FORM 8-K

Current report filing

Filing Date: **2019-09-27** | Period of Report: **2019-09-27**
SEC Accession No. 0001397403-19-000037

FILER

IMH Financial Corp
CIK:**1397403**| IRS No.: **810624254** | State of Incorp.:**DE** | Fiscal Year End: **1231**
Type: **8-K** | Act: **34** | File No.: **000-52611** | Film No.: **191121775**
SIC: **6500** Real estate

Mailing Address
7001 NORTH SCOTTSDALE ROAD, SUITE 2050
SCOTTSDALE AZ 85253

Business Address
7001 NORTH SCOTTSDALE ROAD, SUITE 2050
SCOTTSDALE AZ 85253
480-840-8400

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): September 25, 2019

IMH Financial Corporation
(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of Incorporation)

000-52611	23-1537126
(Commission File Number)	(IRS Employer Identification No.)
7001 N. Scottsdale Rd., Suite # 2050 Scottsdale, Arizona	85253
(Address of Principal Executive Offices)	(Zip Code)

480-840-8400
(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 (see General Instruction A.2. below):

☐ 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))

Section 1 – Registrant's Business and Operations

Item 1.01 Entry into a Material Definitive Agreement.

Series B-4 Cumulative Convertible Preferred Stock Subscription Agreement:

On September 25, 2019, IMH Financial Corporation (the "Company") entered into a Series B-4 Cumulative Convertible Preferred Stock Subscription Agreement (the "Subscription Agreement") with JPMorgan Chase Funding Inc. ("JPM Funding"). Pursuant to the Subscription Agreement, JPM Funding agreed to purchase 1,875,000 shares (the "JPM Series B-4 Shares") of Series B-4 Cumulative Convertible Preferred Stock, $0.01 par value per share, of the Company (the "Series B-4 Preferred Stock"), at a purchase price of $3.20 per share, for a total purchase price of $6,000,000. The Series B-4 Preferred Stock, together with the Series B-1 Cumulative Convertible Preferred Stock, $0.01 par value per share, of the Company (the "Series B-1 Preferred Stock"), the Series B-2 Cumulative Convertible Preferred Stock, $0.01 par value per share, of the Company (the "Series B-2 Preferred Stock"), and the Series B-3 Cumulative Convertible Preferred Stock, $0.01 par value per share, of the Company (the "Series B-3 Preferred Stock", together with the Series B-1 Preferred Stock and the Series B-2 Preferred Stock, the "Existing Series B Preferred Stock") are collectively referred to in this Current Report as the "Series B Preferred Stock". The Subscription Agreement contains various representations, warranties and other obligations and terms that are commonly contained in a subscription agreement of this nature. The Company intends to use the proceeds from the sale of these shares for general corporate purposes.

The Subscription Agreement is attached as Exhibit 10.1 to this Current Report and the description of the Subscription Agreement in this Item 1.01 is qualified in its entirety by reference to such agreement.

Rights and Preferences of the Series B-4 Preferred Stock:

The description below provides a summary of certain material terms of the Series B-4 Preferred Stock issued pursuant to the Subscription Agreement. The ensuing description is qualified in its entirety by reference to the text of the Certificate of Designation of Series B-4 Cumulative Convertible Preferred Stock (the "Series B-4 Certificate of Designation") which is attached as Exhibit 3.1 to this Current Report. Capitalized terms not otherwise defined in this Current Report shall have the meaning ascribed to such terms in the Series B-4 Certificate of Designation. Certain of the rights and preferences of the Series B-4 Preferred Stock described in this Item 1.01 are set forth in the Series B-4 Certificate of Designation and in the Appendix thereto.

- *Dividends*. Dividends on the Series B-4 Preferred Stock are cumulative and accrue from the issue date and compound quarterly at the rate of 5.65% of the issue price per year, payable quarterly in arrears. The dividend rate is subject to increase in the event the Company is not in compliance with certain of its obligations to the holders of the Series B-4 Preferred Stock, as well as for other occurrences including, but not limited to, bankruptcy, default under indebtedness, judgments in excess of a certain amount, delinquent Securities and Exchange Commission (the "SEC") filings, and the commencement of certain legal proceedings. Subject to certain dividend rights of holders of Class B Common Stock, par value $0.01 per share, of the Company (the "Class B Common Stock"), no dividend may be paid on any capital stock of the Company during any fiscal year unless all accrued dividends on the Series B Preferred Stock, including the Series B-4 Preferred Stock, have been paid in full, except for dividends on shares of Voting Common Stock, par value $0.01 per share, of the Company (the "Voting Common Stock") payable in shares of Voting Common Stock; provided, however, that if the Company is in compliance with certain of its obligations to the holders

of the Series B Preferred Stock, and (A) is not in default on any of its indebtedness and (B) has had EDITDA of greater than $12 million in the aggregate over the four most recently completed fiscal calendar quarters, the Company is permitted to pay quarterly dividends on the Voting Common Stock of up to $375,000 in the aggregate. In the event that any dividends are declared with respect to the Voting Common Stock or any Junior Stock, the holders of the Series B Preferred Stock are entitled to receive Additional Dividends as set forth in the Series B-4 Certificate of Designation.

- *Liquidation Preference*. Upon a Liquidation Event or a Deemed Liquidation Event of the Company, before any payment or distribution shall be made to or set apart for the holders of any Junior Stock, the holders of shares of the Series B-4 Preferred Stock will be entitled to receive a liquidation preference of 145% of the sum of the Original Price per share of the Series B-4 Preferred Stock plus all accrued and unpaid dividends; provided, that, if a share of the Series B-4 Preferred Stock would be entitled to an amount greater than its liquidation preference if it had been converted into a share of Common Stock immediately prior to the Liquidation Event or Deemed Liquidation Event, that share of the Series B-4 Preferred Stock shall be entitled to the amount it would have received on an as-converted basis.

- *Optional Conversion*. Each share of the Series B-4 Preferred Stock is convertible at any time by any holder thereof into a number of shares of Common Stock initially equal to the sum of the Original Price per share of the Series B-4 Preferred Stock plus all accrued and unpaid dividends, divided by the conversion price then in effect. The initial conversion price is equal to the Original Price per share of the Series B-4 Preferred Stock, subject to adjustment in the event of certain dilutive issuances, stock splits, combinations, mergers or reorganizations.

- *Automatic Conversion.* All issued and outstanding shares of the Series B-4 Preferred Stock will automatically convert into shares of Common Stock at the Conversion Price then in effect upon the closing of a sale of shares of Common Stock at a price equal to or greater than 2.25 times the Original Price per share of the Series B-1 Preferred Stock and the Series B-2 Preferred Stock, subject to adjustment, in a firm commitment underwritten public offering and the listing of the Common Stock on a national securities exchange resulting in at least $75,000,000 of gross proceeds to the Company.

- *Optional Redemption*. The Company may, at any time that a holder of the Series B-4 Preferred Stock holds less than fifteen percent of the number of shares of the Series B-4 Preferred Stock issued to such holder on the original issuance date, elect to redeem, out of legally available funds, the shares of the Series B-4 Preferred Stock held by such holder at a price (the "Redemption Price") equal to the greater of (i) 145% of the sum of the Original Price per share of the Series B-4 Preferred Stock plus all accrued and unpaid dividends or (ii) the sum of the Tangible Book Value of the Company per share of Voting Common Stock plus all accrued and unpaid dividends, calculated pursuant to the terms of the Series B-4 Certificate of Designation as of the date of redemption.

- *Redemption upon Demand*. At any time after September 25, 2024, each holder of the Series B-4 Preferred Stock may require the Company to redeem, out of legally available funds, the shares of the Series B-4 Preferred Stock held by such holder at the Required Redemption Price.

- *Redemption upon Specified Default Events*. In the event of certain default events, breaches (including of operating covenants), a bankruptcy or the occurrence of certain other adverse events, including default on debt or non-appealable judgments against the Company in excess of certain amounts, failure to comply timely with the Company's reporting obligations under the Exchange Act, or proceedings or investigations against the Company relating to any alleged noncompliance with

certain laws or regulations, the holders of at least fifty-one percent (51%) of the shares of the Series B-4 Preferred Stock (the "Required Series B-4 Holders") may require the Company to redeem, out of legally available funds, all shares of the Series B-4Preferred Stock at the Noncompliance Redemption Price.

- *Voting Rights.* Holders of the Series B-4 Preferred Stock are entitled to vote on an as-converted basis on all matters on which holders of Voting Common Stock are entitled to vote. At each election of directors, (A) upon JPM Funding transferring shares of the JPM Series B-4 Shares acquired by it on September 25, 2019 (the "Initial Issuance Date") to a transferee (other than any Affiliates of JPM Funding or any Affiliate of JPMorgan Chase & Co. and other than in a Pre-Authorized Transfer) approved as required under the Series B-4 Certificate of Designation (the "Series B-4 Holder"), and for so long as the Series B-4 Holder owns greater than fifty percent (50%) of the number of shares of the JPM Series B-4 Shares issued on the Initial Issuance Date, or (B) for so long as JPM Funding owns at least fifty percent (50%) of the number of shares of the Series B-4 Preferred Stock acquired by it on the Initial Issuance Date and less than fifty percent (50%) of the number of shares of the Series B-3 Preferred Stock acquired by it on February 9, 2018 and less than fifty percent (50%) of the number of shares of the Series B-2 Preferred Stock acquired by it on April 11, 2017 (in the case of each of clauses (A) and (B) above, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar reorganization event affecting such shares), the holders of the Series B-4 Preferred Stock, voting as a single class, shall be entitled to elect one director (the "Series B-4 Director"). For the avoidance of doubt, JPM Funding shall not have the right to designate, vote, or fill a vacancy in respect of the Series B-4 Director if it is then entitled to designate, vote, or fill a vacancy in respect of the Series B-2 Director or the Series B-3 Director.

