

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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of
The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): October 27, 2021

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

Delaware
(State or other jurisdiction of
incorporation)

001-37605
(Commission File Number)

47-3844457
(IRS Employer
Identification No.)

1200 West Platt Street, Suite 1000
Tampa, Florida 33606
(Address of principal executive offices, including zip code)

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

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

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

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2). Emerging growth company

If an emerging growth company, indicate by check mark if 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.

Item 5.02. Departure of Directors or Certain Officer; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Adoption of LM Funding America, Inc. 2021 Omnibus Incentive Plan

On October 27, 2021, the Board of Directors (the “Board”) of LM Funding America, Inc. (the “Company”, “we”, or “our”) adopted the LM Funding America, Inc. 2021 Omnibus Incentive Plan (the “Plan” or the “2021 Omnibus Plan”). The Plan authorizes the grant of incentive stock options, within the meaning of Section 422 of the Internal Revenue Code, to our employees and any of our parent and subsidiary corporations’ employees, and the grant of nonstatutory stock options, restricted stock, restricted stock units, stock appreciation rights, performance units and performance shares to our employees, directors and consultants and any of our future subsidiary corporations’ employees and consultants.

The Plan became effective on October 27, 2021, provided that no options or stock appreciation rights granted under the Plan will be exercisable and no shares or restricted stock units may be granted under the Plan unless and until the Plan has been approved by the stockholders of the Company, which approval must occur on or within twelve (12) months of the date on which the Plan became effective. Upon the adoption of the Plan, the Board terminated the LM Funding America, Inc. 2015 Omnibus Incentive Plan, provided that such plan will continue to govern outstanding awards previously made under such plan.

The following is a summary of certain terms and conditions of the 2021 Omnibus Plan:

Plan Administration

The 2021 Omnibus Plan is administered by the Board or our compensation committee, or any other committee or subcommittee or one or more of our officers to whom authority has been delegated (collectively, the “Administrator”). The Administrator has the authority to interpret the 2021 Omnibus Plan and award agreements entered into with respect to the 2021 Omnibus Plan; to make, change and rescind rules and regulations relating to the 2021 Omnibus Plan; to make changes to, or reconcile any inconsistency in, the 2021 Omnibus Plan or any award agreement covering an award; and to take any other actions needed to administer the 2021 Omnibus Plan.

Eligibility

The Administrator may designate any of the following as a participant under the 2021 Omnibus Plan: any officer or employee, or individuals engaged to become an officer or employee, of our company or our affiliates; and consultants of the Company or our affiliates, and our directors, including our non-employee directors.

Types of Awards

The 2021 Omnibus Plan permits the Administrator to grant stock options, stock appreciation rights (“SARs”), performance shares, performance units, shares of common stock, restricted stock, restricted stock units (“RSUs”), cash incentive awards, dividend equivalent units, or any other type of award permitted under the 2021 Omnibus Plan. The Administrator may grant any type of award to any participant it selects, but only our employees or our subsidiaries’ employees may receive grants of incentive stock options within the meaning of Section 422 of the Code. Awards may be granted alone or in addition to, in tandem with, or (subject to the repricing prohibition described below) in substitution for any other award (or any other award granted under another plan of our company or any affiliate, including the plan of an acquired entity).

Shares Reserved Under the 2021 Omnibus Plan

The 2021 Omnibus Plan provides that 5,000,000 shares of our common stock are initially reserved for issuance under the 2021 Omnibus Plan, all of which may be issued pursuant to the exercise of incentive stock options. The number of shares available for issuance under our 2021 Omnibus Plan will also include an annual increase on the first day of each fiscal year beginning with our 2023 fiscal year (so long as the number of authorized shares of common stock in the Company’s certificate of incorporation has been increased to at least 100,000,000 shares prior to such date), equal to the lesser of:

- 1,000,000 shares;
- 10% of the outstanding shares of all class of our common stock as of the last day of the immediately preceding fiscal year; or
- such other amount as our Board of Directors may determine.

The number of shares reserved for issuance under the 2021 Omnibus Plan will be reduced on the date of the grant of any award by the maximum number of shares, if any, with respect to which such award is granted. However, an award that may be settled solely in cash will not deplete the 2021 Omnibus Plan’s share reserve at the time the award is

granted. If (a) an award expires, is canceled, or terminates without issuance of shares or is settled in cash, (b) the Administrator determines that the shares granted under an award will not be issuable because the conditions for issuance will not be satisfied, (c) shares are forfeited under an award, (d) shares are issued under any award and we reacquire them pursuant to our reserved rights upon the issuance of the shares, (e) shares are tendered or withheld in payment of the exercise price of an option or as a result of the net settlement of outstanding stock appreciation rights or (f) shares are tendered or withheld to satisfy federal, state or local tax withholding obligations, then those shares are added back to the reserve and may again be used for new awards under the 2021 Omnibus Plan. However, shares added back to the reserve pursuant to clauses (d), (e) or (f) in the preceding sentence may not be issued pursuant to incentive stock options.

Options and Stock Appreciation Rights.

The Administrator may grant stock options and determine all terms and conditions of each stock option, which include the number of stock options granted, whether a stock option is to be an incentive stock option ("ISO") or non-qualified stock option ("NQSO"), and the grant date for the stock option. However, the exercise price per share of common stock may never be less than the fair market value of a share of common stock on the date of grant and the expiration date may not be later than 10 years after the date of grant. Stock options will be exercisable and vest at such times and be subject to such restrictions and conditions as are determined by the Administrator, including with respect to the manner of payment of the exercise price of such stock options.

The Administrator may also grant SARs, which represent the right of a participant to receive cash in an amount, or common stock with a fair market value, equal to the appreciation of the fair market value of a share of common stock during a specified period of time. The 2021 Omnibus Plan provides that the Administrator will determine all terms and conditions of each SAR, including, among other things: (a) whether the SAR is granted independently of a stock option or relates to a stock option, (b) the grant price, which may never be less than the fair market value of our common stock as determined on the date of grant, (c) a term that must be no later than 10 years after the date of grant, and (d) whether the SAR will settle in cash, common stock or a combination of the two.

Performance and Stock Awards.

The Administrator may grant awards of shares of common stock, restricted stock, RSUs, performance shares or performance units. Restricted stock means shares of common stock that are subject to a risk of forfeiture or restrictions on transfer, which may lapse upon the achievement or partial achievement of performance goals (as described below) or upon the completion of a period of service. An RSU grants the participant the right to receive cash or shares of common stock the value of which is equal to the fair market value of one share of common stock, to the extent performance goals are achieved or upon the completion of a period of service. Performance shares give the participant the right to receive shares of common stock to the extent performance goals are achieved. Performance units give the participant the right to receive cash or shares of common stock valued in relation to a unit that has a designated dollar value or the value of which is equal to the fair market value of one or more shares of common stock, to the extent performance goals are achieved.

Cash Incentive Awards

The Administrator may grant cash incentive awards. An incentive award is the right to receive a cash payment to the extent one or more performance goals are achieved. The Administrator will determine all terms and conditions of a cash incentive award, including, but not limited to, the performance goals (described below), the performance period, the potential amount payable, and the timing of payment. While the 2021 Omnibus Plan permits cash incentive awards to be granted under the 2021 Omnibus Plan, we may also make cash incentive awards outside of the 2021 Omnibus Plan.

The Administrator will determine all terms and conditions of the awards including (a) whether performance goals must be achieved for the participant to realize any portion of the benefit provided under the award, (b) the length of the vesting or performance period and, if different, the date that payment of the benefit will be made, (c) with respect to performance units, whether to measure the value of each unit in relation to a designated dollar value or the fair market value of one or more shares of common stock, and (d) with respect to performance shares, performance units, and RSUs, whether the awards will settle in cash, in shares of common stock (including restricted stock), or in a combination of the two.

Performance Goals

For purposes of the 2021 Omnibus Plan, the Administrator may establish objective or subjective performance goals which may apply to any performance award. Such performance goals may include, but are not limited to, one or more of the following measures with respect to our company or any one or more of our subsidiaries, affiliates, or other business units: basic earnings per common share for our company on a consolidated basis; diluted earnings per common share for our company on a consolidated basis; total stockholder return; fair market value of shares; net sales; cost of

sales; gross profit; selling, general and administrative expenses; operating income; earnings before interest and the provision for income taxes (EBIT); earnings before interest, the provision for income taxes, depreciation, and amortization (EBITDA); net income; accounts receivable; return on equity; return on assets; return on invested capital; return on sales; economic value added, or other measure of profitability that considers the cost of capital employed; free cash flow; net cash provided by operating activities; net increase (decrease) in cash and cash equivalents; customer satisfaction; market share; and/or quality. Performance goals may also relate to a participant's individual performance. The Administrator reserves the right to adjust any performance goals or modify the manner of measuring or evaluating a performance goal.

Dividend equivalent rights.

The Administrator may grant dividend equivalent units. A dividend equivalent unit gives the participant the right to receive a payment, in cash or shares of common stock, equal to the cash dividends or other distributions that we pay with respect to a share of common stock. We determine all terms and conditions of a dividend equivalent unit award, except that dividend equivalent units may not be granted in connection with a stock option or SAR, and dividend equivalent unit awards granted in connection with another award cannot provide for payment until the date such award vests or is earned, as applicable.

Other stock-based awards.

The Administrator may grant to any participant shares of unrestricted stock as a replacement for other compensation to which such participant is entitled, such as in payment of director fees, in lieu of cash compensation, in exchange for cancellation of a compensation right or as a bonus.

Transferability

Awards are not transferable, including to any financial institution, other than by will or the laws of descent and distribution, unless the Administrator allows a participant to (a) designate in writing a beneficiary to exercise the award or receive payment under the award after the participant's death, (b) transfer an award to a former spouse as required by a domestic relations order incident to a divorce, or (c) transfer an award without receiving any consideration.

Adjustments

If (a) we are involved in a merger or other transaction in which our shares of common stock are changed or exchanged; (b) we subdivide or combine shares of common stock or declare a dividend payable in shares of common stock, other securities, or other property (other than stock purchase rights issued pursuant to a stockholder rights agreement); (c) we effect a cash dividend that exceeds 10% of the fair market value of a share of common stock or any other dividend or distribution in the form of cash or a repurchase of shares of common stock that our Board of Directors determines is special or extraordinary, or that is in connection with a recapitalization or reorganization; or (d) any other event occurs that in the Administrator's judgment requires an adjustment to prevent dilution or enlargement of the benefits intended to be made available under the 2021 Omnibus Plan, then the Administrator will, in a manner it deems equitable, adjust any or all of (1) the number and type of shares subject to the 2021 Omnibus Plan and which may, after the event, be made the subject of awards; (2) the number and type of shares of common stock subject to outstanding awards; (3) the grant, purchase, or exercise price with respect to any award; and (4) the performance goals of an award. In any such case, the Administrator may also provide for a cash payment to the holder of an outstanding award in exchange for the cancellation of all or a portion of the award, subject to the terms of the 2021 Omnibus Plan.

The Administrator may, in connection with any merger, consolidation, acquisition of property or stock, or reorganization, authorize the issuance or assumption of awards upon terms and conditions we deem appropriate without affecting the number of shares of common stock otherwise reserved or available under the 2021 Omnibus Plan.

Change of Control

Upon a change of control (as defined in the 2021 Omnibus Plan), in order to preserve a participant's rights under an award, the Administrator in its discretion may, at the time an award is made or at any time thereafter, take one or more of the following actions: (a) provide for the acceleration of any time period, or the deemed achievement of any performance Goals, relating to the exercise or realization of the award; (b) provide for the purchase or cancellation of the award for an amount of cash or other property that could have been received upon the exercise or realization of the award had the award been currently exercisable or payable (or the cancellation of awards in exchange for no payment to the extent that no cash or other property would be received upon the exercise or realization of the award in such circumstances); (c) adjust the terms of the award in the manner determined by the Administrator to reflect the change of control; (d) cause the award to be assumed, or new right substituted therefor, by another entity; or (e) make such other provision as the Administrator may consider equitable and in the best interests of our company.

Non-Employee Directors

Non-employee directors will be eligible to receive all types of awards (except for incentive stock options) under our 2021 Omnibus Plan. To provide a maximum limit on the cash compensation and equity awards that can be made to our non-employee directors, the 2021 Omnibus Plan provides that in any given fiscal year, an outside director may not be granted shares under our 2021 Omnibus Plan with an aggregate grant date fair value, when added to any cash compensation received by the non-employee directors, of greater than \$300,000.

Term of Plan

Unless earlier terminated by the Board, the 2021 Omnibus Plan will terminate on, and no further awards may be granted, after the 10th anniversary of its effective date.

Termination and Amendment of Plan

The Board or the Administrator may amend, alter, suspend, discontinue or terminate the 2021 Omnibus Plan at any time, subject to the following limitations:

- Our Board of Directors must approve any amendment to the 2021 Omnibus Plan if we determine such approval is required by prior action of our Board of Directors, applicable corporate law, or any other applicable law;
- Stockholders must approve any amendment to the 2021 Omnibus Plan, which may include an amendment to materially increase the number of shares reserved under the 2021 Omnibus Plan, if we determine that such approval is required by Section 16 of the Securities Exchange Act of 1934, as amended, the Internal Revenue Code, the listing requirements of any principal securities exchange or market on which the shares are then traded, or any other applicable law; and
- Stockholders must approve any amendment to the 2021 Omnibus Plan that would diminish the protections afforded by the participant award limits or repricing and backdating prohibitions.

Amendment, Modification, Cancellation and Disgorgement of Awards

Subject to the requirements of the 2021 Omnibus Plan, the Administrator may modify or amend any award or waive any restrictions or conditions applicable to any award or the exercise of the award, or amend, modify, or cancel any terms and conditions applicable to any award, in each case, by mutual agreement of the Administrator and the participant or any other person that may have an interest in the award, so long as any such action does not increase the number of shares of common stock issuable under the 2021 Omnibus Plan.

We do not need to obtain participant (or other interested party) consent for any such action (a) that is permitted pursuant to the adjustment provisions of the 2021 Omnibus Plan; (b) to the extent we deem the action necessary to comply with any applicable law or the listing requirements of any principal securities exchange or market on which our common stock is then traded; (c) to the extent we deem the action is necessary to preserve favorable accounting or tax treatment of any award for us; or (d) to the extent we determine that such action does not materially and adversely affect the value of an award or that such action is in the best interest of the affected participant or any other person as may then have an interest in the award.

The Administrator can cause a participant to forfeit any award, and require the participant to disgorge any gains attributable to the award, if the participant engages in any action constituting, as determined by the Administrator in its discretion, cause for termination, or a breach of a material company policy, any award agreement or any other agreement between the participant and the Company or one of our affiliates concerning noncompetition, nonsolicitation, confidentiality, trade secrets, intellectual property, nondisparagement or similar obligations.

Any awards granted under the 2021 Omnibus Plan, and any shares of common stock issued or cash paid under an award, will be subject to any recoupment or clawback policy that we adopt, or any recoupment or similar requirement otherwise made applicable by law, regulation or listing standards to us.

Repricing and Backdating Prohibited

Except for the adjustments provided for in the 2021 Omnibus Plan, neither the Administrator nor any other person may amend the terms of outstanding stock options or SARs to reduce their exercise or grant price, cancel outstanding stock options or SARs in exchange for stock options or SARs with an exercise or grant price that is less than the exercise or grant price of the awards being cancelled, or cancel outstanding stock options or SARs with an exercise or grant price above the current fair market value of a share in exchange for cash or other securities. In addition, the Administrator may not grant a stock option or SAR with a grant date that is effective prior to the date the Administrator takes action to approve such award.

The foregoing description of the 2021 Omnibus Plan is summary in nature and is qualified in its entirety by the full text of such plan, which is attached as Exhibit 10.1 to this Current Report on Form 8-K.

Adoption of Non-Employee Director Compensation Program

On October 27, 2021, the Board adopted and approved a non-employee director compensation program (the “Non-Employee Director Compensation Program”) that provides for annual retainer fees and equity awards for our non-employee directors. The program was adopted under the 2021 Omnibus Incentive Plan. Under the Non-Employee Director Compensation Program, each non-employee director of the Company receives an annual cash retainer of \$60,000 (or \$90,000 for audit committee members) payable in arrears in equal quarterly payments, pro-rated for partial years. Non-employee directors will also receive an annual stock option award to purchase a number of shares equal to \$60,000 (or \$90,000 for audit committee members) divided by the option exercise price (which will be equal to the fair market value of the company’s common stock on the date of grant), which annual awards will vest one-half on the 180th day after the grant date and one-half on the first anniversary of the grant date. The annual option award will be granted on the day of the company’s annual stockholder meeting each year. The Non-Employee Director Compensation Program also provides for an initial option grant on the date on which a person first becomes a director of the Company with respect to a number of shares equal to \$25,000 divided by the exercise price, and it provides for the grant of an option on October 28, 2021 to each non-employee director then serving on the board of directors to purchase a number of shares equal to \$60,000 (\$75,000 for audit committee members) divided by the exercise price, which was \$5.95 per share. Options granted under the non-employee director compensation program will be subject to accelerated vesting upon a change of control of the Company (as defined in the 2021 Omnibus Plan), and the options granted on October 28, 2021 will be subject to accelerated vesting in the event that the closing price of the Company’s common stock exceeds \$12.00 for ten consecutive trading days. The options granted on October 28, 2021 to the non-employee directors will not be exercisable unless and until the 2021 Omnibus Plan is approved by the Company’s stockholders.

The foregoing description of the Non-Employee Director Compensation Program is summary in nature and is qualified in its entirety by the full text of such program, which is attached as Exhibit 10.2 to this Current Report on Form 8-K.

Executive Employment Agreements

On October 27, 2021, the Company and Bruce Rodgers entered into an Amended and Restated Employment Agreement under which Mr. Rodgers will continue to serve as the Chief Executive Officer of the Company (the “Rodgers Employment Agreement”). The Rodgers Employment Agreement provides for an annual base salary of \$750,000, and it provides that Mr. Rodgers may be granted annual bonuses at the discretion of the Board of Directors and may participate in the Company’s equity incentive plans on the same terms as other senior executives. The agreement also provides that, in consideration of the Company’s failure to make quarterly stock grants to Mr. Rodgers as provided in his prior employment agreement, the Company will grant to Mr. Rodgers 48,662 fully vested restricted shares under the 2021 Omnibus Plan upon the approval of the 2021 Omnibus Plan by the Company’s stockholders. Under the Rodgers Employment Agreement, Mr. Rodgers is entitled to participate in all of the Company’s pension, life insurance, health insurance, disability insurance and other benefit plans on the same basis as the Company’s other employee officers participate. The agreement also provides for a \$15,000,000 lump-sum cash bonus upon any change of control (as defined in the agreement) during the term of the agreement that does not involve a sale of the Company, or a bonus of 2% of the transaction value if the change of control is a Company Sale, and all unvested restricted shares will vest upon a change of control. The term of the Rodgers Employment Agreement is through September 30, 2023 and is automatically renewed each year unless notice of non-renewal is provided by the Company or Mr. Rodgers at least 30 days prior to the renewal date. Mr. Rodgers will receive the base salary due under the employment agreement for a period of 36 months after termination if terminated “without cause” (including a non-renewal of the agreement by the Company) or he terminates his own employment for a “good reason event”, as those terms are defined in the agreement, in addition to any accrued bonus as of the termination date and the accelerated vesting of any unvested options and other equity awards. Mr. Rodgers’ employment agreement contains certain non-competition covenants and confidentiality provisions.

On October 27, 2021, the Company and Richard Russell entered into an Amended and Restated Employment Agreement under which Mr. Russell will continue to serve as the Chief Financial Officer of the Company (the “Russell Employment Agreement”). The Russell Employment Agreement provides for an annual base salary of \$500,000, and it provides that Mr. Russell may be granted annual bonuses at the discretion of the Board of Directors and may participate in the Company’s equity incentive plans on the same terms as other senior executives. The agreement also provides that, in consideration of the Company’s failure to make quarterly stock grants to Mr. Russell as provided in his prior employment agreement, the Company will grant to Mr. Russell 25,279 fully vested restricted shares under the 2021 Omnibus Plan upon the approval of the 2021 Omnibus Plan by the Company’s stockholders. Under the Russell Employment Agreement, Mr. Russell is entitled to participate in all of the Company’s pension, life insurance, health insurance, disability insurance and other benefit plans on the same basis as the Company’s other employee officers participate. The agreement also provides for a \$10,000,000 lump-sum cash bonus upon any change of control (as defined in the agreement) during the term of the agreement that does not involve a sale of the Company, or a bonus of 2% of the transaction value if the change of control is a Company, an all unvested restricted shares will vest upon a change of control. The term of the Russell Employment Agreement is through September 30, 2023 and is automatically renewed each year unless notice of non-renewal is provided by the Company or Mr. Russell at least 30 days prior to the renewal date. Mr. Russell will receive the base salary due under the employment agreement for a period of 36 months after termination if terminated “without cause” (including a non-renewal of the agreement by the Company) or he terminates his own employment for a “good reason event”, as those terms are defined in the agreement, in addition to any accrued bonus as of the termination date and the accelerated vesting of any unvested options and other equity awards. Mr. Russell’s employment agreement contains certain non-competition covenants and confidentiality provisions.

On October 27, 2021, the Company and Ryan Duran entered into an Employment Agreement under which Mr. Duran will serve as the Executive Vice President of Operations of the Company (the “Duran Employment Agreement”). The Duran Employment Agreement provides for an annual base salary of \$175,000, and it provides that Mr. Duran may be granted annual bonuses at the discretion of the Board of Directors and may participate in the Company’s equity incentive plans on the same terms as other senior executives. The agreement provides that Mr. Duran is entitled to participate in all of the Company’s pension, life insurance, health insurance, disability insurance and other benefit plans on the same basis as the Company’s other employee officers participate. The term of the Duran Employment Agreement is through September 30, 2023 and is automatically renewed each year unless notice of non-renewal is provided by the Company or Mr. Duran at least 30 days prior to the renewal date. Mr. Duran will be entitled to a lump sum severance payment of three times his base salary if he is terminated “without cause” (including a non-renewal of the agreement by the Company) or he terminates his own employment for a “good reason event”, as those terms are defined in the agreement, in addition to any accrued bonus as of the termination date and the accelerated vesting of any unvested options and other equity awards. Mr. Duran’s employment agreement contains certain non-competition covenants and confidentiality provisions.

The foregoing descriptions of the Rodgers Employment Agreement, Russell Employment Agreement, and Duran Employment Agreement are summary in nature and are qualified in their entirety by the full text of such agreements, which are attached as Exhibits 10.6, 10.7, and 10.8, respectively, to this Current Report on Form 8-K.

Stock Option Grants

On October 28, 2021, options to purchase 1,800,000 shares, 1,800,000 shares, and 175,000 shares of common stock were granted to Bruce Rodgers, Richard Russell, and Ryan Duran, respectively. The options were granted under the 2021 Omnibus Plan, have an exercise price of \$5.95 per share (the closing price of our common stock on October 27, 2021), and will not be exercisable unless our stockholders approve the 2021 Omnibus Plan within one year of the adoption of the Plan. The options otherwise vest as to one-third of the option shares on the first anniversary of the date of grant and as to one-thirty sixth (1/36th) of the option shares on a monthly basis thereafter, provided that the executive is in continuous employment or service to the Company through the applicable vesting date. Unvested options will vest on an accelerated basis upon a change of control of the Company (as defined in 2021 Omnibus Plan) or upon our common stock achieving a \$12.00 closing price for ten consecutive trading days. The options will expire 10 years from the date of grant and otherwise generally terminate early within 90 days after a termination of employment (or 12 months due to death or disability).

Also on October 28, 2021, options to purchase shares of our common stock were granted to our non-employee directors under the Non-Employee Director Compensation Program with respect to 12,605 shares of common stock for each of Andrew Graham, Fred Mills, and Doug McCree and 10,084 shares for each of Frank Silcox, Joel Rodgers, and Carolin Gould. The options have an exercise price of \$5.95 per share and will not be exercisable unless our stockholders approve the 2021 Omnibus Plan within one year of the adoption of the Plan. The options otherwise vest as

to one-half of the option shares on the 180th day after the date of grant and as to one-half of the option shares on the first anniversary of the grant date, provided that the director is in continuous service to the Company through the applicable vesting date. Unvested options will vest on an accelerated basis upon a change of control of the Company (as defined in 2021 Omnibus Plan) or upon our common stock achieving a \$12.00 closing price for ten consecutive trading days. The options will expire 10 years from the date of grant and otherwise generally terminate early within 90 days after a termination of director service (or 12 months due to death or disability).

Item 3.02. Unregistered Sales of Equity Securities.

The issuance of the options to executive officers and non-employee directors as described in Item 5.02 above are and will be exempt from registration under the Securities Act of 1933, as amended (the “Securities Act”), because the offer and sale of such securities did and does not involve a “public offering” as defined in Section 4(a)(2) of the Securities Act, was made without any form of general solicitation to a sophisticated party, and was made with full access to any information requested regarding the Company, the Options, and the Common Stock.

Item 9.01. Financial Statements and Exhibits

(d) Exhibits

Exhibit Number	Description
10.1	LM Funding America, Inc. 2021 Omnibus Incentive Plan
10.2	LM Funding America, Inc. Non-Employee Director Compensation Program
10.3	Form of Stock Option Award Agreement (2021 Omnibus Incentive Plan)
10.4	Form of Stock Option Award Agreement for executive officer option grants made on October 28, 2021
10.5	Form of Stock Option Award Agreement for non-employee directors
10.6	Amended and Restated Employment Agreement, dated October 27, 2021, with Bruce Rodgers
10.7	Amended and Restated Employment Agreement, dated October 27, 2021, with Richard Russell
10.8	Amended and Restated Employment Agreement, dated October 27, 2021, with Ryan Duran

EX-104 Cover Page Interactive Data File (embedded within the Inline XBRL document)

Forward-Looking Statements

This Current Report on Form 8-K may contain “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995 that involve risks and uncertainty. Words such as “anticipate,” “estimate,” “expect,” “intend,” “plan,” and “project” and other similar words and expressions are intended to signify forward-looking statements. Forward-looking statements are not guarantees of future results and conditions but rather are subject to various risks and uncertainties. Such statements are based on the Company’s current expectations and are subject to a number of risks and uncertainties that could cause actual results to differ materially from those described in the forward-looking statements. Investors are cautioned that there can be no assurance actual results or business conditions will not differ materially from those projected or suggested in such forward-looking statements as a result of various risks and uncertainties. Investors should refer to the risks detailed from time to time in the reports the Company files with the SEC, including the Company’s Annual Report on Form 10-K for the year ended December 31, 2020, as well as other filings on Form 10-Q and periodic filings on Form 8-K, for additional

factors that could cause actual results to differ materially from those stated or implied by such forward-looking statements. The Company disclaim any intention or obligation to update or revise any forward-looking statements, whether as a result of new information, future events, or otherwise, unless required by law.

SIGNATURE

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

LM Funding America, Inc.

