Assistant Treasurers, in general, shall perform such duties and have such authority as shall from time to time be delegated or assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Board of Directors.

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Section 5.12 Other Assistants and Acting Officers. The Board of Directors shall have the power to appoint, or to authorize any duly appointed officer of the corporation to appoint, any person to act as assistant to any officer, or as agent for the corporation in his or her stead, or to perform the duties of such officer whenever for any reason it is impracticable for such officer to act personally, and such assistant or acting officer or other agent so appointed by the Board of Directors or an authorized officer shall have the power to perform all the duties of the office to which he or she is so appointed to be an assistant, or as to which he or she is so appointed to act, except as such power may be otherwise defined or restricted by the Board of Directors or the appointing officer.

Section 5.13 Salaries. The salaries of the principal officers shall be fixed from time to time by the Board of Directors or by a duly authorized committee thereof, and no officer shall be prevented from receiving such salary by reason of the fact that he or she is also a director of the corporation.

## ARTICLE 6

### **CONTRACTS, CHECKS AND DEPOSITS; SPECIAL CORPORATE ACTS**

Section 6.1 Contracts. The Board of Directors may authorize any officer or officers, or any agent or agents to enter into any contract or execute or deliver any instrument in the name of and on behalf of the corporation, and such authorization may be general or confined to specific instances. In the absence of other designation, all deeds, mortgages, and instruments of assignment or pledge made by the corporation shall be executed in the name of the corporation by the Chair, the President or one of the Vice Presidents; the Secretary or an Assistant Secretary, when necessary or required, shall attest and affix the corporate seal, if any, thereto; and when so executed no other party to such instrument or any third party shall be required to make any inquiry into the authority of the signing officer or officers.

Section 6.2 Checks, Drafts, etc. All checks, drafts or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the corporation, shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall from time to time be determined by or under the authority of a resolution of the Board of Directors.

Section 6.3 Deposits. All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositaries as may be selected by or under the authority of a resolution of the Board of Directors.

Section 6.4 Voting of Securities Owned by Corporation. Subject always to the specific directions of the Board of Directors, (a) any shares or other securities issued by any other corporation and owned or controlled by this corporation may be voted at any meeting of security holders of such other corporation by the Chair of the Board of this corporation if he or she be present, or in his or her absence by the President of this corporation if he or she be present, or in

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his or her absence by any Vice President of this corporation who may be present, and (b) whenever, in the judgment of the Chair of the Board, or in his or her absence, of the President, it is desirable for this corporation to execute a proxy or written consent in respect of any such shares or other securities, such proxy or consent shall be executed in the name of this corporation by the Chair of the Board, the President or one of the Vice Presidents of this corporation, without necessity of any authorization by the Board of Directors, affixation of corporate seal, if any, or countersignature or attestation by another officer. Any person or persons designated in the manner above stated as the proxy or proxies of this corporation shall have full right, power, and authority to vote the shares or other securities issued by such other corporation and owned or controlled by this corporation the same as such shares or other securities might be voted by this corporation.

## ARTICLE 7

### **CERTIFICATES FOR SHARES; TRANSFER OF SHARES**

Section 7.1 Consideration for Shares. The Board of Directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, promises to perform services evidenced by a written contract, or other securities of the corporation. Before the corporation issues shares, the Board of Directors shall determine that the consideration received or to be received for the shares to be issued is adequate. The determination of the Board of Directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable. The corporation may place in escrow shares issued for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid, or the benefits are received. If the services are not performed, the note is not paid, or the benefits are not received, the corporation may cancel, in whole or in part, the shares escrowed or restricted and the distributions credited.

Section 7.2 Certificates for Shares. Every holder of shares in the corporation shall be entitled to have a certificate representing all shares to which he or she is entitled unless the Board of Directors authorizes the issuance of some or all shares without certificates. Any such authorization shall not affect shares already represented by certificates until the certificates are surrendered to the corporation. If the Board of Directors authorizes the issuance of any shares without certificates, within a reasonable time after the issue or transfer of any such shares, the corporation shall send the shareholder a written statement of the information required by the Act or the Articles of Incorporation to be set forth on certificates, including any restrictions on transfer. Certificates representing shares of the corporation shall be in such form, consistent with the Act, as shall be determined by the Board of Directors. Such certificates shall be signed (either manually or in facsimile) by the Chair, the President, any Vice President, the Secretary or any other persons designated by the Board of Directors and may be sealed with the seal of the corporation or a facsimile thereof. All certificates for shares shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered on the stock transfer

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books of the corporation. Unless the Board of Directors authorizes shares without certificates, all certificates surrendered to the corporation for transfer shall be canceled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and canceled, except as provided in these bylaws with respect to lost, destroyed, or stolen certificates. The validity of a share certificate is not affected if a person who signed the certificate (either manually or in facsimile) no longer holds office when the certificate is issued.

Section 7.3 Transfer of Shares. Prior to due presentment of a certificate for shares for registration of transfer, the corporation may treat the registered owner of such shares as the person exclusively entitled to vote, to receive notifications, and otherwise to have and exercise all the rights and power of an owner. Where a certificate for shares is presented to the corporation with a request to register a transfer, the corporation shall not be liable to the owner or any other person suffering loss as a result of such registration of transfer if (a) there were on or with the certificate the necessary endorsements, and (b) the corporation had no duty to inquire into adverse claims or has discharged any such duty. The corporation may require reasonable assurance that such endorsements are genuine and effective and compliance with such other regulations as may be prescribed by or under the authority of the Board of Directors.

Section 7.4 Restrictions on Transfer. The face or reverse side of each certificate representing shares shall bear a conspicuous notation as required by the Act or the Articles of Incorporation of the restrictions imposed by the corporation, if any, upon the transfer of such shares.

Section 7.5 Lost, Destroyed, or Stolen Certificates. Unless the Board of Directors authorizes shares without certificates, where the owner claims that certificates for shares have been lost, destroyed, or wrongfully taken, a new certificate shall be issued in place thereof if the owner (a) so requests before the corporation has notice that such shares have been acquired by a bona fide purchaser, (b) files with the corporation a sufficient indemnity bond if required by the Board of Directors or any principal officer, and (c) satisfies such other reasonable requirements as may be prescribed by or under the authority of the Board of Directors.

Section 2. Stock Regulations. The Board of Directors shall have the power and authority to make all such further rules and regulations not inconsistent with law as they may deem expedient concerning the issue, transfer, and registration of shares of the corporation.

## ARTICLE 8

### SEAL

Section 8.1 Seal. The Board of Directors may provide for a corporate seal for the corporation.

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## ARTICLE 9

### **BOOKS AND RECORDS**

#### Section 9.1 Books and Records.

(i) The corporation shall keep as permanent records minutes of all meetings of the shareholders and Board of Directors, a record of all actions taken by the shareholders or Board of Directors without a meeting, and a record of all actions taken by a committee of the Board of Directors in place of the Board of Directors on behalf of the corporation.

(ii) The corporation shall maintain accurate accounting records.

(iii) The corporation or its agent shall maintain a record of the shareholders in a form that permits preparation of a list of the names and addresses of all shareholders in alphabetical order by class of shares showing the number and series of shares held by each.

(iv) The corporation shall keep a copy of all records required under applicable laws and regulations, including, without limitation, all written communications within the preceding three years to all shareholders generally or to all shareholders of a class or series, including the financial statements required to be furnished by the Act, and a copy of its most recent annual report delivered to the Department of State.

Section 9.2 Inspection Rights. Shareholders and directors are entitled to inspect and copy records of the corporation as permitted by the Act.

Section 9.3 Distribution of Financial Information. The corporation shall prepare and disseminate financial statements to shareholders as required by the Act.

Section 9.4 Other Reports. The corporation shall disseminate such other reports to shareholders as are required by the Act, including reports regarding indemnification in certain circumstances and reports regarding the issuance or authorization for issuance of shares in exchange for promises to render services in the future.

## ARTICLE 10

### **INDEMNIFICATION**

Section 10.1 Action by Third Party. The corporation shall indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of, the corporation), by reason of the fact that the person is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against liability incurred in connection with such proceeding, including any appeal thereof, if the person acted in good faith and in a manner the person reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal action or proceeding, had

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no reasonable cause to believe his or her conduct was unlawful. The termination of any proceeding by judgment, order, settlement or conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner that the person reasonably believed to be in, or not opposed to, the best interests of the corporation or, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct of the person was unlawful.