- At each election of directors, for so long as (A) upon JPM Funding transferring shares of the Series B-4 Preferred Stock to the Series B-4 Holder, and for so long as the Series B-4 Holder owns greater than fifty percent (50%) of the number of shares of the Series B-4 Preferred Stock issued on the Initial Issuance Date or (B) JPM Funding owns (i) at least fifty percent (50%) of the number of shares of the Series B-4 Preferred Stock acquired by it on the Initial Issuance Date, (ii) less than fifty percent (50%) of the number of shares of the Series B-2 Preferred Stock acquired by it on April 11, 2017 and (iii) less than fifty percent (50%) of the number of shares of the Series B-3 Preferred Stock acquired by it on February 9, 2018 (in the case of each of clauses (A) and (B) above, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar reorganization event affecting such shares), the holders of the Series B-4 Preferred Stock, voting as a single class, shall be entitled to designate, vote or fill a vacancy with respect to, by majority vote of the holders of each such series of the Series B Preferred Stock entitled to vote thereon, the Series B Director. The Series B Director, in order to be qualified as such, shall have been designated as a nominee for the position of the Series B Director in a writing furnished to the Corporation by the holders of the Series B Preferred Stock entitled to designate such Series B Director.

- *Investment Committee.* In the event JPM Funding has the right to designate, vote, or fill a vacancy in respect of the Series B-4 Director, the Investment Committee shall include the Series B-4 Director (provided such Series B-4 Director was designated as such by JPM Funding or any other Affiliate of JPMorgan Chase & Co.).

- *Transfer Restrictions*. Holders may not transfer or pledge their shares of the Series B-4 Preferred Stock without the consent of the Board, subject to applicable laws and the Company's Certificate of Incorporation.

- *Preemptive Rights*. Any holder of the Series B-4 Preferred Stock that owns 10% or more of the outstanding shares of the Series B-4 Preferred Stock is also entitled to participate, on a pro rata basis in proportion to their as-converted Common Stock ownership, in any future equity issuances undertaken by the Company for the primary purpose of raising additional capital, subject to certain exceptions.

- *Required Liquidation*. Under the Series B-4 Certificate of Designation, if at any time the Company is not in compliance with certain of its obligations to the holders of the Series B Preferred Stock and fails to pay in full (i) the dividends on the Series B Preferred Stock as of the end of two consecutive fiscal quarters or (ii) the Redemption Price within 180 days following the later of (x) demand therefore resulting from such non-compliance and (y) September 25, 2020, unless the Required Holders and the Required Series B-4 Holders elect otherwise, the Company is required to use its best efforts to commence a liquidation of the Company.

- *Restrictive Covenants*. The Series B-4 Certificate of Designation also contains certain restrictive covenants, which require the consent of the Required Series B-4 Holders as a condition to the Company taking certain actions, including without limitation the following:

    - make, incur or permit to exist any operating expense or capital expenditure in excess of 105% of the amount budgeted therefor in the applicable approved annual budget with respect to any particular budget line item, or 103% of the aggregate amount of such budgeted expenses or capital expenditures, and use reasonable best efforts to avoid making, incurring or permitting to exist any operating expense or capital expenditure in excess of $250,000 not set forth in the Company's approved annual budget;

    - enter into any agreement or arrangement that will likely involve payments by the Company or any of the Company's subsidiaries in excess of $250,000 over the term thereof other than agreements or arrangements authorized in the Company's approved annual budget;

    - sell, encumber or otherwise transfer certain assets, including individual loans and real estate owned assets and interests in any of the Company's wholly owned subsidiaries, unless approved in the Company's annual budget subject to certain other exceptions;

    - enter into, or be a party to, any affiliate transaction;

    - unless approved by the Investment Committee, make any advances or loans to, guarantee for the benefit of, or make any investment in, any other person, other than the Company's wholly-owned subsidiaries;

    - dissolve, liquidate or consolidate the Company's business;

    - enter into any agreement or plan of merger or consolidation, or engage in any merger or consolidation, unless, upon consummation, the Series B Preferred Stock (x) remains outstanding and unchanged, or (y) shall be converted into equity interests of the surviving entity that have the same relative designations, rights, powers, preferences and privileges provided for in the Series B-4 Certificate of Designation;

- engage in any business activity not related to the ownership and operation of mortgage loans or real property or strictly incidental thereto;

- enter into any new line of business other than the ownership and operation of real property, mortgage loans and activities strictly incidental thereto;

- commence or permit any subsidiary to commence any bankruptcy or similar proceeding;

- make any capital contribution to or purchase, redeem, acquire or retire any securities in any other person, or cause or permit any reduction or retirement of the capital stock, partnership interests, membership interests of the Company and its subsidiaries;

- hire or terminate certain key personnel or consultants, subject to certain exceptions;

- incur additional indebtedness, subject to certain exceptions;

- permit the issuance by any subsidiary of any equity securities, subject to certain exceptions;

- create or authorize the creation of, or issue, or authorize the issuance of senior preferred stock or parity stock, or any indebtedness or any security convertible into, exchangeable for or having option rights to purchase shares of senior preferred stock or parity stock;

- reclassify any class or series of Voting Common Stock into shares with a preference or priority as to dividends or assets superior to or on a parity with the Series B Preferred Stock;

- engage any auditor that is not a nationally recognized accounting firm; or

- amend, alter, waive or repeal any provision of the Certificate of Incorporation or bylaws in a manner that may adversely affect the holders of the Series B Preferred Stock.

The foregoing description is qualified in its entirety by reference to the text of the Series B-4 Certificate of Designation, which is filed as Exhibit 3.1 to this Current Report.

Third Amended and Restated Investment Agreement

On September 25, 2019, concurrent with the execution of the Subscription Agreement, the Company, JCP Realty Partners, LLC, a Delaware limited liability company ("JCP Realty"), Juniper NVM, LLC, a Delaware limited liability company **("**Juniper NVM," and collectively with JCP Realty, "Juniper"), and JPM Funding entered into a Third Amended and Restated Investment Agreement (the "Investment Agreement") pursuant to which the Company made certain representations and agreed to abide by certain covenants, including, but not limited to, (i) a covenant that the Company take all commercially reasonable actions as are reasonably necessary for the Company to be eligible to rely on the exemption provided by Section 3(c)(5)(C) of the Investment Company Act of 1940, as amended (the "Investment Company Act"), commonly referred to as the "Real Estate Exemption" and to use its best efforts to remain eligible to rely on that exemption at all times thereafter; and (ii) a covenant that the Company, within five (5) days of filing a quarterly or annual report with the SEC, deliver to Juniper and JPM Funding a written statement setting forth in reasonable detail the information and calculations reasonably necessary for Juniper and JPM Funding to determine whether the Company is then in compliance with the Real Estate Exemption or in the event the

Company is not then in compliance, cause to be delivered to Juniper and JPM Funding a written opinion of the Company's outside legal counsel that the Company is not an investment company as defined in Section 3(a)(1) of the Investment Company Act without relying on an exclusion from the definition of "investment company" in Section 3(b) or Section 3(c) of the Investment Company Act or an exclusion in any rule promulgated under the Investment Company Act. The Investment Agreement further provides that the Company may not take any action, the result of which would reasonably be expected to cause the Company to become ineligible for the Real Estate Exemption without the prior written consent of Juniper and JPM Funding. The Company further agreed to refrain from taking certain actions prohibited by Section 13 of the Bank Holding Company Act of 1956, as amended (the "BHCA"), and the rules and regulations adopted thereunder, until such time as JPM Funding determines, in its sole discretion, that JPM Funding could not be deemed to be an affiliate of the Company for purposes of the BHCA. In the event JPM Funding determines, in its sole discretion, that the Company violates any of the above covenants, and that violation is not cured within the period of time specified in the Investment Agreement, Juniper and JPM Funding have the right to demand that the Company purchase all of their shares of the Series B Preferred Stock at the Required Redemption Price as set forth in the Series B-4 Certificate of Designation.

The Investment Agreement also provides that, for so long as Juniper owns at least 781,456 shares of the Series B-1 Preferred Stock (subject to adjustment as provided in the Investment Agreement), (i) approval by the Required Holders under the Second Amended and Restated Certificate of Designation of Series B-1 Cumulative Convertible Preferred Stock, Series B-2 Cumulative Convertible Preferred Stock and Series B-3 Cumulative Convertible Preferred Stock of the Company (the "Restated Certificate of Designation") and under the Series B-4 Certificate of Designation will be deemed to have been obtained only if at least ninety-three percent (93%) of the outstanding shares of the Existing Series B Preferred Stock approve the matter at issue and (ii) on any matter requiring approval or consent of the Required Holders pursuant to the Restated Certificate of Designation and the Series B-4 Certificate of Designation, JPM Funding (or any transferee) will vote its shares of the Series B-4 Preferred Stock for or against such approval or consent to achieve the same result as the vote of the holders of the Existing Series B Preferred Stock.

The foregoing description is qualified in its entirety by reference to the text of the Investment Agreement, which is filed as Exhibit 10.2 to this Current Report.

Second Amended and Restated Investors' Rights Agreement:

On September 25, 2019, concurrent with the execution of the Subscription Agreement, the Company, Juniper, and JPM Funding entered into a Second Amended and Restated Investors' Rights Agreement (the "Rights Agreement"). Pursuant to the Rights Agreement, Juniper and JPM Funding have certain demand and other registration rights to cause the shares of Company common stock issuable upon conversion of the shares of the Series B Preferred Stock to be registered under the Securities Act of 1933, as amended, (the "1933 Act"). These registration rights may not be exercised unless and until any of the Company's equity securities are listed on a national securities exchange.

Pursuant to the Rights Agreement, a person holding at least 30% of any single series of the Series B Preferred Stock, or if none, the holders of 50% of the registrable securities (each, a "Major Investor"), have the right to demand the Company register that person(s)' registrable securities on a Form S-11 or other similar long-form registration statement, provided that such demand rights are subject to certain limitations and conditions, including that the holder must expect that the registration of the shares will result in aggregate gross cash proceeds in excess of $10,000,000. Additionally, if all of the issued and outstanding shares of the Series B Preferred Stock are converted into Common Stock or a Major Investor has notified the Company

of its intent to convert its shares of the Series B Preferred Stock into Common Stock, the Company will be obligated to file a registration statement with the SEC in accordance with Rule 415 promulgated under the 1933 Act. In addition to the foregoing registration rights, Major Investors have certain rights to cause their registerable shares to be a part of an underwritten offering, either through their demand rights or the shelf registration rights outlined above. The Rights Agreement imposes various conditions on the Major Investors' rights thereunder, including, but not limited to, that the Company shall not be obligated to effect more than three (3) demand registrations, file a registration statement within 120 days after the effective date of a previous registration statement filed pursuant to the Rights Agreement, or effect an underwritten offering on behalf of the Major Investors within certain time frames.