By: /s/ Richard Russell
Richard Russell
Chief Financial Officer

Dated: November 1, 2021

**LM FUNDING AMERICA, INC.
2021 OMNIBUS INCENTIVE PLAN**

1. Purposes and Effective Date.

(a) *Purposes.* The LM Funding America, Inc. 2021 Omnibus Incentive Plan has two complementary purposes: (i) to attract and retain outstanding individuals to serve as officers, directors, employees and consultants and (ii) to increase shareholder value. The Plan will provide participants incentives to increase shareholder value by offering the opportunity to acquire shares of the Company's common stock, receive monetary payments based on the value of such common stock, or receive other incentive compensation, on the potentially favorable terms that this Plan provides.

(b) *Effective Date.* The Plan shall become effective on October 27, 2021 (the "Effective Date"). However, no Options or Stock Appreciation Rights will be exercisable; no Restricted Stock, Restricted Stock Units, Performance Shares, Performance Units valued in relating to Shares or other Stock-based awards will be granted; and no Cash Incentive Award will be paid unless and until the Plan has been approved by the shareholders of the Company, which approval must occur on or within twelve (12) months after the Effective Date. This Plan will terminate as provided in Section 15.

2. Definitions. Capitalized terms used and not otherwise defined in this Plan or in any Award agreement have the following meanings:

(a) "Act" means the Securities Act of 1933, as amended from time to time. Any reference to a specific provision of the Act shall include any successor provision thereto.

(b) "Administrator" means the Board or the Committee; *provided* that, to the extent the Board or the Committee has delegated authority and responsibility as an Administrator of the Plan to one or more committees or officers of the Company as permitted by Section 3(b), the term "Administrator" shall also mean such committee, committees, officer or officers.

(c) "Affiliate" has the meaning ascribed to such term in Rule 12b-2 under the Exchange Act. Notwithstanding the foregoing, for purposes of determining those individuals to whom an Option or a Stock Appreciation Right may be granted, the term "Affiliate" means any entity that, directly or through one or more intermediaries, is controlled by or is under common control with, the Company within the meaning of Code Sections 414(b) or (c); *provided* that, in applying such provisions, the phrase "at least 20 percent" shall be used in place of "at least 80 percent" each place it appears therein.

(d) "Applicable Exchange" means the Nasdaq Stock Market, the New York Stock Exchange or such other exchange or automated trading system on which the Stock is principally traded at the applicable time.

(e) "Award" means a grant of Options, Stock Appreciation Rights, Performance Shares, Performance Units, Stock, Restricted Stock, Restricted Stock Units, an Incentive Award, Dividend Equivalent Units or any other type of award permitted under this Plan. Any Award granted under this Plan shall be provided or made in such manner and at such time as complies with the applicable requirements of Code Section 409A to avoid a plan failure described in Code Section 409A(a)(1), including, without limitation, deferring payment to a specified employee or until a specified distribution event, as provided in Code Section 409A(a)(2), and the provisions of Code Section 409A are incorporated

into this Plan to the extent necessary for any Award that is subject to Code Section 409A to comply therewith .

(f) “Beneficial Owner” means a Person, with respect to any securities which:

(i) such Person or any of such Person’s Affiliates has the right to acquire (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, rights, warrants or options, or otherwise; provided, however, that a Person shall not be deemed the Beneficial Owner of, or to beneficially own, securities tendered pursuant to a tender or exchange offer made by or on behalf of such Person or any of such Person’s Affiliates until such tendered securities are accepted for purchase;

(ii) such Person or any of such Person’s Affiliates, directly or indirectly, has the right to vote or dispose of or has “beneficial ownership” of (as determined pursuant to Rule 13d-3 of the General Rules and Regulations under the Act), including pursuant to any agreement, arrangement or understanding; provided, however, that a Person shall not be deemed the Beneficial Owner of, or to beneficially own, any security under this clause (ii) as a result of an agreement, arrangement or understanding to vote such security if the agreement, arrangement or understanding: (A) arises solely from a revocable proxy or consent given to such Person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the applicable rules and regulations under the Act and (B) is not also then reportable on a Schedule 13D under the Act (or any comparable or successor report); or

(iii) are beneficially owned, directly or indirectly, by any other Person with which such Person or any of such Person’s Affiliates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except pursuant to a revocable proxy as described in clause (ii) above) or disposing of any voting securities of the Company.

(g) “Board” means the Board of Directors of the Company.

(h) “Cause” shall have the same meaning as set forth in a Participant’s employment agreement or individual Award with the Company, or, if the Participant does not have an employment agreement with the Company (or the Participant’s individual Award does not otherwise define the term), “Cause” shall mean a good faith finding by the Company that the Participant has (i) failed, neglected, or refused to perform the lawful employment duties related to the Participant’s position or as from time to time assigned to the Participant (other than due to disability within the meaning of Code Section 22(e)(3)); (ii) committed any willful, intentional, or grossly negligent act having the effect of injuring the interest, business, or reputation of the Company or any Affiliate; (iii) violated or failed to comply in any material respect with the Company’s or an Affiliate’s published rules, regulations, or policies, as in effect or amended from time to time, to the extent applicable to the Participant; (iv) committed an act constituting a felony or misdemeanor involving moral turpitude, fraud, theft, or dishonesty; (v) misappropriated or embezzled any property of the Company or an Affiliate (whether or not an act constituting a felony or misdemeanor); or (vi) breached any material provision of any applicable confidentiality, non-compete, non-solicit, general release, covenant not-to-sue, or other agreement with the Company or any Affiliate.

(i) “Change of Control” means, unless specified otherwise in an Award agreement, the occurrence of any of the following:

(i) any Person (other than (A) the Company or any of its subsidiaries, (B) a trustee or other fiduciary holding securities under any employee benefit plan of the Company or any of

its subsidiaries, (C) an underwriter temporarily holding securities pursuant to an offering of such securities, or (D) a corporation owned, directly or indirectly, by the shareholders of the Company in substantially the same proportions as their ownership of stock in the Company (“Excluded Persons”) is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such Person any securities acquired directly from the Company or its Affiliates after the Effective Date, pursuant to express authorization by the Board that refers to this exception) representing fifty percent (50%) or more of either the then outstanding shares of common stock of the Company or the combined voting power of the Company’s then outstanding voting securities; or

(ii) the following individuals cease for any reason to constitute a majority of the number of directors of the Company then serving: (A) individuals who, on the Effective Date, constituted the Board and (B) any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including but not limited to a consent solicitation, relating to the election of directors of the Company, as such terms are used in Rule 14a-11 of Regulation 14A under the Act) whose appointment or election by the Board or nomination for election by the Company’s shareholders was approved by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors on the Effective Date, or whose appointment, election or nomination for election was previously so approved (collectively the “Continuing Directors”); provided, however, that individuals who are appointed to the Board pursuant to or in accordance with the terms of an agreement relating to a merger, consolidation, or share exchange involving the Company (or any direct or indirect Subsidiary of the Company) shall not be Continuing Directors for purposes of this Agreement until after such individuals are first nominated for election by a vote of at least two-thirds (2/3) of the then Continuing Directors and are thereafter elected as directors by the shareholders of the Company at a meeting of shareholders held following consummation of such merger, consolidation, or share exchange; and, provided further, that in the event the failure of any such persons appointed to the Board to be Continuing Directors results in a Change of Control, the subsequent qualification of such persons as Continuing Directors shall not alter the fact that a Change of Control occurred; or

(iii) the consummation of a merger, consolidation or share exchange of the Company with any other corporation or the issuance of voting securities of the Company in connection with a merger, consolidation or share exchange of the Company (or any direct or indirect Subsidiary of the Company), in each case, which requires approval of the shareholders of the Company, other than (A) a merger, consolidation or share exchange which would result in the voting securities of the Company outstanding immediately prior to such merger, consolidation or share exchange continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or any parent thereof) at least fifty percent (50%) of the combined voting power of the voting securities of the Company or such surviving entity or any parent thereof outstanding immediately after such merger, consolidation or share exchange, or (B) a merger, consolidation or share exchange effected to implement a recapitalization of the Company (or similar transaction) in which no Person (other than an Excluded Person) is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such Person any securities acquired directly from the Company or its Affiliates after the Effective Date, pursuant to express authorization by the Board that refers to this exception) representing twenty percent (20%) or more of either the then outstanding shares of common stock of the Company or the combined voting power of the Company’s then outstanding voting securities; or

(iv) the consummation of a plan of complete liquidation or dissolution of the Company or a sale or disposition by the Company of all or substantially all of the Company’s

assets (in one transaction or a series of related transactions within any period of twenty-four (24) consecutive months), in each case, which requires approval of the shareholders of the Company, other than a sale or disposition by the Company of all or substantially all of the Company's assets to an entity at least seventy-five percent (75%) of the combined voting power of the voting securities of which are owned by Persons in substantially the same proportions as their ownership of the Company immediately prior to such sale.

Notwithstanding the foregoing, no "Change of Control" shall be deemed to have occurred if there is consummated any transaction or series of integrated transactions immediately following which the record holders of the common stock of the Company immediately prior to such transaction or series of transactions continue to own, directly or indirectly, in the same proportions as their ownership in the Company, an entity that owns all or substantially all of the assets or voting securities of the Company immediately following such transaction or series of transactions.

Notwithstanding the foregoing, if an Award is considered deferred compensation subject to the provisions of Code Section 409A, and if a payment under such Award is triggered upon a "Change of Control," then the foregoing definition shall be deemed amended as necessary to comply with Code Section 409A.

(j) "Code" means the Internal Revenue Code of 1986, as amended. Any reference to a specific provision of the Code includes any successor provision and the regulations promulgated under such provision.

(k) "Committee" means the Compensation Committee of the Board, any successor committee thereto or such other committee of the Board that is designated by the Board with the same or similar authority. The Committee shall consist only of Non-Employee Directors (not fewer than two (2)) to the extent necessary for the Plan and Awards to comply with Rule 16b-3 promulgated under the Exchange Act.

(l) "Company" means LM Funding America, Inc., a Delaware corporation, or any successor thereto.

(m) "Director" means a member of the Board.

(n) "Disability" means, unless otherwise defined in the applicable Award agreement, a finding of disability under the long term disability plan sponsored by the Company or an Affiliate in which the Participant participates. Notwithstanding the foregoing, for Awards that are subject to Section 409A of the Code, Disability shall mean that a Participant is disabled under Section 409A(a)(2)(C)(i) or (ii) of the Code.

(o) "Dividend Equivalent Unit" means the right to receive a payment, in cash or Shares, equal to the cash dividends or other cash distributions paid with respect to a Share.

(p) "Effective Date" has the meaning in Section 1(b).

(q) "Exchange Act" means the Securities Exchange Act of 1934, as amended. Any reference to a specific provision of the Exchange Act includes any successor provision and the regulations and rules promulgated under such provision.

(r) "Fair Market Value" means a price that is based on the opening, closing, actual, high or low sale price, or the arithmetic mean of selling prices of, a Share, on the Applicable Exchange on the

applicable date, the preceding trading day, the next succeeding trading day, or the arithmetic mean of selling prices on all trading days over a specified averaging period weighted by volume of trading on each trading day in the period that is within 30 days before or 30 days after the applicable date, as determined by the Administrator in its discretion; provided that, if an arithmetic mean of prices is used to set a grant price or an exercise price for an Option or Stock Appreciation Right, the commitment to grant the applicable Award based on such arithmetic mean must be irrevocable before the beginning of the specified averaging period in accordance with Treasury Regulation 1.409A-1(b)(5)(iv)(A). The method of determining Fair Market Value with respect to an Award shall be determined by the Administrator and may differ depending on whether Fair Market Value is in reference to the grant, exercise, vesting, settlement, or payout of an Award; provided that, if the Administrator does not specify a different method, the Fair Market Value of a Share as of a given date shall be the closing sale price as of the trading day immediately preceding the date as of which Fair Market Value is to be determined or, if there shall be no such sale on such date, the next preceding day on which such a sale shall have occurred. If the Stock is not traded on an established stock exchange, the Administrator shall determine in good faith the Fair Market Value in whatever manner it considers appropriate, but based on objective criteria. Notwithstanding the foregoing, in the case of the sale of Shares on the Applicable Exchange, the actual sale price shall be the Fair Market Value of such Shares.

(s) “Incentive Award” means the right to receive a cash payment to the extent Performance Goals are achieved (or other requirements are met), and shall include “Annual Incentive Awards” as described in Section 10 and “Long-Term Incentive Awards” as described in Section 11.

(t) “Incentive Stock Option” means an Option that is intended to qualify as an “incentive stock option” within the meaning of Section 422 of the Code.

(u) “Non-Employee Director” means a Director who is not also an employee of the Company or its Subsidiaries and, to the extent necessary for Awards to comply with Rule 16b-3 under the Exchange Act, who otherwise meets the definition of “Non-Employee Director” in Rule 16b-3(b)(3) under the Exchange Act.

(v) “Nonqualified Stock Option” means an Option that is not intended to qualify as an Incentive Stock Option.

(w) “Option” means the right to purchase a Share at a stated price for a specified period of time.

(x) “Participant” means an individual selected by the Administrator to receive an Award.

(y) “Performance Goals” means any objective or subjective goals the Administrator establishes with respect to an Award. A Performance Goal may, but is not required to, relate to one or more of the following with respect to the Company or any one or more Subsidiaries, Affiliates or other business units: basic earnings per common share for the Company on a consolidated basis; diluted earnings per common share for the Company on a consolidated basis; total shareholder return; fair market value of shares; net sales; cost of sales; gross profit; selling, general and administrative expenses; operating income; earnings before interest and the provision for income taxes (EBIT); earnings before interest, the provision for income taxes, depreciation, and amortization (EBITDA); net income; accounts receivable; return on equity; return on assets; return on invested capital; return on sales; economic value added, or other measure of profitability that considers the cost of capital employed; free cash flow; net cash provided by operating activities; net increase (decrease) in cash and cash equivalents; customer satisfaction; market share; and/or quality. Unless otherwise determined by the Administrator, the relevant measurement of performance as to each Performance Goal shall be computed in accordance with generally accepted accounting principles, if applicable. The Administrator reserves the right to adjust Performance Goals, or

modify the manner of measuring or evaluating a Performance Goal, for any reason the Administrator determines is appropriate, including but not limited to by excluding the effects of (i) charges for reorganizing and restructuring, (ii) discontinued operations, (iii) asset write-downs, (iv) gains or losses on the disposition of a business, (v) mergers, acquisitions or dispositions, and (vi) extraordinary, unusual and/or non-recurring items of gain or loss. The inclusion in an Award agreement of specific adjustments or modifications shall not be deemed to preclude the Administrator from making other adjustments or modifications, in its discretion, as described herein, unless the Award agreement provides that the adjustments or modifications described in such agreement shall be the sole adjustments or modifications. The Administrator may establish other Performance Goals not listed in this Plan. Where applicable, the Performance Goals may be expressed, without limitation, in terms of attaining a specified level of the particular criterion or the attainment of an increase or decrease (expressed as absolute numbers or a percentage) in the particular criterion or achievement in relation to a peer group or other index. The Performance Goals may include a threshold level of performance below which no payment will be made (or no vesting will occur), levels of performance at which specified payments will be paid (or specified vesting will occur), and a maximum level of performance above which no additional payment will be made (or at which full vesting will occur).

(z) "Performance Shares" means the right to receive Shares to the extent Performance Goals are achieved (or other requirements are met).

(aa) "Performance Unit" means the right to receive a cash payment and/or Shares valued in relation to a unit that has a designated dollar value or the value of which is equal to the Fair Market Value of one or more Shares, to the extent Performance Goals are achieved (or other requirements are met).

(bb) "Person" means any individual, firm, partnership, corporation or other entity, including any successor (by merger or otherwise) of such entity, or a group of any of the foregoing acting in concert.

(cc) "Plan" means this LM Funding America, Inc. 2021 Omnibus Incentive Plan, as it may be amended from time to time.

(dd) "Restricted Stock" means Shares that are subject to a risk of forfeiture or restrictions on transfer, or both a risk of forfeiture and restrictions on transfer, which may lapse upon the achievement or partial achievement of Performance Goals or upon the completion of a period of service, or both.

(ee) "Restricted Stock Unit" means the right to receive a cash payment and/or Shares the value of which is equal to the Fair Market Value of one Share.

(ff) "Section 16 Participants" means Participants who are subject to the provisions of Section 16 of the Exchange Act.

(gg) "Share" means a share of Stock.

(hh) "Stock" means the common stock, par value \$0.001 per share, of the Company.

(ii) "Stock Appreciation Right" or "SAR" means the right to receive a cash payment, and/or Shares with a Fair Market Value, equal to the appreciation of the Fair Market Value of a Share during a specified period of time.

(jj) "Subsidiary" means any corporation, limited liability company or other limited liability entity in an unbroken chain of entities beginning with the Company if each of the entities (other than the last

entities in the chain) owns the stock or equity interest possessing more than fifty percent (50%) of the total combined voting power of all classes of stock or other equity interests in one of the other entities in the chain.

3. Administration.

(a) *Administration.* In addition to the authority specifically granted to the Administrator in this Plan, the Administrator has full discretionary authority to administer this Plan, including but not limited to the authority to: (i) interpret the provisions of this Plan or any agreement covering an Award; (ii) prescribe, amend and rescind rules and regulations relating to this Plan; (iii) correct any defect, supply any omission, or reconcile any inconsistency in the Plan, any Award or any agreement covering an Award in the manner and to the extent it deems desirable to carry this Plan or such Award into effect; and (iv) make all other determinations necessary or advisable for the administration of this Plan. All Administrator determinations shall be made in the sole discretion of the Administrator and are final and binding on all interested parties.

(b) *Delegation to Other Committees or Officers.* To the extent applicable law permits, the Board may delegate to another committee of the Board, or the Committee may delegate to a subcommittee of the Committee or to one or more officers of the Company, any or all of their respective authority and responsibility as an Administrator of the Plan; *provided* that no such delegation is permitted with respect to Stock-based Awards made to Section 16 Participants at the time any such delegated authority or responsibility is exercised unless the delegation is to another committee of the Board consisting entirely of Non-Employee Directors. If the Board or the Committee has made such a delegation, then all references to the Administrator in this Plan include such other committee, subcommittee or one or more officers to the extent of such delegation.

(c) *No Liability; Indemnification.* No member of the Board or the Committee, and no officer or member of any other committee to whom a delegation under Section 3(b) has been made, will be liable for any act done, or determination made, by the individual in good faith with respect to the Plan or any Award. The Company will indemnify and hold harmless each such individual as to any acts or omissions, or determinations made, in each case done or made in good faith, with respect to this Plan or any Award to the maximum extent that the law and the Company's By-Laws permit.

4. **Eligibility.** The Administrator may designate any of the following as a Participant from time to time, to the extent of the Administrator's authority: any officer or other employee of the Company or its Affiliates; any individual that the Company or an Affiliate has engaged to become an officer or employee; any consultant or advisor who provides services to the Company or its Affiliates; or any Director, including a Non-Employee Director. The Administrator's designation of, or granting of an Award to, a Participant will not require the Administrator to designate such individual as a Participant or grant an Award to such individual at any future time. The Administrator's granting of a particular type of Award to a Participant will not require the Administrator to grant any other type of Award to such individual.

5. **Types of Awards.** Subject to the terms of this Plan, the Administrator may grant any type of Award to any Participant it selects, but only employees of the Company or a Subsidiary may receive grants of Incentive Stock Options. Awards may be granted alone or in addition to, in tandem with, or (subject to the prohibition on repricing set forth in Section 15(e)) in substitution for any other Award (or any other award granted under another plan of the Company or any Affiliate, including the plan of an acquired entity).

6. Shares Reserved under this Plan.

(a) *Plan Reserve.* Subject to adjustment as provided in Section 17, as of the Effective Date, an aggregate of 5,000,000 Shares are reserved for issuance under this Plan, all of which may be issued pursuant to the exercise of Incentive Stock Options. The aggregate number of Shares reserved for issuance under this Plan shall be increased annually on the first day of each fiscal year of the Company after the Effective Date, commencing on the first day of the Company's fiscal year 2023 (and only so long as the number of authorized shares of common stock in the Company's certificate of incorporation has been increased to at least 100,000,000 shares prior to such date) by a number of Shares equal to the least of: (i) 1,000,000 Shares, (ii) 10% of the outstanding shares of all classes of the Company's common stock as of the last day of the immediately preceding fiscal year or (iii) such other number of Shares as the Board may determine. The Shares reserved for issuance may be either authorized and unissued Shares or Shares reacquired at any time and now or hereafter held as treasury stock. The aggregate number of Shares reserved under this Section 6(a) shall be depleted on the date of grant of an Award by the maximum number of Shares, if any, that may be issuable under an Award as determined at the time of grant. Notwithstanding the foregoing, an Award that may be settled solely in cash shall not cause any depletion of the Plan's Share reserve at the time such Award is granted.

(b) *Replenishment of Shares Under this Plan.* To the extent (i) an Award lapses, expires, terminates or is cancelled without the issuance of Shares under the Award (whether due currently or on a deferred basis) or is settled in cash, (ii) it is determined during or at the conclusion of the term of an Award that all or some portion of the Shares with respect to which the Award was granted will not be issuable on the basis that the conditions for such issuance will not be satisfied, (iii) Shares are forfeited under an Award (except as described below), (iv) Shares are issued under any Award and the Company subsequently reacquires them pursuant to rights reserved upon the issuance of the Shares, or (v) Shares are tendered or withheld in payment of the exercise price of an Option or as a result of the net settlement of an outstanding Stock Appreciation Right or (vi) Shares are tendered or withheld to satisfy federal, state or local tax withholding obligations, then such Shares shall be recredited to the Plan's reserve and may again be used for new Awards under this Plan, but Shares recredited to the Plan's reserve pursuant to clause (iv), (v) or (vi) may not be issued pursuant to Incentive Stock Options.

(c) *Non-Employee Director Award Limitation.* Subject to adjustment as provided in Section 7, the maximum number of Shares that may be granted during any fiscal year to any individual Non-Employee Director shall not exceed that number of Shares that has a grant date fair value of, when added to any cash compensation received by such Non-Employee Director, \$300,000.

7. **Options.** Subject to the terms of this Plan, the Administrator will determine all terms and conditions of each Option, including but not limited to: (a) whether the Option is an Incentive Stock Option that meets the requirements of Code Section 422, or a Nonqualified Stock Option that does not meet the requirements of Code Section 422; (b) the grant date, which may not be any day prior to the date that the Administrator approves the grant; (c) the number of Shares subject to the Option; (d) the exercise price, which may never be less than the Fair Market Value of the Shares subject to the Option as determined on the date of grant, (e) the terms and conditions of vesting and exercise; (f) the term, except that an Option must terminate no later than ten (10) years after the date of grant; and (g) the manner of payment of the exercise price. In all other respects, the terms of any Incentive Stock Option should comply with the provisions of Code Section 422 except to the extent the Administrator determines otherwise. If an Option that is intended to be an Incentive Stock Option fails to meet the requirements thereof, the Option shall automatically be treated as a Nonqualified Stock Option to the extent of such failure. To the extent permitted by the Administrator, and subject to such procedures as the Administrator may specify, the payment of the exercise price of Options may be made by (w) delivery of cash or other Shares or other securities of the Company (including by attestation) having a then Fair Market Value equal to the purchase price of such Shares, (x) by delivery (including by fax) to the

Company or its designated agent of an executed irrevocable option exercise form together with irrevocable instructions to a broker-dealer to sell or margin a sufficient portion of the Shares and deliver the sale or margin loan proceeds directly to the Company to pay for the exercise price, (y) by surrendering the right to receive Shares otherwise deliverable to the Participant upon exercise of the Award having a Fair Market Value at the time of exercise equal to the total exercise price, or (z) by any combination of the methods set forth in clauses (w), (x) and/or (y). Except to the extent otherwise set forth in an Award agreement, a Participant shall have no rights as a holder of Stock as a result of the grant of an Option until the Option is exercised, the exercise price and applicable withholding taxes are paid and the Shares subject to the Option are issued thereunder.

8. Stock Appreciation Rights. Subject to the terms of this Plan, the Administrator will determine all terms and conditions of each SAR, including but not limited to: (a) whether the SAR is granted independently of an Option or relates to an Option; (b) the grant date, which may not be any day prior to the date that the Administrator approves the grant; (c) the number of Shares to which the SAR relates; (d) the grant price, which may never be less than the Fair Market Value of the Shares subject to the SAR as determined on the date of grant; (e) the terms and conditions of exercise or maturity, including vesting; (f) the term, *provided* that an SAR must terminate no later than ten (10) years after the date of grant; and (g) whether the SAR will be settled in cash, Shares or a combination thereof.

9. Performance and Stock Awards. Subject to the terms of this Plan, the Administrator will determine all terms and conditions of each award of Shares, Restricted Stock, Restricted Stock Units, Performance Shares or Performance Units, including, but not limited to: (a) the number of Shares and/or units to which such Award relates; (b) whether, as a condition for the Participant to realize all or a portion of the benefit provided under the Award, one or more Performance Goals must be achieved during such period as the Administrator specifies; (c) the length of the vesting and/or performance period and, if different, the date on which payment of the benefit provided under the Award will be made; (d) with respect to Performance Units, whether to measure the value of each unit in relation to a designated dollar value or the Fair Market Value of one or more Shares; and (e) with respect to Restricted Stock Units and Performance Units, whether to settle such Awards in cash, in Shares (including Restricted Stock), or in a combination of cash and Shares; provided that no dividends or Dividend Equivalent Units shall be paid on Performance Shares or Performance Units prior to their vesting.

10. Annual Incentive Awards. Subject to the terms of this Plan, the Administrator will determine all terms and conditions of an Annual Incentive Award, including but not limited to the Performance Goals, performance period, the potential amount payable, and the timing of payment; *provided* that the Administrator must require that payment of all or any portion of the amount subject to the Annual Incentive Award is contingent on the achievement or partial achievement of one or more Performance Goals during the period the Administrator specifies, although the Administrator may specify that all or a portion of the Performance Goals subject to an Award are deemed achieved upon a Participant's death, Disability, or such other circumstances as the Administrator may specify; and *provided further* that any performance period applicable to an Annual Incentive Award must relate to a period of at least one year.

11. Long-Term Incentive Awards. Subject to the terms of this Plan, the Administrator will determine all terms and conditions of a Long-Term Incentive Award, including, but not limited to, the Performance Goals, performance period (which must be more than one year), the potential amount payable, and the timing of payment; *provided* that the Administrator must require that payment of all or any portion of the amount subject to the Long-Term Incentive Award is contingent on the achievement or partial achievement of one or more Performance Goals during the period the Administrator specifies, although the Administrator may specify that all or a portion of the Performance Goals subject to an Award are deemed achieved upon a Participant's death, Disability or retirement (as defined by the Administrator), or such other circumstances as the Administrator may specify.