Section 10.2 Action by Corporation. The corporation shall indemnify any person who was or is a party to any proceeding by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses and amounts paid in settlement not exceeding, in the judgment of the Board of Directors, the estimated expense of litigating the proceeding to conclusion, actually and reasonably incurred in connection with the defense or settlement of such proceeding, including any appeal thereof. Such indemnification shall be authorized if such person acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of the corporation, except that no indemnification shall be made under this subsection in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the court in which such proceeding was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses that such court shall deem proper.

Section 10.3 Successful Defense of an Action To the extent that a director, officer, employee or agent of the corporation has been successful on the merits or otherwise in defense of any proceeding referred to in Section 10.1 or Section 10.2, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses actually and reasonably incurred by the person in connection therewith.

Section 10.4 Procedure. Any indemnification under Section 10.1 or Section 10.2, unless pursuant to a determination by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 10.1 or Section 10.2. Such determination shall be made:

(a) By the Board of Directors by majority vote of a quorum consisting of directors who were not parties to such proceeding;

(b) If such quorum is not obtainable or, even if obtainable, by majority vote of a committee duly designated by the Board of Directors (in which directors who are parties may participate) consisting solely of two or more directors not at the time parties to the proceeding;

(c) By independent legal counsel:

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- 10.4(b); or
- (1) Selected by the Board of Directors prescribed in Section 10.4(a) or the committee prescribed in Section 10.4(b); or
  - (2) If a quorum of the directors cannot be obtained for Section 10.4(a) and the committee cannot be designated under Section 10.4(b), selected by majority vote of the full Board of Directors (in which directors who are parties may participate); or
  - (d) By the shareholders by a majority vote of a quorum consisting of shareholders who were not parties to such proceeding or, if no such quorum is obtainable, by a majority vote of shareholders who were not parties to such proceeding.

Section 10.5 Reasonableness of Expenses. Evaluation of the reasonableness of expenses and authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible. However, if the determination of permissibility is made by independent legal counsel, persons specified by Section 10.4(c) shall evaluate the reasonableness of expenses and may authorize indemnification.

Section 10.6 Expenses Paid in Advance. Expenses reasonably incurred by an officer or director in defending a civil or criminal proceeding shall be paid by the corporation in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if such director or officer ultimately is found not to be entitled to indemnification by the corporation pursuant to this section. Expenses incurred by other employees and agents may be paid in advance in accordance with the advancement terms.

Notwithstanding Section 10.7, for any proceeding related to a covered matter, the advancement of expenses as contemplated by this Section 10.6 shall be terminated or reduced or shall be subject to additional conditions under modified advancement terms if (i) such officer, director or employee does not prevail at trial, enters into a plea arrangement, agrees to the entry of a final administrative or judicial order imposing sanctions, or otherwise admits to the violation or (ii) the corporation initiates an investigation and determines that the officer's, director's or employee's action in respect of such covered matter is not indemnifiable, except to the extent that Section 607.0850(3), Florida Statutes requires the corporation to provide indemnification for expenses. Any subsequent agreement with a director, officer or employee that addresses indemnification and advancement of expenses shall be consistent with this paragraph of Section 10.6. Notwithstanding the foregoing, nothing provided for in this paragraph shall act to abrogate or modify in any manner any obligation that the corporation otherwise has to indemnify or provide advancement of expenses (i) existing prior to January 17, 2014 or (ii) that is contemplated in any contract entered into prior to January 17, 2014.

Section 10.7 Willful Misconduct, Etc. The indemnification and advancement of expenses provided pursuant to this Article 10 are not exclusive, and the corporation may make any other or further indemnification or advancement of expenses of any of its directors, officers, employees or agents, under any provisions of the Articles of Incorporation, or any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in the person's official capacity and as to action in another capacity while holding such office. However, indemnification or advancement of expenses shall not be made to or on behalf of any director,

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officer, employee or agent if a judgment or other final adjudication establishes that the cause of action so adjudicated constitutes:

- (e) A violation of the criminal law, unless the director, officer, employee or agent had reasonable cause to believe the conduct was lawful or had no reasonable cause to believe the conduct was unlawful;
- (f) A transaction from which the director, officer, employee or agent derived an improper personal benefit;
- (g) In the case of a director, a circumstance under which the liability provisions of Section 607.0834, Florida Statutes, are applicable; or
- (h) Willful misconduct or conscious disregard for the best interests of the corporation in a proceeding by or in the right of the corporation to procure a judgment in its favor or in a proceeding by or in the right of a shareholder.

Section 10.8 Persons No Longer in the Corporation's Services Indemnification and advancement of expenses as provided in this section shall continue, unless otherwise provided when authorized or ratified, to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person, unless otherwise provided when authorized or ratified.

Section 10.9 Court Ordered Indemnification. Unless the corporation's Articles of Incorporation provide otherwise, notwithstanding the failure of the corporation to provide indemnification, and despite any contrary determination of the Board of Directors or of the shareholders in the specific case, a director, officer, employee or agent of the corporation who is or was a party to the proceeding may apply for indemnification or advancement of expenses, or both to the court conducting the proceeding, to the circuit court, or to another court of competent jurisdiction.

Section 10.10 Constituent Corporations. For purposes of this Article 10, the term "corporation" includes, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger, so that any person who is or was a director, officer, employee or agent of a constituent corporation, or is or was serving at the request of a constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, is in the same position under this section with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued.

Section 10.11 Definitions.

For purposes of this Article 10:

- (i) The term "advancement terms" includes such terms or conditions as the Board of Directors deems appropriate;
  - (j) The term "covered matter" includes any indictment or civil complaint filed by a state or federal governmental enforcement agency against, an officer, director or any employee, arising out of events occurring on or after January 17, 2014;
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- (k) The term “other enterprises” includes employee benefit plans;
- (l) The term “expenses” includes counsel fees, including those for appeal;
- (m) The term “liability” includes obligations to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to any employee benefit plan), and expenses actually and reasonably incurred with respect to a proceeding;
- (n) The term “proceeding” includes any threatened, pending or completed action, suit or other type of proceeding, whether civil, criminal, administrative or investigative and whether formal or informal;
- (o) The term “agent” includes a volunteer;
- (p) The term “servicing at the request of the corporation” includes any service as a director, officer, employee or agent of the corporation that imposes duties on such persons, including duties relating to an employee benefit plan and its participants or beneficiaries; and
- (q) The term “not opposed to the best interest of the corporation” describes the actions of a person who acts in good faith and in a manner the person reasonably believes to be in the best interests of the participants and beneficiaries of an employee benefit plan.

Section 10.12 Insurance. The corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person’s status as such, whether or not the corporation would have the power to indemnify him or her against such liability under the provisions of this Article 10.

Section 10.13 Effect of Amendment. No amendment to or repeal of this Article 10 shall diminish the rights of indemnification provided for herein to any person who serves or served as a director, officer, employee or agent at any time prior to such amendment or repeal.

## **ARTICLE 11**

### **AMENDMENTS**

Section 11.1 Power to Amend. These bylaws may be amended or repealed by either the Board of Directors or the shareholders, unless the Act reserves the power to amend these bylaws generally or any particular bylaw provision, as the case may be, exclusively to the shareholders or unless the shareholders, in amending or repealing these bylaws generally or any particular bylaw provision, provide expressly that the Board of Directors may not amend or repeal these bylaws or such bylaw provision, as the case may be.

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## ARTICLE 2

### OFFICES

Section 2.1 Principal and Business Offices. The corporation may have such principal and other business offices, either within or without the State of Florida, as the Board of Directors may designate or as the business of the corporation may require from time to time.

Section 2.2 Registered Office. The registered office of the corporation required by the Act to be maintained in the State of Florida may but need not be identical with the principal office if located in the State of Florida, and the address of the registered office may be changed from time to time by the Board of Directors or by the registered agent. The business office of the registered agent of the corporation shall be identical to such registered office.