The Rights Agreement also grants the stockholders that are a party thereto, piggyback rights whereby if the Company intends to register any of its securities (subject to certain exceptions, such as the filing of a Form S-8), the stockholders have the right to have all or a portion of their shares registered under that registration statement. The Rights Agreement sets forth various other obligations and rights on the respective parties, including providing the Major Investors certain information rights, and certain rights and obligations with respect to the preparation of registration statements, the Company's obligation to keep any such registration statements effective for a certain period of time, and potential limitations on the number of shares of a Major Investor's stock that may be included in any such registration statement.

The Rights Agreement is attached as Exhibit 4.1 to this Current Report and this description of the Rights Agreement is qualified in its entirety by reference to such agreement.

Section 3 – Securities and Trading Markets

Item 3.02 Unregistered Sales of Equity Securities.

On September 25, 2019, the Company sold 1,875,000 shares of the Series B-4 Preferred Stock, $0.01 par value per share, pursuant to the terms of the Subscription Agreement. The sale of the JPM Series B-4 Shares was effected pursuant to Section 4(a)(2) of the 1933 Act and Rule 506(b) promulgated thereunder as the Company (i) relied on JPM Funding's representations that it is an "accredited investor" as that term is defined in Rule 501 promulgated under the 1933 Act; (ii) did not engage in any public advertising or general solicitation in connection with the offer and sale of such shares; (iii) reasonably believed that JPM Funding had access to all information about the Company it deemed necessary and understood the risks of acquiring the JPM Series B-4 Shares for investment purposes; and (iv) believed that JPM Funding acquired such shares for its own account. No commissions or other remuneration was paid in connection with this sale.

Section 5 – Corporate Governance and Management

Item 5.01 Changes in Control of Registrant.

Pursuant to the Investment Agreement, for so long as Juniper owns at least 781,456 shares of the Series B-1 Preferred Stock (subject to adjustment as provided in the Investment Agreement), the Company is required to obtain the approval of the holders of at least 93% of the outstanding shares of the Existing Series B Preferred Stock prior to taking certain actions. After taking into account its acquisition of the Series B-4 Preferred Stock as described in this Current Report, JPM Funding owns approximately 33.5% of the Company's issued and outstanding equity securities and as a result has significant voting power with respect to any matters submitted to our stockholders for approval.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

Series B Preferred Stock Series B-4 Certificate of Designation:

In connection with the issuance of the Series B-4 Preferred Stock as described in this Current Report, we filed the Series B-4 Certificate of Designation with the Secretary of State of the State of Delaware. The summary of the rights, privileges and preferences of the Series B-4 Preferred Stock set forth above in Item1.01 of the Current Report are qualified in their entirety by reference to the Series B-4 Certificate of Designation, which is attached hereto as Exhibit 3.1 and is incorporated herein by reference.

Section 9 - Financial Statements and Exhibits

Item 9.01 Financial Statements and Exhibits.

Exhibits	Exhibit Description
3.1	Certificate of Designation of Series B-4 Cumulative Convertible Preferred Stock, dated September 25, 2019.
4.1	Second Amended and Restated Investors' Rights Agreement by and among IMH Financial Corporation, JCP Realty Partners, LLC, Juniper NVM, LLC and JPMorgan Chase Funding Inc., dated September 25, 2019.
10.1	Series B-4 Cumulative Convertible Preferred Stock Subscription Agreement by and between IMH Financial Corporation and JPMorgan Chase Funding Inc., dated September 25, 2019.
10.2	Third Amended and Restated Investment Agreement by and among IMH Financial Corporation, Juniper NVM, LLC, JCP Realty Partners, LLC and JPMorgan Chase Funding Inc., dated September 25, 2019.

SIGNATURES

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

Dated: September 27, 2019

IMH FINANCIAL CORPORATION

By: /s/ *Lawrence D. Bain*

Lawrence D. Bain
Co-Chairman and Interim Chief Executive Officer

Exhibit 3.1

CERTIFICATE OF DESIGNATION
of
SERIES B-4 CUMULATIVE CONVERTIBLE PREFERRED STOCK
of
IMH FINANCIAL CORPORATION

(Pursuant to Section 151 of the General Corporation Law of the State of Delaware)

The undersigned, being the Interim Chief Executive Officer of IMH FINANCIAL CORPORATION (the "Corporation"), a corporation organized and existing under the laws of the State of Delaware, in accordance with the provisions of Sections 103 and 151 of the General Corporation Law of the State of Delaware ("DGCL"), DOES HEREBY CERTIFY:

FIRST: The Certificate of Incorporation of the Corporation (as such may be amended, modified or restated from time to time, the "Certificate of Incorporation") authorizes the issuance of 100,000,000 shares of Preferred Stock, par value $0.01 per share (the "Preferred Stock"), and, further, authorizes the Board of Directors of the Corporation (the "Board"), by resolution or resolutions, at any time and from time to time, to provide for the issuance of all or any shares of the Preferred Stock in one or more series, each with such designations, powers, preferences, relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof;

SECOND: The Corporation currently has outstanding 2,604,852 shares of Series B-1 Cumulative Convertible Preferred Stock (the "Series B-1 Preferred Stock"), 5,595,148 shares of Series B-2 Cumulative Convertible Preferred Stock (the "Series B-2 Preferred Stock") and 2,352,941 shares of Series B-3 Cumulative Convertible Preferred Stock (the "Series B-3 Preferred Stock" and, collectively with the Series B-1 Preferred Stock and the Series B-2 Preferred Stock, the "Existing Preferred Stock").

THIRD: On September 25, 2019, the Board duly adopted the following resolutions authorizing the issuance of 1,875,000 shares of Series B-4 Cumulative Convertible Preferred Stock (the "Series B-4 Preferred Stock", and collectively with the Existing Preferred Stock, the "Series B Preferred Stock") and the filing of this Certificate of Designation of the Series B-4 Cumulative Convertible Preferred Stock (as the same may be further amended and/or restated from time to time, the "Certificate of Designation").

RESOLVED, that the Corporation is authorized to issue shares of Series B-4 Cumulative Convertible Preferred Stock, $0.01 per share, which shall have the following rights, powers and preferences:

1. NUMBER OF SHARES AND DESIGNATIONS. 1,875,000 of the 100,000,000 authorized shares of Preferred Stock are designated as shares of Series B-4 Preferred Stock. Except as otherwise expressly provided herein or required by applicable law, the rights, powers and

preferences, and the qualifications, limitations and restrictions thereof, of the Series B-4 Preferred Stock shall be identical to the rights, powers and preferences, and the qualifications, limitations and restrictions thereof, of the Existing Preferred Stock.

2. RANKING. Subject to the right of the holders of the Class B Common Stock to receive the Special Dividend and except to the extent that the Required Holders (as defined below) and the Required Series B-4 Holders (as defined below) consent to the creation of Parity Stock (as defined below) or Senior Preferred Stock (as defined below) in accordance with Section 1.1.16 of SCHEDULE 1 hereof and this Section 2, all shares of capital stock of the Corporation shall be junior in rank to all shares of Series B-4 Preferred Stock with respect to the preferences as to dividends, distributions and payments upon a Liquidation Event, Deemed Liquidation Event or redemption (such junior stock is referred to herein collectively as "Junior Stock"). Subject to the right of the holders of the Class B Common Stock to receive the Special Dividend, the designations, rights, powers, preferences and privileges of all shares of Junior Stock of the Corporation shall be subject to the designations, rights, powers, preferences and privileges of the shares of Series B-4 Preferred Stock. Without limiting any other provision of this Certificate of Designation, without the prior written consent of the Required Holders and the Required Series B-4 Holders, the Corporation shall not hereafter authorize or issue any additional or other shares of capital stock that rank (i) senior to the shares of Series B-4 Preferred Stock in respect of the preferences as to dividends, distributions or payments upon a Liquidation Event, Deemed Liquidation Event or redemption (collectively, the "Senior Preferred Stock") or (ii) *pari passu* to the shares of Series B-4 Preferred Stock in respect of the preferences as to dividends, distributions or payments upon a Liquidation Event, Deemed Liquidation Event or redemption (collectively, the "Parity Stock"). Notwithstanding the foregoing, shares of Series B-1 Preferred Stock, shares of Series B-2 Preferred Stock, and shares of Series B-3 Preferred Stock shall be considered, individually and collectively, as "Parity Stock".

3. DIVIDENDS.

(a) Each holder of a share of Series B-4 Preferred Stock (each, a "Holder" and collectively, the "Holders") shall be entitled to receive dividends out of funds legally available therefor ("Dividends") in an amount per share equal to the Applicable Rate. Dividends on each share of Series B-4 Preferred Stock shall (i) be payable in cash, quarterly in arrears when, as and if declared by the Board, (ii) accrue daily at the Applicable Rate, (iii) commence accruing on the Series B-4 Issue Date, compounded quarterly and (iv) be computed on the basis of the actual number of days elapsed over a three hundred sixty (360) day calendar year.

(b) Dividends on the Series B-4 Preferred Stock shall be cumulative and shall continue to accrue and compound whether or not declared.

(c) Subject to the right of the holders of the Class B Common Stock to receive the Special Dividend and to the rights of any Senior Preferred Stock or Parity Stock, the Corporation shall not declare, pay or set aside any dividends on any shares of any class or series of capital stock of the Corporation (other than dividends or shares of Voting Common Stock payable in shares of Voting Common Stock) unless and until all accrued dividends on the Series B-4 Preferred Stock have been paid in full in accordance with Section 3(a) above. Thereafter, with respect to any fiscal quarter, the Corporation may declare and pay a cash dividend, out of funds legally available therefor, with respect to the Voting Common Stock subject to the conditions and limitations set forth in Section 1.1.12 of SCHEDULE 1. The Corporation shall not declare or make any dividend or distribution upon or effect any subdivision or combination (in each case, through a stock split, reverse stock split, stock dividend, merger, recapitalization or otherwise) of one or more series of Series B Preferred Stock unless the Corporation simultaneously declares or makes an identical dividend or distribution upon or effects an identical subdivision or combination of the Series B-4 Preferred Stock.