12. Dividend Equivalent Units. Subject to the terms of this Plan, the Administrator will determine all terms and conditions of each award of Dividend Equivalent Units, including but not limited to whether: (a) such Award will be granted in tandem with another Award; (b) payment of the Award will be made concurrently with dividend payments or credited to an account for the Participant which provides for the deferral of such amounts until a stated time; (c) the Award will be settled in cash or Shares; and (d) as a condition for the Participant to realize all or a portion of the benefit provided under the Award, one or more Performance Goals must be achieved during such period as the Administrator specifies; *provided* that Dividend Equivalent Units may not be granted in connection with an Option or Stock Appreciation Right; and *provided further* that no Dividend Equivalent Unit granted in tandem with another Award shall include vesting provisions more favorable to the Participant than the vesting provisions, if any, to which the tandem Award is subject; and *provided further* that no Dividend Equivalent Unit relating to another Award shall provide for payment with respect such other Award prior to its vesting.

13. Other Stock-Based Awards. Subject to the terms of this Plan, the Administrator may grant to a Participant shares of unrestricted Stock as replacement for other compensation to which the Participant is entitled, such as in payment of director fees, in lieu of cash compensation, in exchange for cancellation of a compensation right, or as a bonus.

14. Transferability. Awards are not transferable other than by will or the laws of descent and distribution, unless and to the extent the Administrator allows a Participant to: (a) designate in writing a beneficiary to exercise the Award or receive payment under the Award after the Participant's death; (b) transfer an Award to the former spouse of the Participant as required by a domestic relations order incident to a divorce; or (c) transfer an Award; *provided, however*, that with respect to clause (c) above the Participant may not receive consideration for such a transfer of an Award.

15. Termination and Amendment of Plan; Amendment, Modification or Cancellation of Awards.

(a) *Term of Plan.* Unless the Board earlier terminates this Plan pursuant to Section 15(b), this Plan will terminate on, and no further Awards may be granted under this Plan after, the tenth (10th) anniversary of the Effective Date.

(b) *Termination and Amendment.* The Board or the Administrator may amend, alter, suspend, discontinue or terminate this Plan at any time, subject to the following limitations:

(i) the Board must approve any amendment of this Plan to the extent the Company determines such approval is required by: (A) prior action of the Board, (B) applicable corporate law, or (C) any other applicable law;

(ii) shareholders must approve any amendment of this Plan to the extent the Company determines such approval is required by: (A) Section 16 of the Exchange Act, (B) the Code, (C) the listing requirements of any principal securities exchange or market on which the Shares are then traded, or (D) any other applicable law; and

(iii) shareholders must approve any of the following Plan amendments: (A) an amendment to materially increase any number of Shares specified in Section 6(a) or the limits set forth in Section 6(b)(except as permitted by Section 17), or (B) an amendment that would diminish the protections afforded by Section 15(e).

(c) *Amendment, Modification, Cancellation and Disgorgement of Awards.*

(i) Except as provided in Section 15(e) and subject to the requirements of this Plan, the Administrator may modify, amend or cancel any Award; *provided* that, except as otherwise provided in the Plan or the Award agreement, any modification or amendment that materially diminishes the rights of the Participant, or the cancellation of an Award, shall be effective only if agreed to by the Participant or any other person(s) as may then have an interest in such Award, but the Administrator need not obtain Participant (or other interested party) consent for the modification, amendment or cancellation of an Award pursuant to the provisions of subsection (ii) or Section 17 or as follows: (A) to the extent the Administrator deems such action necessary to comply with any applicable law or the listing requirements of any principal securities exchange or market on which the Shares are then traded; (B) to the extent the Administrator deems necessary to preserve favorable accounting or tax treatment of any Award for the Company; or (C) to the extent the Administrator determines that such action does not materially and adversely affect the value of an Award or that such action is in the best interest of the affected Participant (or any other person(s) as may then have an interest in the Award). Notwithstanding the foregoing, unless determined otherwise by the Administrator, any such amendment shall be made in a manner that will enable an Award intended to be exempt from Code Section 409A to continue to be so exempt, or to enable an Award intended to comply with Code Section 409A to continue to so comply.

(ii) Notwithstanding anything to the contrary in an Award agreement, the Administrator shall have full power and authority to terminate or cause the Participant to forfeit the Award, and require the Participant to disgorge to the Company any gains attributable to the Award, if the Participant engages in any action constituting, as determined by the Administrator in its discretion, Cause for termination, or a breach of any Award agreement or any other agreement between the Participant and the Company or an Affiliate concerning noncompetition, nonsolicitation, confidentiality, trade secrets, intellectual property, nondisparagement or similar obligations.

(iii) Any Awards granted pursuant to this Plan, and any Stock issued or cash paid pursuant to an Award, shall be subject to any recoupment or clawback policy that is adopted by, or any recoupment or similar requirement otherwise made applicable by law, regulation or listing standards to, the Company from time to time.

(d) *Survival of Authority and Awards*. Notwithstanding the foregoing, the authority of the Board and the Administrator under this Section 15 and to otherwise administer the Plan with respect to then-outstanding Awards will extend beyond the date of this Plan's termination. In addition, termination of this Plan will not affect the rights of Participants with respect to Awards previously granted to them, and all unexpired Awards will continue in force and effect after termination of this Plan except as they may lapse or be terminated by their own terms and conditions.

(e) *Repricing and Backdating Prohibited*. Notwithstanding anything in this Plan to the contrary, and except for the adjustments provided for in Section 17, neither the Administrator nor any other person may (i) amend the terms of outstanding Options or SARs to reduce the exercise or grant price of such outstanding Options or SARs; (ii) cancel outstanding Options or SARs in exchange for Options or SARs with an exercise or grant price that is less than the exercise or grant price of the original Options or SARs; or (iii) cancel outstanding Options or SARs with an exercise or grant price above the current Fair Market Value of a Share in exchange for cash or other securities. In addition, the Administrator may not make a grant of an Option or SAR with a grant date that is effective prior to the date the Administrator takes action to approve such Award.

(f) *Foreign Participation.* To assure the viability of Awards granted to Participants employed or residing in foreign countries, the Administrator may provide for such special terms as it may consider necessary or appropriate to accommodate differences in local law, tax policy, accounting or custom. Moreover, the Administrator may approve such supplements to, or amendments, restatements or alternative versions of, this Plan as it determines is necessary or appropriate for such purposes. Any such amendment, restatement or alternative versions that the Administrator approves for purposes of using this Plan in a foreign country will not affect the terms of this Plan for any other country. In addition, all such supplements, amendments, restatements or alternative versions must comply with the provisions of Section 15(b)(ii).

16. Taxes.

(a) *Withholding.* In the event the Company or one of its Affiliates is required to withhold any Federal, state or local taxes or other amounts in respect of any income recognized by a Participant as a result of the grant, vesting, payment or settlement of an Award or disposition of any Shares acquired under an Award, the Company may deduct (or require an Affiliate to deduct) from any payments of any kind otherwise due the Participant cash, or with the consent of the Administrator, Shares otherwise deliverable or vesting under an Award, to satisfy such tax or other obligations. Alternatively, the Company or its Affiliate may require such Participant to pay to the Company or its Affiliate, in cash, promptly on demand, or make other arrangements satisfactory to the Company or its Affiliate regarding the payment to the Company or its Affiliate of the aggregate amount of any such taxes and other amounts. If Shares are deliverable upon exercise or payment of an Award, then the Administrator may permit a Participant to satisfy all or a portion of the Federal, state and local withholding tax obligations arising in connection with such Award by electing to (i) have the Company or its Affiliate withhold Shares otherwise issuable under the Award, (ii) tender back Shares received in connection with such Award or (iii) deliver other previously owned Shares, in each case having a Fair Market Value equal to the amount to be withheld; *provided* that the amount to be withheld in Shares may not exceed the total maximum statutory tax withholding obligations associated with the transaction to the extent needed for the Company and its Affiliates to avoid an accounting charge. If an election is provided, the election must be made on or before the date as of which the amount of tax to be withheld is determined and otherwise as the Administrator requires. In any case, the Company and its Affiliates may defer making payment or delivery under any Award if any such tax may be pending unless and until indemnified to its satisfaction.

(b) *No Guarantee of Tax Treatment.* Notwithstanding any provisions of this Plan to the contrary, the Company does not guarantee to any Participant or any other Person with an interest in an Award that (i) any Award intended to be exempt from Code Section 409A shall be so exempt, (ii) any Award intended to comply with Code Section 409A or Code Section 422 shall so comply, or (iii) any Award shall otherwise receive a specific tax treatment under any other applicable tax law, nor in any such case will the Company or any Affiliate be required to indemnify, defend or hold harmless any individual with respect to the tax consequences of any Award.

17. Adjustment and Change of Control Provisions.

(a) *Adjustment of Shares.* If (i) the Company shall at any time be involved in a merger or other transaction in which the Shares are changed or exchanged; (ii) the Company shall subdivide or combine the Shares or the Company shall declare a dividend payable in Shares, other securities (other than stock purchase rights issued pursuant to a shareholder rights agreement) or other property; (iii) the Company shall effect a cash dividend the amount of which, on a per Share basis, exceeds ten percent (10%) of the Fair Market Value of a Share at the time the dividend is declared, or the Company shall effect any other dividend or other distribution on the Shares in the form of cash, or a repurchase of Shares, that the Board determines by resolution is special or extraordinary in nature or that is in connection with a transaction

that the Company characterizes publicly as a recapitalization or reorganization involving the Shares; or (iv) any other event shall occur, which, in the case of this clause (iv), in the judgment of the Administrator necessitates an adjustment to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under this Plan, then the Administrator shall, in such manner as it may deem equitable to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under this Plan, adjust any or all of: (A) the number and type of Shares subject to this Plan (including the number and type of Shares described in Sections 6(a) and 6(c)) and which may after the event be made the subject of Awards; (B) the number and type of Shares subject to outstanding Awards; (C) the grant, purchase, or exercise price with respect to any Award; and (D) the Performance Goals of an Award. In any such case, the Administrator may also (or in lieu of the foregoing) make provision for a cash payment to the holder of an outstanding Award in exchange for the cancellation of all or a portion of the Award (without the consent of the holder of an Award) in an amount determined by the Administrator effective at such time as the Administrator specifies (which may be the time such transaction or event is effective). However, in each case, with respect to Awards of Incentive Stock Options, no such adjustment may be authorized to the extent that such authority would cause this Plan to violate Code Section 422(b). Further, the number of Shares subject to any Award payable or denominated in Shares must always be a whole number. In any event, previously granted Options or SARs are subject to only such adjustments as are necessary to maintain the relative proportionate interest the Options and SARs represented immediately prior to any such event and to preserve, without exceeding, the value of such Options or SARs.

Without limitation, in the event of any reorganization, merger, consolidation, combination or other similar corporate transaction or event, whether or not constituting a Change of Control (other than any such transaction in which the Company is the continuing corporation and in which the outstanding Stock is not being converted into or exchanged for different securities, cash or other property, or any combination thereof), the Administrator may substitute, on an equitable basis as the Administrator determines, for each Share then subject to an Award and the Shares subject to this Plan (if the Plan will continue in effect), the number and kind of shares of stock, other securities, cash or other property to which holders of Stock are or will be entitled in respect of each Share pursuant to the transaction.

(b) *Issuance or Assumption.* Notwithstanding any other provision of this Plan, and without affecting the number of Shares otherwise reserved or available under this Plan, in connection with any merger, consolidation, acquisition of property or stock, or reorganization, the Administrator may authorize the issuance or assumption of awards under this Plan upon such terms and conditions as it may deem appropriate.

(c) *Effect of Change of Control.*

(i) In order to preserve a Participant's rights under an Award in the event of a Change of Control, the Administrator in its discretion may, at the time an Award is made or at any time thereafter, take one or more of the following actions: (a) provide for the acceleration of any time period, or the deemed achievement of any Performance Goals, relating to the exercise or realization of the Award; (b) provide for the purchase or cancellation of the Award for an amount of cash or other property that could have been received upon the exercise or realization of the Award had the Award been currently exercisable or payable (or the cancellation of Awards in exchange for no payment to the extent that no cash or other property would be received upon the exercise or realization of the Award in such circumstances); (c) adjust the terms of the Award in the manner determined by the Administrator to reflect the Change of Control; (d) cause the Award to be assumed, or new right substituted therefor, by another entity; or (e) make such other provision as the Administrator may consider equitable and in the best interests of the Company.

(ii) Except to the extent the Participant has in effect an employment or similar agreement with the Company or any Affiliate or is subject to a policy that provides for a more favorable result to the Participant upon a Change of Control, in the event that the Company's legal counsel or accounting advisor determines that any payment, benefit or transfer by the Company under this Plan or any other plan, agreement, or arrangement to or for the benefit of the Participant (in the aggregate, the "Total Payments") would be subject to the tax ("Excise Tax") imposed by Code Section 4999 but for this subsection (d), then, notwithstanding any other provision of this Plan to the contrary, the Total Payments shall be delivered either (i) in full or (ii) in an amount such that the value of the aggregate Total Payments that the Participant is entitled to receive shall be One Dollar (\$1.00) less than the maximum amount that the Participant may receive without being subject to the Excise Tax, whichever of clause (i) or (ii) results in the receipt by the Participant of the greatest benefit on an after-tax basis (taking into account applicable federal, state and local income taxes and the Excise Tax). In the event that clause (ii) results in a greater after-tax benefit to the Participants, payments or benefits included in the Total Payments shall be reduced or eliminated by applying the following principles, in order: (A) the payment or benefit with the higher ratio of the parachute payment value to present economic value (determined using reasonable actuarial assumptions) shall be reduced or eliminated before a payment or benefit with a lower ratio; (B) the payment or benefit with the later possible payment date shall be reduced or eliminated before a payment or benefit with an earlier payment date; and (C) cash payments shall be reduced prior to non-cash benefits; provided that if the foregoing order of reduction or elimination would violate Code Section 409A, then the reduction shall be made pro rata among the payments or benefits included in the Total Payments (on the basis of the relative present value of the parachute payments).

(d) *Certain Modifications.* Notwithstanding anything contained in this Section 17, the Board may, in its sole and absolute discretion, amend, modify or rescind the provisions of this Section 17 if it determines that the operation of this Section 17 may prevent a transaction in which the Company, a Subsidiary or any Affiliate is a party from receiving desired tax treatment, including without limitation requiring that each Participant receive a replacement or substitute Award issued by the surviving or acquiring corporation.

18. Miscellaneous.

(a) *Other Terms and Conditions.* The Administrator may provide in any Award agreement such other provisions (whether or not applicable to the Award granted to any other Participant) as the Administrator determines appropriate to the extent not otherwise prohibited by the terms of the Plan.

(b) *Employment and Service.* The issuance of an Award shall not confer upon a Participant any right with respect to continued employment or service with the Company or any Affiliate, or the right to continue as a Director. Unless determined otherwise by the Administrator, for purposes of the Plan and all Awards, the following rules shall apply:

(i) a Participant who transfers employment between the Company and its Affiliates, or between Affiliates, will not be considered to have terminated employment;

(ii) a Participant who ceases to be a Non-Employee Director because he or she becomes an employee of the Company or an Affiliate shall not be considered to have ceased service as a Director with respect to any Award until such Participant's termination of employment with the Company and its Affiliates;

(iii) a Participant who ceases to be employed by the Company or an Affiliate and immediately thereafter becomes a Non-Employee Director, a non-employee director of an Affiliate, or a consultant to the Company or any Affiliate shall not be considered to have terminated employment until such Participant's service as a director of, or consultant to, the Company and its Affiliates has ceased; and

(iv) a Participant employed by an Affiliate will be considered to have terminated employment when such entity ceases to be an Affiliate.

Notwithstanding the foregoing, for purposes of an Award that constitutes "nonqualified deferred compensation" subject to Code Section 409A, if a Participant's termination of employment or service triggers the payment of such nonqualified deferred compensation under such Award, then the Participant will be deemed to have terminated employment or service upon his or her "separation from service" within the meaning of Code Section 409A. Notwithstanding any other provision in this Plan or an Award to the contrary, if any Participant is a "specified employee" within the meaning of Code Section 409A as of the date of his or her "separation from service" within the meaning of Code Section 409A, then, to the extent required to avoid the imposition of additional taxes under Code Section 409A, any payment of nonqualified deferred compensation made to the Participant on account of such separation from service shall not be made before a date that is six (6) months after the date of the separation from service.

(c) *No Fractional Shares*. No fractional Shares or other securities may be issued or delivered pursuant to this Plan, and the Administrator may determine whether cash, other securities or other property will be paid or transferred in lieu of any fractional Shares or other securities, or whether such fractional Shares or other securities or any rights to fractional Shares or other securities will be canceled, terminated or otherwise eliminated.

(d) *Unfunded Plan; Awards Not Includable for Benefits Purposes*. This Plan is unfunded and does not create, and should not be construed to create, a trust or separate fund with respect to this Plan's benefits. This Plan does not establish any fiduciary relationship between the Company and any Participant or other person. To the extent any person holds any rights by virtue of an Award granted under this Plan, such rights are no greater than the rights of the Company's general unsecured creditors. Income recognized by a Participant pursuant to an Award shall not be included in the determination of benefits under any employee pension benefit plan (as such term is defined in Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended) or group insurance or other benefit plans applicable to the Participant which are maintained by the Company or any Affiliate, except as may be provided under the terms of such plans or determined by resolution of the Board.

(e) *Requirements of Law and Securities Exchange*. The granting of Awards and the issuance of Shares in connection with an Award are subject to all applicable laws, rules and regulations and to such approvals by any governmental agencies or national securities exchanges as may be required. Notwithstanding any other provision of this Plan or any award agreement, the Company has no liability to deliver any Shares under this Plan or make any payment unless such delivery or payment would comply with all applicable laws and the applicable requirements of any securities exchange or similar entity, and unless and until the Participant has taken all actions required by the Company in connection therewith. The Company may impose such restrictions on any Shares issued under the Plan as the Company determines necessary or desirable to comply with all applicable laws, rules and regulations or the requirements of any national securities exchanges.

(f) *Governing Law; Venue*. This Plan, and all agreements under this Plan, will be construed in accordance with and governed by the laws of the State of Delaware, without reference to any conflict of

law principles. Any legal action or proceeding with respect to this Plan, any Award or any award agreement, or for recognition and enforcement of any judgment in respect of this Plan, any Award or any award agreement, may only be brought and determined in a court sitting in the State of Florida.

(g) *Limitations on Actions.* Any legal action or proceeding with respect to this Plan, any Award or any award agreement, must be brought within one (1) year after the day the complaining party first knew or should have known of the events giving rise to the complaint.

(h) *Construction.* Whenever any words are used herein in the masculine, they shall be construed as though they were used in the feminine in all cases where they would so apply; and wherever any words are used in the singular or plural, they shall be construed as though they were used in the plural or singular, as the case may be, in all cases where they would so apply. Titles of sections are for general information only, and this Plan is not to be construed with reference to such titles. The title, label or characterization of an Award in an award agreement or in the Company's public filings or other disclosures shall not be determinative as to which specific Award type is represented by the award agreement. Instead, the Administrator may determine which specific type(s) of Award(s) is (are) represented by any award agreement, at the time such Award is granted or at any time thereafter. Except to the extent otherwise provided in the applicable award agreement, in the case of any Award that includes a "series of installment payments" (within the meaning of Section 1.409A-2(b)(2)(iii) of the Treasury Regulations), the Award holder's right to the series of installment payments shall be treated as a right to a series of separate payments and not as a right to a single payment.

(i) *Severability.* If any provision of this Plan or any award agreement or any Award (a) is or becomes or is deemed to be invalid, illegal or unenforceable in any jurisdiction, or as to any person or Award, or (b) would cause this Plan, any award agreement or any Award to violate or be disqualified under any law the Administrator deems applicable, then such provision should be construed or deemed amended to conform to applicable laws, or if it cannot be so construed or deemed amended without, in the determination of the Administrator, materially altering the intent of this Plan, award agreement or Award, then such provision should be stricken as to such jurisdiction, person or Award, and the remainder of this Plan, such award agreement and such Award will remain in full force and effect.

LM FUNDING AMERICA, INC.

NON-EMPLOYEE DIRECTOR COMPENSATION PROGRAM

(Effective October 27, 2021)

Non-employee members of the board of directors (the “*Board*”) of LM Funding America, Inc. (the “*Company*”) shall receive cash and equity compensation as set forth in this Non-Employee Director Compensation Program (this “*Program*”). This Program has been adopted under the Company’s 2021 Omnibus Incentive Plan (the “*Equity Plan*”). The cash and equity compensation described in this Program shall be paid or be made, as applicable, automatically and without further action of the Board, to each member of the Board who is not an employee of the Company or any parent or subsidiary of the Company (each, a “*Non-Employee Director*”) who is entitled to receive such cash or equity compensation, unless such Non-Employee Director declines the receipt of such cash or equity compensation by written notice to the Company. This Program shall remain in effect until it is revised or rescinded by further action of the Board. This Program may be amended, modified or terminated by the Board at any time in its sole discretion. The terms and conditions of this Program shall supersede any prior cash and/or equity compensation arrangements for service as a member of the Board between the Company and any of its Non-Employee Directors. No Non-Employee Director shall have any rights hereunder, except with respect to equity awards to be automatically granted pursuant to the Program. Capitalized terms not otherwise defined herein shall have the meanings ascribed in the Equity Plan.

1. Cash Compensation.

(a) Annual Retainers. Each Non-Employee Director shall receive an annual cash retainer of \$60,000 for service on the Board.

(b) Additional Annual Retainers for Audit Committee Service. In addition, a Non-Employee Director serving as a member of the Audit Committee shall receive an additional annual retainer of \$30,000 for such service.

(c) Payment of Retainers. The annual retainers described in Sections 1(a) and 1(b) shall be earned on a quarterly basis based on a calendar quarter and shall be paid by the Company in arrears not later than the fifteenth day following the end of each calendar quarter. In the event a Non-Employee Director does not serve as a Non-Employee Director, or in the applicable positions described in Section 1(a) or 1(b), for an entire calendar quarter, the retainer paid to such Non-Employee Director shall be prorated for the portion of such calendar quarter actually served as a Non-Employee Director, or in such position, as applicable.

2. Equity Compensation. Non-Employee Directors shall be granted the equity awards described below. The awards described below shall be granted under and shall be subject to the terms and provisions of the Equity Plan, or any other applicable Company equity incentive plan then-maintained by the Company, and shall be granted subject to the execution and delivery of award agreements, including attached exhibits, in substantially the forms previously approved by the Board. All applicable terms of the Equity Plan apply to this Program as if fully set forth herein, and all grants of stock awards hereby are subject in all respects to the terms of the Equity Plan and the applicable award agreement.

(a) Initial Awards. Each Non-Employee Director who is initially elected or appointed to the Board shall be automatically granted a number of stock options to purchase shares of the Company’s common stock under the Equity Plan, or any other applicable Company equity incentive plan then-

maintained by the Company, equal to (i) \$25,000, divided by (ii) the exercise price of the option. Such options will have an exercise price equal to the Fair Market Value (as defined in the Equity Plan) of the Company's common stock on the date of grant. The awards described in this Section 2(a) shall be referred to as "**Initial Awards**." No Non-Employee Director shall be granted more than one Initial Award.

(b) Subsequent Awards for All Non-Employee Directors. A Non-Employee Director who (i) is serving on the Board as of the date of any annual meeting of the Company's stockholders and has been serving as a Non-Employee Director for at least three months as of the date of such meeting, and (ii) will continue to serve as a Non-Employee Director immediately following such meeting, shall be automatically granted a number of stock options to purchase shares of the Company's common stock under the Equity Plan, or any other applicable Company equity incentive plan then-maintained by the Company, equal to (A) \$60,000 (or \$90,000 for Non-Employee Directors who are members of the Audit Committee on the date of option grant), less the dollar value of any Initial Award paid during the preceding 12 months, divided by (B) the exercise price of the option. Such options will have an exercise price equal to the Fair Market Value (as defined in the Equity Plan) of the Company's common stock on the date of grant. The awards described in this Section 2(b) shall be referred to as "**Subsequent Awards**." A Non-Employee Director elected for the first time to the Board at an annual meeting of the Company's stockholders shall only receive a Subsequent Award in connection with such election, and shall not receive any Initial Award on the date of such meeting.

(c) Termination of Employment of Employee Directors. Members of the Board who are employees of the Company or any parent or subsidiary of the Company who subsequently terminate their employment with the Company and any parent or subsidiary of the Company and remain on the Board will not receive an Initial Award pursuant to Section 2(a) above, but to the extent that they are otherwise entitled, will receive, after termination from employment with the Company and any parent or subsidiary of the Company, Subsequent Awards as described in Section 2(b) above.

(d) Vesting of Awards Granted to Non-Employee Directors. Each Initial Award and Subsequent Award shall vest and become exercisable as follows: one-half the shares subject to the award shall vest within 180 days of the grant date, and one half of the shares subject to the award shall vest on the first anniversary of the grant date. Unvested awards shall become fully vested upon a Change of Control.

(e) Awards for Fourth Quarter 2021. For the fourth quarter 2021, Non-Employee Directors will receive a cash retainer of \$15,000 not later than the fifteenth day following the end of such quarter, and on the first day following the adoption date of the Program, the Non-Employee Directors will receive an option to purchase a number of shares of common stock equal to (i) \$60,000 (or \$75,000 for Non-Employee Directors who are members of the Audit Committee on the date of option grant), divided by (ii) exercise price of the option (the "2021 Options"). The 2021 Options will have an exercise price equal to the Fair Market Value (as defined in the Equity Plan) of the Company's common stock on the date of grant. The 2021 Options shall not constitute an Initial Award and shall not impact the amount of the Subsequent Award granted in 2022. In addition to the vesting provisions described above, unvested 2021 Options granted pursuant to this paragraph will vest in full if the closing price of the Company's common stock exceeds \$12.00 per share (subject to adjustment for stock splits, stock dividends, reverse stock splits, and the like) for ten (10) consecutive trading days after the date of grant.

(f) Stockholder Approval of Equity Plan. No stock options granted under this Program shall be exercisable unless and until the Equity Plan is approved by the Company's stockholders.

3. Compensation Limits. Notwithstanding anything to the contrary in this Program, all compensation payable under this Program will be subject to any limits on the maximum amount of Non-Employee Director compensation set forth in the Equity Plan, as in effect from time to time.

4. Reimbursements. The Company shall reimburse each Non-Employee Director for all reasonable, documented, out-of-pocket travel and other business expenses incurred by such Non-Employee Director in the performance of his or her duties to the Company in accordance with the Company's applicable expense reimbursement policies and procedures as in effect from time to time.

* * * * *

**LM FUNDING AMERICA, INC.
2021 OMNIBUS INCENTIVE PLAN
STOCK OPTION AWARD**

[PARTICIPANTID]
[FIRSTNAME] [LASTNAME]

You have been granted an option (your "Option") to purchase shares ("Shares") of Common Stock of LM Funding America, Inc. (the "Company") under the LM Funding America, Inc. 2021 Omnibus Incentive Plan (the "Plan"), effective as of the Grant Date, with the following terms and conditions:

Grant Date: [_____] , [__]

Vesting Commencement Date [_____] , 20[____]

Type of Option: [Nonqualified Stock Option]
[Incentive Stock Option]

Number of Option Shares: [SHARES GRANTED]

Exercise Price per Share: U.S. \$[_____]

Vesting: The Option will vest and become exercisable as follows [_____] , provided that you remain in continuous employment or service with the Company or an Affiliate until the applicable vesting date.