## ARTICLE 3

### SHAREHOLDERS

Section 3.1 Annual Meeting. The annual meeting of shareholders for the election of directors and the conduct of such other business as may properly come before the meeting in accordance with these bylaws shall be held at such place and time on such day, other than a legal holiday, as the Chief Executive Officer of the corporation in each such year determines; provided, that if the Chief Executive Officer does not act, the Board of Directors shall determine the place, time and date of such meeting. If the election of directors shall not be held on the day fixed as herein provided for any annual meeting of shareholders, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of shareholders as soon thereafter as is practicable. At any annual meeting of the shareholders, only such nominations of persons for election to the Board of Directors shall be made, and only such other business shall be conducted or considered, as shall have been properly brought before the meeting. For nominations to be properly made at an annual meeting, and proposals of other business to be properly brought before an annual meeting, nominations and proposals of other business must be (a) specified in the corporation's notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (b) otherwise properly made at the annual meeting, by or at the direction of the Board of Directors or (c) otherwise properly requested to be brought before the annual meeting by a shareholder of the corporation in accordance with these bylaws. For nominations of persons for election to the Board of Directors or proposals of other business to be properly requested by a shareholder to be made at an annual meeting, a shareholder must (i) be a shareholder of record at the time of giving of notice of such annual meeting by or at the direction of the Board of Directors and at the time of the annual meeting, (ii) be entitled to vote at such annual meeting and (iii) comply with the procedures set forth in these bylaws as to such business or nomination. The immediately preceding sentence shall be the exclusive means for a shareholder to make nominations or other business proposals (other than matters properly brought under Rule 14a-8 or Rule 14a-11 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and included in the corporation's notice of meeting) before an annual meeting of shareholders.

### Section 3.2 Special Meetings.

(a) Call by Directors. Special meetings of shareholders, for any purpose or purposes, may be called by the Board of Directors, the Chair of the Board or the Lead Director (if any).

(b) Call by Shareholders. The corporation shall call a special meeting of shareholders in the event that the holders of at least fifty percent (50%) of all of the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting (the "Requisite Percentage") sign, date, and deliver to the Secretary one or more written demands for the meeting describing one or more purposes for which it is to be held. ("Special Meeting Request"). The corporation shall give notice of such a Special Meeting Request within sixty days after the date that the demand is delivered to the corporation. Nominations of persons for election to the Board of Directors may be made at a special meeting of shareholders at which directors are to be elected pursuant to the corporation's notice of meeting (a) by or at the direction of the Board of Directors or (b) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any shareholder of the corporation who (i) is a shareholder of record at the time of giving of notice of such special meeting and at the time of the special meeting, (ii) is entitled to vote at the meeting and (iii) complies with the procedures set forth in these Bylaws as to such nomination. The immediately preceding sentence shall be the exclusive means for a shareholder to make nominations or other business proposals before a special meeting of shareholders (other than matters properly brought under Rule 14a-8 or Rule 14a-11 under the Exchange Act and included in the corporation's notice of meeting).

(c) Notwithstanding the foregoing provisions of this Section 3.2, a special meeting requested by shareholders pursuant to Section 3.2(b) shall not be held if (i) the Special Meeting Request does not comply with this Article 3; (ii) the Special Meeting Request relates to an item of business that is not a proper subject for shareholder action under applicable law; (iii) the Special Meeting Request is received by the corporation during the period commencing 90 days prior to the first anniversary of the date of the immediately preceding annual meeting and ending on the date of the next annual meeting; (iv) an annual or special meeting of shareholders that included a substantially similar item of business ("Similar Business") (as determined in good faith by the Board of Directors) was held not more than 120 days before the Special Meeting Request was received by the Secretary; (v) the Board of Directors has called or calls for an annual or special meeting of shareholders to be held within 90 days after the Special Meeting Request is received by the Secretary and the Board of Directors determines in good faith that the business to be conducted at such meeting includes the Similar Business; (vi) such Special Meeting Request was made in a manner that involved a violation of Regulation 14A under the Securities Exchange Act of 1934, as amended, or other applicable law; or (vii) two or more special meetings of shareholders called pursuant to the request of shareholders have been held within the 12-month period before the Special Meeting Request was received by the Secretary. For purposes of this Article 3, the nomination, election or removal of directors shall be deemed to be Similar Business with respect to all items of business involving the nomination, election or removal of directors, changing the size of the Board of Directors and filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors.

(d) Any shareholder's participation in a Special Meeting Request at any time by written revocation delivered to the Secretary and if, following any such revocation, there are outstanding un-revoked requests from shareholders holding less than the Requisite Percentage in accordance with this Section 3, the Board of Directors may, in its discretion, cancel the special meeting. If none of the requesting shareholders appears or sends a duly authorized agent to present the business to be presented for consideration that was specified in the Special Meeting Request, the corporation need not present such business for a vote at such special meeting.

Business conducted at a special meeting requested by shareholders pursuant to Article 3 shall be limited to the matters described in the applicable Special Meeting Request; provided that nothing herein shall prohibit the Board of Directors from submitting matters to the shareholders at any such special meeting requested by shareholders.

Section 3.3 Place of Meeting. The Board of Directors may designate any place, either within or without the State of Florida, as the place of meeting for any annual or special meeting of shareholders. If no designation is made, the place of meeting shall be the principal office of the corporation.

#### Section 3.4 Notice of Meeting.

(a) Content and Delivery. Written notice stating the date, time, and place of any meeting of shareholders and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten days nor more than sixty days before the date of the meeting by or at the direction of the Chief Executive Officer, the President or the Secretary, or the officer or persons duly calling the meeting, to each shareholder of record entitled to vote at such meeting and to such other persons as required by the Act. Unless the Act requires otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called. If mailed, notice of a meeting of shareholders shall be deemed to be delivered when deposited in the United States mail, addressed to the shareholder at his or her address as it appears on the stock record books of the corporation, with postage thereon prepaid.

(b) Notice of Adjourned Meetings. If an annual or special meeting of shareholders is adjourned to a different date, time, or place, the corporation shall not be required to give notice of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment; provided, however, that if a new record date for an adjourned meeting is or must be fixed, the corporation shall give notice of the adjourned meeting to persons who are shareholders as of the new record date who are entitled to notice of the meeting.

(c) No Notice Under Certain Circumstances. Notwithstanding the other provisions of this Section, no notice of a meeting of shareholders need be given to a shareholder if: (1) an annual report and proxy statement for two consecutive annual meetings of shareholders, or (2) all, and at least two, checks in payment of dividends or interest on securities during a twelve-month period have been sent by first-class, United States mail, addressed to the shareholder at his or her address as it appears on the share transfer books of the corporation, and returned undeliverable. The obligation of the corporation to give notice of a shareholders' meeting to any such shareholder shall be reinstated once the corporation has received a new address for such shareholder for entry on its share transfer books.

#### Section 3.5 Waiver of Notice.

(a) Written Waiver. A shareholder may waive any notice required by the Act or these bylaws before or after the date and time stated for the meeting in the notice. The waiver shall be in writing and signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records. Neither the business to be transacted at nor the purpose of any regular or special meeting of shareholders need be specified in any written waiver of notice.

(b) Waiver by Attendance. A shareholder's attendance at a meeting, in person or by proxy, waives objection to all of the following: (1) lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and (2) consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

#### Section 3.6 Fixing of Record Date.

(a) General. The Board of Directors may fix in advance a date as the record date for the purpose of determining shareholders entitled to notice of a shareholders' meeting, entitled to vote, or take any other action. In no event may a record date fixed by the Board of Directors be a date preceding the date upon which the resolution fixing the record date is adopted or a date more than seventy days before the date of meeting or action requiring a determination of shareholders.

(b) Special Meeting. The record date for determining shareholders entitled to demand a special meeting shall be the close of business on the date the first shareholder delivers his or her demand to the corporation.

(c) Absence of Board Determination for Shareholders' Meeting. If the Board of Directors does not determine the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting, such record date shall be the close of business on the day before the first notice with respect thereto is delivered to shareholders.

(d) Adjourned Meeting. A record date for determining shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the Board of Directors fixes a new record date, which it must do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

#### Section 3.7 Shareholders' List for Meetings.

(a) Preparation and Availability. After a record date for a meeting of shareholders has been fixed, the corporation shall

prepare an alphabetical list of the names of all of the shareholders entitled to notice of the meeting. The list shall be arranged by class or series of shares, if any, and show the address of and number of shares held by each shareholder. Such list shall be available for inspection by any shareholder for a period of ten days prior to the meeting or such shorter time as exists between the record date and the meeting date, and continuing through the meeting, at the corporation's principal office, at a place identified in the meeting notice in the city where the meeting will be held, or at the office of the corporation's transfer agent or registrar, if any. A shareholder or his or her agent or attorney may, on written demand, inspect the list, subject to the requirements of the Act, during regular business hours and at his or her expense, during the period that it is available for inspection pursuant to this Section. The corporation shall make the shareholders' list available at the meeting and any shareholder or his or her agent or attorney may inspect the list at any time during the meeting or any adjournment thereof.

(b) Prima Facie Evidence. The shareholders' list is prima facie evidence of the identity of shareholders entitled to examine the shareholders' list or to vote at a meeting of shareholders.