(d) In the event that any dividends are declared with respect to the Voting Common Stock or any Junior Stock, the holders of the Series B-4 Preferred Stock as of the record date established by the Board for such dividends shall be entitled to receive as additional dividends (in each case, the "Additional Dividends") an amount (whether in the form of cash, securities or other property) equal to the amount (and in the same form) of the dividends that such holder would have received had the Series B-4 Preferred Stock been converted into Common Stock as of the date immediately prior to the record date of such dividend, such Additional Dividends to be payable, out of funds legally available therefor, on the payment date of the dividend established by the Board. The record date for any such Additional Dividends shall be the record date for the applicable dividend, and any such Additional Dividends shall be payable to the persons in whose name the Series B-4 Preferred Stock is registered at the close of business on the applicable record date.

(e) In the event that any Special Dividend is paid, the holders of the Series B-4 Preferred Stock as of the record date established by the Board therefor shall be entitled to receive as additional dividends (the "Special Preferred Class B-4 Dividends") for each share of Common Stock that it would hold if it had converted all of its shares of Series B-4 Preferred Stock into Common Stock the same amount that is received by holders of Class B Common Stock with respect to each share of Class B Common Stock (in each case, with respect to the Common Stock and Class B Common Stock, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar reorganization event affecting such shares), such Special Preferred Class B-4 Dividends to be payable, out of funds legally available therefor, on the payment date for the Special Dividend (the "Special Preferred Class

B-4 Payment Date"). The record date for any Special Preferred Class B-4 Dividends shall be the record date for the Special Dividend, and any such Special Preferred Class B-4 Dividends shall be payable to the persons in whose name the Series B-4 Preferred Stock is registered at the close of business on the applicable record date.

4. LIQUIDATION, DISSOLUTION OR WINDING UP.

(a) Preferential Payments to Holders. In the event of a Liquidation Event or a Deemed Liquidation Event, the Holders shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, after and subject to the payment in full of all amounts required to be distributed to the holders of any Senior Preferred Stock upon such Liquidation Event or Deemed Liquidation Event, but before any payment shall be made to the holders of any Junior Stock, an amount per share (the "Series B-4 Liquidation Preference") equal to the Applicable Percentage times the sum of (i) the Original Price, plus (ii) any Dividends accrued and unpaid thereon, whether or not declared; *provided*, that, if a share of Series B-4 Preferred Stock would be entitled to an amount greater than its Series B-4 Liquidation Preference if it had been converted into a share of Common Stock immediately prior to the Liquidation Event or Deemed Liquidation Event, the share of Series B-4 Preferred Stock shall be entitled to the amount it would have received on an as-converted basis, without having to be converted into Common Stock. If upon any such Liquidation Event or a Deemed Liquidation Event, the remaining assets of the Corporation available for distribution to its stockholders after payment in full of amounts required to be paid or distributed to holders of Senior Preferred Stock pursuant to this Certificate of Designation shall be insufficient to pay the Holders and the holders of Parity Stock the full amount to which they shall be respectively entitled, the Holders and the holders of Parity Stock shall share ratably in any distribution of the remaining assets of the Corporation in proportion to the respective amounts which would otherwise be payable with respect to the shares of Series B-4 Preferred Stock and Parity Stock held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full. To the extent necessary, the Corporation shall cause such actions to be taken by any of the Subsidiaries so as to enable, to the maximum extent permitted by law, the net proceeds of a Liquidation Event or Deemed Liquidation Event to be distributed to the Holders and the holders of Parity Stock in accordance with this Section 4(a). All of the preferential amounts to be paid to the Holders under this Section 4(a) shall be paid or set apart for payment before the payment or setting apart for payment of any amount for, or the distribution of any of the assets of the Corporation available for distribution to, the holders of Junior Stock in connection with a Liquidation Event or a Deemed Liquidation Event as to which this Section 4 applies. The aggregate amount which a Holder is entitled to receive under this Section 4(a) with respect to a share of Series B-4 Preferred Stock is hereinafter referred to as the "Series B-4 Liquidation Amount."

(b) Distribution of Remaining Assets. Upon a Liquidation Event or Deemed Liquidation Event, after the payment in full of the Series B-4 Liquidation Preference required to be paid to the Holders as set forth in Section 4(a) above, the Holders will not be entitled to any further participation in any distribution of the remaining assets of the Corporation as Holders of shares of Series B-4 Preferred Stock.

(c) Additional Rights. In the event the requirements of this Section 4 are not complied with by the Corporation, the Corporation shall, to the fullest extent permitted by law, forthwith either (i) cause such Liquidation Event or Deemed Liquidation Event to be postponed until such time as the requirements of this Section 4 have been complied with; or (ii) cancel such Liquidation Event or Deemed Liquidation Event, in which event the designations, rights, powers, preferences and privileges of the Holders shall revert to and be the same as such designations, rights, powers, preferences and privileges existing in this Certificate of Designation immediately prior to the Liquidation Event or Deemed Liquidation Event.

(d) Deemed Liquidation Events. The effectuation of a transaction (or series of transactions), including, without limitation, each of the following events shall be considered a "Deemed Liquidation Event", unless the Required Holders and the Required Series B-4 Holders elect otherwise by written notice to the Corporation at least two (2) Business Days prior to the effective date of such event:

(i) a merger or consolidation in which

(1) the Corporation is a constituent party, or

(2) a Subsidiary is a constituent party and the Corporation or such Subsidiary issues shares of its capital stock pursuant to such merger or consolidation, except any such merger or consolidation involving the Corporation or a Subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, directly or indirectly, of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation;

(ii) the sale, lease, transfer or other disposition, in a single transaction or series of related transactions, by the Corporation or any Subsidiaries of all or substantially all the assets of the Corporation and the Subsidiaries, taken as a whole, or the sale or disposition (whether by merger or otherwise) of one or more Subsidiaries if

substantially all of the assets of the Corporation and the Subsidiaries, taken as a whole, are held by such Subsidiary or Subsidiaries, except where such sale, lease, transfer or other disposition is to a wholly owned Subsidiary; or

(iii) more than fifty percent (50%) of the Common Stock is disposed of, in a single transaction or series of related transactions, to a single Person or group of affiliated Persons (other than by means of a conversion of shares of Series B Preferred Stock).

(e) Noncompliance Event. If at any time following a Noncompliance Event, the Corporation fails to pay in full (i) the Dividends on the Series B Preferred Stock as of the end of two (2) consecutive fiscal quarters or (ii) the Noncompliance Redemption Price for all shares of Series B Preferred Stock within one hundred eighty (180) days following the later of (x) the Noncompliance Redemption Demand and (y) September 25, 2020, then the Corporation shall, unless the Required Holders and the Required Series B-4 Holders elect otherwise by written notice to the Corporation, use its best efforts to promptly commence an orderly wind down, liquidation and dissolution in a commercially reasonable manner, and during such wind down, liquidation and dissolution, the Corporation shall be prohibited from making any new Investments, incurring any Indebtedness or making any dividends or other distributions to its stockholders, other than the Special Dividend and dividends and redemption payments payable to (A) the holders of any Senior Preferred Stock ranking senior to the Series B Preferred Stock with respect to such dividend or redemption payments and (B) the holders of any Series B Preferred Stock with respect to shares of Series B Preferred Stock.

5. VOTING RIGHTS.

(a) General. Except as otherwise provided herein or as required by applicable law, the Holders shall vote together with the holders of Voting Common Stock and any other securities properly issued by the Corporation that are entitled to vote together with the Voting Common Stock with respect to the matter to be voted upon as a single class on all matters submitted to a vote of the holders of Voting Common Stock, with each share of Series B-4 Preferred Stock entitled to such number of votes as are equal to the number of whole shares of Common Stock into which such share of Series B-4 Preferred Stock would then be convertible pursuant to Section 6(a) below, regardless of whether the shares of Series B-4 Preferred Stock are then so converted.

(b) Series B-4 Preferred Stock Protective Provisions. Except with the prior vote or written consent of the Required Series B-4 Holders, the Corporation shall not, directly or indirectly, whether by merger, consolidation or otherwise:

(i) amend, alter, waive or repeal any provision of the Certificate of Incorporation or Bylaws of the Corporation to alter or change the designations, rights, powers, preferences or privileges of the Holders in a manner adverse to the Holders; or

(ii) enter into any agreement or plan of merger or consolidation with any other entity, or engage in any merger or consolidation with any other entity, unless, upon the consummation of such consolidation or merger, the shares of Series B-4 Preferred Stock shall (x) remain outstanding and unchanged, or (y) shall be converted into equity interests of the surviving entity that have the same relative designations, rights, powers, preferences and privileges provided for herein.

(c) Preferred Directors.

(i) At each election of directors, (A) upon JPM transferring shares of Series B-4 Preferred Stock to a transferee (other than any of its Affiliates or any other Affiliate of JPMorgan Chase & Co. and other than in a Pre-Authorized Transfer) approved as required under the terms of this Certificate of Designation (the "Series B-4 Holder"), and for so long as the Series B-4 Holder owns greater than fifty percent (50%) of the number of shares of Series B-4 Preferred Stock issued on the JPM Acquisition Date, or (B) for so long as JPM owns (i) at least fifty percent (50%) of the number of shares of Series B-4 Preferred Stock acquired by it on the JPM Acquisition Date, (ii) less than fifty percent (50%) of the number of shares of Series B-3 Preferred Stock acquired by it on the JPM Acquisition Date, and (iii) less than fifty percent (50%) of the number of shares of Series B-2 Preferred Stock acquired by it on the JPM Acquisition Date (in the case of each of clauses (A) and (B), subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar reorganization event affecting such shares), the holders of the Series B-4 Preferred Stock, voting as a single class, shall be entitled to elect one director (the "Series B-4 Director"). For the avoidance of doubt, JPM shall not have the right to designate, vote, or fill a vacancy in respect of the Series B-4 Director if it is then entitled to designate, vote, or fill a vacancy in respect of the Series B-2 Director or the Series B-3 Director. The Series B-4 Director, in order to be qualified as such, shall have been designated as a nominee for the position of Series B-4 Director in a writing furnished by the Series B-4 Holder or JPM, as applicable, to the Corporation. Any vacancy in respect of the Series B-4 Director shall be filled solely by the Series B-4 Holder or JPM, as applicable.