Upon your termination of employment, or cessation of services to, the Company and its Affiliates prior to the date the Option is fully vested, you will forfeit the unvested portion of the Option.

[Notwithstanding anything in this Option to the contrary, no portion of this Option may be exercised unless and until the Company's stockholders have voted to approve Plan within one (1) year of the Grant Date. This Option shall be deemed cancelled and void without any further action by the Company or you if the Company's stockholders have not approved the Plan on or before the first anniversary of the Grant Date.]¹

Termination Date: Your Option expires at, and cannot be exercised after, the earliest to occur of:

- The tenth (10th) anniversary of the Grant Date;
- 12 months after your termination of employment or service as a result of death or disability (as determined by the Administrator);
- Your termination of employment or service for Cause; or
- 90 days after your termination of employment or service for any other reason, provided that if you die during this 90-day period, the exercise period will be extended until 12 months after the date of your death.

If the date this Option terminates as specified above falls on a day on which the stock market is not open for trading or on a date on which you are prohibited by Company policy (such as an insider trading policy) from exercising the Option, the termination date shall be automatically extended to the first available trading day following the original termination date, but not beyond the tenth (10th) anniversary of the Grant Date.

¹ To be included in grants made before stockholder approval of Plan.

Manner of Exercise:

You may exercise your Option only to the extent vested and only if it has not terminated. To exercise your Option, you must complete the "Notice of Stock Option Exercise" form provided by the Company and return it to the address or send it via facsimile or email as indicated on the form, or use the equity platform or other exercise procedure prescribed by the Company. The exercise will not be completed until you pay the total exercise price and all applicable withholding taxes due as a result of the exercise to the Company and, to the extent prescribed by the Company, until you have executed a joinder agreement to any stockholders agreement or similar agreement maintained by the Company and provided any investment representation required by the Company.

If someone else wants to exercise your Option after your death, that person must contact the Company and prove to the Company's satisfaction that he or she is entitled to do so.

Your ability to exercise your Option may be restricted by the Company if required by applicable law.

No fractional Shares shall be issued pursuant to the grant or exercise of this Option. The Administrator shall determine whether the cash value of such fraction shall be paid or whether the fraction shall be canceled for no consideration.

Market Stand-Off:

In connection with any underwritten public offering by the Company of its equity securities pursuant to an effective registration statement filed under the Securities Act of 1933, as amended, you agree that you shall not directly or indirectly sell, make any short sale of, loan, hypothecate, pledge, offer, grant or sell any option or other contract for the purchase of, purchase any option or other contract for the sale of, or otherwise dispose of or transfer or agree to engage in any of the foregoing transactions with respect to, any Shares acquired under this Stock Option Award without the prior written consent of the Company. Such restriction shall be in effect for such period of time following the date of the final prospectus for the offering as may be determined by the Company. In no event, however, shall such period exceed one hundred eighty (180) days.

Restrictions on Transfer:

Your Option and all rights hereunder shall be non-assignable and non-transferable other than by will or the laws of descent and distribution and shall be exercisable during your lifetime only by you or your guardian or legal representative.

Taxes:

You (and not the Company or any Affiliate) shall be responsible for your federal, state, local or foreign tax liability and any of your other tax consequences that may arise as a result of the transactions contemplated by this Option. You shall rely solely on the determinations of your own tax advisors or your own determinations, and not on any statements or representations by the Company or any of its agents, with regard to all such tax matters. To the extent that the receipt, vesting or exercise of this Option, or other event, results in income to you for federal, state or local income tax purposes, you shall deliver to the Company or its Affiliate at the time the Company or its Affiliate is obligated to withhold taxes in connection with such receipt, vesting, exercise or other event, as the case may be, such amount as the Company or its Affiliate requires to meet its withholding obligation under applicable tax laws or regulations, and if you fail to do so, the Company shall not be obligated to deliver any Shares to you and shall have the right and authority to deduct or withhold from other compensation payable to you an amount sufficient to satisfy its withholding obligations.

To the extent permitted by the Company at the time a tax withholding requirement arises, you may satisfy the withholding requirement in whole or in part, by electing to have the Company withhold for its own account that number of Shares otherwise deliverable to you upon exercise having an aggregate Fair Market Value on the date the tax is to be determined equal to the tax that the Company must withhold in connection with the exercise; provided that the amount so withheld shall not exceed the maximum statutory rate to the extent necessary to avoid an accounting charge. The Fair Market Value of any fractional Share not used to satisfy the withholding obligation (as determined on the date the tax is determined) will be paid to you in cash.

Miscellaneous:

- Neither the Plan nor the grant of the Option shall constitute or be evidence of any agreement or understanding, express or implied, that you have a right to continue as an employee of the Company or any of its Affiliates for any period of time, or at any particular rate of compensation.
- The Plan and this Option constitute the entire understanding of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements between you and the Company with respect to the subject matter hereof. You expressly warrant that you are not accepting this Option in reliance on any promises, representations, or inducements other than those contained herein.
- By accepting the grant of your Option, you agree not to sell any Shares acquired in connection with your Option other than as set forth in the Plan and at a time when applicable laws, Company policies or an agreement between the Company and its underwriters do not prohibit a sale.
- As a condition of the granting of your Option, you agree, for yourself and your legal representatives or guardians, that this Stock Option Award shall be interpreted by the Committee and that any interpretation by the Committee of the terms of this Stock Option Award or the Plan and any determination made by the Committee pursuant to this Stock Option Award or the Plan shall be final, binding and conclusive.
- Subject to the terms of the Plan, the Committee may modify or amend this Stock Option Award without your consent as permitted by Section 15(c) of the Plan or: (i) to the extent such action is deemed necessary by the Committee to comply with any applicable law or the listing requirements of any principal securities exchange or market on which Shares are then traded; (ii) to the extent the action is deemed necessary by the Committee to preserve favorable accounting or tax treatment of any award for the Company; or (iii) to the extent the Committee determines that such action does not materially and adversely affect the value of this Stock Option Award or that such action is in the best interest of you or any other person who may then have an interest in this Stock Option Award.
- This Stock Option Award may be executed in counterparts.

Your Option is granted under and governed by the terms and conditions of the Plan, including provisions of the Plan relating to the right of the Company to repurchase Shares issued pursuant to the Plan. The terms of the Plan to the extent not stated herein are expressly incorporated herein by reference and in the event of any conflict between this Option and the Plan, the terms of the Plan shall govern, control and supersede over the provisions of this Option. Capitalized terms used in this Option and not defined shall have the meanings given in the Plan.

BY ACCEPTING THIS STOCK OPTION AWARD, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS DESCRIBED HEREIN AND IN THE PLAN. YOU ALSO ACKNOWLEDGE RECEIPT OF THE PLAN.

LM FUNDING AMERICA, INC. OPTIONEE

By: _____
[EXECUTIVE] [OPTIONEE]
[POSITION]

Date: _____

**LM FUNDING AMERICA, INC.
NOTICE OF STOCK OPTION EXERCISE**

Your completed form should be delivered to: _____,
 Phone: _____ Fax: _____ Email: _____
Incomplete forms may cause a delay in processing your option exercise.

OPTIONEE INFORMATION

Please complete the following. PLEASE WRITE YOUR FULL LEGAL NAME SINCE THIS NAME MAY BE ON YOUR SHARES.

Name: _____
 Street Address: _____
 City: _____ State: _____ Zip Code: _____
 Work Phone #: (____) - _____ - _____ Home Phone #: (____) - _____ - _____
 Social Security #: _____ - _____ - _____

DESCRIPTION OF OPTION(S) BEING EXERCISED

Please complete the following for each option that you wish to exercise.

Grant Date	Exercise Price Per Share	Number of Option Shares Being Purchased	Total Exercise Price (multiply Exercise Price Per Share by Number of Option Shares Being Purchased)
	\$		\$
	\$		\$
	\$		\$
	\$		\$
	\$		\$
Aggregate Exercise Price			\$

**LM FUNDING AMERICA, INC.
2021 OMNIBUS INCENTIVE PLAN
STOCK OPTION AWARD**

[PARTICIPANTID]
[FIRSTNAME] [LASTNAME]

You have been granted an option (your "Option") to purchase shares ("Shares") of Common Stock of LM Funding America, Inc. (the "Company") under the LM Funding America, Inc. 2021 Omnibus Incentive Plan (the "Plan"), effective as of the Grant Date, with the following terms and conditions:

Grant Date:	October 28, 2021
Vesting Commencement Date	October 28, 2021
Type of Option:	Nonqualified Stock Option
Number of Option Shares:	[SHARES GRANTED]
Exercise Price per Share:	U.S. \$5.95

Vesting: The Option will vest and become exercisable with respect to one third (1/3) of the total Option Shares on the first anniversary the Vesting Commencement Date, and one thirty sixth (1/36) of the total Option Shares on the last day of each month thereafter (beginning with the first full month after the month in which the first anniversary of the Vesting Commencement Date occurs), provided that you remain in continuous employment or service with the Company or an Affiliate until the applicable vesting date.

Notwithstanding the foregoing, the unvested portion of the Option will vest in full upon a Change of Control, if you are continuously employed with, or in the service of, the Company or an Affiliate thereof through the day preceding the date of the Change of Control.

In addition, the unvested portion of the Option will vest in full in the event that the closing price of the Company's common stock on the Applicable Exchange exceeds \$12.00 per share (which number will be adjusted for stock splits, stock dividends, reverse stock splits, and the like occurring after the Grant Date) for ten (10) consecutive trading days, provided that you remain in continuous employment or service with the Company or an Affiliate through and including the last day of such ten (10) trading-day period.

Upon your termination of employment, or cessation of services to, the Company and its Affiliates prior to the date the Option is fully vested, you will forfeit the unvested portion of the Option.

Notwithstanding anything in this Option to the contrary, no portion of this Option may be exercised unless and until the Company's stockholders have voted to approve Plan within one (1) year of the Grant Date. This Option shall be deemed cancelled and void without any further action by the Company or you if the Company's stockholders have not approved the Plan on or before the first anniversary of the Grant Date.

Termination Date:

Your Option expires at, and cannot be exercised after, the earliest to occur of:

- The tenth (10th) anniversary of the Grant Date;
- 12 months after your termination of employment or service as a result of death or disability (as determined by the Administrator);
- Your termination of employment or service for Cause; or
- 90 days after your termination of employment or service for any other reason, provided that if you die during this 90-day period, the exercise period will be extended until 12 months after the date of your death.

If the date this Option terminates as specified above falls on a day on which the stock market is not open for trading or on a date on which you are prohibited by Company policy (such as an insider trading policy) from exercising the Option, the termination date shall be automatically extended to the first available trading day following the original termination date, but not beyond the tenth (10th) anniversary of the Grant Date.

Manner of Exercise:

You may exercise your Option only to the extent vested and only if it has not terminated. To exercise your Option, you must complete the "Notice of Stock Option Exercise" form provided by the Company and return it to the address or send it via facsimile or email as indicated on the form, or use the equity platform or other exercise procedure prescribed by the Company. The exercise will not be completed until you pay the total exercise price and all applicable withholding taxes due as a result of the exercise to the Company and, to the extent prescribed by the Company, until you have executed a joinder agreement to any stockholders agreement or similar agreement maintained by the Company and provided any investment representation required by the Company.

If someone else wants to exercise your Option after your death, that person must contact the Company and prove to the Company's satisfaction that he or she is entitled to do so.

Your ability to exercise your Option may be restricted by the Company if required by applicable law.

No fractional Shares shall be issued pursuant to the grant or exercise of this Option. The Administrator shall determine whether the cash value of such fraction shall be paid or whether the fraction shall be canceled for no consideration.

Market Stand-Off:

In connection with any underwritten public offering by the Company of its equity securities pursuant to an effective registration statement filed under the Securities Act of 1933, as amended, you agree that you shall not directly or indirectly sell, make any short sale of, loan, hypothecate, pledge, offer, grant or sell any option or other contract for the purchase of, purchase any option or other contract for the sale of, or otherwise dispose of or transfer or agree to engage in any of the foregoing transactions with respect to, any Shares acquired under this Stock Option Award without the prior written consent of the Company. Such restriction shall be in effect for such period of time following the date of the final prospectus for the offering as may be determined by the Company. In no event, however, shall such period exceed one hundred eighty (180) days.

Restrictions on Transfer:

Your Option and all rights hereunder shall be non-assignable and non-transferable other than by will or the laws of descent and distribution and shall be exercisable during your lifetime only by you or your guardian or legal representative.

Taxes:

You (and not the Company or any Affiliate) shall be responsible for your federal, state, local or foreign tax liability and any of your other tax consequences that may arise as a result of the transactions contemplated by this Option. You shall rely solely on the determinations of your own tax advisors or your own determinations, and not on any statements or representations by the Company or any of its agents, with regard to all such tax matters. To the extent that the receipt, vesting or exercise of this Option, or other event, results in income to you for federal, state or local income tax purposes, you shall deliver to the Company or its Affiliate at the time the Company or its Affiliate is obligated to withhold taxes in connection with such receipt, vesting, exercise or other event, as the case may be, such amount as the Company or its Affiliate requires to meet its withholding obligation under applicable tax laws or regulations, and if you fail to do so, the Company shall not be obligated to deliver any Shares to you and shall have the right and authority to deduct or withhold from other compensation payable to you an amount sufficient to satisfy its withholding obligations.

To the extent permitted by the Company at the time a tax withholding requirement arises, you may satisfy the withholding requirement in whole or in part, by electing to have the Company withhold for its own account that number of Shares otherwise deliverable to you upon exercise having an aggregate Fair Market Value on the date the tax is to be determined equal to the tax that the Company must withhold in connection with the exercise; provided that the amount so withheld shall not exceed the maximum statutory rate to the extent necessary to avoid an accounting charge. The Fair Market Value of any fractional Share not used to satisfy the withholding obligation (as determined on the date the tax is determined) will be paid to you in cash.

Miscellaneous:

- Neither the Plan nor the grant of the Option shall constitute or be evidence of any agreement or understanding, express or implied, that you have a right to continue as an employee of the Company or any of its Affiliates for any period of time, or at any particular rate of compensation.
- The Plan and this Option constitute the entire understanding of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements between you and the Company with respect to the subject matter hereof. You expressly warrant that you are not accepting this Option in reliance on any promises, representations, or inducements other than those contained herein.
- By accepting the grant of your Option, you agree not to sell any Shares acquired in connection with your Option other than as set forth in the Plan and at a time when applicable laws, Company policies or an agreement between the Company and its underwriters do not prohibit a sale.
- As a condition of the granting of your Option, you agree, for yourself and your legal representatives or guardians, that this Stock Option Award shall be interpreted by the Committee and that any interpretation by the Committee of the terms of this Stock Option Award or the Plan and any determination made by the Committee pursuant to this Stock Option Award or the Plan shall be final, binding and conclusive.
- Subject to the terms of the Plan, the Committee may modify or amend this Stock Option Award without your consent as permitted by Section 15(c) of the Plan or: (i) to the extent such action is deemed necessary by the Committee to comply with any applicable law or the listing requirements of any principal securities exchange or market on which Shares are then traded; (ii) to the extent the action is deemed necessary by the Committee to preserve favorable accounting or tax treatment of any award for the Company; or (iii) to the extent the Committee determines that such action does not materially and adversely affect the value of this Stock Option Award or that such action is in the best interest of you or any other person who may then have an interest in this Stock Option Award.
- This Stock Option Award may be executed in counterparts.

Your Option is granted under and governed by the terms and conditions of the Plan, including provisions of the Plan relating to the right of the Company to repurchase Shares issued pursuant to the Plan. The terms of the Plan to the extent not stated herein are expressly incorporated herein by reference and in the event of any conflict between this Option and the Plan, the terms of the Plan shall govern, control and supersede over the provisions of this Option. Capitalized terms used in this Option and not defined shall have the meanings given in the Plan.

BY ACCEPTING THIS STOCK OPTION AWARD, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS DESCRIBED HEREIN AND IN THE PLAN. YOU ALSO ACKNOWLEDGE RECEIPT OF THE PLAN.

LM FUNDING AMERICA, INC. OPTIONEE

By: _____
[EXECUTIVE] [OPTIONEE]
[POSITION]

Date: _____

**LM FUNDING AMERICA, INC.
NOTICE OF STOCK OPTION EXERCISE**

Your completed form should be delivered to: _____,
 Phone: _____ Fax: _____ Email: _____
Incomplete forms may cause a delay in processing your option exercise.

OPTIONEE INFORMATION

Please complete the following. PLEASE WRITE YOUR FULL LEGAL NAME SINCE THIS NAME MAY BE ON YOUR SHARES.

Name: _____
 Street Address: _____
 City: _____ State: _____ Zip Code: _____
 Work Phone #: (____) - ____ - _____ Home Phone #: (____) - ____ - _____
 Social Security #: _____ - ____ - _____

DESCRIPTION OF OPTION(S) BEING EXERCISED

Please complete the following for each option that you wish to exercise.

Grant Date	Exercise Price Per Share	Number of Option Shares Being Purchased	Total Exercise Price (multiply Exercise Price Per Share by Number of Option Shares Being Purchased)
	\$		\$
	\$		\$
	\$		\$
	\$		\$
	\$		\$
Aggregate Exercise Price			\$

**LM FUNDING AMERICA, INC.
2021 OMNIBUS INCENTIVE PLAN
STOCK OPTION AWARD
(Non-Employee Director)**

[PARTICIPANTID]
[FIRSTNAME] [LASTNAME]

You have been granted an option (your "Option") to purchase shares ("Shares") of Common Stock of LM Funding America, Inc. (the "Company") under the LM Funding America, Inc. 2021 Omnibus Incentive Plan (the "Plan"), effective as of the Grant Date, with the following terms and conditions:

Grant Date: [_____] , 20[___]

Vesting Commencement Date [_____] , 20[___]

Type of Option: Nonqualified Stock Option

Number of Option Shares: [SHARES GRANTED]

Exercise Price per Share: U.S. \$[_____]

Vesting: The Option will vest and become exercisable with respect to one one-half (1/2) of the total Option Shares on the date that is one hundred eighty (180) days after the Vesting Commencement Date, and one-half (1/2) of the total Option Shares on the first (1st) anniversary the Vesting Commencement Date, provided that you remain in continuous service with the Company or an Affiliate until the applicable vesting date.

Notwithstanding the foregoing, the unvested portion of the Option will vest in full upon a Change of Control, if you are continuously in the service of the Company or an Affiliate thereof through the day preceding the date of the Change of Control.

[In addition, the unvested portion of the Option will vest in full in the event that the closing price of the Company's common stock on the Applicable Exchange exceeds \$12.00 per share (which number will be adjusted for stock splits, stock dividends, reverse stock splits, and the like occurring after the Grant Date) for ten (10) consecutive trading days, provided that you remain in continuous service with the Company or an Affiliate through and including the last day of such ten (10) trading-day period.]¹

Upon your termination cessation of services to the Company and its Affiliates (as a Director or otherwise) prior to the date the Option is fully vested, you will forfeit the unvested portion of the Option.

[Notwithstanding anything in this Option to the contrary, no portion of this Option may be exercised unless and until the Company's stockholders have voted to approve Plan within one (1) year of the Grant Date. This Option shall be deemed cancelled and void without any further action by the Company or you if the Company's stockholders have not approved the Plan on or before the first anniversary of the Grant Date.]²

1 This clause to be included only in the option granted on October 28, 2021.

2 To be included only prior to stockholder approval of Plan.

Termination Date:

Your Option expires at, and cannot be exercised after, the earliest to occur of:

- The tenth (10th) anniversary of the Grant Date;
- 12 months after your termination of your service to the Company as a result of death or disability (as determined by the Administrator); or
- Your termination of service to the Company for Cause; or
- 90 days after your termination of service for any other reason, provided that if you die during this 90-day period, the exercise period will be extended until 12 months after the date of your death.

If the date this Option terminates as specified above falls on a day on which the stock market is not open for trading or on a date on which you are prohibited by Company policy (such as an insider trading policy) from exercising the Option, the termination date shall be automatically extended to the first available trading day following the original termination date, but not beyond the tenth (10th) anniversary of the Grant Date.

Manner of Exercise:

You may exercise your Option only to the extent vested and only if it has not terminated. To exercise your Option, you must complete the "Notice of Stock Option Exercise" form provided by the Company and return it to the address or send it via facsimile or email as indicated on the form, or use the equity platform or other exercise procedure prescribed by the Company. The exercise will not be completed until you pay the total exercise price and all applicable withholding taxes due as a result of the exercise to the Company and, to the extent prescribed by the Company, until you have executed a joinder agreement to any stockholders agreement or similar agreement maintained by the Company and provided any investment representation required by the Company.

If someone else wants to exercise your Option after your death, that person must contact the Company and prove to the Company's satisfaction that he or she is entitled to do so.

Your ability to exercise your Option may be restricted by the Company if required by applicable law.

No fractional Shares shall be issued pursuant to the grant or exercise of this Option. The Administrator shall determine whether the cash value of such fraction shall be paid or whether the fraction shall be canceled for no consideration.

Market Stand-Off:

In connection with any underwritten public offering by the Company of its equity securities pursuant to an effective registration statement filed under the Securities Act of 1933, as amended, you agree that you shall not directly or indirectly sell, make any short sale of, loan, hypothecate, pledge, offer, grant or sell any option or other contract for the purchase of, purchase any option or other contract for the sale of, or otherwise dispose of or transfer or agree to engage in any of the foregoing transactions with respect to, any Shares acquired under this Stock Option Award without the prior written consent of the Company. Such restriction shall be in effect for such period of time following the date of the final prospectus for the offering as may be determined by the Company. In no event, however, shall such period exceed one hundred eighty (180) days.

Restrictions on Transfer:

Your Option and all rights hereunder shall be non-assignable and non-transferable other than by will or the laws of descent and distribution and shall be exercisable during your lifetime only by you or your guardian or legal representative.

Taxes:

You (and not the Company or any Affiliate) shall be responsible for your federal, state, local or foreign tax liability and any of your other tax consequences that may arise as a result of the transactions contemplated by this Option. You shall rely solely on the determinations of your own tax advisors or your own determinations, and not on any statements or representations by the Company or any of its agents, with regard to all such tax matters. To the extent that the receipt, vesting or exercise of this Option, or other event, results in income to you for federal, state or local income tax purposes, you shall deliver to the Company or its Affiliate at the time the Company or its Affiliate is obligated to withhold taxes in connection with such receipt, vesting, exercise or other event, as the case may be, such amount as the Company or its Affiliate requires to meet its withholding obligation under applicable tax laws or regulations, and if you fail to do so, the Company shall not be obligated to deliver any Shares to you and shall have the right and authority to deduct or withhold from other compensation payable to you an amount sufficient to satisfy its withholding obligations.

To the extent permitted by the Company at the time a tax withholding requirement arises, you may satisfy the withholding requirement in whole or in part, by electing to have the Company withhold for its own account that number of Shares otherwise deliverable to you upon exercise having an aggregate Fair Market Value on the date the tax is to be determined equal to the tax that the Company must withhold in connection with the exercise; provided that the amount so withheld shall not exceed the maximum statutory rate to the extent necessary to avoid an accounting charge. The Fair Market Value of any fractional Share not used to satisfy the withholding obligation (as determined on the date the tax is determined) will be paid to you in cash.

Miscellaneous:

- Neither the Plan nor the grant of the Option shall constitute or be evidence of any agreement or understanding, express or implied, that you have a right to continue to serve as a Director of the Company or any of its Affiliates for any period of time.
- The Plan and this Option constitute the entire understanding of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements between you and the Company with respect to the subject matter hereof. You expressly warrant that you are not accepting this Option in reliance on any promises, representations, or inducements other than those contained herein.
- By accepting the grant of your Option, you agree not to sell any Shares acquired in connection with your Option other than as set forth in the Plan and at a time when applicable laws, Company policies or an agreement between the Company and its underwriters do not prohibit a sale.
- As a condition of the granting of your Option, you agree, for yourself and your legal representatives or guardians, that this Stock Option Award shall be interpreted by the Committee and that any interpretation by the Committee of the terms of this Stock Option Award or the Plan and any determination made by the Committee pursuant to this Stock Option Award or the Plan shall be final, binding and conclusive.
- Subject to the terms of the Plan, the Committee may modify or amend this Stock Option Award without your consent as permitted by Section 15(c) of the Plan or: (i) to the extent such action is deemed necessary by the Committee to comply with any applicable law or the listing requirements of any principal securities exchange or market on which Shares are then traded; (ii) to the extent the action is deemed necessary by the Committee to preserve favorable accounting or tax treatment of any award for the Company; or (iii) to the extent the Committee determines that such action does not materially and adversely affect the value of this Stock Option Award or that such action is in the best interest of you or any other person who may then have an interest in this Stock Option Award.
- This Stock Option Award may be executed in counterparts.

Your Option is granted under and governed by the terms and conditions of the Plan, including provisions of the Plan relating to the right of the Company to repurchase Shares issued pursuant to the Plan. The terms of the Plan to the extent not stated herein are expressly incorporated herein by reference and in the event of any conflict between this Option and the Plan, the terms of the Plan shall govern, control and supersede over the provisions of this Option. Capitalized terms used in this Option and not defined shall have the meanings given in the Plan.

BY ACCEPTING THIS STOCK OPTION AWARD, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS DESCRIBED HEREIN AND IN THE PLAN. YOU ALSO ACKNOWLEDGE RECEIPT OF THE PLAN.

LM FUNDING AMERICA, INC. OPTIONEE

By: _____
[EXECUTIVE] [OPTIONEE]
[POSITION]

Date: _____

**LM FUNDING AMERICA, INC.
NOTICE OF STOCK OPTION EXERCISE**

Your completed form should be delivered to: _____, _____.

Phone: _____ Fax: _____ Email: _____

Incomplete forms may cause a delay in processing your option exercise.

OPTIONEE INFORMATION

Please complete the following. PLEASE WRITE YOUR FULL LEGAL NAME SINCE THIS NAME MAY BE ON YOUR SHARES.

Name: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Work Phone #: (____) - ____ - ____ Home Phone #: (____) - ____ - ____

Social Security #: ____ - ____ - ____

DESCRIPTION OF OPTION(S) BEING EXERCISED

Please complete the following for each option that you wish to exercise.

Grant Date	Exercise Price Per Share	Number of Option Shares Being Purchased	Total Exercise Price (multiply Exercise Price Per Share by Number of Option Shares Being Purchased)
	\$		\$
	\$		\$
	\$		\$
	\$		\$
	\$		\$
Aggregate Exercise Price			\$

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (this “**Agreement**”) is dated as of October 27, 2021 (the “**Effective Date**”), by and between LM Funding America, Inc., Delaware incorporated corporation (the “**Company**”), and Bruce M. Rodgers (“**Executive**”).