(c) Failure to Comply. If the requirements of this Section have not been substantially complied with, or if the corporation refuses to allow a shareholder or his or her agent or attorney to inspect the shareholders' list before or at the meeting, on the demand of any shareholder, in person or by proxy, who failed to get such access, the meeting shall be adjourned until such requirements are complied with.

(d) Validity of Action Not Affected. Refusal or failure to prepare or make available the shareholders' list shall not affect the validity of any action taken at a meeting of shareholders.

Section 3.8 Conduct of Meetings by Remote Communication. The Board of Directors may adopt guidelines and procedures for shareholders and proxy holders not physically present at a special meeting of shareholders to participate in the meeting, be deemed present in person, vote, communicate and read or hear the proceedings of the meeting substantially concurrently with such proceedings, all by means of remote communication. The Board of Directors may adopt procedures and guidelines for the conduct of a special meeting solely by means of remote communication rather than holding the meeting at a designated place.

#### Section 3.9 Quorum.

(a) What Constitutes a Quorum. Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. If the corporation has only one class of stock outstanding, such class shall constitute a separate voting group for purposes of this Section. Except as otherwise provided in the Act, a majority of the votes entitled to be cast on the matter shall constitute a quorum of the voting group for action on that matter.

(b) Presence of Shares. Once a share is represented for any purpose at a meeting, other than for the purpose of objecting to holding the meeting or transacting business at the meeting, it is considered present for purposes of determining whether a quorum exists for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for the adjourned meeting.

(c) Adjournment in Absence of Quorum. Where a quorum is not present, the holders of a majority of the shares represented and who would be entitled to vote at the meeting if a quorum were present may adjourn such meeting from time to time.

Section 3.10 Voting of Shares. Except as provided in the Articles of Incorporation or the Act, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a meeting of shareholders.

#### Section 3.11 Vote Required.

(a) Matters Other Than Election of Directors. If a quorum exists, except in the case of the election of directors, action on a matter shall be approved if the votes cast favoring the action exceed the votes cast opposing the action, unless the Act or the Articles of Incorporation require a greater number of affirmative votes.

(b) Election of Directors. Each director shall be elected by a plurality of the votes cast by the shares entitled to vote in the election of directors at a meeting at which a quorum is present. Each shareholder who is entitled to vote at an election of directors has the right to vote the number of shares owned by him or her for as many persons as there are directors to be elected. Shareholders do not have a right to cumulate their votes for directors.

Section 3.12 Conduct of Meeting. The Chair of the Board of Directors, and in his or her absence, the Lead Director (if any), and in his or her absence, the President, and in his or her absence, a Vice President in the order provided under the Section of these bylaws titled "Vice Presidents," and in their absence, any person chosen by the shareholders present shall call a shareholders' meeting to order and shall act as presiding officer of the meeting, and the Secretary of the corporation shall act as secretary of all meetings of the shareholders, but, in the absence of the Secretary, the presiding officer may appoint any other person to act as secretary of the meeting. The presiding officer of the meeting shall have broad discretion in determining the order of business at a shareholders' meeting. The presiding officer's authority to conduct the meeting shall include, but in no way be limited to, recognizing shareholders entitled to speak, calling for the necessary reports, stating questions and putting them to a vote, calling for nominations, and announcing the results of voting. The presiding officer also shall take such actions as are necessary and appropriate to preserve order at the meeting. The rules of parliamentary procedure need not be observed in the conduct of shareholders' meetings; however, meetings shall be conducted in accordance with accepted usage and common practice with fair treatment to all who are entitled to take part.

Section 3.13 Inspectors of Election. Inspectors of election may be appointed by the Board of Directors to act at any meeting of shareholders at which any vote is taken. If inspectors of election are not so appointed, the presiding officer of the meeting may, and on the request of any shareholder shall, make such appointment. The inspectors of election shall determine the number of shares outstanding, the voting rights with respect to each, the shares represented at the meeting, the existence of a quorum, and the authenticity, validity, and effect of proxies; receive votes, ballots, consents, and waivers; hear and determine all challenges and

questions arising in connection with the vote; count and tabulate all votes, consents, and waivers; determine and announce the result; and do such acts as are proper to conduct the election or vote with fairness to all shareholders. No inspector, whether appointed by the Board of Directors or by the person acting as presiding officer of the meeting, need be a shareholder.

#### Section 3.14 Proxies.

(a) Appointment. At all meetings of shareholders, a shareholder or attorney-in-fact for a shareholder may vote the shareholder's shares in person or by proxy. If an appointment form expressly provides, any proxy holder may appoint, in writing, a substitute to act in his or her place. A shareholder or attorney-in-fact for a shareholder may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by electronic transmission. Any type of electronic transmission appearing to have been, or containing or accompanied by such information or obtained under such procedures to reasonably ensure that the electronic transmission was, transmitted or authorized by such person is a sufficient appointment, subject to the verification requested by the corporation under Section 3.16 of these bylaws and Section 607.0724, Florida Statutes. The appointment may be signed by any reasonable means, including, but not limited to, facsimile or electronic signature. Any copy, facsimile transmission or other reliable reproduction of the writing or electronic transmission of the appointment may be substituted or used in lieu of the original writing or electronic transmission for any purpose for which the original writing or electronic transmission could be used if the copy, facsimile transmission or other reproduction is a complete reproduction of the entire original writing or electronic transmission.

(b) When Effective. An appointment of a proxy is effective when received by the Secretary or other officer or agent of the corporation authorized to tabulate votes. An appointment is valid for up to eleven months unless a longer period is expressly provided in the appointment form. An appointment of a proxy is revocable by the shareholder unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest.

Section 3.15 Shareholder Nominations and Proposals. Any shareholder nomination or proposal for action at a forthcoming shareholder meeting must be delivered to the corporation in accordance with all applicable laws and regulations, including, without limitation, by the deadline for submitting shareholder proposals pursuant to Securities Exchange Commission Regulations Sections 240.14a-8 and 240.14a-11. The presiding officer at any shareholder meeting shall not be required to recognize any proposal or nomination which did not comply with such deadline.

Section 3.16 Representative Claims. Except where a private right of action at a lower threshold than that required by this bylaw is expressly authorized by applicable statute, a current or prior shareholder or group of shareholders (collectively, a "Claiming Shareholder") may not initiate a claim in a court of law on behalf of (1) the corporation and/or (2) any class of current and/or prior shareholders against the corporation and/or against any director and/or officer of the corporation in his or her official capacity, unless the Claiming Shareholder, no later than the date the claim is asserted, delivers to the Secretary written consents by beneficial shareholders owning at least 3% of the outstanding shares of the corporation as of (i) the date the claim was discovered (or should have been discovered) by the Claiming Shareholder or (ii), if on behalf of a class consisting only of prior shareholders, the last date on which a shareholder must have held shares to be included in the class.

Section 3.17 Acceptance of Instruments Showing Shareholder Action. If the name signed on a vote, waiver, consent or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, may accept the vote, waiver, consent or proxy appointment and give it effect as the act of a shareholder. If the name signed on a vote, waiver, consent or proxy appointment does not correspond to the name of a shareholder, the corporation, if acting in good faith, may accept the vote, waiver, consent or proxy appointment and give it effect as the act of the shareholder if any of the following apply:

- (i) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;
- (ii) The name signed purports to be that of a administrator, executor, guardian, personal representative, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation is presented with respect to the vote, consent, waiver, consent or proxy appointment;
- (iii) The name signed purports to be that of a receiver or trustee in bankruptcy, or assignee for the benefit of creditors of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation is presented with respect to the vote, consent, waiver, consent or proxy appointment;
- (iv) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder is presented with respect to the vote, waiver, consent or proxy appointment; or
- (v) Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all co-owners.

The corporation may reject a vote, waiver, consent or proxy appointment if the Secretary or other officer or agent of the corporation who is authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

## ARTICLE 4

### BOARD OF DIRECTORS

Section 4.1 General Powers and Number. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, the Board of Directors, a majority of whom shall be Independent Directors. The number of directors shall be established from time to time by resolution of the Board of Directors, but no such resolution shall increase or decrease the number of directors by more than one without the approval of shareholders pursuant to Section 3.11(a). Initially, the Board shall be comprised of seven (7) directors. For purposes of this section, "Independent Director"

shall mean a person other than an officer or director of the corporation or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

Section 4.2 Qualifications. Directors must be natural persons who are eighteen years of age or older but need not be residents of this state or shareholders of the corporation.

Section 4.3 Term of Office. The term of each director shall expire at the next annual meeting of shareholders following his or her election or until his or her successor is elected and qualifies.