(ii) At each election of directors, in the event JPM has the right to designate, vote, or fill a vacancy in respect of the Series B-4 Director, the holders of the Series B-4 Preferred Stock (in addition to any of the other series of Series B Preferred Stock entitled to designate, vote, or fill a vacancy in respect of such Series B Director, pursuant to the Existing Preferred Stock Certificate of Designation) shall be entitled to designate, vote, or fill a vacancy with respect to, by majority vote of the holders of each such series of Series B Preferred Stock entitled to vote thereon, the Series B Director. The Series B Director, in order to be qualified as such, shall have been

designated as a nominee for the position of Series B Director in a writing furnished to the Corporation by the holders of Series B Preferred Stock entitled to designate such Series B Director.

(iii) Prior to each meeting of stockholders, the Corporation shall use its best efforts to cause the nomination of (A) subject to the terms and conditions in Section 5(c)(i) of this Certificate of Designation, a person designated in writing by JPM or the Series B-4 Holder, as applicable, as the Series B-4 Director and (B) subject to the terms and conditions in Section 5(c)(ii) of this Certificate of Designation and Section 5(c)(iv) of the Existing Preferred Stock Certificate of Designation, a person designated in writing by the holders of Series B Preferred Stock entitled to vote thereon, as the Series B Director.

(d) CEO Director. Subject to the provisions of this Section 5(d), one director, to be qualified as such, must be the Chief Executive Officer of the Corporation. If a vacancy shall occur in the office of the Board held by the Chief Executive Officer, the Required Holders and the Required Series B-4 Holders may appoint a person to fill such vacancy and such replacement director (the "non-CEO replacement director") shall continue to be qualified as such until a replacement Chief Executive Officer has been duly hired by the Corporation, at which time the non-CEO replacement director shall automatically be disqualified and shall cease to serve on the Board.

(e) Removal of Preferred Directors. The Series B-4 Director may be removed without cause by, and only by, the affirmative vote of the holder or holder(s) of not less than a majority of the voting power of all outstanding shares of Series B-4 Preferred Stock, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of such stockholder(s).

(f) Investment Committee. In the event JPM has the right to designate, vote, or fill a vacancy in respect of the Series B-4 Director, the Investment Committee shall include the Series B-4 Director (provided such Series B-4 Director was designated as such by JPMorgan Chase Funding Inc. or any other Affiliate of JPMorgan Chase & Co.).

(g) Additional Covenants.

(i) At any time that the Corporation is not subject to the reporting requirements of Section 13 and Section 15 of the Exchange Act, if the Corporation is not otherwise voluntarily filing annual, quarterly and current reports required thereunder, the Corporation shall deliver to all Holders reports that the Corporation would have been required to file with the SEC pursuant to Section 13 or Section 15(d) of the Exchange Act if the Corporation were subject to such provisions within the same timeframes such reports would

be required to be filed with the SEC if the Corporation were subject to the reporting requirements of Section 13 or Section 15 of the Exchange Act. In addition to the foregoing, the Holders shall be entitled to receive the information specified in Section 1.1.1 of SCHEDULE 1 hereof.

(ii) At any time when JPM holds at least forty percent (40%) of the number of shares of Series B-4 Preferred Stock acquired by it on the JPM Acquisition Date (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar reorganization event affecting such shares), the Corporation shall comply in all respects with each of the Operating Covenants and other terms and conditions set forth in SCHEDULE 1 hereto. SCHEDULE 1 hereto is incorporated by reference herein to this Certificate of Designation. Without limiting the foregoing and any other remedy available with respect to any breach thereof, any act or transaction that requires the prior vote or written consent of the Required Series B-4 Holders pursuant to any provision of SCHEDULE 1 shall be null and void *ab initio*, and of no force or effect, unless such vote or consent has duly been given or obtained.

6. OPTIONAL CONVERSION. At any time after the Series B Issue Date of such shares, any Holder may cause the conversion of all or a portion of its shares of Series B-4 Preferred Stock as follows:

(a) Conversion Ratio. At the Conversion Time (as defined below), each outstanding share of Series B-4 Preferred Stock shall, without the payment of additional consideration by the Holder thereof, convert into the number of fully paid and non-assessable shares of Common Stock as is determined by dividing (i) the sum of (a) the Original Price, plus (b) all Dividends accrued and unpaid thereon, whether or not declared, by (ii) the Conversion Price (as defined below) in effect at the Conversion Time. The "Conversion Price" shall initially be equal to the Original Price. The Conversion Price, and the rate at which shares of Series B-4 Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

(b) Termination of Conversion Rights. In the event a Redemption Notice is delivered pursuant to Section 8, the rights to convert shares of Series B-4 Preferred Stock designated for redemption into Common Stock (the "Conversion Rights") shall terminate at the close of business on the last full day preceding the date fixed for redemption, unless the redemption price is not fully paid on such redemption date, in which case the Conversion Rights for such shares shall continue until such price is paid in full. In the event of a Liquidation Event or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable upon the occurrence of such event to the Holders; *provided*, that, a Holder may elect to exercise

its Conversion Rights conditioned upon, and subject to, the closing or occurrence of such Liquidation Event or Deemed Liquidation Event.

(c) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of shares of the Series B-4 Preferred Stock. In lieu of any fractional shares to which the Holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as reasonably determined by the Board. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series B-4 Preferred Stock the Holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

(d) Mechanics of Conversion.

(i) Notice of Conversion. In order for a Holder to convert all or a portion of the outstanding shares of Series B-4 Preferred Stock into shares of Common Stock, the Holder shall surrender a certificate or certificates representing the shares of Series B-4 Preferred Stock it desires to convert (or, if the Holder certifies under penalty of perjury that such Holder's certificate(s) has(ve) been lost, stolen or destroyed, a completed lost certificate affidavit attached hereto as Exhibit A ("Lost Certificate")), together with a completed and executed share exchange form attached hereto as Exhibit B ("Exchange Form"). The Exchange Form must be signed by the Holder and the signature(s) must correspond with the name(s) as written on the face of the certificate(s) without alteration or enlargement or any change whatsoever. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form reasonably satisfactory to the Corporation, duly executed by the Holder or its attorney duly authorized in writing. The close of business on the date of receipt by the Corporation of such certificate(s) (or Lost Certificate(s)) and Exchange Form(s) shall be the time of conversion (the "Conversion Time"). As soon as practicable after the Conversion Time and the surrender of the certificate or certificates (or Lost Certificate) for Series B-4 Preferred Stock, the Corporation shall issue and deliver to such Holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof, together with cash as provided in Section 6(c) in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and the payment, out of funds legally available therefor, of all declared but unpaid dividends to the Holder of such shares so converted; *provided*, that, such payment shall not occur until the payment date fixed by the Board for the dividend so declared and such payment shall not be made unless such Holder was the holder of record of Series B-4 Preferred Stock as of the record date fixed for such dividend. Such converted

Series B-4 Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series B Preferred Stock accordingly.

(ii) Reservation of Shares. The Corporation shall at all times when the Series B-4 Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Series B-4 Preferred Stock into Common Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series B-4 Preferred Stock into Common Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series B-4 Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in the Corporation's best efforts to seek to obtain the requisite stockholder approval of any necessary amendment to the Certificate of Incorporation. Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series B-4 Preferred Stock into Common Stock, the Corporation will take any commercially reasonable corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and non-assessable shares of Common Stock at such adjusted Conversion Price.

(iii) Taxes. The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of the shares of Series B-4 Preferred Stock to Common Stock pursuant to this Section 6. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Series B-4 Preferred Stock so converted to Common Stock were registered, and no such issuance or delivery shall be made unless and until the Person requesting such issuance has paid to the Corporation the full amount of any such tax (together with any interest or penalties thereon) or has established, to the satisfaction of the Corporation in the Corporation's sole discretion, that such tax (together with any interest or penalties thereon) has been paid.

(e) Adjustments to Conversion Price for Diluting Issues.

(i) Deemed Issue of Additional Shares of Common Stock.

(1) If the Corporation at any time or from time to time after the Series B Original Issue Date (or, with respect to the Series B-4 Preferred Stock, after the Series B Issue Date with respect thereto) shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Voting Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(2) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Conversion Price pursuant to the terms of Section 6(e)(ii), are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Voting Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this clause (2) shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (ii) the Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of Common Stock as a result of the issuance of such Option

or Convertible Security) between the original adjustment date and such readjustment date.

(3) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which are themselves Exempted Securities), the issuance of which did not result in an adjustment to the Conversion Price pursuant to the terms of Section 6(e)(ii) (either because the consideration per share (determined pursuant to Section 6(e)(iii)) of the Additional Shares of Common Stock subject thereto was equal to or greater than the greater of the Conversion Price then in effect and the Common FMV at such time, or because such Option or Convertible Security was issued before the Series B Original Issue Date (or, in the case of the Series B-4 Preferred Stock, the Series B Issue Date with respect thereto), are revised after the Series B Original Issue Date (or, in the case of the Series B-4 Preferred Stock, the Series B Issue Date with respect thereto) as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Voting Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended or adjusted, and the Additional Shares of Common Stock subject thereto shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(4) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Conversion Price pursuant to the terms of Section 6(e)(ii), the Conversion Price shall be readjusted to such Conversion Price as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(5)If the number of shares of Voting Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, is calculable at the time such Option or Convertible Security is issued or amended but is subject to adjustment based upon subsequent events, any adjustment to the Conversion Price provided for in this Section 6(e)(i) shall be effected at the time of such issuance or amendment based on

such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (2) and (3) of this Section 6(e)(i)). If the number of shares of Voting Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to the Conversion Price that would result under the terms of this Section 6(e)(i) at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the Conversion Price that such issuance or amendment took place at the time such calculation can first be made. No adjustment pursuant to this Section 6(e) shall be made if such adjustment would result in an increase in the Conversion Price.