Recitals

A. The Company and Executive have entered into an Amended and Restated Employment Agreement, dated as of September 30, 2020, under which Executive is employed by the Company (the “**Existing Employment Agreement**”);

B. The Company and Executive have agreed to protect the interests of the Company and Company’s customers and Confidential Information (as defined below) that may have been or that may be disclosed to Executive as set forth herein; and

C. The Company and Executive desire to amend and restate the Existing Employment Agreement in its entirety, effective as of the Effective Date, as set forth herein.

Agreement

NOW, THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree to amend and restate the Existing Employment Agreement in its entirety as follows:

Section 1. *Employment, Duties and Acceptance.*

(a) The Company shall employ Executive during the Term (as defined below) as Chief Executive Officer. Executive shall be responsible for performing the duties and exercising the powers which the Board of Directors of the Company (the “**Board**”) may from time-to-time assign to him in his capacity as Chief Executive Officer of the Company in connection with the conduct and management of the business of the Company and its subsidiaries and affiliates.

(b) Executive hereby accepts such employment and agrees, during the Term, to render Executive's services to the Company on a full-time basis and to devote Executive's full business time and attention to the business and affairs of the Company and any subsidiary or affiliate of the Company; provided that Executive may perform the services described on Exhibit A hereto during the Term so long as his performance of such services does not unduly interfere with his performance of his duties for the Company. Executive agrees that at all times during the Term, Executive will faithfully perform the duties assigned to him by the Board to the best of Executive's ability. Executive further agrees to accept election and to serve during all or any part of the Term as an officer, director or representative of any subsidiary or affiliate of the Company, without any compensation therefor other than that specified in this Agreement. Executive shall report directly to the Board.

(c) The duties to be performed by Executive hereunder shall be principally performed at the Company's offices located in Tampa, Florida, subject to reasonable travel requirements on behalf of the Company. Executive shall be entitled to an annual paid time off of 30 days on the same terms that the Company provides to other similarly situated senior Company executives in accordance with the Company's policies and practices; provided that Executive shall schedule the timing and duration of Executive's vacations in a reasonable manner taking into account the needs of the business of the Company.

(d) Executive acknowledges that from time to time the Company may promulgate workplace policies and rules. Executive agrees to fully comply with all such policies and rules, and understands that failure to do so may result in a disciplinary action up to and including immediate discharge for Cause (as defined below).

Section 2. *Term.* As used herein, the "**Term**" means the period commencing on the Effective Date and ending on September 30, 2023; provided that, following such date, the Term shall be automatically renewed each year unless Executive or the Company gives written notice of termination on or before the 30th day prior to the automatic renewal date of its desire not to renew the Term. Any such renewal shall be upon the terms and conditions set forth herein unless otherwise agreed between the Company and Executive. In the event that the Company gives

written notice that it does not intend to renew the Term, Executive shall be entitled to the benefits set forth in Section 4(b)(iii).

Section 3. Compensation. Executive shall be entitled to the following compensation:

(a) The Company agrees to pay to Executive a salary in cash (the “**Salary**”), as compensation for the services to be performed by Executive, at the rate of \$750,000 per calendar year commencing with the Effective Date, paid in accordance with the Company’s customary payroll procedures and subject to applicable withholding. During the Term, the Board shall have the right to increase, but not decrease, the Salary, except the Board may decrease the Salary in connection with a base salary decrease that is generally applicable to all members of the Company’s senior management. Without limiting the generality of the foregoing, Executive will be eligible for additional annual salary merit increases during the Term based on the evaluation of Executive’s performance as determined by the Board in its sole discretion. Executive’s salary as in effect from time to time shall constitute the “**Salary**” for purposes of this Agreement.

(b) The Company shall reimburse Executive for all reasonable expenses incurred by Executive in the course of performing Executive’s duties under this Agreement that are consistent with the Company’s policies in effect from time to time with respect to travel, entertainment and other business expenses, subject to the Company’s requirements with respect to reporting and documentation of such expenses.

(c) Executive shall be eligible to participate in any equity incentive plan, restricted share plan, share award plan, stock appreciation rights plan, stock option plan or similar plan adopted by the Company on the same terms and conditions applicable to other senior Company executives, with the amount of such awards to be determined by the Board in its sole discretion. Executive shall be eligible for an annual bonus and long term incentive awards as determined at the sole discretion of the Board. Without limiting the generality of the foregoing, in lieu of the quarterly grants of restricted stock contemplated by Section 3(d) of the Existing Employment Agreement, which were not made, Executive will receive a grant of 48,662 fully-vested shares of the Company’s common stock pursuant to the Company’s 2021 Omnibus Incentive Plan (the “**Plan**”), effective as of the next business day following the Company’s filing of a Registration Statement on Form S-8 with the Securities and Exchange Commission on or after the Effective Date

registering the offer and sale of shares of the Company's common stock pursuant to the Plan. Such grant shall be contingent on the approval of the Plan by the Company's stockholders and on Executive's continuous employment by the Company until the grant date. Unless otherwise determined by the Board, the Company's tax withholding obligations in connection with such grant shall be satisfied through the Company withholding a number of shares from the grant sufficient to satisfy the Company's tax withholding obligations.

(d) Executive shall be entitled to all rights and benefits for which Executive shall be eligible under any retirement, retirement savings, profit-sharing, pension or welfare benefit plan, life, disability, health, dental, hospitalization and other forms of insurance and all other so-called "fringe" benefits or perquisites (except for with respect to any plan that provides severance or other similar benefits), on the same terms that the Company provides to other similarly situated senior Company executives (subject to all restrictions on participation that may apply under federal and state tax laws).

In the event of a Change of Control (as defined in the Plan as of the Effective Date) (a "**Change of Control**") that involves the sale of all of the shares of the Company's common stock or the sale of substantially all of the assets of the Company (an "**M&A Transaction**") and that occurs while Executive is employed with the Company or (unless Executive's employment is terminated by the Company for Cause) within the twelve (12) months following the end of such employment, Executive shall receive a lump sum cash bonus, payable on the consummation of the M&A Transaction, in a gross amount equal to 2% of the value of such M&A Transaction (the "**M&A Transaction Bonus**"). The value of such M&A Transaction shall be calculated for this purpose based on the total value, including cash, equity and any assumed debt, of the Company as determined on the basis of the consideration received in the M&A Transaction. The Company shall pay the M&A Transaction Bonus in a combination of equity and cash in the same proportion as the consideration paid in the M&A Transaction. In the event of a Change of Control other than an M&A Transaction that occurs while Executive is employed with the Company or (unless Executive's employment is terminated by the Company for Cause) within the twelve (12) months following the end of such employment, Executive shall receive a lump sum cash bonus in a gross amount of \$15,000,000 (a "**Change of Control Bonus**"), payable on the consummation of such Change of Control. For the avoidance of doubt, Executive shall in no event become entitled to both

an M&A Transaction Bonus and a Change of Control Bonus, or more than one of either type of bonus. If any portion of the M&A Transaction Bonus or Change of Control Bonus would, in the opinion of tax counsel engaged by the Company ("**Tax Counsel**"), be subject to the tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "**Code**") (or any successor provision) (the "**Excise Tax**"), then the Company shall pay to the Executive, no later than 2 ½ months following the end of the year in which the M&A Transaction Bonus or Change of Control Bonus is paid, an additional amount (the "**Gross-Up Payment**") such that the net amount retained by the Executive, after deduction of (i) any Excise Tax; (ii) any federal, state or local income tax, interest charges or penalties arising in respect of the imposition of such Excise Tax; and (iii) any federal, state or local income tax or Excise Tax imposed upon the payment provided for by this paragraph, necessary to place the Executive in the same after-tax financial position that he would have been in if he had not incurred any liability for the Excise Tax. For purposes of determining the amount of the Gross Up Payment, the Executive shall be deemed to pay federal income taxes at the highest marginal stated rate of federal income taxation in the calendar year in which the Gross-Up Payment is to be made and state and local income taxes at the highest marginal states rates of taxation in the state and locality of the Executive's domicile for income tax purposes on the date the Gross-Up Payment is made, net of the expected reduction in federal income taxes that could be obtained from deduction of such state and local taxes. As a result of the uncertainty in the application of Section 280G of the Code at the time of the initial determinations by the Tax Counsel, it is possible that amounts will have been paid or distributed by the Company to or for the benefit of the Executive pursuant to this Agreement which should not have been so paid or distributed ("**Overpayment**") or that additional amounts which should have been paid or distributed ("**Underpayment**"), in each case, consistent with the calculation of the Gross-Up Payment hereunder. In the event that the Tax Counsel, based upon the assertion of a deficiency by the Internal Revenue Service against the Company or the Executive which the Tax Counsel believes has a high probability of success or other controlling precedent or substantial authority, determines that an Underpayment has been made, any such Underpayment shall be promptly paid by the Company to or for the benefit of the Executive. In the event that the Tax Counsel, based upon controlling precedent or other substantial authority, determines that an Overpayment has occurred, any such Overpayment paid or distributed by the Company to or for the benefit of the Executive shall be treated for all purposes as a loan to the Executive which the Executive shall promptly repay

to the Company; provided, however, that no amount shall be payable by the Executive to the Company if and to the extent such payment would not reduce the amount which is subject to the Excise Tax. In the event that the provisions of Sections 280G and 4999 of the Code (or any successor provisions) are repealed and not reinstated, this paragraph shall cease to be effective on the effective date of such repeal.

Section 4. Termination.

(a) *Events of Termination.* Executive's employment with the Company shall terminate (the date of such termination being the "**Termination Date**") immediately upon any of the following:

(i) Executive's death ("**Termination Upon Death**");

(ii) the effective date of a written notice sent to Executive stating the Company's determination, made in good faith, that due to a mental or physical condition, Executive has been unable and failed to substantially render the services to be provided by Executive to the Company for a period of at least 180 days out of any consecutive 360 days ("**Termination For Disability**");

(iii) the effective date of a written notice sent to Executive stating the Company's determination, made in good faith, that it is terminating Executive's employment for Cause ("**Termination For Cause**");

(iv) the effective date of a notice sent to Executive stating that the Company is terminating Executive's employment without Cause (including any notice from the Company to Executive pursuant to Section 2 that the Company has decided not to renew the Term), which notice can be given by the Company at any time after the Effective Date at the Company's sole discretion, for any reason or for no reason ("**Termination Without Cause**");

(v) the effective date of a notice (other than a notice delivered pursuant to Section 4(a)(vi) of this Agreement) sent to the Company from Executive stating that Executive is electing to terminate Executive's employment with the Company without Good Reason ("**Resignation Without Good Reason**"); or

(vi) the effective date of a written notice to Company stating Executive's determination, made in good faith, that a Good Reason Event (as defined below) has occurred within 30 days preceding such notice and as a consequence Executive is electing to terminate Executive's employment hereunder for a Good Reason Event ("**Resignation For Good Reason**"); *provided, however*, that Executive will give the Company 30 days to cure such Good Reason Event, and if the Company fails to cure such Good Reason Event within 30 days after Executive gives written notice of resignation hereunder, then Executive may immediately terminate Executive's employment with the Company, and such termination will be a Resignation For Good Reason hereunder; provided, further, that Executive's termination shall be deemed a Termination For Cause if the Company has delivered to Executive written notice of any act or omission that, if not cured, would constitute Cause at any time preceding the notice provided by Executive hereunder.

As used herein, the term "**Cause**" shall mean (i) commission of a willful act of dishonesty in the course of Executive's duties hereunder, (ii) conviction by a court of competent jurisdiction of, or plea of no contest to, a crime constituting a felony or conviction in respect of, or plea of no contest to, any act involving fraud, dishonesty or moral turpitude, (iii) Executive's performance under the influence of controlled substances (other than those taken pursuant to a medical doctor's orders), (iv) frequent or extended, and unjustifiable, absenteeism, (v) Executive's personal misconduct or refusal to perform duties and responsibilities or to carry out the lawful directives of the Board, which, if capable of being cured shall not have been cured, within 30 days after the Company shall have advised Executive in writing of its intention to terminate Executive's employment, or (vi) Executive's material non-compliance with the terms of this Agreement, which, if capable of being cured, shall not have been cured within 30 days after the Company shall have advised Executive in writing of its intention to terminate Executive's employment for such reason.

As used herein, the term "**Good Reason Event**" shall mean (i) a material adverse change in the responsibilities or duties of Executive as set forth in this Agreement (including a change in reporting where Executive no longer reports directly to the Board, or a change in Executive's capacity as Chief Executive Officer) without Executive's prior consent at a time when there are no circumstances pending that would permit the Board to terminate Executive for Cause, such that Executive is no longer acting as part of the senior management team of the Company, (ii) any reduction in the Salary or a material reduction in Executive's benefits (other than (x) the reduction

in Salary contemplated by Section 3(a), (y) a reduction in Salary that is the result of an administrative or clerical error, and which is cured within 15 business days after the Company receives notice of such failure or (z) a reduction in Salary or benefits that are generally applicable to all members of the Company's senior management), (iii) a material breach by the Company of this Agreement that is not cured within 30 days following the Company's receipt of written notice of such breach from Executive, or (iv) without Executive's prior written consent, the relocation of Executive's principal place of employment outside of a 30 mile radius from the location of the Company's offices in Tampa, Florida as of the Effective Date. With regard to clause (i), Executive acknowledges that the Company has flexibility under Section 1(a) to assign Executive a broad range of responsibilities and duties that are consistent with him being a member of the senior management team and such assignments will not constitute a "Good Reason Event."

(b) *Effect of Termination.*

(i) *Death or Disability.* In the event of Termination Upon Death or Termination For Disability pursuant to Sections 4(a)(i) or 4(a)(ii) of this Agreement:

(A) Executive (or Executive's legal representative) shall be entitled to receive in cash an amount equal to any earned but unpaid Salary owing by the Company to Executive as of the Termination Date (the "**Accrued Salary**");

(B) Executive (or Executive's legal representative) shall be entitled to receive in cash, to the extent provided under any management bonus plan, an amount equal to the pro rata portion, determined as of the Termination Date, of any bonus to which Executive would have been entitled had Executive been employed by the Company at the time such bonus would have otherwise been paid (the "**Accrued Bonus**"); and

(C) all unvested Restricted Shares, Options, and Warrants granted to Executive during the Term of this Agreement shall become fully vested and non-forfeitable as of the Termination Date.

(ii) *Termination For Cause.* In the event of a Termination For Cause pursuant to Section 4(a)(iii) of this Agreement, Executive shall be entitled to receive in cash an amount equal to any Accrued Salary.

(iii) *Termination Without Cause and Resignation For Good Reason and Termination Upon Non-renewal.* In the event of Termination Without Cause or Resignation For Good Reason pursuant to Sections 4(a)(iv) or 4(a)(vi) of this Agreement, subject to Section 4(c)(ii) of this Agreement:

(A) a Executive (or Executive's legal representative) shall be entitled to receive in cash an amount equal to the Accrued Salary;

(B) Executive (or Executive's legal representative) shall be entitled to receive in cash an amount equal to the Accrued Bonus;

(C) Executive (or Executive's legal representative) shall be entitled to receive in cash an amount equal to Executive's Salary (at the rate then in effect, and without taking into account any reductions that would have given rise to Good Reason termination by Executive), payable in equal installments in accordance with the Company's customary payroll procedures commencing on the Termination Date and ending 36 months thereafter;

(D) all unvested Restricted Shares, Options and Warrants granted to Executive during the Term of this Agreement shall become fully vested and non-forfeitable as of the Termination Date.

(iv) *Resignation Without Good Reason.* In the event of Resignation Without Good Reason pursuant to Section 4(a)(v) of this Agreement, Executive shall be entitled to receive in cash an amount equal to any Accrued Salary.

(v) *Upon Termination For Any Reason.* In the event of any termination, Executive shall be entitled to receive:

(A) any unpaid reasonable, reimbursable business expenses incurred by Executive in the course of performing Executive's duties

under this Agreement that were incurred in a manner consistent with the Company's policies in effect from time to time with respect to travel, entertainment and other business expenses, subject to the Company's requirements with respect to incurring, reporting and documenting such expenses; and

(B) benefits under the Company's benefit plans of general application as shall be determined under the provisions of those plans.

(c) *Additional Provisions.*

(i) Any amounts to be paid pursuant to this Section 4 shall be paid in accordance with the Company's existing payroll or bonus payment practices, as applicable.

(ii) As a condition to the Company's obligations, if any, to make any Accrued Bonus and severance payments provided under Section 4(b)(iii)(B) and (C), Executive shall have executed, delivered and not revoked a general release in the form attached hereto as Exhibit B.

(iii) Notwithstanding any provision of this Agreement, the obligations and commitments under Section 5 of this Agreement shall survive and continue in full force and effect in accordance with their terms notwithstanding any termination of Executive's employment for any reason or termination of this Agreement for any reason.

(iv) Notwithstanding anything in this Agreement to the contrary, the Company shall have no obligation to pay any amounts payable under Sections 4(b)(i)(B), 4(b)(ii)(B) or 4(b)(iii)(C) of this Agreement during such times as Executive is in breach of Section 5 of this Agreement, after the Company provides Executive with notice of such breach.

(v) Executive agrees that termination of Executive's employment for any reason shall, with no further action by Executive required, constitute Executive's resignation, as of the Termination Date and to the extent applicable, from all positions as an officer, director or representative of the Company and any subsidiary or affiliate of the Company.

Section 5. *Noncompetition, Nonsolicitation And Confidentiality.*

(a) *Definitions.*

“**Company’s Business**” means the business of providing specialty financial products to nonprofit incorporated community associations in the states in which the Company has conducted business.

“**Competitor**” means any company, other entity or association or individual that directly or indirectly is engaged in the Company’s Business.

“**Confidential Information**” means any confidential information with respect to the Company’s Business and/or the businesses of its clients or customers, including, but not limited to: the trade secrets of the Company; products or services; standard proposals; standard submissions, surveys and analyses; policy forms; fees, costs and pricing structures; marketing information; advertising and pricing strategies; analyses; reports; computer software, including operating systems, applications and program listings; flow charts; manuals and documentation; data bases; all copyrightable works; the Company’s existing and prospective clients and customers, their addresses or other contact information and/or their confidential information; existing and prospective client and customer lists and other related data; expiration periods; policy numbers; coverage specifications; daily reports and related correspondence; premium renewal notices; and all similar and related information in whatever form. The term Confidential Information does not include, and there shall be no obligation hereunder with respect to, information that (i) is generally available to the public on the date of this Agreement, (ii) becomes generally available to the public other than as a result of a disclosure by Executive not otherwise permissible hereunder or (iii) Executive has learned or learns from other sources where, to Executive’s knowledge, such sources have not violated their confidentiality obligation to the Company or any other applicable obligation of confidentiality.

(b) *Noncompetition.* Executive covenants and agrees that during the period commencing on the Effective Date and ending two years following the Termination Date (the “**Restricted Period**”), Executive will not, directly or indirectly, own, manage, operate, control,

render service to, or participate in the ownership, management, operation or control of any Competitor anywhere in the United States of America; provided, however, that Executive shall be entitled to own shares of stock of any corporation having a class of equity securities actively traded on a national securities exchange or on the Nasdaq Stock Market which represent, in the aggregate, not more than 1% of such corporation's fully-diluted shares.

(c) *Nonsolicitation of Employees.* Executive covenants and agrees that during the Restricted Period, Executive will not, directly or indirectly, employ or solicit, or receive or accept the performance of services by any then current officer, manager, employee or independent contractor of the Company or any subsidiary or affiliate of the Company, or in any way interfere with the relationship between the Company or any subsidiary or affiliate of the Company, on the one hand, and any such officer, manager, employee or independent contractor, on the other hand.

(d) *Nonsolicitation of Customers and Vendors.* Executive covenants and agrees that during the Restricted Period, Executive will not, directly or indirectly, knowingly induce, or attempt to induce, any customer, salesperson, distributor, supplier, vendor, manufacturer, representative, agent, jobber, licensee or other person known by Executive to be transacting business with the Company or any subsidiary or affiliate of the Company (collectively the "**Customers**" and "**Vendors**") to reduce or cease doing business with the Company or any such subsidiary or affiliate of the Company, or in any way to interfere with the relationship between any such Customer or Vendor, on the one hand, and the Company or any subsidiary or affiliate of the Company, on the other hand.

(e) *Representations and Covenants by Executive.* Executive represents and warrants that: (i) Executive's execution, delivery and performance of this Agreement do not and will not conflict with, breach, violate or cause a default under any contract, agreement, instrument, order, judgment or decree to which Executive is a party or by which Executive is bound; (ii) Executive is not a party to or bound by any employment agreement, noncompete agreement or confidentiality agreement with any other person or entity (other than the Company) and Executive is not subject to any other agreement that would prevent Executive from performing Executive's duties for the Company or otherwise complying with this Agreement; (iii) Executive is not subject to or in breach of any nondisclosure agreement, including any agreement concerning trade secrets or

confidential information owned by any other party; and (iv) upon the execution and delivery of this Agreement by the Company, this Agreement shall be the valid and binding obligation of Executive, enforceable in accordance with its terms.

(f) *Nondisclosure of Confidential Information.* Executive hereby acknowledges and represents that Executive has consulted with independent legal counsel regarding Executive's rights and obligations under this Agreement and that Executive fully understands the terms and conditions contained herein and Executive agrees that Executive will not, directly or indirectly: (i) use, disclose, reverse engineer or otherwise exploit for Executive's own benefit or for the benefit of anyone other than the Company the Confidential Information except as authorized by the Company; (ii) during Executive's employment with the Company, use, disclose, or reverse engineer (x) any confidential information or trade secrets of any former employer or third party, or (y) any works of authorship developed in whole or in part by Executive during any former employment or for any other party, unless authorized in writing by the former employer or third party; or (iii) upon Executive's resignation or termination (x) retain Confidential Information, including any copies existing in any form (including electronic form), that are in Executive's possession or control, or (y) destroy, delete or alter the Confidential Information without the Company's consent. Notwithstanding the foregoing, Executive may use the Confidential Information in the course of performing Executive's duties on behalf of the Company or any subsidiary or affiliate of the Company as described hereunder, provided that such use is made in good faith. Executive will immediately surrender possession of all Confidential Information to Company upon any suspension or termination of Executive's employment with Company for any reason.

(g) *Inventions and Patents.* Executive acknowledges that all (i) inventions, innovations, improvements, developments, methods, designs, analysis, drawings, reports, processes, novel concepts and all similar or related information (whether or not patentable) that relate to the Company's or any of its subsidiaries' or affiliates' actual or anticipated businesses, (ii) research and development and (iii) existing or future products or services that are, to any extent, conceived, developed or made by Executive while employed by the Company or any subsidiary or affiliate of the Company ("**Work Product**") belong to the Company or such subsidiary or affiliate. Executive shall promptly disclose such Work Product to the Board and, at the cost and expense of the Company, perform all actions reasonably necessary or requested by the Board (whether during or

after the Term) to establish and confirm such ownership (including, without limitation, executing assignments, consents, powers of attorney and other instruments).

(h) *Miscellaneous.*

(i) Executive acknowledges that (x) Executive's position is a position of trust and responsibility with access to Confidential Information of the Company, (y) the Confidential Information, and the relationship between the Company and each of its employees, Customers and Vendors, are valuable assets of the Company and may not be converted to Executives own use and (z) the restrictions contained in this Section 5 are reasonable and necessary to protect the legitimate business interests of the Company and will not impair or infringe upon Executive's right to work or earn a living after Executive's employment with the Company ends.

(ii) Each of the foregoing obligations shall be enforceable independent of any other obligation, and the existence of any claim or cause of action that Executive may have against the Company, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Company of these obligations.

(iii) Executive acknowledges that monetary damages will not be an adequate remedy for the Company in the event of a breach of this Agreement and that it would be impossible for the Company to measure damages in the event of such a breach. Therefore, Executive agrees that, in addition to other rights that the Company may have at law or equity, the Company is entitled, without posting bond, to seek an injunction preventing Executive from any breach of this Agreement.

(iv) In the event of a breach or violation by Executive during the Restricted Period of any restriction in Section 5(b), (b) or (d) of this Agreement, the Restricted Period shall be tolled until such breach or violation has been cured.

(v) The parties intend to provide the Company with the maximum protection possible with respect to its Customers and Vendors. The parties, however, do not intend to include a provision that contravenes the public policy of any state. Therefore, if any provision of this Section 5 is unlawful, against public policy or otherwise declared void, such provision shall not be deemed part of this Agreement, which otherwise shall remain in full force and effect. If, at the

time of enforcement of this Agreement, a court or other tribunal holds that the duration, scope or area restriction stated herein is unreasonable under the circumstances then existing, the parties agree that the court should enforce the restrictions to the extent it deems reasonable.

(vi) Executive hereby agrees that prior to accepting employment with any other person or entity during the Term or during the Restricted Period following the Termination Date, Executive will provide such prospective employer with written notice of the existence of this Agreement and the provisions of this Section 5 of this Agreement, with a copy of such notice delivered simultaneously to the Company in accordance with Section 10 of this Agreement.

(vii) Notwithstanding any provision of this Agreement, the obligations and commitments of this Section 5 shall survive and continue in full force and effect in accordance with their terms notwithstanding any termination of Executive's employment for any reason or termination of this Agreement for any reason.

Section 6. *Withholding Taxes.* Prior to making any payments required to be made pursuant to this Agreement, the Company may require that the Company be reimbursed in cash for any taxes required by any government to be withheld or otherwise deducted and paid by the Company in respect of such payment by the Company. In lieu thereof, the Company shall have the right to withhold the amount of such taxes from any sums due or to become due from it to Executive.

Section 7. *Expenses.* In the event of any legal action to enforce Executive's or the Company's rights under this Agreement, each party will be responsible for that party's reasonable attorneys' fees, expenses and disbursements.

Section 8. *Assignment.* This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Executive shall not assign or transfer any rights or obligations hereunder. The Company shall have the right to assign or transfer any rights or obligations hereunder only to (a) a successor entity in the event of a merger, consolidation, or transfer or sale of all or substantially all the assets of the Company or (b) a subsidiary or affiliate of the Company. Any purported assignment, other than as provided above, shall be null and void.

Section 9. Indemnification. The Company shall indemnify Executive for any act or omission done or not done in performance of Executive's duties hereunder in accordance with the Company's certificate of incorporation, by-laws and any other constituent document to the extent provided for any other officer or member of the Board. The Company's obligations under this Section 9 shall survive any termination of this Agreement or Executive's employment hereunder.

Section 10. Notices. All notices, requests, consents and other communications required or permitted to be given hereunder, shall be in writing and shall be delivered personally or sent by prepaid telegram, telex, facsimile transmission, overnight courier or mailed, first class, postage prepaid by registered or certified mail, as follows:

If to the Company: LM Funding America, Inc., Richard Russell, Chief Financial Officer

If to Executive: To Executive's address as reflected on the payroll records of the Company

or such other address as either party shall designate by notice in writing to the other in accordance herewith. Any such notice shall be deemed given when so delivered personally, by telex, facsimile transmission or telegram, or if sent by overnight courier, one day after delivery to such courier by the sender or if mailed, five days after deposit by the sender in the U.S. mails.