Section 4.4 Removal. Subject to the rights of the holders, if any, of preferred stock of the corporation to elect additional directors under the specified circumstances, any director may be removed at any time, but only for cause, upon the affirmative vote of the holders of a 66 2/3% of the combined voting power of the then outstanding shares of stock of the corporation entitled to vote generally in the election of directors, voting together as a single class.

A director may be removed by the shareholders or directors only at a meeting called for the purpose of removing him or her, and the meeting notice must state that the purpose or one of the purposes of the meeting is the removal of directors.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office

Section 4.5 Resignation.

(a) Except as contemplated in Section 4.5(b), a director may resign at any time by delivering written notice to the Board of Directors or its Chair or to the corporation. Such resignation shall be effective when the notice is delivered unless the notice specifies a later effective date.

(b) As a condition to being nominated to the Board of Directors or re-nominated for continued service on the Board of Directors, as the case may be, each incumbent director or director nominee must, in addition to providing any other deliverables required by these bylaws, sign and deliver to the Board of Directors an irrevocable letter of resignation, in a form satisfactory to the Board of Directors, with such letter being deemed tendered as of the date of the Board of Director's determination referred to below. The letter of resignation will be limited and conditioned upon (i) a finding by the majority of the disinterested members of the Board of Directors, in accordance with the procedure set out below, that, in connection with the performance of his or her duties as a director of the corporation, the director either Substantially Participated in a Significant Violation, or recklessly disregarded his or her duty to exercise reasonable oversight and (ii) the acceptance of the resignation by the disinterested members of the Board of Directors. Whether a director's conduct is subject to this provision will be reviewed by the disinterested members of the Board of Directors, who will determine (i) whether the director's action or failure to act falls within conduct described above; and (ii) whether to accept or reject the resignation, or whether other action should be taken. The resignation, if accepted, will be effective at the time the disinterested members of the Board of Directors accept it.

Section 4.6 Vacancies.

(a) Who May Fill Vacancies. Except as provided below, whenever any vacancy occurs on the Board of Directors, including a vacancy resulting from an increase in the number of directors, it may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board of Directors, or by the shareholders at a special meeting called in accordance with Section 3.2 of these bylaws. Any director elected in accordance with the preceding sentence shall hold office until the next annual meeting of the corporation. If the directors first fill a vacancy, the shareholders shall have no further right with respect to that vacancy, and if the shareholders first fill the vacancy, the directors shall have no further rights with respect to that vacancy.

(b) Directors Elected by Voting Groups. Whenever the holders of shares of any voting group are entitled to elect a class of one or more directors by the provisions of the Articles of Incorporation, vacancies in such class may be filled by holders of shares of that voting group or by a majority of the directors then in office elected by such voting group or by a sole remaining director so elected. If no director elected by such voting group remains in office, unless the Articles of Incorporation provide otherwise, directors not elected by such voting group may fill vacancies.

(c) Prospective Vacancies. A vacancy that will occur at a specific later date, because of a resignation effective at a later date or otherwise, may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

Section 4.7 Compensation. The Board of Directors, irrespective of any personal interest of any of its members, may establish reasonable compensation of all directors for services to the corporation as directors, officers, or otherwise, or may delegate such authority to an appropriate committee. The Board of Directors also shall have authority to provide for or delegate authority to an appropriate committee to provide for reasonable pensions, disability or death benefits, and other benefits or payments, to directors, officers, and employees and to their families, dependents, estates, or beneficiaries on account of prior services rendered to the corporation by such directors, officers, and employees.

Section 4.8 Regular Meetings. A regular meeting of the Board of Directors shall be held without other notice than this bylaw immediately after the annual meeting of shareholders and each adjourned session thereof. The place of such regular meeting shall be the same as the place of the meeting of shareholders which precedes it, or such other suitable place as may be announced at such meeting of shareholders. The Board of Directors may provide, by resolution, the date, time, and place, either within or without the State of Florida, for the holding of additional regular meetings of the Board of Directors without notice other than such resolution.

Section 4.9 Special Meetings. Special meetings of the Board of Directors may be called by the Chair of the Board, the Lead Director (if any), the President or one-third of the members of the Board of Directors. The person or persons calling the meeting may fix any place, either within or without the State of Florida, as the place for holding any special meeting of the Board of Directors, and if

no other place is fixed, the place of the meeting shall be the principal office of the corporation in the State of Florida.

Section 4.10 Notice. Special meetings of the Board of Directors must be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting.

Section 4.11 Waiver of Notice. Notice of a meeting of the Board of Directors need not be given to any director who signs a waiver of notice either before or after the meeting. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting and waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when a director states, at the beginning of the meeting or promptly upon arrival at the meeting, any objection to the transaction of business because the meeting is not lawfully called or convened.

Section 4.12 Quorum and Voting. A quorum of the Board of Directors consists of a majority of the number of directors prescribed by these bylaws. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the Board of Directors. A director who is present at a meeting of the Board of Directors or a committee of the Board of Directors when corporate action is taken is deemed to have assented to the action taken unless: (a) he or she objects at the beginning of the meeting (or promptly upon his or her arrival) to holding it or transacting specified business at the meeting; or (b) he or she votes against or abstains from the action taken.

Section 4.13 Conduct of Meetings.

(a) Presiding Officer. The Board of Directors shall elect from among its members a Chair of the Board of Directors, who shall preside at meetings of the Board of Directors. If the Chair is an employee of the corporation, the Board of Directors shall elect from among its members a Lead Director, who shall preside at executive sessions of the Board at which employees of the corporation or any of its subsidiaries shall not be present. The Chair, and in his or her absence, the Lead Director, and in his or her absence, the President, and in his or her absence, any director chosen by the directors present, shall call meetings of the Board of Directors to order and shall act as presiding officer of the meeting.

(b) Minutes. The Secretary of the corporation shall act as secretary of all meetings of the Board of Directors but in the absence of the Secretary, the presiding officer may appoint any other person present to act as secretary of the meeting. Minutes of any regular or special meeting of the Board of Directors shall be prepared and distributed to each director.

(c) Adjournments. A majority of the directors present, whether or not a quorum exists, may adjourn any meeting of the Board of Directors to another time and place. Notice of any such adjourned meeting shall be given to the directors who are not present at the time of the adjournment and, unless the time and place of the adjourned meeting are announced at the time of the adjournment, to the other directors.

(d) Participation by Conference Call or Similar Means. The Board of Directors may permit any or all directors to participate in a regular or a special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Section 4.14 Committees. The Board of Directors, by resolution adopted by a majority of the full Board of Directors, shall designate from among its members an Audit Committee, a Compensation Committee, a Nominating and Corporate Governance Committee and one or more other committees each of which, to the extent provided in such resolution and in any charter adopted by the Board of Directors for any committee, shall have and may exercise all the authority of the Board of Directors, except that no such committee shall have the authority to:

- (i) approve or recommend to shareholders actions or proposals required by the Act to be approved by shareholders;
- (ii) fill vacancies on the Board of Directors or any committee thereof;
- (iii) adopt, amend, or repeal these bylaws;
- (iv) authorize or approve the reacquisition of shares unless pursuant to a general formula or method specified by the Board of Directors; or
- (v) authorize or approve the issuance or sale or contract for the sale of shares, or determine the designation and relative rights, preferences, and limitations of a voting group except that the Board of Directors may authorize a committee (or a senior executive officer of the corporation) to do so within limits specifically prescribed by the Board of Directors.

Each committee must have two or more members, who shall serve at the pleasure of the Board of Directors. The Board of Directors, by resolution adopted in accordance with this Section, may designate one or more directors as alternate members of any such committee, who may act in the place and stead of any absent member or members at any meeting of such committee. The Board of Directors may adopt a charter for any such committee specifying requirements with respect to committee chairs and membership, responsibilities of the committee, the conduct of meetings and business of the committee and such other matters as the Board may designate. In the absence of a committee charter or a provision of a committee charter governing such matters, the provisions of these bylaws which govern meetings, notice and waiver of notice, and quorum and voting requirements of the Board of Directors apply to committees and their members as well.

Section 4.15 Lead Director. If the Board of Directors appoints a Lead Director to preside at executive sessions of the Board of Directors, the Board of Directors may assign to the Lead Director by resolutions such additional duties as the Board of Directors determines, in its discretion, including acting as a liaison between the Board of Directors and the officers of the corporation and assisting in the setting of agendas for meetings of the Board of Directors.