(ii) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall issue after the Series B Original Issue Date (or, with respect to the Series B-4 Preferred Stock, after the Series B Issue Date with respect thereto) Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 6(e)(i)), without consideration or for a consideration per share less than either the Conversion Price or the Common FMV in effect immediately prior to such issue (the foregoing a "Dilutive Issuance"), then the Conversion Price shall be reduced to an amount equal to "CP1" below:

$$CP1 = CCP \times \frac{OB + (AC / AP)}{OA}$$

CCP = the Conversion Price in effect immediately prior to such Dilutive Issuance

AP = the Conversion Price in effect immediately prior to such Dilutive Issuance or the Common FMV, whichever is greater

OB = the number of shares of Voting Common Stock Deemed Outstanding immediately prior to such Dilutive Issuance

AC = the aggregate consideration, if any, received by the Corporation upon such Dilutive Issuance

OA = the number of shares of Voting Common Stock Deemed Outstanding immediately after such Dilutive Issuance.

(iii) Determination of Consideration. For purposes of this Section 6(e), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property: Such consideration shall:

a. insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

b. insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as reasonably determined by the Board and consented to in writing by the Required Holders and the Required Series B-4 Holders;

c. in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both cash and property other than cash; be the proportion of such consideration so received, computed as provided in clauses (a) and (b) above, as applicable, as reasonably determined by the Board and consented to in writing by the Required Holders and the Required Series B-4 Holders; and

d. in all cases where the Additional Shares of Common Stock issued or deemed to have been issued are not Common Stock, be adjusted to reflect the relative value of such Additional Shares of Common Stock and the Common Stock, as reasonably determined by the Board and consented to in writing by the Required Holders and the Required Series B-4 Holders.

(2) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 6(e)(ii) relating to Options and Convertible Securities, shall be determined by dividing

a. the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange

of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

b. the maximum number of shares of Voting Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

(iv) Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Conversion Price pursuant to the terms of Section 6(e)(iii), and such issuance dates occur within a period of no more than ninety (90) days from the first such issuance to the final such issuance, then, upon the final such issuance, the Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

(f) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time effect a subdivision of the outstanding Voting Common Stock, the Conversion Price in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of Series B-4 Preferred Stock shall be increased in proportion to such increase in the aggregate number of shares of Voting Common Stock outstanding. If the Corporation shall at any time or from time to time combine the outstanding shares of Voting Common Stock, the Conversion Price in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of Series B-4 Preferred Stock shall be decreased in proportion to such decrease in the aggregate number of shares of Voting Common Stock outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

(g) Adjustment for Merger or Reorganization, etc. Subject to the provisions of Section 4(d), if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation (other than a Deemed Liquidation Event) in which the Voting Common Stock (but not the Series B-4 Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Section 6(e)), then, following any such reorganization, recapitalization, reclassification,

consolidation or merger, each share of Series B-4 Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Series B-4 Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as reasonably determined by the Board and consented to in writing by the Required Series B-4 Holders) shall be made in the application of the provisions in this Section 6 with respect to the rights and interests thereafter of the Holder, to the end that the provisions set forth in this Section 6 (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Series B-4 Preferred Stock. Notwithstanding anything in this Certificate of Designation to the contrary, in the event a holder of Series B-4 Preferred Stock is entitled to receive any consideration other than shares of capital stock of the Corporation upon the conversion of one or more shares of Series B-4 Preferred Stock pursuant to this Section 6, such consideration shall be deemed to be paid as a redemption of Series B-4 Preferred Stock and shall be paid only out of funds legally available therefor.

(h) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 6, the Corporation at its expense shall, as promptly as reasonably practicable, but in any event not later than ten (10) days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each Holder a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Series B Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any Holder (but in any event not later than twenty (20) days thereafter), furnish or cause to be furnished to such Holder a certificate setting forth (i) the Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Series B-4 Preferred Stock.

(i) Notice of Record Date. In the event:

(i) the Corporation shall take a record of the holders of its Voting Common Stock (or other capital stock or securities at the time issuable upon conversion of the Series B-4 Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or

(ii) of any capital reorganization of the Corporation, any reclassification of the Voting Common Stock of the Corporation, or any Deemed Liquidation Event; or

(iii) of a Liquidation Event or a Deemed Liquidation Event;

then, and in each such case, the Corporation will send or cause to be sent to the Holders a written notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, Deemed Liquidation Event or Liquidation Event is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Voting Common Stock (or such other capital stock or securities at the time issuable upon the conversion of the Series B-4 Preferred Stock) shall be entitled to exchange their shares of Voting Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, Deemed Liquidation Event or Liquidation Event, and the amount per share and character of such exchange applicable to the Series B-4 Preferred Stock and the Voting Common Stock. Such written notice shall be sent at least ten (10) days prior to the record date or effective date for the event specified in such written notice.

7. AUTOMATIC CONVERSION.

(a) Trigger Events. Upon the closing of a sale of shares of Common Stock at a price equal to or greater than two and a quarter times (2.25x) the Original Price for the Series B-1 Preferred Stock and Series B-2 Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Voting Common Stock), in a firm commitment underwritten public offering and listing of the Common Stock on a national securities exchange, pursuant to an effective registration statement under the Securities Act, resulting in at least seventy-five million dollars ($75,000,000) of gross proceeds to the Corporation (the time of such closing is referred to herein as the "Automatic Conversion Time"), (x) all outstanding shares of Series B-4 Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective Conversion Price, and (y) such shares may not be reissued by the Corporation.

(b) Procedural Requirements. All Holders shall be sent written notice of the Automatic Conversion Time at least ten (10) days prior to the effectiveness thereof and the place designated for automatic conversion of all such shares of Series B-4 Preferred Stock pursuant to this Section 7. Upon receipt of such notice, each Holder shall surrender

his, her or its certificate or certificates for all such shares (or, if such Holder alleges that such certificate has been lost, stolen or destroyed, a completed Lost Certificate) to the Corporation at the place designated in such written notice. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form reasonably satisfactory to the Corporation, duly executed by the registered Holder or by his, her or its attorney duly authorized in writing. All rights with respect to the Series B-4 Preferred Stock converted pursuant to Section 7(a), including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the Automatic Conversion Time (notwithstanding the failure of the holder or holders thereof to surrender the certificates at or prior to such time), except only the rights of the holders thereof, upon surrender of their certificate or certificates (or Lost Certificate) therefor, to receive the items provided for in the next sentence of this Section 7(b). As soon as practicable after the Automatic Conversion Time and the surrender of the certificate or certificates (or Lost Certificate) for Series B-4 Preferred Stock, the Corporation shall issue and deliver to such Holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof, together with cash as provided in Section 6(c) in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and the payment, out of funds legally available therefor, of all declared but unpaid dividends to the holder of such shares so converted; *provided*, that, such payment shall not occur until the payment date fixed by the Board for the dividend so declared and such payment shall not be made unless such holder was the holder of record of Series B-4 Preferred Stock as of the record date fixed for such dividend. Such converted Series B-4 Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series B-4 Preferred Stock accordingly.

8. REDEMPTION

(a) Redemption upon Noncompliance Event. The Corporation shall promptly, but in no event later than five (5) Business Days after a Noncompliance Event, notify the Holders in writing of the occurrence of a Noncompliance Event. Upon the occurrence of a Noncompliance Event, the Required Series B-4 Holders may require the Corporation to redeem, out of funds legally available therefor, all shares of Series B-4 Preferred Stock at a price (the "Noncompliance Redemption Price") equal to the greater of (i) the Applicable Percentage times the sum of (x) the Original Price per share, plus (y) any Dividends accrued and unpaid thereon, whether or not declared, until redeemed, and (ii) the sum of (x) the Per Share Book Value per share as of the date of such redemption, plus (y) any Dividends accrued and unpaid thereon, whether or not declared, until redeemed, on the twentieth (20th) day after receipt

of a written notice from such Required Series B-4 Holders requesting such redemption (a "Noncompliance Redemption Demand") (the date of such redemption being referred to as "Noncompliance Redemption Date"). On the Noncompliance Redemption Date, the Corporation shall redeem all shares of Series B-4 Preferred Stock owned by each Holder. If the Corporation does not have sufficient funds available to redeem all shares of Series B-4 Preferred Stock of Holders to be redeemed on the Noncompliance Redemption Date, the Corporation shall redeem each Holder's shares of Series B-4 Preferred Stock, each Holder being entitled to receive its pro rata share thereof based on the number of outstanding shares of Series B-4 Preferred Stock, out of any available funds, and shall redeem the remaining shares of Series B-4 Preferred Stock as soon as practicable after the Corporation has available funds, and (i) Dividends shall continue to accrue on such unredeemed shares at the Applicable Rate per annum until redeemed, and (ii) all designations, rights, powers, preferences and privileges of the Series B-4 Preferred Stock shall remain in full force and effect until redeemed.

(b) Required Redemption. At any time after September 25, 2024, each Holder of Series B-4 Preferred Stock, may require the Corporation to redeem, out of funds legally available therefor, all shares of such Series B-4 Preferred Stock held by such Holder at a price (the "Required Redemption Price") equal to the greater of (i) the Applicable Percentage times the sum of (x) the Original Price per share, plus (y) any Dividends accrued and unpaid thereon, whether or not declared, until redeemed, and (ii) the sum of (x) the Per Share Book Value per share as of the date of such redemption, plus (y) any Dividends accrued but unpaid thereon, whether or not declared, until redeemed, on the thirtieth (30th) day after receipt of a written notice from such Holder requesting such redemption (a "Required Redemption Demand") (the date of such redemption being referred to as a "Required Redemption Date"). On such Required Redemption Date, the Corporation shall redeem all such shares of Series B-4 Preferred Stock held by such Holder. To the extent that the Corporation does not redeem any shares of Series B-4 Preferred Stock as required by the preceding sentence, (i) Dividends shall continue to accrue on such shares of the Series B-4 Preferred Stock at the Applicable Rate per annum, whether or not declared, until all such shares are redeemed, and (ii) all rights of the Series B-4 Preferred Stock shall remain in full force and effect until redeemed. If the Corporation does not have sufficient funds available to redeem all shares of Series B-4 Preferred Stock of Holders to be redeemed on the Required Redemption Date, the Corporation shall redeem each Holder's applicable shares of Series B-4 Preferred Stock out of any available funds, each Holder being entitled to receive its pro rata share thereof based on the number of outstanding shares of Series B-4 Preferred Stock, and shall redeem the remaining shares of Series B-4 Preferred Stock to be redeemed as soon as practicable after the Corporation has available funds (which Series B-4 Preferred Stock not so redeemed shall continue to accrue Dividends).