Section 11. Entire Agreement. This Agreement shall constitute the entire agreement between Executive and the Company concerning the subject matter hereof. This Agreement supersedes and preempts any prior employment agreement or other understandings, agreements or representations by or among the parties, written or oral, that may have related to the subject matter hereof. No provisions of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing, signed by Executive and an authorized officer of the Company.

Section 12. Governing Law. This Agreement shall be subject to and governed by the laws of the State of Florida, without giving effect to the principles of conflicts of law under Florida law that would require or permit the application of the laws of a jurisdiction other than the State of Florida and irrespective of the fact that the parties now or at any time may be residents of or engage

in activities in a different state. Employee agrees that in the event of any dispute or claim arising under this Agreement, jurisdiction and venue shall be vested and proper, and Employee hereby consents to the jurisdiction of any court sitting in Tampa, Florida, including the United States District Court for the Middle District of Florida.

Section 13. Full Settlement. Executive acknowledges and agrees that, subject to the payment by the Company of the benefits provided in this Agreement to Executive, in no event will the Company nor any subsidiary or affiliate thereof be liable to Executive for damages under any claim of breach of contract as a result of the termination of Executive's employment. In the event of any such termination, the Company shall be liable only to provide to Executive, or Executive's heirs or beneficiaries, the benefits specified in this Agreement.

Section 14. Strict Compliance. Executive's or the Company's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right Executive or the Company may have hereunder shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement. The waiver, whether express or implied, by either party of a violation of any of the provisions of this Agreement shall not operate or be construed as a waiver of any subsequent violation of any such provision.

Section 15. Creditor Status. No benefit or promise hereunder shall be secured by any specific assets of the Company. Executive shall have only the rights of an unsecured general creditor of the Company in seeking satisfaction of such benefits or promises.

Section 16. Section 409A. This Agreement is intended to comply with the requirements of Section 409A of the Code ("**Section 409A**"), and shall be construed accordingly. Any payments or distributions to be made to Executive under this Agreement upon a separation from service of amounts classified as "nonqualified deferred compensation" for purposes of Section 409A, shall in no event be made or commence until six months after such separation from service if Executive is determined to be a specified Executive of a public company (all as determined under Section 409A). Each payment of nonqualified deferred compensation under this Agreement shall be treated as a separate payment for purposes of Section 409A. Any reimbursements made pursuant to this Agreement shall be paid as soon as practicable but no later than 90 days after Executive submits evidence of such expenses to the Company (which payment date shall in no event be later

than the last day of the calendar incurred). The amount of such reimbursements paid and any in-kind benefits the year following the calendar year in which the expense was provided during any calendar year shall not affect the reimbursements paid or in-kind benefits provided in any other calendar year, and the right to any such payments and benefits shall not be subject to liquidation or exchange for another payment or benefit.

Section 17. Cooperation. Executive agrees to provide assistance to and cooperate with the Company upon its reasonable request with respect to matters within the scope of Executive's duties and responsibilities during the Restricted Period. During such Period, the Company shall, to the maximum extent coordinate or cause any such request with Executive's other commitments and responsibilities to minimize the degree to which such request interferes with such commitments and responsibilities. The Company agrees that it will reimburse Executive for reasonable documented travel expenses (i.e., travel, meals and lodging) that Executive may incur in providing assistance to the Company hereunder.

Section 18. Non-disparagement. Executive agrees to not make any statements, written or oral, while employed by the Company and thereafter, which would be reasonably likely to disparage or damage the Company, its affiliates or subsidiaries or the personal or professional reputation of any present or former employees, officers or members of the managing or directorial boards or committees of the Company or its affiliates or subsidiaries. The Company agrees that it will instruct each of its and its affiliates' and subsidiaries' members, directors, managers, officers and employees not to make any disparaging communication regarding Executive, and no such person or entity will be authorized on the Company's or any affiliate's or subsidiary's behalf to make any such disparaging communications regarding Executive.

Section 19. Recoupment. Executive agrees to reimburse the Company for all or a portion, as determined below, of any bonus or incentive or equity-based compensation paid or awarded to Executive by the Company, if the Board determines that (a) the payment, award or vesting thereof was predicated upon the achievement of certain financial results that were subsequently the subject of a material financial restatement, (b) Executive engaged in fraud or misconduct that caused, in whole or in part, the need for the material financial restatement, and (c) a lower payment, award or vesting would have occurred based upon the restated financial results. In

such event, Executive agrees to reimburse (in the manner determined by the Board, including cancellation of options or other stock awards) any bonus or incentive or equity-based compensation previously paid, awarded or vested in the amount by which such bonus or incentive or equity-based compensation actually paid, awarded or vested exceeds the lower payment, award or vesting that would have occurred based upon the restated financial result; provided that no reimbursement shall be required if the payment, award or vesting otherwise subject to reimbursement hereunder occurred more than three (3) years prior to the date the applicable reinstatement is disclosed. In addition, notwithstanding anything to the contrary, any bonus or incentive or equity-based compensation, or other compensation, payable to Executive pursuant to this Agreement or any other agreement, plan or arrangement of the Company shall be subject to repayment or recoupment (clawback) by the Company to the extent applicable under Section 304 of the Sarbanes-Oxley Act of 2002 (and not otherwise exempted) and in accordance with such policies and procedures as the Board or the Compensation Committee of the Board may adopt from time to time, including policies and procedures to implement applicable law (including, but not limited to, Section 954 of the Dodd-Frank Act), stock market or exchange rules and regulations or accounting or tax rules and regulations.

Section 20. *Survival.* Any provision of this Agreement that is expressly or by implication intended to survive the termination of this Agreement shall survive or remain in effect after the termination of this Agreement.

Section 21. *Counterparts.* This Agreement may be executed in two or more counterparts, anyone of which need not contain the signature of more than one party, but all such counterparts taken together shall constitute one and the same agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

LM FUNDING AMERICA, INC.

By:

/s/ Richard

Russell

Richard Russell, Chief Financial Officer

EXECUTIVE

/s/ Bruce M. Rodgers

Bruce M. Rodgers

EXHIBIT A
PERMITTED ACTIVITIES

1. Executive may administer, operate and provide legal and administrative services for and on behalf of Business Law Group, P.A.
2. Executive may serve as President and CEO of LMF Acquisition Opportunities, Inc. and provide part-time services to BRRR Management, LLC.

EXHIBIT B
FORM OF RELEASE

This RELEASE (“**Release**”) is granted effective as of the [] day of [], 20[] by [•••] (the “**Executive**”) in favor of [] (the “**Company**”) and the other Released Parties (as defined below). This is the Release referred to in the Amended and Restated Employment Agreement, dated as of _____, 2020, between the Company and the Executive (the “**Employment Agreement**”). The Executive gives this Release in consideration of the Company’s promises and covenants contained in the Employment Agreement, with respect to which this Release is an integral part.

1. *Release of the Company.* The Executive, for himself, his successors, assigns, attorneys, and all those entitled to assert his rights, now and forever hereby releases and discharges the Company and its respective officers, directors, stockholders, trustees, Executives, agents, parent corporations, subsidiaries, affiliates, estates, successors, assigns and attorneys (the “**Released Parties**”), from any and all claims, actions, causes of action, sums of money due, suits, debts, liens, covenants, contracts, obligations, costs, expenses, damages, judgments, agreements, promises, demands, claims for attorney’s fees and costs, or liabilities whatsoever, in law or in equity, which the Executive ever had or now has against the Released Parties, arising by reason of or in any way connected with or which may be traced either directly or indirectly to the employment relationship which existed between the Company or any of its parents, subsidiaries, affiliates, or predecessors and the Executive, or the termination of that relationship, that the Executive has, had or purports to have, from the beginning of time to the date of this Release, whether known or unknown, that now exists, no matter how remotely they may be related to the aforesaid employment relationship including but not limited to claims for employment discrimination under federal or state law, except as provided in Paragraph 2; claims arising under Title VII of the Civil Rights Act, 42 U.S.C. § 2000(e), *et seq.* or the Americans With Disabilities Act, 42 U.S.C. § 12101, *et seq.*; claims for statutory or common law wrongful discharge, including any claims arising under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*; claims for attorney’s fees, expenses and costs; claims for defamation; claims for wages or vacation pay; claims for benefits, including any claims arising under the Executive Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.*; and provided, however, that nothing herein shall

release the Company of its obligations to the Executive under the Employment Agreement between the Company and the Executive or any other contractual obligations between the Company or its subsidiaries or affiliates and the Executive (including, without limitation, any equity award agreement or indemnification agreement), or any indemnification obligations to the Executive under the Company's certificate of incorporation, bylaws, operating agreement or other constituent document or any federal, state or local law or otherwise.

2. *Release of Claims Under Age Discrimination in Employment Act.* Without limiting the generality of the foregoing, the Executive agrees that by executing this Release, he has released and waived any and all claims he has or may have as of the date of this Release for age discrimination under the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq.* It is understood that the Executive has been advised to consult with an attorney prior to executing this Release; that he in fact has consulted a knowledgeable, competent attorney regarding this Release; that he may, before executing this Release, consider this Release for a period of 21 calendar days; and that the consideration he receives for this Release is in addition to amounts to which he was already entitled. It is further understood that this Release is not effective until seven calendar days after the execution of this Release and that the Executive may revoke this Release within seven calendar days from the date of execution hereof.

The Executive agrees that he has carefully read this Release and is signing it voluntarily. The Executive acknowledges that he has had 21 days from receipt of this Release to review it prior to signing or that, if the Executive is signing this Release prior to the expiration of such 21-day period, the Executive is waiving his right to review the Release for such full 21-day period prior to signing it. The Executive has the right to revoke this release within seven days following the date of its execution by him. However, if the Executive revokes this Release within such seven-day period, no severance benefit will be payable to him under the Employment Agreement and he shall return to the Company any such payment received prior to that date.

THE EXECUTIVE HAS CAREFULLY READ THIS RELEASE AND ACKNOWLEDGES THAT IT CONSTITUTES A GENERAL RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS AGAINST THE COMPANY UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT. THE EXECUTIVE ACKNOWLEDGES THAT HE HAS HAD A FULL

OPPORTUNITY TO CONSULT WITH AN ATTORNEY OR OTHER ADVISOR OF HIS CHOOSING CONCERNING HIS EXECUTION OF THIS RELEASE AND THAT HE IS SIGNING THIS RELEASE VOLUNTARILY AND WITH THE FULL INTENT OF RELEASING THE COMPANY FROM ALL SUCH CLAIMS.

Name _____ of _____ Executive:
[_____]
Date: [•], 20[•]

4857-0787-6609.1

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (this “**Agreement**”) is dated as of October 27, 2021 (the “**Effective Date**”), by and between LM Funding America, Inc., Delaware incorporated corporation (the “**Company**”), and Richard Russell (“**Executive**”).

Recitals

A. The Company and Executive have entered into an Amended and Restated Employment Agreement, dated as of September 30, 2020, under which Executive is employed by the Company (the “**Existing Employment Agreement**”);

B. The Company and Executive have agreed to protect the interests of the Company and Company’s customers and Confidential Information (as defined below) that may have been or that may be disclosed to Executive as set forth herein; and

C. The Company and Executive desire to amend and restate the Existing Employment Agreement in its entirety, effective as of the Effective Date, as set forth herein.

Agreement

NOW, THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree to amend and restate the Existing Employment Agreement in its entirety as follows:

Section 1. *Employment, Duties and Acceptance.*

(a) The Company shall employ Executive during the Term (as defined below) as Chief Financial Officer. Executive shall be responsible for performing the duties and exercising the powers which the Chief Executive Officer and Board of Directors of the Company (the “**Board**”) may from time-to-time assign to him in his capacity as Chief Financial Officer of the Company in

connection with the conduct and management of the business of the Company and its subsidiaries and affiliates.

(b) Executive hereby accepts such employment and agrees, during the Term, to render Executive's services to the Company on a full-time basis and to devote Executive's full business time and attention to the business and affairs of the Company and any subsidiary or affiliate of the Company, provided that Executive may perform the services described on Exhibit A hereto during the Term so long as his performance of such services does not unduly interfere with his performance of his duties for the Company. Executive agrees that at all times during the Term, Executive will faithfully perform the duties so assigned to him to the best of Executive's ability. Executive further agrees to accept election and to serve during all or any part of the Term as an officer, director or representative of any subsidiary or affiliate of the Company, without any compensation therefor other than that specified in this Agreement. Executive shall report directly to the Chief Executive Officer.

(c) The duties to be performed by Executive hereunder shall be principally performed at the Company's offices located in Tampa, Florida, subject to reasonable travel requirements on behalf of the Company. Executive shall be entitled to an annual paid time off of 30 days on the same terms that the Company provides to other similarly situated senior Company executives in accordance with the Company's policies and practices; provided that Executive shall schedule the timing and duration of Executive's vacations in a reasonable manner taking into account the needs of the business of the Company.

(d) Executive acknowledges that from time to time the Company may promulgate workplace policies and rules. Executive agrees to fully comply with all such policies and rules, and understands that failure to do so may result in a disciplinary action up to and including immediate discharge for Cause (as defined below).

Section 2. *Term.* As used herein, the "**Term**" means the period commencing on the Effective Date and ending on September 30, 2023; provided that, following such date, the Term shall be automatically renewed each successive year unless Executive or the Company gives written notice of termination on or before the 30th day prior to the automatic renewal date of its desire not to renew the Term. Any such renewal shall be upon the terms and conditions set forth herein unless

otherwise agreed between the Company and Executive. In the event that the Company gives written notice that it does not intend to renew the Term, Executive shall be entitled to the benefits set forth in Section 4(b)(iii).

Section 3. Compensation. Executive shall be entitled to the following compensation:

(a) The Company agrees to pay to Executive a salary in cash (the “**Salary**”), as compensation for the services to be performed by Executive, at the rate of \$500,000 per calendar year commencing with the Effective Date, paid in accordance with the Company’s customary payroll procedures and subject to applicable withholding. During the Term, the Board shall have the right to increase, but not decrease, the Salary, except the Board may decrease the Salary in connection with a base salary decrease that is generally applicable to all members of the Company’s senior management. Without limiting the generality of the foregoing, Executive will be eligible for additional annual salary merit increases during the Term based on the evaluation of Executive’s performance as determined by the Board in its sole discretion. Executive’s salary as in effect from time to time shall constitute the “**Salary**” for purposes of this Agreement.

(b) The Company shall reimburse Executive for all reasonable expenses incurred by Executive in the course of performing Executive’s duties under this Agreement that are consistent with the Company’s policies in effect from time to time with respect to travel, entertainment and other business expenses, subject to the Company’s requirements with respect to reporting and documentation of such expenses.

(c) Executive shall be eligible to participate in any equity incentive plan, restricted share plan, share award plan, stock appreciation rights plan, stock option plan or similar plan adopted by the Company on the same terms and conditions applicable to other senior Company executives, with the amount of such awards to be determined by the Board in its sole discretion. Executive shall be eligible for an annual bonus and long term incentive awards as determined at the sole discretion of the Board. Without limiting the generality of the foregoing, in lieu of the quarterly grants of restricted stock contemplated by Section 3(d) of the Existing Employment Agreement, which were not made, Executive will receive a grant of 25,279 fully-vested shares of the Company’s common stock pursuant to the Company’s 2021 Omnibus Incentive Plan (the “**Plan**”), effective as of the next business day following the Company’s filing of a Registration

Statement on Form S-8 with the Securities and Exchange Commission on or after the Effective Date registering the offer and sale of shares of the Company's common stock pursuant to the Plan. Such grant shall be contingent on the approval of the Plan by the Company's stockholders and on Executive's continuous employment by the Company until the grant date. Unless otherwise determined by the Board, the Company's tax withholding obligations in connection with such grant shall be satisfied through the Company withholding a number of shares from the grant sufficient to satisfy the Company's tax withholding obligations.

(d) Executive shall be entitled to all rights and benefits for which Executive shall be eligible under any retirement, retirement savings, profit-sharing, pension or welfare benefit plan, life, disability, health, dental, hospitalization and other forms of insurance and all other so-called "fringe" benefits or perquisites (except for with respect to any plan that provides severance or other similar benefits), on the same terms that the Company provides to other similarly situated senior Company executives (subject to all restrictions on participation that may apply under federal and state tax laws).

(e) In the event of a Change of Control (as defined in the Plan as of the Effective Date) (a "**Change of Control**") that involves the sale of all of the shares of the Company's common stock or the sale of substantially all of the assets of the Company (an "**M&A Transaction**") and that occurs while Executive is employed with the Company or (unless Executive's employment is terminated by the Company for Cause) within the twelve (12) months following the end of such employment, Executive shall receive a lump sum cash bonus, payable on the consummation of the M&A Transaction, in a gross amount equal to 2% of the value of such M&A Transaction (the "**M&A Transaction Bonus**"). The value of such M&A Transaction shall be calculated for this purpose based on the total value, including cash, equity and any assumed debt, of the Company as determined on the basis of the consideration received in the M&A Transaction. The Company shall pay the M&A Transaction Bonus in a combination of equity and cash in the same proportion as the consideration paid in the M&A Transaction. In the event of a Change of Control other than an M&A Transaction that occurs while Executive is employed with the Company or (unless Executive's employment is terminated by the Company for Cause) within the twelve (12) months following the end of such employment, Executive shall receive a lump sum cash bonus in a gross amount of \$10,000,000 (a "**Change of Control Bonus**"), payable on the consummation of such

Change of Control. For the avoidance of doubt, Executive shall in no event become entitled to both an M&A Transaction Bonus and a Change of Control Bonus, or more than one of either type of bonus. If any portion of the M&A Transaction Bonus or Change of Control Bonus would, in the opinion of tax counsel engaged by the Company ("**Tax Counsel**"), be subject to the tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "**Code**") (or any successor provision) (the "**Excise Tax**"), then the Company shall pay to the Executive, no later than 2 ½ months following the end of the year in which the M&A Transaction Bonus or Change of Control Bonus is paid, an additional amount (the "**Gross-Up Payment**") such that the net amount retained by the Executive, after deduction of (i) any Excise Tax; (ii) any federal, state or local income tax, interest charges or penalties arising in respect of the imposition of such Excise Tax; and (iii) any federal, state or local income tax or Excise Tax imposed upon the payment provided for by this paragraph, necessary to place the Executive in the same after-tax financial position that he would have been in if he had not incurred any liability for the Excise Tax. For purposes of determining the amount of the Gross Up Payment, the Executive shall be deemed to pay federal income taxes at the highest marginal stated rate of federal income taxation in the calendar year in which the Gross-Up Payment is to be made and state and local income taxes at the highest marginal states rates of taxation in the state and locality of the Executive's domicile for income tax purposes on the date the Gross-Up Payment is made, net of the expected reduction in federal income taxes that could be obtained from deduction of such state and local taxes. As a result of the uncertainty in the application of Section 280G of the Code at the time of the initial determinations by the Tax Counsel, it is possible that amounts will have been paid or distributed by the Company to or for the benefit of the Executive pursuant to this Agreement which should not have been so paid or distributed ("**Overpayment**") or that additional amounts which should have been paid or distributed ("**Underpayment**"), in each case, consistent with the calculation of the Gross-Up Payment hereunder. In the event that the Tax Counsel, based upon the assertion of a deficiency by the Internal Revenue Service against the Company or the Executive which the Tax Counsel believes has a high probability of success or other controlling precedent or substantial authority, determines that an Underpayment has been made, any such Underpayment shall be promptly paid by the Company to or for the benefit of the Executive. In the event that the Tax Counsel, based upon controlling precedent or other substantial authority, determines that an Overpayment has occurred, any such Overpayment paid or distributed by the Company to or for the benefit of the Executive

shall be treated for all purposes as a loan to the Executive which the Executive shall promptly repay to the Company; provided, however, that no amount shall be payable by the Executive to the Company if and to the extent such payment would not reduce the amount which is subject to the Excise Tax. In the event that the provisions of Sections 280G and 4999 of the Code (or any successor provisions) are repealed and not reinstated, this paragraph shall cease to be effective on the effective date of such repeal.

Section 4. Termination.

(a) *Events of Termination.* Executive's employment with the Company shall terminate (the date of such termination being the "**Termination Date**") immediately upon any of the following:

(i) Executive's death ("**Termination Upon Death**");

(ii) the effective date of a written notice sent to Executive stating the Company's determination, made in good faith, that due to a mental or physical condition, Executive has been unable and failed to substantially render the services to be provided by Executive to the Company for a period of at least 180 days out of any consecutive 360 days ("**Termination For Disability**");

(iii) the effective date of a written notice sent to Executive stating the Company's determination, made in good faith, that it is terminating Executive's employment for Cause ("**Termination For Cause**");

(iv) the effective date of a notice sent to Executive stating that the Company is terminating Executive's employment without Cause (including any notice from the Company to Executive pursuant to Section 2 that the Company has decided not to renew the Term), which notice can be given by the Company at any time after the Effective Date at the Company's sole discretion, for any reason or for no reason ("**Termination Without Cause**");

(v) the effective date of a notice (other than a notice delivered pursuant to Section 4(a)(vi) of this Agreement) sent to the Company from Executive stating that Executive is

electing to terminate Executive's employment with the Company without Good Reason ("**Resignation Without Good Reason**"); or

(vi) the effective date of a written notice to Company stating Executive's determination, made in good faith, that a Good Reason Event (as defined below) has occurred within 30 days preceding such notice and as a consequence Executive is electing to terminate Executive's employment hereunder for a Good Reason Event ("**Resignation For Good Reason**"); *provided, however*, that Executive will give the Company 30 days to cure such Good Reason Event, and if the Company fails to cure such Good Reason Event within 30 days after Executive gives written notice of resignation hereunder, then Executive may immediately terminate Executive's employment with the Company, and such termination will be a Resignation For Good Reason hereunder; provided, further, that Executive's termination shall be deemed a Termination For Cause if the Company has delivered to Executive written notice of any act or omission that, if not cured, would constitute Cause at any time preceding the notice provided by Executive hereunder.

As used herein, the term "**Cause**" shall mean (i) commission of a willful act of dishonesty in the course of Executive's duties hereunder, (ii) conviction by a court of competent jurisdiction of, or plea of no contest to, a crime constituting a felony or conviction in respect of, or plea of no contest to, any act involving fraud, dishonesty or moral turpitude, (iii) Executive's performance under the influence of controlled substances (other than those taken pursuant to a medical doctor's orders), (iv) frequent or extended, and unjustifiable, absenteeism, (v) Executive's personal misconduct or refusal to perform duties and responsibilities or to carry out the lawful directives of the Board, which, if capable of being cured shall not have been cured, within 30 days after the Company shall have advised Executive in writing of its intention to terminate Executive's employment, or (vi) Executive's material non-compliance with the terms of this Agreement, which, if capable of being cured, shall not have been cured within 30 days after the Company shall have advised Executive in writing of its intention to terminate Executive's employment for such reason.

As used herein, the term "**Good Reason Event**" shall mean (i) a material adverse change in the responsibilities or duties of Executive as set forth in this Agreement (including a change in reporting where Executive no longer reports directly to the Chief Executive Officer, or a change in Executive's capacity as Chief Financial Officer) without Executive's prior consent at a time when

there are no circumstances pending that would permit the Board to terminate Executive for Cause, such that Executive is no longer acting as part of the senior management team of the Company, (ii) any reduction in the Salary or a material reduction in Executive's benefits (other than (x) the reduction in Salary contemplated by Section 3(a), (y) a reduction in Salary that is the result of an administrative or clerical error, and which is cured within 15 business days after the Company receives notice of such failure or (z) a reduction in Salary or benefits that are generally applicable to all members of the Company's senior management), (iii) a material breach by the Company of this Agreement that is not cured within 30 days following the Company's receipt of written notice of such breach from Executive, or (iv) without Executive's prior written consent, the relocation of Executive's principal place of employment outside of a 50 mile radius from the location of the Company's offices in Tampa, Florida as of the Effective Date. With regard to clause (i), Executive acknowledges that the Company has flexibility under Section 1(a) to assign Executive a broad range of responsibilities and duties that are consistent with him being a member of the senior management team and such assignments will not constitute a "Good Reason Event."

(b) *Effect of Termination.*

(i) *Death or Disability.* In the event of Termination Upon Death or Termination For Disability pursuant to Sections 4(a)(i) or 4(a)(ii) of this Agreement:

(A) Executive (or Executive's legal representative) shall be entitled to receive in cash an amount equal to any earned but unpaid Salary owing by the Company to Executive as of the Termination Date (the "**Accrued Salary**");

(B) Executive (or Executive's legal representative) shall be entitled to receive in cash, to the extent provided under any management bonus plan, an amount equal to the pro rata portion, determined as of the Termination Date, of any bonus to which Executive would have been entitled had Executive been employed by the Company at the time such bonus would have otherwise been paid (the "**Accrued Bonus**"); and

(C) all unvested Restricted Shares, Options, and Warrants granted to Executive during the Term of this Agreement shall become fully vested and non-forfeitable as of the Termination Date.

(ii) *Termination For Cause.* In the event of a Termination For Cause pursuant to Section 4(a)(iii) of this Agreement, Executive shall be entitled to receive in cash an amount equal to any Accrued Salary.

(iii) *Termination Without Cause and Resignation For Good Reason and Termination Upon Non-renewal.* In the event of Termination Without Cause or Resignation For Good Reason pursuant to Sections 4(a)(iv) or 4(a)(vi) of this Agreement, subject to Section 4(c)(ii) of this Agreement:

(A) a Executive (or Executive's legal representative) shall be entitled to receive in cash an amount equal to the Accrued Salary;

(B) Executive (or Executive's legal representative) shall be entitled to receive in cash an amount equal to the Accrued Bonus;

(C) Executive (or Executive's legal representative) shall be entitled to receive in cash an amount equal to Executive's Salary (at the rate then in effect, and without taking into account any reductions that would have given rise to Good Reason termination by Executive), payable in equal installments in accordance with the Company's customary payroll procedures commencing on the Termination Date and ending 36 months thereafter;

(D) all unvested Restricted Shares, Options and Warrants granted to Executive during the Term of this Agreement shall become fully vested and non-forfeitable as of the Termination Date.

(iv) *Resignation Without Good Reason.* In the event of Resignation Without Good Reason pursuant to Section 4(a)(v) of this Agreement, Executive shall be entitled to receive in cash an amount equal to any Accrued Salary.

(v) *Upon Termination For Any Reason.* In the event of any termination, Executive shall be entitled to receive:

(A) any unpaid reasonable, reimbursable business expenses incurred by Executive in the course of performing Executive's duties under this Agreement

that were incurred in a manner consistent with the Company's policies in effect from time to time with respect to travel, entertainment and other business expenses, subject to the Company's requirements with respect to incurring, reporting and documenting such expenses; and

(B) benefits under the Company's benefit plans of general application as shall be determined under the provisions of those plans.