Section 4.16 Action Without Meeting. Any action required or permitted by the Act to be taken at a meeting of the Board of Directors or a committee thereof may be taken without a meeting if the action is taken by all members of the Board or of the committee. The action shall be evidenced by one or more written consents describing the action taken, signed by each director or committee member and retained by the corporation. Such action shall be effective when the last director or committee member signs the consent, unless the consent specifies a different effective date. A consent signed under this Section has the effect of a vote at a meeting and may be described as such in any document.

## ARTICLE 5

### OFFICERS

Section 5.1 Number. The principal officers of the corporation shall be a Chief Executive Officer, a President, the number of Executive Vice Presidents, Senior Vice Presidents and Vice Presidents as authorized from time to time by the Board of Directors, a Secretary, and a Treasurer, each of whom shall be elected by the Board of Directors. The Board of Directors shall designate from among the officers it elects those who shall be the executive officers of the corporation responsible for all policy making functions, under the direction of the Board of Directors. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board of Directors. The Board of Directors may also authorize any duly appointed officer to appoint one or more officers or assistant officers. The same individual may simultaneously hold more than one office.

Section 5.2 Election and Term of Office. The officers of the corporation to be elected by the Board of Directors shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of the shareholders. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as is practicable. Each officer shall hold office until his or her successor shall have been duly elected or until his or her prior death, resignation, or removal.

Section 5.3 Removal. The Board of Directors may remove any officer and, unless restricted by the Board of Directors, an officer may remove any officer or assistant officer appointed by that officer, at any time, with or without cause and notwithstanding the contract rights, if any, of the officer removed. The appointment of an officer does not of itself create contract rights.

Section 5.4 Resignation. An officer may resign at any time by delivering notice to the corporation. The resignation shall be effective when the notice is delivered, unless the notice specifies a later effective date and the corporation accepts the later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, the pending vacancy may be filled before the effective date but the successor may not take office until the effective date.

Section 5.5 Vacancies. A vacancy in any principal office because of death, resignation, removal, disqualification, or otherwise, shall be filled as soon thereafter as practicable by the Board of Directors for the unexpired portion of the term.

Section 5.6 Chief Executive Officer. The Chief Executive Officer shall be the principal executive officer of the corporation and, subject to the direction of the Board of Directors, shall in general supervise all of the business operations and affairs of the corporation, the daily operations of which shall be under the control of the President. The Chief Executive Officer shall have authority, subject to such rules as may be prescribed by the Board of Directors, to direct the President in the performance of the President's duties. The Chief Executive Officer shall have authority, subject to such rules as may be prescribed by the Board of Directors, to appoint such agents and employees of the corporation as he or she shall deem necessary, to prescribe their powers, duties and compensation, and to delegate authority to them. Such agents and employees shall hold office at the discretion of the Chief Executive Officer. The Chief Executive Officer shall have authority to sign certificates for shares of the corporation the issuance of which shall have been authorized by resolution of the Board of Directors, and to execute and acknowledge, on behalf of the corporation, all deeds, mortgages, bonds, contracts, leases, reports, and all other documents or instruments necessary or proper to be executed in the course of the corporation's regular business, or which shall be authorized by resolution of the Board of Directors; and except as otherwise provided by law or the Board of Directors, the Chief Executive Officer may authorize the President, any Vice President or other officer or agent of the corporation to execute and acknowledge such documents or instruments in his or her place and stead. In general, he or she shall perform all duties as may be prescribed by the Board of Directors from time to time.

Section 5.7 President. The President shall be the principal operating officer of the corporation and, subject to the direction of the Board of Directors and the Chair, shall in general supervise and control all of the business and affairs of the corporation. If the Chair of the Board is not present, the President shall preside at all meetings of the Board of Directors and shareholders. The President shall have authority, subject to such rules as may be prescribed by the Board of Directors, to appoint such agents and employees of the corporation as he or she shall deem necessary, to prescribe their powers, duties and compensation, and to delegate authority to them. Such agents and employees shall hold office at the discretion of the President. The President shall have authority, subject to such rules as may be prescribed by the Board of Directors and/or the Chair, to sign certificates for shares of the corporation the issuance of which shall have been authorized by resolution of the Board of Directors, and to execute and acknowledge, on behalf of the corporation, all deeds, mortgages, bonds, contracts, leases, reports, and all other documents or instruments necessary or proper to be executed in the course of the corporation's regular business, or which shall be authorized by resolution of the Board of Directors; and, except as otherwise provided by law or the Board of Directors or the Chair, the President may authorize any Vice President or other officer or agent of the corporation to execute and acknowledge such documents or instruments in his or her place and stead. In general he or she shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

Section 5.8 Vice Presidents. The Board of Directors may appoint one or more Executive Vice Presidents, Senior Vice Presidents and other Vice Presidents, prescribe their powers and duties, and specify to which other officer a Vice President should report. The Board of Directors may authorize the President to appoint one or more Vice Presidents, to prescribe their powers, duties and compensation, and to delegate authority to them.

Section 5.9 Secretary. The Secretary shall: (a) keep, or cause to be kept, minutes of the meetings of the shareholders and of the Board of Directors (and of committees thereof) in one or more books provided for that purpose (including records of actions taken

by the shareholders or the Board of Directors (or committees thereof) without a meeting); (b) be custodian of the corporate records and of the seal of the corporation, if any, and if the corporation has a seal, see that it is affixed to all documents the execution of which on behalf of the corporation under its seal is duly authorized; (c) authenticate the records of the corporation; (d) maintain a record of the shareholders of the corporation, in a form that permits preparation of a list of the names and addresses of all shareholders, by class or series of shares and showing the number and class or series of shares held by each shareholder; (e) have general charge of the stock transfer books of the corporation; and (f) in general perform all duties incident to the office of Secretary and have such other duties and exercise such authority as from time to time may be delegated or assigned by the President or by the Board of Directors.

Section 5.10 Treasurer. The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the corporation; (b) maintain appropriate accounting records; (c) receive and give receipts for moneys due and payable to the corporation from any source whatsoever, and deposit all such moneys in the name of the corporation in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of these bylaws; and (d) in general perform all of the duties incident to the office of Treasurer and have such other duties and exercise such other authority as from time to time may be delegated or assigned by the President or by the Board of Directors. If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board of Directors shall determine.

Section 5.11 Assistant Secretaries and Assistant Treasurers. There shall be such number of Assistant Secretaries and Assistant Treasurers as the Board of Directors may from time to time authorize. The Assistant Treasurers shall respectively, if required by the Board of Directors, give bonds for the faithful discharge of their duties in such sums and with such sureties as the Board of Directors shall determine. The Assistant Secretaries and Assistant Treasurers, in general, shall perform such duties and have such authority as shall from time to time be delegated or assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Board of Directors.

Section 5.12 Other Assistants and Acting Officers. The Board of Directors shall have the power to appoint, or to authorize any duly appointed officer of the corporation to appoint, any person to act as assistant to any officer, or as agent for the corporation in his or her stead, or to perform the duties of such officer whenever for any reason it is impracticable for such officer to act personally, and such assistant or acting officer or other agent so appointed by the Board of Directors or an authorized officer shall have the power to perform all the duties of the office to which he or she is so appointed to be an assistant, or as to which he or she is so appointed to act, except as such power may be otherwise defined or restricted by the Board of Directors or the appointing officer.

Section 5.13 Salaries. The salaries of the principal officers shall be fixed from time to time by the Board of Directors or by a duly authorized committee thereof, and no officer shall be prevented from receiving such salary by reason of the fact that he or she is also a director of the corporation.

## ARTICLE 6

### **CONTRACTS, CHECKS AND DEPOSITS; SPECIAL CORPORATE ACTS**

Section 6.1 Contracts. The Board of Directors may authorize any officer or officers, or any agent or agents to enter into any contract or execute or deliver any instrument in the name of and on behalf of the corporation, and such authorization may be general or confined to specific instances. In the absence of other designation, all deeds, mortgages, and instruments of assignment or pledge made by the corporation shall be executed in the name of the corporation by the Chair, the President or one of the Vice Presidents; the Secretary or an Assistant Secretary, when necessary or required, shall attest and affix the corporate seal, if any, thereto; and when so executed no other party to such instrument or any third party shall be required to make any inquiry into the authority of the signing officer or officers.

Section 6.2 Checks, Drafts, etc. All checks, drafts or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the corporation, shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall from time to time be determined by or under the authority of a resolution of the Board of Directors.

Section 6.3 Deposits. All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as may be selected by or under the authority of a resolution of the Board of Directors.