(c) Optional Redemption. If at any time JPM holds less than fifteen percent (15%) of the number of shares of Series B-4 Preferred Stock issued to it on the JPM Acquisition Date (subject in

each case to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar reorganization event affecting such shares), the Corporation may elect to redeem from JPM, out of funds legally available therefor, all such shares of Series B-4 Preferred Stock held by JPM at a price (the "Optional Redemption Price") equal to the greater of (i) the Applicable Percentage times the sum of (x) the Original Price per share, plus (y) any Dividends accrued and unpaid thereon, whether or not declared, until redeemed, and (ii) the sum of (x) the Per Share Book Value per share as of the date of such redemption, plus (y) any Dividends accrued and unpaid thereon, whether or not declared, until redeemed, on the thirtieth (30th) day after receipt of a written notice from the Corporation to JPM of such redemption (an "Optional Redemption") (the date of such redemption being referred to as a "Optional Redemption Date"). On such Optional Redemption Date, the Corporation shall redeem all shares of Series B-4 Preferred Stock held by JPM.

(d) Redemption Notice. The Corporation shall send written notice of any Noncompliance Redemption Demand, Required Redemption Demand, or Optional Redemption, as applicable (in each case, a "Redemption Notice"), to each Holder not more than ten (10) days after a Noncompliance Redemption Demand or less than thirty (30) days prior to the Required Redemption Date or Optional Redemption Date, as applicable. The Redemption Notice to each Holder shall state:

(i) the number of shares of Series B-4 Preferred Stock held by such Holder that the Corporation shall redeem on the Noncompliance Redemption Date or the Optional Redemption Date, as applicable, or that the Holder may require the Corporation to redeem on the Required Redemption Date (in each case, a "Redemption Date"), as applicable; the Noncompliance Redemption Date, the Required Redemption Date, or the Optional Redemption Date, as applicable, and the Noncompliance Redemption Price, the Required Redemption Price, or the Optional Redemption Price, as applicable;

(ii) the date upon which the Holder's right to convert such Series B-4 Preferred Stock will terminate if tendered for redemption (as determined in accordance with Section 6(b)); and

(iii) that the Holder is to surrender to the Corporation, in the manner and at the place designated by the Corporation, his, her or its certificate or certificates representing the shares of Series B-4 Preferred Stock to be redeemed.

(e) Surrender of Certificates; Payment. On or before a Redemption Date, each Holder of shares of Series B-4 Preferred Stock to be redeemed on the Redemption Date, unless such Holder has exercised his, her or its right to convert such shares of Series B-4 Preferred Stock as provided in Section 6, shall surrender the original certificate or original certificates representing such shares of Series B-4 Preferred Stock (or, if such registered Holder certifies

under penalty of perjury that such original certificate has been lost, stolen or destroyed, a completed Lost Certificate) to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Noncompliance Redemption Price, the Required Redemption Price, or the Optional Redemption Price, as applicable, for such shares of Series B-4 Preferred Stock shall be payable to the Holder whose name appears on such original certificate or certificates as the owner thereof. In the event less than all of the shares of Series B-4 Preferred Stock represented by a certificate are redeemed, a new certificate representing the unredeemed shares of Series B-4 Preferred Stock shall promptly be issued to such Holder.

(f) Rights Subsequent to Redemption. If the Redemption Notice shall have been duly given, and if on the applicable Redemption Date, the Noncompliance Redemption Price, the Required Redemption Price, or the Optional Redemption Price, as applicable, payable upon redemption of the shares of Series B-4 Preferred Stock to be redeemed on such Redemption Date is paid or tendered for payment or deposited with an independent payment agent so as to be available therefor, then notwithstanding that the certificates evidencing any of the shares of Series B-4 Preferred Stock so called for redemption shall not have been surrendered, Dividends with respect to such shares of Series B-4 Preferred Stock shall cease to accrue after such Redemption Date, and all rights with respect to such shares of Series B-4 Preferred Stock shall forthwith after the Redemption Date terminate, except only the right of the Holders to receive the Noncompliance Redemption Price, the Required Redemption Price, or the Optional Redemption Price, as applicable, without interest upon surrender of their certificate or certificates therefor.

9. REDEEMED OR OTHERWISE ACQUIRED SHARES. Any shares of Series B-4 Preferred Stock that are redeemed or otherwise acquired by the Corporation shall be automatically and immediately retired and shall not be reissued, sold or transferred. Neither the Corporation nor any of Subsidiaries may exercise any voting or other rights granted to the Holders following redemption.

10. PREEMPTIVE RIGHTS. Each Holder that owns 10% or more of the outstanding shares of Series B-4 Preferred Stock at the time of any future issuance of equity capital stock of the Corporation shall have the preemptive right to purchase shares of equity capital stock of the Corporation issued in connection with such issuance in proportion to its Pro Rata Share; *provided, however,* that such preemptive rights shall not be available to any Holder for issuances of Exempted Securities or Voting Common Stock issued as consideration in connection with any merger or acquisition involving the Corporation.

11. TRANSFERABILITY. No Holder shall be entitled to Transfer (as defined on SCHEDULE 1 to this Certificate of Designation) shares of Series B-4 Preferred Stock to any Person unless such Transfer has been approved by the Board, which approval shall not be unreasonably withheld or delayed by the Board; provided that, no such approval or other consent of the

Board shall be required for any Pre-Authorized Transfer (as defined on SCHEDULE 1 to this Certificate of Designation). For the avoidance of doubt, it shall not be deemed to be unreasonable for the Board to withhold its consent with respect to any Transfer for which such consent is required that will, as determined by the Board in its sole and absolute discretion, result in (i) an ownership change as determined pursuant to Section 382 of the Code, and (ii) a material adverse effect on the value and utility of the built-in tax losses of the Corporation and the Subsidiaries. Any purported Transfer in violation of this Section 11 shall be null and void *ab initio*, provided that, it is expressly acknowledged and agreed that any Pre-Authorized Transfer of shares of Series B-4 Preferred Stock will not, and will not for any reason be deemed to, be a Transfer in violation of this Section 11, and no such Pre-Authorized Transfer will be deemed void or voidable pursuant to this Section 11. In the event there is any conflict between this Section 11 and any provision of the Corporation's Bylaws, this Section 11 shall control.

12. WAIVER. No designations, rights, powers, preferences or privileges or other terms of the Series B-4 Preferred Stock set forth herein may be waived with respect to any shares of the Series B-4 Preferred Stock unless waived specifically in each instance by the Holder thereof, and then such waiver shall be effective only in the specific instance, and for the purpose, for which given.

13. CORPORATION MAY NOT REQUIRE REDEMPTION OR CONVERSION. The Corporation shall not have the right to redeem or convert (or cause the redemption or conversion of) any shares of the Series B-4 Preferred Stock, other than (i) an automatic conversion as set forth in Section 7(a), (ii) a redemption following either a Noncompliance Redemption Demand or a Required Redemption Demand, or (iii) an Optional Redemption pursuant to Section 8(c).

14. NOTICES. The Corporation shall provide each Holder with prompt written notice of all material actions taken by the Corporation pursuant to the terms of this Certificate of Designation, including in reasonable detail a description of such action, excluding any action taken by any Holder; *provided, however,* that the provision by the Corporation to any Holder of written notice of an action required by the Corporation in accordance with any other notice requirements set forth in this Certificate of Designation with regard to such action by the Corporation shall constitute prompt written notice for purposes of this Section 14. Unless otherwise provided herein, all notices, demands, requests, consents, approvals or other communications (any of the foregoing, a "Notice") required, permitted or desired to be given by the Corporation to any Holder under this Certificate of Designation shall be in writing and shall be sent by facsimile (with answer back acknowledged) or by registered or certified mail, postage prepaid, return receipt requested, or delivered by hand or by reputable overnight courier, addressed to the party to be so notified at its address hereinafter set forth, or to such other address as such party may hereafter specify in accordance with the provisions of this Section 14. Any Notice shall be deemed to have been received: (a) three (3) days

after the date such Notice is mailed, (b) on the date of sending by facsimile if sent during business hours on a Business Day (otherwise on the next Business Day), (c) on the date of delivery by hand if delivered during business hours on a Business Day (otherwise on the next Business Day), and (d) on the next Business Day if sent by an overnight commercial courier, in each case addressed to the parties as follows:

If to the Holders at the address for each Holder on the records of the Corporation.

If to the Corporation:

IMH Financial Corporation
7001 N. Scottsdale Rd, Suite 2050
Scottsdale, Arizona 85253
Attention: Legal Department
Fax: (480) 840-8401

with a copy to:

Ulmer & Berne LLP
1660 West 2nd Street
Suite 1100
Cleveland, OH 44113
Attn: Howard Groedel, Esq.
Facsimile No. (216) 583-7119

The Corporation or any Holder may change the address to which any such Notice is to be delivered by furnishing ten (10) days written notice of such change to the other party in accordance with the provisions of this Section 14. Notices shall be deemed to have been given on the date as set forth above, even if there is an inability to actually deliver any such Notice because of a changed address of which no Notice was given, or there is a rejection or refusal to accept any Notice offered for delivery. Notice for the Corporation or any Holder may be given by its respective counsel.