(c) *Additional Provisions.*

(i) Any amounts to be paid pursuant to this Section 4 shall be paid in accordance with the Company's existing payroll or bonus payment practices, as applicable.

(ii) As a condition to the Company's obligations, if any, to make any Accrued Bonus and severance payments provided under Section 4(b)(iii)(B) and (C), Executive shall have executed, delivered and not revoked a general release in the form attached hereto as Exhibit B.

(iii) Notwithstanding any provision of this Agreement, the obligations and commitments under Section 5 of this Agreement shall survive and continue in full force and effect in accordance with their terms notwithstanding any termination of Executive's employment for any reason or termination of this Agreement for any reason.

(iv) Notwithstanding anything in this Agreement to the contrary, the Company shall have no obligation to pay any amounts payable under Sections 4(b)(i)(B), 4(b)(ii)(B) or 4(b)(iii)(C) of this Agreement during such times as Executive is in breach of Section 5 of this Agreement, after the Company provides Executive with notice of such breach.

(v) Executive agrees that termination of Executive's employment for any reason shall, with no further action by Executive required, constitute Executive's resignation, as of the Termination Date and to the extent applicable, from all positions as an officer, director or representative of the Company and any subsidiary or affiliate of the Company.

Section 5. *Noncompetition, Nonsolicitation And Confidentiality.*

(a) *Definitions.*

“**Company’s Business**” means the business of providing specialty financial products to nonprofit incorporated community associations in the states in which the Company has conducted business.

“**Competitor**” means any company, other entity or association or individual that directly or indirectly is engaged in the Company’s Business.

“**Confidential Information**” means any confidential information with respect to the Company’s Business and/or the businesses of its clients or customers, including, but not limited to: the trade secrets of the Company; products or services; standard proposals; standard submissions, surveys and analyses; policy forms; fees, costs and pricing structures; marketing information; advertising and pricing strategies; analyses; reports; computer software, including operating systems, applications and program listings; flow charts; manuals and documentation; data bases; all copyrightable works; the Company’s existing and prospective clients and customers, their addresses or other contact information and/or their confidential information; existing and prospective client and customer lists and other related data; expiration periods; policy numbers; coverage specifications; daily reports and related correspondence; premium renewal notices; and all similar and related information in whatever form. The term Confidential Information does not include, and there shall be no obligation hereunder with respect to, information that (i) is generally available to the public on the date of this Agreement, (ii) becomes generally available to the public other than as a result of a disclosure by Executive not otherwise permissible hereunder or (iii) Executive has learned or learns from other sources where, to Executive’s knowledge, such sources have not violated their confidentiality obligation to the Company or any other applicable obligation of confidentiality.

(b) *Noncompetition.* Executive covenants and agrees that during the period commencing on the Effective Date and ending two years following the Termination Date (the “**Restricted Period**”), Executive will not, directly or indirectly, own, manage, operate, control, render service to, or participate in the ownership, management, operation or control of any Competitor anywhere in the United States of America; provided, however, that Executive shall be entitled to own shares of stock of any corporation having a class of equity securities actively traded

on a national securities exchange or on the Nasdaq Stock Market which represent, in the aggregate, not more than 1% of such corporation's fully-diluted shares.

(c) *Nonsolicitation of Employees.* Executive covenants and agrees that during the Restricted Period, Executive will not, directly or indirectly, employ or solicit, or receive or accept the performance of services by any then current officer, manager, employee or independent contractor of the Company or any subsidiary or affiliate of the Company, or in any way interfere with the relationship between the Company or any subsidiary or affiliate of the Company, on the one hand, and any such officer, manager, employee or independent contractor, on the other hand.

(d) *Nonsolicitation of Customers and Vendors.* Executive covenants and agrees that during the Restricted Period, Executive will not, directly or indirectly, knowingly induce, or attempt to induce, any customer, salesperson, distributor, supplier, vendor, manufacturer, representative, agent, jobber, licensee or other person known by Executive to be transacting business with the Company or any subsidiary or affiliate of the Company (collectively the "**Customers**" and "**Vendors**") to reduce or cease doing business with the Company or any such subsidiary or affiliate of the Company, or in any way to interfere with the relationship between any such Customer or Vendor, on the one hand, and the Company or any subsidiary or affiliate of the Company, on the other hand.

(e) *Representations and Covenants by Executive.* Executive represents and warrants that: (i) Executive's execution, delivery and performance of this Agreement do not and will not conflict with, breach, violate or cause a default under any contract, agreement, instrument, order, judgment or decree to which Executive is a party or by which Executive is bound; (ii) Executive is not a party to or bound by any employment agreement, noncompete agreement or confidentiality agreement with any other person or entity (other than the Company) and Executive is not subject to any other agreement that would prevent Executive from performing Executive's duties for the Company or otherwise complying with this Agreement; (iii) Executive is not subject to or in breach of any nondisclosure agreement, including any agreement concerning trade secrets or confidential information owned by any other party; and (iv) upon the execution and delivery of this Agreement by the Company, this Agreement shall be the valid and binding obligation of Executive, enforceable in accordance with its terms.

(f) *Nondisclosure of Confidential Information.* Executive hereby acknowledges and represents that Executive has consulted with independent legal counsel regarding Executive's rights and obligations under this Agreement and that Executive fully understands the terms and conditions contained herein and Executive agrees that Executive will not, directly or indirectly: (i) use, disclose, reverse engineer or otherwise exploit for Executive's own benefit or for the benefit of anyone other than the Company the Confidential Information except as authorized by the Company; (ii) during Executive's employment with the Company, use, disclose, or reverse engineer (x) any confidential information or trade secrets of any former employer or third party, or (y) any works of authorship developed in whole or in part by Executive during any former employment or for any other party, unless authorized in writing by the former employer or third party; or (iii) upon Executive's resignation or termination (x) retain Confidential Information, including any copies existing in any form (including electronic form), that are in Executive's possession or control, or (y) destroy, delete or alter the Confidential Information without the Company's consent. Notwithstanding the foregoing, Executive may use the Confidential Information in the course of performing Executive's duties on behalf of the Company or any subsidiary or affiliate of the Company as described hereunder, provided that such use is made in good faith. Executive will immediately surrender possession of all Confidential Information to Company upon any suspension or termination of Executive's employment with Company for any reason.

(g) *Inventions and Patents.* Executive acknowledges that all (i) inventions, innovations, improvements, developments, methods, designs, analysis, drawings, reports, processes, novel concepts and all similar or related information (whether or not patentable) that relate to the Company's or any of its subsidiaries' or affiliates' actual or anticipated businesses, (ii) research and development and (iii) existing or future products or services that are, to any extent, conceived, developed or made by Executive while employed by the Company or any subsidiary or affiliate of the Company ("**Work Product**") belong to the Company or such subsidiary or affiliate. Executive shall promptly disclose such Work Product to the Board and, at the cost and expense of the Company, perform all actions reasonably necessary or requested by the Board (whether during or after the Term) to establish and confirm such ownership (including, without limitation, executing assignments, consents, powers of attorney and other instruments).

(h) *Miscellaneous.*

(i) Executive acknowledges that (x) Executive's position is a position of trust and responsibility with access to Confidential Information of the Company, (y) the Confidential Information, and the relationship between the Company and each of its employees, Customers and Vendors, are valuable assets of the Company and may not be converted to Executives own use and (z) the restrictions contained in this Section 5 are reasonable and necessary to protect the legitimate business interests of the Company and will not impair or infringe upon Executive's right to work or earn a living after Executive's employment with the Company ends.

(ii) Each of the foregoing obligations shall be enforceable independent of any other obligation, and the existence of any claim or cause of action that Executive may have against the Company, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Company of these obligations.

(iii) Executive acknowledges that monetary damages will not be an adequate remedy for the Company in the event of a breach of this Agreement and that it would be impossible for the Company to measure damages in the event of such a breach. Therefore, Executive agrees that, in addition to other rights that the Company may have at law or equity, the Company is entitled, without posting bond, to seek an injunction preventing Executive from any breach of this Agreement.

(iv) In the event of a breach or violation by Executive during the Restricted Period of any restriction in Section 5(b), (b) or (d) of this Agreement, the Restricted Period shall be tolled until such breach or violation has been cured.

(v) The parties intend to provide the Company with the maximum protection possible with respect to its Customers and Vendors. The parties, however, do not intend to include a provision that contravenes the public policy of any state. Therefore, if any provision of this Section 5 is unlawful, against public policy or otherwise declared void, such provision shall not be deemed part of this Agreement, which otherwise shall remain in full force and effect. If, at the time of enforcement of this Agreement, a court or other tribunal holds that the duration, scope or area restriction stated herein is unreasonable under the circumstances then existing, the parties agree that the court should enforce the restrictions to the extent it deems reasonable.

(vi) Executive hereby agrees that prior to accepting employment with any other person or entity during the Term or during the Restricted Period following the Termination Date, Executive will provide such prospective employer with written notice of the existence of this Agreement and the provisions of this Section 5 of this Agreement, with a copy of such notice delivered simultaneously to the Company in accordance with Section 10 of this Agreement.

(vii) Notwithstanding any provision of this Agreement, the obligations and commitments of this Section 5 shall survive and continue in full force and effect in accordance with their terms notwithstanding any termination of Executive's employment for any reason or termination of this Agreement for any reason.

Section 6. *Withholding Taxes.* Prior to making any payments required to be made pursuant to this Agreement, the Company may require that the Company be reimbursed in cash for any taxes required by any government to be withheld or otherwise deducted and paid by the Company in respect of such payment by the Company. In lieu thereof, the Company shall have the right to withhold the amount of such taxes from any sums due or to become due from it to Executive.

Section 7. *Expenses.* In the event of any legal action to enforce Executive's or the Company's rights under this Agreement, each party will be responsible for that party's reasonable attorneys' fees, expenses and disbursements.

Section 8. *Assignment.* This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Executive shall not assign or transfer any rights or obligations hereunder. The Company shall have the right to assign or transfer any rights or obligations hereunder only to (a) a successor entity in the event of a merger, consolidation, or transfer or sale of all or substantially all the assets of the Company or (b) a subsidiary or affiliate of the Company. Any purported assignment, other than as provided above, shall be null and void.

Section 9. *Indemnification.* The Company shall indemnify Executive for any act or omission done or not done in performance of Executive's duties hereunder in accordance with the Company's certificate of incorporation, by-laws and any other constituent document to the extent

provided for any other officer or member of the Board. The Company's obligations under this Section 9 shall survive any termination of this Agreement or Executive's employment hereunder.

Section 10. Notices. All notices, requests, consents and other communications required or permitted to be given hereunder, shall be in writing and shall be delivered personally or sent by prepaid telegram, telex, facsimile transmission, overnight courier or mailed, first class, postage prepaid by registered or certified mail, as follows:

If to the Company: LM Funding America, Inc., Bruce M. Rodgers, CEO

If to Executive: To Executive's address as reflected on the payroll records of the Company

or such other address as either party shall designate by notice in writing to the other in accordance herewith. Any such notice shall be deemed given when so delivered personally, by telex, facsimile transmission or telegram, or if sent by overnight courier, one day after delivery to such courier by the sender or if mailed, five days after deposit by the sender in the U.S. mails.

Section 11. Entire Agreement. This Agreement shall constitute the entire agreement between Executive and the Company concerning the subject matter hereof. This Agreement supersedes and preempts any prior employment agreement or other understandings, agreements or representations by or among the parties, written or oral, that may have related to the subject matter hereof. No provisions of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing, signed by Executive and an authorized officer of the Company.

Section 12. Governing Law. This Agreement shall be subject to and governed by the laws of the State of Florida, without giving effect to the principles of conflicts of law under Florida law that would require or permit the application of the laws of a jurisdiction other than the State of Florida and irrespective of the fact that the parties now or at any time may be residents of or engage in activities in a different state. Employee agrees that in the event of any dispute or claim arising under this Agreement, jurisdiction and venue shall be vested and proper, and Employee hereby consents to the jurisdiction of any court sitting in Tampa, Florida, including the United States District Court for the Middle District of Florida.

Section 13. Full Settlement. Executive acknowledges and agrees that, subject to the payment by the Company of the benefits provided in this Agreement to Executive, in no event will the Company nor any subsidiary or affiliate thereof be liable to Executive for damages under any claim of breach of contract as a result of the termination of Executive's employment. In the event of any such termination, the Company shall be liable only to provide to Executive, or Executive's heirs or beneficiaries, the benefits specified in this Agreement.

Section 14. Strict Compliance. Executive's or the Company's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right Executive or the Company may have hereunder shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement. The waiver, whether express or implied, by either party of a violation of any of the provisions of this Agreement shall not operate or be construed as a waiver of any subsequent violation of any such provision.

Section 15. Creditor Status. No benefit or promise hereunder shall be secured by any specific assets of the Company. Executive shall have only the rights of an unsecured general creditor of the Company in seeking satisfaction of such benefits or promises.

Section 16. Section 409A. This Agreement is intended to comply with the requirements of Section 409A of the Code ("Section 409A"), and shall be construed accordingly. Any payments or distributions to be made to Executive under this Agreement upon a separation from service of amounts classified as "nonqualified deferred compensation" for purposes of Section 409A, shall in no event be made or commence until six months after such separation from service if Executive is determined to be a specified Executive of a public company (all as determined under Section 409A). Each payment of nonqualified deferred compensation under this Agreement shall be treated as a separate payment for purposes of Section 409A. Any reimbursements made pursuant to this Agreement shall be paid as soon as practicable but no later than 90 days after Executive submits evidence of such expenses to the Company (which payment date shall in no event be later than the last day of the calendar incurred). The amount of such reimbursements paid and any in-kind benefits the year following the calendar year in which the expense was provided during any calendar year shall not affect the reimbursements paid or in-kind benefits provided in any other

calendar year, and the right to any such payments and benefits shall not be subject to liquidation or exchange for another payment or benefit.

Section 17. Cooperation. Executive agrees to provide assistance to and cooperate with the Company upon its reasonable request with respect to matters within the scope of Executive's duties and responsibilities during the Restricted Period. During such Period, the Company shall, to the maximum extent coordinate or cause any such request with Executive's other commitments and responsibilities to minimize the degree to which such request interferes with such commitments and responsibilities. The Company agrees that it will reimburse Executive for reasonable documented travel expenses (i.e., travel, meals and lodging) that Executive may incur in providing assistance to the Company hereunder.

Section 18. Non-disparagement. Executive agrees to not make any statements, written or oral, while employed by the Company and thereafter, which would be reasonably likely to disparage or damage the Company, its affiliates or subsidiaries or the personal or professional reputation of any present or former employees, officers or members of the managing or directorial boards or committees of the Company or its affiliates or subsidiaries. The Company agrees that it will instruct each of its and its affiliates' and subsidiaries' members, directors, managers, officers and employees not to make any disparaging communication regarding Executive, and no such person or entity will be authorized on the Company's or any affiliate's or subsidiary's behalf to make any such disparaging communications regarding Executive.

Section 19. Recoupment. Executive agrees to reimburse the Company for all or a portion, as determined below, of any bonus or incentive or equity-based compensation paid or awarded to Executive by the Company, if the Board determines that (a) the payment, award or vesting thereof was predicated upon the achievement of certain financial results that were subsequently the subject of a material financial restatement, (b) Executive engaged in fraud or misconduct that caused, in whole or in part, the need for the material financial restatement, and (c) a lower payment, award or vesting would have occurred based upon the restated financial results. In such event, Executive agrees to reimburse (in the manner determined by the Board, including cancellation of options or other stock awards) any bonus or incentive or equity-based compensation previously paid, awarded or vested in the amount by which such bonus or incentive or equity-based

compensation actually paid, awarded or vested exceeds the lower payment, award or vesting that would have occurred based upon the restated financial result; provided that no reimbursement shall be required if the payment, award or vesting otherwise subject to reimbursement hereunder occurred more than three (3) years prior to the date the applicable reinstatement is disclosed. In addition, notwithstanding anything to the contrary, any bonus or incentive or equity-based compensation, or other compensation, payable to Executive pursuant to this Agreement or any other agreement, plan or arrangement of the Company shall be subject to repayment or recoupment (clawback) by the Company to the extent applicable under Section 304 of the Sarbanes-Oxley Act of 2002 (and not otherwise exempted) and in accordance with such policies and procedures as the Board or the Compensation Committee of the Board may adopt from time to time, including policies and procedures to implement applicable law (including, but not limited to, Section 954 of the Dodd-Frank Act), stock market or exchange rules and regulations or accounting or tax rules and regulations.

Section 20. *Survival.* Any provision of this Agreement that is expressly or by implication intended to survive the termination of this Agreement shall survive or remain in effect after the termination of this Agreement.

Section 21. *Counterparts.* This Agreement may be executed in two or more counterparts, anyone of which need not contain the signature of more than one party, but all such counterparts taken together shall constitute one and the same agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

LM FUNDING AMERICA, INC.

By: /s/ Bruce M.
Rogers

Bruce M. Rodgers, Chief Executive Officer

EXECUTIVE

/s/ Richard Russell
Richard Russell

EXHIBIT A
PERMITTED ACTIVITIES

1. Executive may serve as CFO and Treasurer of LMF Acquisition Opportunities, Inc. and provide part-time services to BRRR Management, LLC.
2. Executive may serve as part-time CFO and Treasurer for Generation Income Properties through March 31, 2022

EXHIBIT B
FORM OF RELEASE

This RELEASE (“**Release**”) is granted effective as of the [] day of [], 20[] by [•••] (the “**Executive**”) in favor of [] (the “**Company**”) and the other Released Parties (as defined below). This is the Release referred to in the Amended and Restated Employment Agreement, dated as of _____, 2020 between the Company and the Executive (the “**Employment Agreement**”). The Executive gives this Release in consideration of the Company’s promises and covenants contained in the Employment Agreement, with respect to which this Release is an integral part.

3. *Release of the Company.* The Executive, for himself, his successors, assigns, attorneys, and all those entitled to assert his rights, now and forever hereby releases and discharges the Company and its respective officers, directors, stockholders, trustees, Executives, agents, parent corporations, subsidiaries, affiliates, estates, successors, assigns and attorneys (the “**Released Parties**”), from any and all claims, actions, causes of action, sums of money due, suits, debts, liens, covenants, contracts, obligations, costs, expenses, damages, judgments, agreements, promises, demands, claims for attorney’s fees and costs, or liabilities whatsoever, in law or in equity, which the Executive ever had or now has against the Released Parties, arising by reason of or in any way connected with or which may be traced either directly or indirectly to the employment relationship which existed between the Company or any of its parents, subsidiaries, affiliates, or predecessors and the Executive, or the termination of that relationship, that the Executive has, had or purports to have, from the beginning of time to the date of this Release, whether known or unknown, that now exists, no matter how remotely they may be related to the aforesaid employment relationship including but not limited to claims for employment discrimination under federal or state law, except as provided in Paragraph 2; claims arising under Title VII of the Civil Rights Act, 42 U.S.C. § 2000(e), *et seq.* or the Americans With Disabilities Act, 42 U.S.C. § 12101, *et seq.*; claims for statutory or common law wrongful discharge, including any claims arising under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*; claims for attorney’s fees, expenses and costs; claims for defamation; claims for wages or vacation pay; claims for benefits, including any claims arising under the Executive Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.*; and provided, however, that nothing herein shall release the Company of its obligations to the Executive under the

Employment Agreement between the Company and the Executive or any other contractual obligations between the Company or its subsidiaries or affiliates and the Executive (including, without limitation, any equity award agreement or indemnification agreement), or any indemnification obligations to the Executive under the Company's certificate of incorporation, bylaws, operating agreement or other constituent document or any federal, state or local law or otherwise.

4. *Release of Claims Under Age Discrimination in Employment Act.* Without limiting the generality of the foregoing, the Executive agrees that by executing this Release, he has released and waived any and all claims he has or may have as of the date of this Release for age discrimination under the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq.* It is understood that the Executive has been advised to consult with an attorney prior to executing this Release; that he in fact has consulted a knowledgeable, competent attorney regarding this Release; that he may, before executing this Release, consider this Release for a period of 21 calendar days; and that the consideration he receives for this Release is in addition to amounts to which he was already entitled. It is further understood that this Release is not effective until seven calendar days after the execution of this Release and that the Executive may revoke this Release within seven calendar days from the date of execution hereof.

The Executive agrees that he has carefully read this Release and is signing it voluntarily. The Executive acknowledges that he has had 21 days from receipt of this Release to review it prior to signing or that, if the Executive is signing this Release prior to the expiration of such 21-day period, the Executive is waiving his right to review the Release for such full 21-day period prior to signing it. The Executive has the right to revoke this release within seven days following the date of its execution by him. However, if the Executive revokes this Release within such seven-day period, no severance benefit will be payable to him under the Employment Agreement and he shall return to the Company any such payment received prior to that date.

THE EXECUTIVE HAS CAREFULLY READ THIS RELEASE AND ACKNOWLEDGES THAT IT CONSTITUTES A GENERAL RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS AGAINST THE COMPANY UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT. THE EXECUTIVE ACKNOWLEDGES THAT HE HAS HAD A FULL

OPPORTUNITY TO CONSULT WITH AN ATTORNEY OR OTHER ADVISOR OF HIS CHOOSING CONCERNING HIS EXECUTION OF THIS RELEASE AND THAT HE IS SIGNING THIS RELEASE VOLUNTARILY AND WITH THE FULL INTENT OF RELEASING THE COMPANY FROM ALL SUCH CLAIMS.

Name _____ of _____ Executive:
[_____]
Date: [•], 20[•]

4820-7324-9485.4

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this “**Agreement**”) is dated as of October 27, 2021 (the “**Effective Date**”), by and between LM Funding America, Inc., Delaware incorporated corporation (the “**Company**”), and Ryan Duran (“**Executive**”).

Recitals

- A. The Company currently employs Executive as its Vice President of Operations;
- B. The Company and Executive have agreed to protect the interests of the Company and Company’s customers and Confidential Information (as defined below) that may have been or that may be disclosed to Executive as set forth herein; and
- C. The Company and Executive desire to enter into this Agreement to set forth the terms and conditions of Executive’s employment, effective as of the Effective Date.

Agreement

NOW, THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

Section 1. *Employment, Duties and Acceptance.*

(a) The Company shall employ Executive during the Term (as defined below) as Vice President of Operations. Executive shall be responsible for performing the duties and exercising the powers which the Chief Executive Officer and the Board of Directors of the Company (the “**Board**”) may from time-to-time assign to him in his capacity as Vice President of Operations of the Company in connection with the conduct and management of the business of the Company and its subsidiaries and affiliates.

(b) Executive hereby accepts such employment and agrees, during the Term, to render Executive’s services to the Company on a full-time basis and to devote Executive’s full

business time and attention to the business and affairs of the Company and any subsidiary or affiliate of the Company. Executive agrees that at all times during the Term, Executive will faithfully perform the duties assigned to him to the best of Executive's ability. Executive further agrees to accept election and to serve during all or any part of the Term as an officer, director or representative of any subsidiary or affiliate of the Company, without any compensation therefor other than that specified in this Agreement. Executive shall report directly to the Chief Executive Officer or such other officer as the Board may designate.

(c) The duties to be performed by Executive hereunder shall be principally performed at the Company's offices located in Tampa, Florida, subject to reasonable travel requirements on behalf of the Company. Executive shall be entitled to an annual paid time off of 30 days on the same terms that the Company provides to other similarly situated senior Company executives in accordance with the Company's policies and practices; provided that Executive shall schedule the timing and duration of Executive's vacations in a reasonable manner taking into account the needs of the business of the Company.

(d) Executive acknowledges that from time to time the Company may promulgate workplace policies and rules. Executive agrees to fully comply with all such policies and rules, and understands that failure to do so may result in a disciplinary action up to and including immediate discharge for Cause (as defined below).

Section 2. Term. As used herein, the "**Term**" means the period commencing on the Effective Date and ending on September 30, 2023; provided that, following such date, the Term shall be automatically renewed each successive year unless Executive or the Company gives written notice of termination on or before the 30th day prior to the automatic renewal date of its desire not to renew the Term. Any such renewal shall be upon the terms and conditions set forth herein unless otherwise agreed between the Company and Executive.

Section 3. Compensation. Executive shall be entitled to the following compensation:

(a) The Company agrees to pay to Executive a salary in cash (the "**Salary**"), as compensation for the services to be performed by Executive, at the rate of \$175,000 per calendar year commencing with the Effective Date, paid in accordance with the Company's customary

payroll procedures and subject to applicable withholding. During the Term, the Board shall have the right to increase, but not decrease, the Salary, except the Board may decrease the Salary in connection with a base salary decrease that is generally applicable to all members of the Company's senior management. Without limiting the generality of the foregoing, Executive will be eligible for additional annual salary merit increases during the Term based on the evaluation of Executive's performance as determined by the Board in its sole discretion. Executive's salary as in effect from time to time shall constitute the "**Salary**" for purposes of this Agreement.

(b) The Company shall reimburse Executive for all reasonable expenses incurred by Executive in the course of performing Executive's duties under this Agreement that are consistent with the Company's policies in effect from time to time with respect to travel, entertainment and other business expenses, subject to the Company's requirements with respect to reporting and documentation of such expenses.

(c) Executive shall be eligible to participate in any equity incentive plan, restricted share plan, share award plan, stock appreciation rights plan, stock option plan or similar plan adopted by the Company on the same terms and conditions applicable to other senior Company executives, with the amount of such awards to be determined by the Board in its sole discretion. Executive shall be eligible for an annual bonus and long term incentive awards as determined at the sole discretion of the Board.

(d) Executive shall be entitled to all rights and benefits for which Executive shall be eligible under any retirement, retirement savings, profit-sharing, pension or welfare benefit plan, life, disability, health, dental, hospitalization and other forms of insurance and all other so-called "fringe" benefits or perquisites (except for with respect to any plan that provides severance or other similar benefits), on the same terms that the Company provides to other similarly situated senior Company executives (subject to all restrictions on participation that may apply under federal and state tax laws).