Section 6.4 Voting of Securities Owned by Corporation. Subject always to the specific directions of the Board of Directors, (a) any shares or other securities issued by any other corporation and owned or controlled by this corporation may be voted at any meeting of security holders of such other corporation by the Chair of the Board of this corporation if he or she be present, or in his or her absence by the President of this corporation if he or she be present, or in his or her absence by any Vice President of this corporation who may be present, and (b) whenever, in the judgment of the Chair of the Board, or in his or her absence, of the President, it is desirable for this corporation to execute a proxy or written consent in respect of any such shares or other securities, such proxy or consent shall be executed in the name of this corporation by the Chair of the Board, the President or one of the Vice Presidents of this corporation, without necessity of any authorization by the Board of Directors, affixation of corporate seal, if any, or countersignature or attestation by another officer. Any person or persons designated in the manner above stated as the proxy or proxies of this corporation shall have full right, power, and authority to vote the shares or other securities issued by such other corporation and owned or controlled by this corporation the same as such shares or other securities might be voted by this corporation.

## ARTICLE 7

### **CERTIFICATES FOR SHARES; TRANSFER OF SHARES**

Section 7.1 Consideration for Shares. The Board of Directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, promises to

perform services evidenced by a written contract, or other securities of the corporation. Before the corporation issues shares, the Board of Directors shall determine that the consideration received or to be received for the shares to be issued is adequate. The determination of the Board of Directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable. The corporation may place in escrow shares issued for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid, or the benefits are received. If the services are not performed, the note is not paid, or the benefits are not received, the corporation may cancel, in whole or in part, the shares escrowed or restricted and the distributions credited.

Section 7.2 Certificates for Shares. Every holder of shares in the corporation shall be entitled to have a certificate representing all shares to which he or she is entitled unless the Board of Directors authorizes the issuance of some or all shares without certificates. Any such authorization shall not affect shares already represented by certificates until the certificates are surrendered to the corporation. If the Board of Directors authorizes the issuance of any shares without certificates, within a reasonable time after the issue or transfer of any such shares, the corporation shall send the shareholder a written statement of the information required by the Act or the Articles of Incorporation to be set forth on certificates, including any restrictions on transfer. Certificates representing shares of the corporation shall be in such form, consistent with the Act, as shall be determined by the Board of Directors. Such certificates shall be signed (either manually or in facsimile) by the Chair, the President, any Vice President, the Secretary or any other persons designated by the Board of Directors and may be sealed with the seal of the corporation or a facsimile thereof. All certificates for shares shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the corporation. Unless the Board of Directors authorizes shares without certificates, all certificates surrendered to the corporation for transfer shall be canceled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and canceled, except as provided in these bylaws with respect to lost, destroyed, or stolen certificates. The validity of a share certificate is not affected if a person who signed the certificate (either manually or in facsimile) no longer holds office when the certificate is issued.

Section 7.3 Transfer of Shares. Prior to due presentment of a certificate for shares for registration of transfer, the corporation may treat the registered owner of such shares as the person exclusively entitled to vote, to receive notifications, and otherwise to have and exercise all the rights and power of an owner. Where a certificate for shares is presented to the corporation with a request to register a transfer, the corporation shall not be liable to the owner or any other person suffering loss as a result of such registration of transfer if (a) there were on or with the certificate the necessary endorsements, and (b) the corporation had no duty to inquire into adverse claims or has discharged any such duty. The corporation may require reasonable assurance that such endorsements are genuine and effective and compliance with such other regulations as may be prescribed by or under the authority of the Board of Directors.

Section 7.4 Restrictions on Transfer. The face or reverse side of each certificate representing shares shall bear a conspicuous notation as required by the Act or the Articles of Incorporation of the restrictions imposed by the corporation, if any, upon the transfer of such shares.

Section 7.5 Lost, Destroyed, or Stolen Certificates. Unless the Board of Directors authorizes shares without certificates, where the owner claims that certificates for shares have been lost, destroyed, or wrongfully taken, a new certificate shall be issued in place thereof if the owner (a) so requests before the corporation has notice that such shares have been acquired by a bona fide purchaser, (b) files with the corporation a sufficient indemnity bond if required by the Board of Directors or any principal officer, and (c) satisfies such other reasonable requirements as may be prescribed by or under the authority of the Board of Directors.

Section 7.6 Stock Regulations. The Board of Directors shall have the power and authority to make all such further rules and regulations not inconsistent with law as they may deem expedient concerning the issue, transfer, and registration of shares of the corporation.

## **ARTICLE 8**

### **SEAL**

Section 8.1 Seal. The Board of Directors may provide for a corporate seal for the corporation.

## **ARTICLE 9**

### **BOOKS AND RECORDS**

Section 9.1 Books and Records.

(i) The corporation shall keep as permanent records minutes of all meetings of the shareholders and Board of Directors, a record of all actions taken by the shareholders or Board of Directors without a meeting, and a record of all actions taken by a committee of the Board of Directors in place of the Board of Directors on behalf of the corporation.

(ii) The corporation shall maintain accurate accounting records.

(iii) The corporation or its agent shall maintain a record of the shareholders in a form that permits preparation of a list of the names and addresses of all shareholders in alphabetical order by class of shares showing the number and series of shares held by each.

(iv) The corporation shall keep a copy of all records required under applicable laws and regulations, including, without limitation, all written communications within the preceding three years to all shareholders generally or to all shareholders of a class or series, including the financial statements required to be furnished by the Act, and a copy of its most recent annual report delivered to

the Department of State.

Section 9.2 Inspection Rights. Shareholders and directors are entitled to inspect and copy records of the corporation as permitted by the Act.

Section 9.3 Distribution of Financial Information. The corporation shall prepare and disseminate financial statements to shareholders as required by the Act.

Section 9.4 Other Reports. The corporation shall disseminate such other reports to shareholders as are required by the Act, including reports regarding indemnification in certain circumstances and reports regarding the issuance or authorization for issuance of shares in exchange for promises to render services in the future.

## ARTICLE 10

### INDEMNIFICATION

Section 10.1 Action by Third Party. The corporation shall indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of, the corporation), by reason of the fact that the person is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against liability incurred in connection with such proceeding, including any appeal thereof, if the person acted in good faith and in a manner the person reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any proceeding by judgment, order, settlement or conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner that the person reasonably believed to be in, or not opposed to, the best interests of the corporation or, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct of the person was unlawful.

Section 10.2 Action by Corporation. The corporation shall indemnify any person who was or is a party to any proceeding by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses and amounts paid in settlement not exceeding, in the judgment of the Board of Directors, the estimated expense of litigating the proceeding to conclusion, actually and reasonably incurred in connection with the defense or settlement of such proceeding, including any appeal thereof. Such indemnification shall be authorized if such person acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of the corporation, except that no indemnification shall be made under this subsection in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the court in which such proceeding was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses that such court shall deem proper.

Section 10.3 Successful Defense of an Action. To the extent that a director, officer, employee or agent of the corporation has been successful on the merits or otherwise in defense of any proceeding referred to in Section 10.1 or Section 10.2, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses actually and reasonably incurred by the person in connection therewith.

Section 10.4 Procedure. Any indemnification under Section 10.1 or Section 10.2, unless pursuant to a determination by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 10.1 or Section 10.2. Such determination shall be made:

- (a) By the Board of Directors by majority vote of a quorum consisting of directors who were not parties to such proceeding;
- (b) If such quorum is not obtainable or, even if obtainable, by majority vote of a committee duly designated by the Board of Directors (in which directors who are parties may participate) consisting solely of two or more directors not at the time parties to the proceeding;
- (c) By independent legal counsel:
  - (1) Selected by the Board of Directors prescribed in Section 10.4(a) or the committee prescribed in Section 10.4(b); or
  - (2) If a quorum of the directors cannot be obtained for Section 10.4(a) and the committee cannot be designated under Section 10.4(b), selected by majority vote of the full Board of Directors (in which directors who are parties may participate); or
- (d) By the shareholders by a majority vote of a quorum consisting of shareholders who were not parties to such proceeding or, if no such quorum is obtainable, by a majority vote of shareholders who were not parties to such proceeding.

Section 10.5 Reasonableness of Expenses. Evaluation of the reasonableness of expenses and authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible. However, if the determination of permissibility is made by independent legal counsel, persons specified by Section 10.4(c) shall evaluate the reasonableness of expenses and may authorize indemnification.

Section 10.6 Expenses Paid in Advance. Expenses reasonably incurred by an officer or director in defending a civil or criminal proceeding shall be paid by the corporation in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if such director or officer ultimately is found not to be

entitled to indemnification pursuant to this section. Expenses incurred by other employees and agents may be paid in advance in accordance with the advancement terms.

Notwithstanding Section 10.7, for any proceeding related to a covered matter, the advancement of expenses as contemplated by this Section 10.6 shall be terminated or reduced or shall be subject to additional conditions under modified advancement terms if (i) such officer, director or employee does not prevail at trial, enters into a plea arrangement, agrees to the entry of a final administrative or judicial order imposing sanctions, or otherwise admits to the violation or (ii) the corporation initiates an investigation and determines that the officer's, director's or employee's action in respect of such covered matter is not indemnifiable, except to the extent that Section 607.0850(3), Florida Statutes requires the corporation to provide indemnification for expenses. Any subsequent agreement with a director, officer or employee that addresses indemnification and advancement of expenses shall be consistent with this paragraph of Section 10.6. Notwithstanding the foregoing, nothing provided for in this paragraph shall act to abrogate or modify in any manner any obligation that the corporation otherwise has to indemnify or provide advancement of expenses (i) existing prior to January 17, 2014 or (ii) that is contemplated in any contract entered into prior to January 17, 2014.

Section 10.7 Willful Misconduct, Etc. The indemnification and advancement of expenses provided pursuant to this Article 10 are not exclusive, and the corporation may make any other or further indemnification or advancement of expenses of any of its directors, officers, employees or agents, under any provisions of the Articles of Incorporation, or any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in the person's official capacity and as to action in another capacity while holding such office. However, indemnification or advancement of expenses shall not be made to or on behalf of any director, officer, employee or agent if a judgment or other final adjudication establishes that the cause of action so adjudicated constitutes:

- (a) A violation of the criminal law, unless the director, officer, employee or agent had reasonable cause to believe the conduct was lawful or had no reasonable cause to believe the conduct was unlawful;
- (b) A transaction from which the director, officer, employee or agent derived an improper personal benefit;
- (c) In the case of a director, a circumstance under which the liability provisions of Section 607.0834, Florida Statutes, are applicable; or
- (d) Willful misconduct or conscious disregard for the best interests of the corporation in a proceeding by or in the right of the corporation to procure a judgment in its favor or in a proceeding by or in the right of a shareholder.

Section 10.8 Persons No Longer in the Corporation's Services Indemnification and advancement of expenses as provided in this section shall continue, unless otherwise provided when authorized or ratified, to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person, unless otherwise provided when authorized or ratified.

Section 10.9 Court Ordered Indemnification. Unless the corporation's Articles of Incorporation provide otherwise, notwithstanding the failure of the corporation to provide indemnification, and despite any contrary determination of the Board of Directors or of the shareholders in the specific case, a director, officer, employee or agent of the corporation who is or was a party to the proceeding may apply for indemnification or advancement of expenses, or both to the court conducting the proceeding, to the circuit court, or to another court of competent jurisdiction.

Section 10.10 Constituent Corporations. For purposes of this Article 10, the term "corporation" includes, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger, so that any person who is or was a director, officer, employee or agent of a constituent corporation, or is or was serving at the request of a constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, is in the same position under this section with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued.

#### Section 10.11 Definitions.

For purposes of this Article 10:

- (a) The term "advancement terms" includes such terms or conditions as the Board of Directors deems appropriate;
- (b) The term "covered matter" includes any indictment or civil complaint filed by a state or federal governmental enforcement agency against, an officer, director or any employee, arising out of events occurring on or after January 17, 2014;
- (c) The term "other enterprises" includes employee benefit plans;
- (d) The term "expenses" includes counsel fees, including those for appeal;
- (e) The term "liability" includes obligations to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to any employee benefit plan), and expenses actually and reasonably incurred with respect to a proceeding;
- (f) The term "proceeding" includes any threatened, pending or completed action, suit or other type of proceeding, whether civil, criminal, administrative or investigative and whether formal or informal;
- (g) The term "agent" includes a volunteer;
- (h) The term "servicing at the request of the corporation" includes any service as a director, officer, employee or agent of the corporation that imposes duties on such persons, including duties relating to an employee benefit plan and its participants or beneficiaries; and

(i) The term “not opposed to the best interest of the corporation” describes the actions of a person who acts in good faith and in a manner the person reasonably believes to be in the best interests of the participants and beneficiaries of an employee benefit plan.

Section 10.12 Insurance. The corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person’s status as such, whether or not the corporation would have the power to indemnify him or her against such liability under the provisions of this Article 10.

Section 10.13 Effect of Amendment. No amendment to or repeal of this Article 10 shall diminish the rights of indemnification provided for herein to any person who serves or served as a director, officer, employee or agent at any time prior to such amendment or repeal.

## **ARTICLE 11**

### **AMENDMENTS**

Section 11.1 Power to Amend. These bylaws may be amended or repealed by either the Board of Directors or the shareholders, unless the Act reserves the power to amend these bylaws generally or any particular bylaw provision, as the case may be, exclusively to the shareholders or unless the shareholders, in amending or repealing these bylaws generally or any particular bylaw provision, provide expressly that the Board of Directors may not amend or repeal these bylaws or such bylaw provision, as the case may be.

#### **AMENDMENT NO. 1**

#### **TO AMENDED AND RESTATED BY-LAWS OF EMERGENT CAPITAL, INC.**

Amendment No. 1 to the amended and restated by-laws (the “By-laws”) of Emergent Capital, Inc., a Florida corporation (the “corporation”).

1. Pursuant to the resolution of the Board of Directors of the Corporation (the “Board of Directors”), dated March 6, 2018, Section 3.15 of the By-laws is hereby amended by adding the following sentence to the end of such section:

“In order to be eligible to nominate or propose for nomination a candidate for election as a director, a shareholder must hold at least one percent (1%) of the corporation’s outstanding shares of common stock for no less than twelve (12) months.”

2. This Amendment shall be effective as of March 6, 2018.

3. In all respects not amended, the By-laws are hereby ratified and confirmed and remain in full force and effect.

EMERGENT CAPITAL, INC.

By: /s/ Patrick J. Curry

Name: Patrick J. Curry

Title: Chief Executive Officer

#### **AMENDMENT NO. 2**

#### **TO AMENDED AND RESTATED BY-LAWS OF EMERGENT CAPITAL, INC.**

Amendment No. 2 to the amended and restated by-laws (the “By-laws”) of Emergent Capital, Inc., a Florida corporation (the “corporation”).

1. Pursuant to the resolution of the Board of Directors of the Corporation (the “Board of Directors”), dated April 6, 2018, Section 4.1 of the By-laws is hereby amended by deleting the following phrase from the end of the second sentence of such section:

“, but no such resolution shall increase or decrease the number of directors by more than one without the approval of shareholders pursuant to Section 3.11(a).”

2. This Amendment shall be effective as of May 31, 2018.

3. In all respects not amended, the By-laws are hereby ratified and confirmed and remain in full force and effect.

EMERGENT CAPITAL, INC.

By: /s/ Patrick J. Curry

Name: Patrick J. Curry

Title: Chief Executive Officer

## CERTIFICATIONS

I, Patrick J. Curry, certify that:

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

/s/ Patrick J. Curry

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Patrick J. Curry

Chief Executive Officer and Director

*(Principal Executive Officer)*

November 16, 2018

## CERTIFICATIONS

I, Miriam Martinez, certify that:

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

/s/ Miriam Martinez

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Miriam Martinez

Chief Financial Officer

(Principal Financial Officer)

November 16, 2018

**Certification of the Chief Executive Officer  
Pursuant to 18 U.S.C. Section 1350,  
As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Quarterly Report of Emergent Capital, Inc. (the Registrant) on Form 10-Q for the period ended September 30, 2018 as filed with the U.S. Securities and Exchange Commission on the date hereof (the Report), I, Patrick J. Curry, Chief Executive Officer of the Registrant, certify to the best of my knowledge, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

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

/s/ Patrick J. Curry

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Patrick J. Curry

Chief Executive Officer and Director

November 16, 2018

**Certification of the Chief Executive Officer  
Pursuant to 18 U.S.C. Section 1350,  
As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Quarterly Report of Emergent Capital, Inc. (the Registrant) on Form 10-Q for the period ended September 30, 2018 as filed with the U.S. Securities and Exchange Commission on the date hereof (the Report), I, Miriam Martinez, Chief Financial Officer of the Registrant, certify to the best of my knowledge, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

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

/s/ Miriam Martinez

Miriam Martinez

Chief Financial Officer

November 16, 2018