Section 4. *Termination.*

(a) *Events of Termination.* Executive's employment with the Company shall terminate (the date of such termination being the "**Termination Date**") immediately upon any of the following:

(i) Executive's death ("**Termination Upon Death**");

(ii) the effective date of a written notice sent to Executive stating the Company's determination, made in good faith, that due to a mental or physical condition, Executive has been unable and failed to substantially render the services to be provided by Executive to the Company for a period of at least 180 days out of any consecutive 360 days ("**Termination For Disability**");

(iii) the effective date of a written notice sent to Executive stating the Company's determination, made in good faith, that it is terminating Executive's employment for Cause ("**Termination For Cause**");

(iv) the effective date of a notice sent to Executive stating that the Company is terminating Executive's employment without Cause (provided that any notice from the Company to Executive pursuant to Section 2 that the Company has decided not to renew the Term shall not constitute a termination without Cause), which notice can be given by the Company at any time after the Effective Date at the Company's sole discretion, for any reason or for no reason ("**Termination Without Cause**");

(v) the effective date of a notice (other than a notice delivered pursuant to Section 4(a)(vi) of this Agreement) sent to the Company from Executive stating that Executive is electing to terminate Executive's employment with the Company without Good Reason ("**Resignation Without Good Reason**"); or

(vi) the effective date of a written notice to Company stating Executive's determination, made in good faith, that a Good Reason Event (as defined below) has occurred within 30 days preceding such notice and as a consequence Executive is electing to terminate Executive's employment hereunder for a Good Reason Event ("**Resignation For Good Reason**"); *provided, however*, that Executive will give the Company 30 days to cure such Good Reason Event, and if the Company fails to cure such Good Reason Event within 30 days after Executive gives

written notice of resignation hereunder, then Executive may immediately terminate Executive's employment with the Company, and such termination will be a Resignation For Good Reason hereunder; provided, further, that Executive's termination shall be deemed a Termination For Cause if the Company has delivered to Executive written notice of any act or omission that, if not cured, would constitute Cause at any time preceding the notice provided by Executive hereunder.

As used herein, the term "**Cause**" shall mean (i) commission of a willful act of dishonesty in the course of Executive's duties hereunder, (ii) conviction by a court of competent jurisdiction of, or plea of no contest to, a crime constituting a felony or conviction in respect of, or plea of no contest to, any act involving fraud, dishonesty or moral turpitude, (iii) Executive's performance under the influence of controlled substances (other than those taken pursuant to a medical doctor's orders), (iv) frequent or extended, and unjustifiable, absenteeism, (v) Executive's personal misconduct or refusal to perform duties and responsibilities or to carry out the lawful directives of the Board, which, if capable of being cured shall not have been cured, within 30 days after the Company shall have advised Executive in writing of its intention to terminate Executive's employment, or (vi) Executive's material non-compliance with the terms of this Agreement, which, if capable of being cured, shall not have been cured within 30 days after the Company shall have advised Executive in writing of its intention to terminate Executive's employment for such reason.

As used herein, the term "**Good Reason Event**" shall mean (i) a material adverse change in the responsibilities or duties of Executive as set forth in this Agreement (including a change in reporting where Executive no longer reports directly to the Chief Executive Officer or the Chief Financial Officer) without Executive's prior consent at a time when there are no circumstances pending that would permit the Board to terminate Executive for Cause, such that Executive is no longer acting as part of the senior management team of the Company, (ii) any reduction in the Salary or a material reduction in Executive's benefits (other than (x) the reduction in Salary contemplated by Section 3(a), (y) a reduction in Salary that is the result of an administrative or clerical error, and which is cured within 15 business days after the Company receives notice of such failure or (z) a reduction in Salary or benefits that are generally applicable to all members of the Company's senior management), (iii) a material breach by the Company of this Agreement that is not cured within 30 days following the Company's receipt of written notice of such breach from Executive, or (iv) without Executive's prior written consent, the relocation of Executive's principal

place of employment outside of a 50 mile radius from the location of the Company's offices in Tampa, Florida as of the Effective Date . With regard to clause (i), Executive acknowledges that the Company has flexibility under Section 1(a) to assign Executive a broad range of responsibilities and duties that are consistent with him being a member of the senior management team and such assignments will not constitute a "Good Reason Event."

(b) *Effect of Termination.*

(i) *Death or Disability.* In the event of Termination Upon Death or Termination For Disability pursuant to Sections 4(a)(i) or 4(a)(ii) of this Agreement:

(A) Executive (or Executive's legal representative) shall be entitled to receive in cash an amount equal to any earned but unpaid Salary owing by the Company to Executive as of the Termination Date (the "**Accrued Salary**");

(B) Executive (or Executive's legal representative) shall be entitled to receive in cash, to the extent provided under any management bonus plan, an amount equal to the pro rata portion, determined as of the Termination Date, of any bonus to which Executive would have been entitled had Executive been employed by the Company at the time such bonus would have otherwise been paid (the "**Accrued Bonus**"); and

(C) all unvested Restricted Shares, Options, and Warrants granted to Executive during the Term of this Agreement shall become fully vested and non-forfeitable as of the Termination Date.

(ii) *Termination For Cause.* In the event of a Termination For Cause pursuant to Section 4(a)(iii) of this Agreement, Executive shall be entitled to receive in cash an amount equal to any Accrued Salary.

(iii) *Termination Without Cause and Resignation For Good Reason.* In the event of Termination Without Cause or Resignation For Good Reason pursuant to Sections 4(a)(iv) or 4(a)(vi) of this Agreement, subject to Section 4(c)(ii) of this Agreement:

(A) a Executive (or Executive's legal representative) shall be entitled to receive in cash an amount equal to the Accrued Salary;

(B) Executive (or Executive's legal representative) shall be entitled to receive in cash an amount equal to the Accrued Bonus;

(C) Executive (or Executive's legal representative) shall be entitled to receive in cash an amount equal to the product of three (3) multiplied by Executive's Salary (at the rate then in effect, and without taking into account any reductions that would have given rise to Good Reason termination by Executive), payable in a lump sum on the date that is thirty (30) days after the Termination Date;

(D) all unvested Restricted Shares, Options and Warrants granted to Executive during the Term of this Agreement shall become fully vested and non-forfeitable as of the Termination Date.

(iv) *Resignation Without Good Reason.* In the event of Resignation Without Good Reason pursuant to Section 4(a)(v) of this Agreement, Executive shall be entitled to receive in cash an amount equal to any Accrued Salary.

(v) *Upon Termination For Any Reason.* In the event of any termination, Executive shall be entitled to receive:

(A) any unpaid reasonable, reimbursable business expenses incurred by Executive in the course of performing Executive's duties under this Agreement that were incurred in a manner consistent with the Company's policies in effect from time to time with respect to travel, entertainment and other business expenses, subject to the Company's requirements with respect to incurring, reporting and documenting such expenses; and

(B) benefits under the Company's benefit plans of general application as shall be determined under the provisions of those plans.

(c) *Additional Provisions.*

(i) Any amounts to be paid pursuant to this Section 4 shall be paid in accordance with the Company's existing payroll or bonus payment practices, as applicable.

(ii) As a condition to the Company's obligations, if any, to make any Accrued Bonus and severance payments provided under Section 4(b)(iii)(B) and (C), Executive shall have executed, delivered and not revoked a general release in the form attached hereto as Exhibit A.

(iii) Notwithstanding any provision of this Agreement, the obligations and commitments under Section 5 of this Agreement shall survive and continue in full force and effect in accordance with their terms notwithstanding any termination of Executive's employment for any reason or termination of this Agreement for any reason.

(iv) Notwithstanding anything in this Agreement to the contrary, the Company shall have no obligation to pay any amounts payable under Sections 4(b)(i)(B), 4(b)(iii)(B) or 4(b)(iii)(C) of this Agreement during such times as Executive is in breach of Section 5 of this Agreement, after the Company provides Executive with notice of such breach.

(v) Executive agrees that termination of Executive's employment for any reason shall, with no further action by Executive required, constitute Executive's resignation, as of the Termination Date and to the extent applicable, from all positions as an officer, director or representative of the Company and any subsidiary or affiliate of the Company.

Section 5. *Noncompetition, Nonsolicitation And Confidentiality.*

(a) *Definitions.*

“**Company’s Business**” means the business of providing specialty financial products to nonprofit incorporated community associations in the states in which the Company has conducted business.

“**Competitor**” means any company, other entity or association or individual that directly or indirectly is engaged in the Company’s Business.

“**Confidential Information**” means any confidential information with respect to the Company’s Business and/or the businesses of its clients or customers, including, but not limited to: the trade secrets of the Company; products or services; standard proposals; standard submissions, surveys and analyses; policy forms; fees, costs and pricing structures; marketing information; advertising and pricing strategies; analyses; reports; computer software, including operating systems, applications and program listings; flow charts; manuals and documentation; data bases; all copyrightable works; the Company’s existing and prospective clients and customers, their addresses or other contact information and/or their confidential information; existing and prospective client and customer lists and other related data; expiration periods; policy numbers; coverage specifications; daily reports and related correspondence; premium renewal notices; and all similar and related information in whatever form. The term Confidential Information does not include, and there shall be no obligation hereunder with respect to, information that (i) is generally available to the public on the date of this Agreement, (ii) becomes generally available to the public other than as a result of a disclosure by Executive not otherwise permissible hereunder or (iii) Executive has learned or learns from other sources where, to Executive’s knowledge, such sources have not violated their confidentiality obligation to the Company or any other applicable obligation of confidentiality.

(b) *Noncompetition.* Executive covenants and agrees that during the period commencing on the Effective Date and ending two years following the Termination Date (the “**Restricted Period**”), Executive will not, directly or indirectly, own, manage, operate, control,

render service to, or participate in the ownership, management, operation or control of any Competitor anywhere in the United States of America; provided, however, that Executive shall be entitled to own shares of stock of any corporation having a class of equity securities actively traded on a national securities exchange or on the Nasdaq Stock Market which represent, in the aggregate, not more than 1% of such corporation's fully-diluted shares.

(c) *Nonsolicitation of Employees.* Executive covenants and agrees that during the Restricted Period, Executive will not, directly or indirectly, employ or solicit, or receive or accept the performance of services by any then current officer, manager, employee or independent contractor of the Company or any subsidiary or affiliate of the Company, or in any way interfere with the relationship between the Company or any subsidiary or affiliate of the Company, on the one hand, and any such officer, manager, employee or independent contractor, on the other hand.

(d) *Nonsolicitation of Customers and Vendors.* Executive covenants and agrees that during the Restricted Period, Executive will not, directly or indirectly, knowingly induce, or attempt to induce, any customer, salesperson, distributor, supplier, vendor, manufacturer, representative, agent, jobber, licensee or other person known by Executive to be transacting business with the Company or any subsidiary or affiliate of the Company (collectively the "**Customers**" and "**Vendors**") to reduce or cease doing business with the Company or any such subsidiary or affiliate of the Company, or in any way to interfere with the relationship between any such Customer or Vendor, on the one hand, and the Company or any subsidiary or affiliate of the Company, on the other hand.

(e) *Representations and Covenants by Executive.* Executive represents and warrants that: (i) Executive's execution, delivery and performance of this Agreement do not and will not conflict with, breach, violate or cause a default under any contract, agreement, instrument, order, judgment or decree to which Executive is a party or by which Executive is bound; (ii) Executive is not a party to or bound by any employment agreement, noncompete agreement or confidentiality agreement with any other person or entity (other than the Company) and Executive is not subject to any other agreement that would prevent Executive from performing Executive's duties for the Company or otherwise complying with this Agreement; (iii) Executive is not subject to or in breach of any nondisclosure agreement, including any agreement concerning trade secrets or

confidential information owned by any other party; and (iv) upon the execution and delivery of this Agreement by the Company, this Agreement shall be the valid and binding obligation of Executive, enforceable in accordance with its terms.

(f) *Nondisclosure of Confidential Information.* Executive hereby acknowledges and represents that Executive has consulted with independent legal counsel regarding Executive's rights and obligations under this Agreement and that Executive fully understands the terms and conditions contained herein and Executive agrees that Executive will not, directly or indirectly: (i) use, disclose, reverse engineer or otherwise exploit for Executive's own benefit or for the benefit of anyone other than the Company the Confidential Information except as authorized by the Company; (ii) during Executive's employment with the Company, use, disclose, or reverse engineer (x) any confidential information or trade secrets of any former employer or third party, or (y) any works of authorship developed in whole or in part by Executive during any former employment or for any other party, unless authorized in writing by the former employer or third party; or (iii) upon Executive's resignation or termination (x) retain Confidential Information, including any copies existing in any form (including electronic form), that are in Executive's possession or control, or (y) destroy, delete or alter the Confidential Information without the Company's consent. Notwithstanding the foregoing, Executive may use the Confidential Information in the course of performing Executive's duties on behalf of the Company or any subsidiary or affiliate of the Company as described hereunder, provided that such use is made in good faith. Executive will immediately surrender possession of all Confidential Information to Company upon any suspension or termination of Executive's employment with Company for any reason.

(g) *Inventions and Patents.* Executive acknowledges that all (i) inventions, innovations, improvements, developments, methods, designs, analysis, drawings, reports, processes, novel concepts and all similar or related information (whether or not patentable) that relate to the Company's or any of its subsidiaries' or affiliates' actual or anticipated businesses, (ii) research and development and (iii) existing or future products or services that are, to any extent, conceived, developed or made by Executive while employed by the Company or any subsidiary or affiliate of the Company ("**Work Product**") belong to the Company or such subsidiary or affiliate. Executive shall promptly disclose such Work Product to the Board and, at the cost and expense of the Company, perform all actions reasonably necessary or requested by the Board (whether during or

after the Term) to establish and confirm such ownership (including, without limitation, executing assignments, consents, powers of attorney and other instruments).

(h) *Miscellaneous.*

(i) Executive acknowledges that (x) Executive's position is a position of trust and responsibility with access to Confidential Information of the Company, (y) the Confidential Information, and the relationship between the Company and each of its employees, Customers and Vendors, are valuable assets of the Company and may not be converted to Executives own use and (z) the restrictions contained in this Section 5 are reasonable and necessary to protect the legitimate business interests of the Company and will not impair or infringe upon Executive's right to work or earn a living after Executive's employment with the Company ends.

(ii) Each of the foregoing obligations shall be enforceable independent of any other obligation, and the existence of any claim or cause of action that Executive may have against the Company, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Company of these obligations.

(iii) Executive acknowledges that monetary damages will not be an adequate remedy for the Company in the event of a breach of this Agreement and that it would be impossible for the Company to measure damages in the event of such a breach. Therefore, Executive agrees that, in addition to other rights that the Company may have at law or equity, the Company is entitled, without posting bond, to seek an injunction preventing Executive from any breach of this Agreement.

(iv) In the event of a breach or violation by Executive during the Restricted Period of any restriction in Section 5(b), (b) or (d) of this Agreement, the Restricted Period shall be tolled until such breach or violation has been cured.

(v) The parties intend to provide the Company with the maximum protection possible with respect to its Customers and Vendors. The parties, however, do not intend to include a provision that contravenes the public policy of any state. Therefore, if any provision of this Section 5 is unlawful, against public policy or otherwise declared void, such provision shall not be deemed part of this Agreement, which otherwise shall remain in full force and effect. If, at the

time of enforcement of this Agreement, a court or other tribunal holds that the duration, scope or area restriction stated herein is unreasonable under the circumstances then existing, the parties agree that the court should enforce the restrictions to the extent it deems reasonable.

(vi) Executive hereby agrees that prior to accepting employment with any other person or entity during the Term or during the Restricted Period following the Termination Date, Executive will provide such prospective employer with written notice of the existence of this Agreement and the provisions of this Section 5 of this Agreement, with a copy of such notice delivered simultaneously to the Company in accordance with Section 10 of this Agreement.

(vii) Notwithstanding any provision of this Agreement, the obligations and commitments of this Section 5 shall survive and continue in full force and effect in accordance with their terms notwithstanding any termination of Executive's employment for any reason or termination of this Agreement for any reason.

Section 6. *Withholding Taxes.* Prior to making any payments required to be made pursuant to this Agreement, the Company may require that the Company be reimbursed in cash for any taxes required by any government to be withheld or otherwise deducted and paid by the Company in respect of such payment by the Company. In lieu thereof, the Company shall have the right to withhold the amount of such taxes from any sums due or to become due from it to Executive.

Section 7. *Expenses.* In the event of any legal action to enforce Executive's or the Company's rights under this Agreement, each party will be responsible for that party's reasonable attorneys' fees, expenses and disbursements.

Section 8. *Assignment.* This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Executive shall not assign or transfer any rights or obligations hereunder. The Company shall have the right to assign or transfer any rights or obligations hereunder only to (a) a successor entity in the event of a merger, consolidation, or transfer or sale of all or substantially all the assets of the Company or (b) a subsidiary or affiliate of the Company. Any purported assignment, other than as provided above, shall be null and void.

Section 9. Indemnification. The Company shall indemnify Executive for any act or omission done or not done in performance of Executive's duties hereunder in accordance with the Company's certificate of incorporation, by-laws and any other constituent document to the extent provided for any other officer or member of the Board. The Company's obligations under this Section 9 shall survive any termination of this Agreement or Executive's employment hereunder.

Section 10. Notices. All notices, requests, consents and other communications required or permitted to be given hereunder, shall be in writing and shall be delivered personally or sent by prepaid telegram, telex, facsimile transmission, overnight courier or mailed, first class, postage prepaid by registered or certified mail, as follows:

If to the Company: LM Funding America, Inc., Richard Russell, Chief Financial Officer

If to Executive: To Executive's address as reflected on the payroll records of the Company

or such other address as either party shall designate by notice in writing to the other in accordance herewith. Any such notice shall be deemed given when so delivered personally, by telex, facsimile transmission or telegram, or if sent by overnight courier, one day after delivery to such courier by the sender or if mailed, five days after deposit by the sender in the U.S. mails.

Section 11. Entire Agreement. This Agreement shall constitute the entire agreement between Executive and the Company concerning the subject matter hereof. This Agreement supersedes and preempts any prior employment agreement or other understandings, agreements or representations by or among the parties, written or oral, that may have related to the subject matter hereof. No provisions of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing, signed by Executive and an authorized officer of the Company.

Section 12. Governing Law. This Agreement shall be subject to and governed by the laws of the State of Florida, without giving effect to the principles of conflicts of law under Florida law that would require or permit the application of the laws of a jurisdiction other than the State of Florida and irrespective of the fact that the parties now or at any time may be residents of or engage

in activities in a different state. Employee agrees that in the event of any dispute or claim arising under this Agreement, jurisdiction and venue shall be vested and proper, and Employee hereby consents to the jurisdiction of any court sitting in Tampa, Florida, including the United States District Court for the Middle District of Florida.

Section 13. Full Settlement. Executive acknowledges and agrees that, subject to the payment by the Company of the benefits provided in this Agreement to Executive, in no event will the Company nor any subsidiary or affiliate thereof be liable to Executive for damages under any claim of breach of contract as a result of the termination of Executive's employment. In the event of any such termination, the Company shall be liable only to provide to Executive, or Executive's heirs or beneficiaries, the benefits specified in this Agreement.

Section 14. Strict Compliance. Executive's or the Company's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right Executive or the Company may have hereunder shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement. The waiver, whether express or implied, by either party of a violation of any of the provisions of this Agreement shall not operate or be construed as a waiver of any subsequent violation of any such provision.

Section 15. Creditor Status. No benefit or promise hereunder shall be secured by any specific assets of the Company. Executive shall have only the rights of an unsecured general creditor of the Company in seeking satisfaction of such benefits or promises.

Section 16. Section 409A. This Agreement is intended to comply with the requirements of Section 409A of the Code ("**Section 409A**"), and shall be construed accordingly. Any payments or distributions to be made to Executive under this Agreement upon a separation from service of amounts classified as "nonqualified deferred compensation" for purposes of Section 409A, shall in no event be made or commence until six months after such separation from service if Executive is determined to be a specified Executive of a public company (all as determined under Section 409A). Each payment of nonqualified deferred compensation under this Agreement shall be treated as a separate payment for purposes of Section 409A. Any reimbursements made pursuant to this Agreement shall be paid as soon as practicable but no later than 90 days after Executive submits evidence of such expenses to the Company (which payment date shall in no event be later

than the last day of the calendar incurred). The amount of such reimbursements paid and any in-kind benefits the year following the calendar year in which the expense was provided during any calendar year shall not affect the reimbursements paid or in-kind benefits provided in any other calendar year, and the right to any such payments and benefits shall not be subject to liquidation or exchange for another payment or benefit.

Section 17. Cooperation. Executive agrees to provide assistance to and cooperate with the Company upon its reasonable request with respect to matters within the scope of Executive's duties and responsibilities during the Restricted Period. During such Period, the Company shall, to the maximum extent coordinate or cause any such request with Executive's other commitments and responsibilities to minimize the degree to which such request interferes with such commitments and responsibilities. The Company agrees that it will reimburse Executive for reasonable documented travel expenses (i.e., travel, meals and lodging) that Executive may incur in providing assistance to the Company hereunder.

Section 18. Non-disparagement. Executive agrees to not make any statements, written or oral, while employed by the Company and thereafter, which would be reasonably likely to disparage or damage the Company, its affiliates or subsidiaries or the personal or professional reputation of any present or former employees, officers or members of the managing or directorial boards or committees of the Company or its affiliates or subsidiaries. The Company agrees that it will instruct each of its and its affiliates' and subsidiaries' members, directors, managers, officers and employees not to make any disparaging communication regarding Executive, and no such person or entity will be authorized on the Company's or any affiliate's or subsidiary's behalf to make any such disparaging communications regarding Executive.

Section 19. Recoupment. Executive agrees to reimburse the Company for all or a portion, as determined below, of any bonus or incentive or equity-based compensation paid or awarded to Executive by the Company, if the Board determines that (a) the payment, award or vesting thereof was predicated upon the achievement of certain financial results that were subsequently the subject of a material financial restatement, (b) Executive engaged in fraud or misconduct that caused, in whole or in part, the need for the material financial restatement, and (c) a lower payment, award or vesting would have occurred based upon the restated financial results. In

such event, Executive agrees to reimburse (in the manner determined by the Board, including cancellation of options or other stock awards) any bonus or incentive or equity-based compensation previously paid, awarded or vested in the amount by which such bonus or incentive or equity-based compensation actually paid, awarded or vested exceeds the lower payment, award or vesting that would have occurred based upon the restated financial result; provided that no reimbursement shall be required if the payment, award or vesting otherwise subject to reimbursement hereunder occurred more than three (3) years prior to the date the applicable reinstatement is disclosed. In addition, notwithstanding anything to the contrary, any bonus or incentive or equity-based compensation, or other compensation, payable to Executive pursuant to this Agreement or any other agreement, plan or arrangement of the Company shall be subject to repayment or recoupment (clawback) by the Company to the extent applicable under Section 304 of the Sarbanes-Oxley Act of 2002 (and not otherwise exempted) and in accordance with such policies and procedures as the Board or the Compensation Committee of the Board may adopt from time to time, including policies and procedures to implement applicable law (including, but not limited to, Section 954 of the Dodd-Frank Act), stock market or exchange rules and regulations or accounting or tax rules and regulations.

Section 20. *Survival.* Any provision of this Agreement that is expressly or by implication intended to survive the termination of this Agreement shall survive or remain in effect after the termination of this Agreement.

Section 21. *Counterparts.* This Agreement may be executed in two or more counterparts, anyone of which need not contain the signature of more than one party, but all such counterparts taken together shall constitute one and the same agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

LM FUNDING AMERICA, INC.

By: /s/ Bruce
Rodgers
Bruce Rodgers, Chief Executive Officer

EXECUTIVE

/s/ Ryan Duran
Ryan Duran

EXHIBIT A
FORM OF RELEASE

This RELEASE (“**Release**”) is granted effective as of the [] day of [], 20[] by [•••] (the “**Executive**”) in favor of [] (the “**Company**”) and the other Released Parties (as defined below). This is the Release referred to in the Employment Agreement, dated as of _____, 2021, between the Company and the Executive (the “**Employment Agreement**”). The Executive gives this Release in consideration of the Company’s promises and covenants contained in the Employment Agreement, with respect to which this Release is an integral part.

1. *Release of the Company.* The Executive, for himself, his successors, assigns, attorneys, and all those entitled to assert his rights, now and forever hereby releases and discharges the Company and its respective officers, directors, stockholders, trustees, Executives, agents, parent corporations, subsidiaries, affiliates, estates, successors, assigns and attorneys (the “**Released Parties**”), from any and all claims, actions, causes of action, sums of money due, suits, debts, liens, covenants, contracts, obligations, costs, expenses, damages, judgments, agreements, promises, demands, claims for attorney’s fees and costs, or liabilities whatsoever, in law or in equity, which the Executive ever had or now has against the Released Parties, arising by reason of or in any way connected with or which may be traced either directly or indirectly to the employment relationship which existed between the Company or any of its parents, subsidiaries, affiliates, or predecessors and the Executive, or the termination of that relationship, that the Executive has, had or purports to have, from the beginning of time to the date of this Release, whether known or unknown, that now exists, no matter how remotely they may be related to the aforesaid employment relationship including but not limited to claims for employment discrimination under federal or state law, except as provided in Paragraph 2; claims arising under Title VII of the Civil Rights Act, 42 U.S.C. § 2000(e), *et seq.* or the Americans With Disabilities Act, 42 U.S.C. § 12101, *et seq.*; claims for statutory or common law wrongful discharge, including any claims arising under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*; claims for attorney’s fees, expenses and costs; claims for defamation; claims for wages or vacation pay; claims for benefits, including any claims arising under the Executive Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.*; and provided, however, that nothing herein shall

release the Company of its obligations to the Executive under the Employment Agreement between the Company and the Executive or any other contractual obligations between the Company or its subsidiaries or affiliates and the Executive (including, without limitation, any equity award agreement or indemnification agreement), or any indemnification obligations to the Executive under the Company's certificate of incorporation, bylaws, operating agreement or other constituent document or any federal, state or local law or otherwise.

2. *Release of Claims Under Age Discrimination in Employment Act.* Without limiting the generality of the foregoing, the Executive agrees that by executing this Release, he has released and waived any and all claims he has or may have as of the date of this Release for age discrimination under the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq.* It is understood that the Executive has been advised to consult with an attorney prior to executing this Release; that he in fact has consulted a knowledgeable, competent attorney regarding this Release; that he may, before executing this Release, consider this Release for a period of 21 calendar days; and that the consideration he receives for this Release is in addition to amounts to which he was already entitled. It is further understood that this Release is not effective until seven calendar days after the execution of this Release and that the Executive may revoke this Release within seven calendar days from the date of execution hereof.

The Executive agrees that he has carefully read this Release and is signing it voluntarily. The Executive acknowledges that he has had 21 days from receipt of this Release to review it prior to signing or that, if the Executive is signing this Release prior to the expiration of such 21-day period, the Executive is waiving his right to review the Release for such full 21-day period prior to signing it. The Executive has the right to revoke this release within seven days following the date of its execution by him. However, if the Executive revokes this Release within such seven-day period, no severance benefit will be payable to him under the Employment Agreement and he shall return to the Company any such payment received prior to that date.

THE EXECUTIVE HAS CAREFULLY READ THIS RELEASE AND ACKNOWLEDGES THAT IT CONSTITUTES A GENERAL RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS AGAINST THE COMPANY UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT. THE EXECUTIVE ACKNOWLEDGES THAT HE HAS HAD A FULL

OPPORTUNITY TO CONSULT WITH AN ATTORNEY OR OTHER ADVISOR OF HIS CHOOSING CONCERNING HIS EXECUTION OF THIS RELEASE AND THAT HE IS SIGNING THIS RELEASE VOLUNTARILY AND WITH THE FULL INTENT OF RELEASING THE COMPANY FROM ALL SUCH CLAIMS.

Name _____ of _____ Executive:
[_____]
Date: [•], 20[•]

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