15. SERIES B PREFERRED STOCK REGISTER. The Corporation shall maintain at its principal executive offices (or such other office or agency of the Corporation as it may designate by notice to the Holders), a register for the Series B-4 Preferred Stock, in which the Corporation shall record the name, address and facsimile number of the Persons in whose name the shares of Series B-4 Preferred Stock have been issued, as well as the name and address of each transferee pursuant to any transfer permitted under this Certificate of Designation. The Corporation may treat the Person in whose name any Series B-4 Preferred Stock is registered on the register as the owner and Holder thereof for all purposes, notwithstanding any notice to the contrary, but in all events recognizing any properly made transfers permitted under this Certificate of Designation.

16. HOLDER MATTERS. Any Holder action, approval or consent required, desired or otherwise sought by the Corporation pursuant to the DGCL may be effected by written consent of the Holders or at a duly called meeting of the Holders, all in accordance with the applicable rules and regulations of the DGCL.

17. DISPUTE RESOLUTION. In the case of a dispute as to the determination of the Conversion Price, Common FMV or Per Share Book Value (as the case may be) or the Noncompliance Redemption Price, the Required Redemption Price, or the Optional Redemption Price, as applicable, the Corporation or the applicable Holder (as the case may be) shall submit to the other party the disputed determinations or arithmetic calculations (as the case may be) via facsimile or e-mail (i) within seven (7) Business Days after receipt of the applicable notice giving rise to such dispute to the Corporation or such Holder (as the case may be) or (ii) if no notice gave rise to such dispute, at any time after such Holder learned of the circumstances giving rise to such dispute (including, without limitation, as to whether any issuance or sale or deemed issuance or sale was an issuance or sale or deemed issuance or sale of Exempted Securities). If such Holder and the Corporation are unable to agree upon such determination or calculation within seven (7) Business Days of such disputed determination being submitted to the Corporation or such Holder (as the case may be), then the Corporation shall, within two (2) Business Days, submit via facsimile or e-mail (a) the disputed determination of the Conversion Price, Common FMV or Per Share Book Value (as the case may be) to an independent, national or regional investment bank, with demonstrated expertise in the issue at question, mutually selected by such Holder and the Corporation or (b) any redemption price to an independent, national or regional outside accountant, with demonstrated expertise in the issue at question (other than the Corporation's or such Holder's independent, outside accountant). If the Corporation and the Holder are unable to agree upon an investment bank or accountant (as the case may be), each party shall select one investment bank or accountant (as the case may be), and then the two investment banks or accountants (as the case may be) so selected shall select the investment bank or accountant (as the case may be) meeting the required criteria, which third investment bank or accountant (as the case may be) shall be the one who determines the issue at question. The Corporation shall pay the expense of retaining the investment bank or the accountant (as the case may be) to perform the determinations or calculations (as the case may be) and the Corporation shall cause such investment bank or accountant (as the case may be) to notify the Corporation and such Holder of the results no later than twenty (20) Business Days from the time the Corporation receives such disputed determinations; *provided, however,* if one of the party's determination with respect to the price or value in question is more than ten percent (10%) off of the price or value ultimately determined by the investment bank or accountant (as the case may be) to be the correct price or value (the "Non-Prevailing Party") and the other party's determination with respect to the price or value in question is not more than ten percent (10%) off of the price or value ultimately determined by the investment bank or accountant to be the correct price or value (the "Prevailing Party"), then

the Non-Prevailing Party shall pay the entire expense of retaining the investment bank or accountant (as the case may be). Such investment bank's or accountant's determination shall be binding upon all parties absent demonstrable error or fraud. For purposes of this Section 17, a "dispute" shall be deemed to have occurred if any determination by the Board of the Conversion Price, Common FMV or Per Share Book Value (as the case may be) or the Noncompliance Redemption Price, the Required Redemption Price, or the Optional Redemption Price, as applicable, has not been consented to in writing by the Required Series B-4 Holders, if such consent is required, within seven (7) Business Days after the Corporation has notified the Required Series B-4 Holders of any such determination.

18. MISCELLANEOUS

(a) Governing Law. This Certificate of Designation shall be interpreted in accordance with the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by such laws.

(b) Section References. Unless otherwise stated herein, references to sections appearing in this Certificate of Designation, including any document attached or appended hereto, shall be deemed to be references to sections of this Certificate of Designation.

(c) Severability of Provisions. Each provision of this Certificate of Designation shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Certificate of Designation which are valid, enforceable and legal.

FOURTH: This Certificate of Designation shall be effective 10:00 a.m. (Eastern Time) on September 25, 2019.

FIFTH: The appendices, exhibits and schedules attached hereto (and the appendices, exhibits and schedules attached thereto) and filed herewith shall form part of this Certificate of Designation.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Designation on behalf of the Corporation as of this 25th day of September, 2019.

IMH FINANCIAL CORPORATION

By: /s/ Lawrence D. Bain
Name: Lawrence D. Bain
Title: Co-Chairman and Interim Chief Executive Officer

[Signature Page to Series B-4 Preferred Stock Certificate of Designation]

APPENDIX

Definitions

For purposes of this Certificate of Designation, the following terms shall have the meanings indicated:

"Additional Dividends" shall have the meaning set forth in Section 3(d).

"Additional Shares of Common Stock" shall mean all shares of Voting Common Stock issued (or, pursuant to Section 6(e)(i), deemed to be issued) by the Corporation after the Series B Original Issue Date (or, with respect to the Series B-4 Preferred Stock, the Series B Issue Date with respect thereto), other than the Exempted Securities.

"Affiliate" shall mean, as to any specified Person, any other Person that (a) directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Person specified and/or (b) is the spouse, issue or parent of the Person specified or of an Affiliate of such spouse, issue or parent. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of such Person, whether through ownership of voting securities, by contract or otherwise.

"Annual Budget" shall mean the operating and capital budget for operation of the Corporation's and Subsidiaries' business and for each Individual Property or Mortgage Loan setting forth, on a month-by-month basis, in reasonable detail, the annual business plan and each line item of the Corporation's and Subsidiaries' good faith estimate of anticipated Gross Revenue, Operating Expenses and Capital Expenditures for the applicable Fiscal Year with respect to such annual business plan.

"Applicable Percentage" shall mean one hundred forty-five percent (145%).

"Applicable Rate" shall mean five and 65/100 percent (5.65%) of the Original Price per annum, which rate shall increase to ten and 65/100 percent (10.65%) of the Original Price per annum immediately upon the occurrence of a Noncompliance Event and, in the event that a Noncompliance Event remains uncured for a period of 180 days following a Noncompliance Redemption Demand relating thereto, such rate shall increase immediately to fifteen and 65/100 percent (15.65%) of the Original Price per annum.

"Approved Annual Budget" shall have the meaning set forth in Section 1.1.1 of SCHEDULE 1.

"Automatic Conversion Time" shall have the meaning set forth in Section 7(a).

"Bain Stock Grant" shall mean the restricted stock award agreement, dated July 24, 2014, granting Lawrence D. Bain 850,000 shares of Common Stock.

"Bain Termination Agreement" shall mean that certain Termination of Employment Agreement, Release and Additional Compensation Agreement, dated as of April 9, 2019.

"Board" shall have the meaning set forth in the Preamble of this Certificate of Designation.

"Brohard Employment Agreement" shall mean that certain Executive Employment Agreement, dated as of January 21, 2015, entered into between the Corporation and Jonathan Brohard.

"Business Day" shall mean any day other than a Saturday, Sunday or a day on which state or federally chartered banking institutions in New York, New York are not required to be open.

"Capital Expenditures" for any period shall mean amounts expended for replacements and alterations to an Individual Property and required to be capitalized according to GAAP.

"Certificate of Designation" shall have the meaning set forth in the Preamble of this Certificate of Designation.

"Certificate of Incorporation" shall have the meaning set forth in the Preamble of this Certificate of Designation.

"Class B Common Stock" shall mean the shares of "Class B Common Stock", par value $0.01 per share, of the Corporation

"Code" shall mean the Internal Revenue Code of 1986, as amended, and as it may be further amended from time to time, any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

"Common Dividend Conditions" shall mean, as of any date of declaration of dividends by the Corporation: (i) such dividends are duly approved by the Board, (ii) a Noncompliance Event does not exist, (iii) the Corporation is not in default of any Indebtedness, and (iv) the Corporation has had EBITDA of greater than $12 million in the aggregate over the four (4) most recently completed fiscal calendar quarters.

"Common Stock" shall mean the shares of "Common Stock", par value $0.01 per share, of the Corporation.

"Common FMV" shall mean, as of any date, the fair market value of a share of Common Stock as of such date as reasonably determined by the Board and consented to in writing by the Required Holders and the Required Series B-4 Holders.

"Consultancy Agreement" shall mean that certain Consultancy Agreement, dated as of July 24, 2014, by and between the Corporation and JCP Realty Advisors, LLC, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time by a writing executed by

the parties thereto, but in any such case, subject to the limitations of Sections 1.1.3 and 1.1.8 of SCHEDULE 1.

"Conversion Price" shall have the meaning set forth in Section 6(a). "Conversion Rights" shall have the meaning set forth in Section 6(b). "Conversion Time" shall have the meaning set forth in Section 6(d)(i).

"Convertible Securities" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Voting Common Stock, but excluding Options.

"Corporation" shall have the meaning set forth in the Preamble of this Certificate of Designation.

"Deemed Liquidation Event" shall have the meaning set forth in Section 4(d).

"DGCL" shall have the meaning set forth in the Preamble of this Certificate of Designation.

"Dilutive Issuance" shall have the meaning set forth in Section 6(e)(ii).

"Director Compensation Plan" shall mean the 2014 IMH Financial Corporation Non-Employee Director Compensation Plan, as it may be amended or restated from time to time.

"dispute" shall have the meaning set forth in Section 17.

"Dividends" shall have the meaning set forth in Section 3(a).

"EBITDA" means, for any period, Net Income before income taxes, interest, depreciation, amortization, gains or losses on sales of operating real estate and marketable securities, any provision or benefit for income taxes, noncash impairment charges, and gains or losses on extraordinary items in accordance with GAAP and gains or losses on early extinguishment of debt, plus an amount equal to stock-based compensation expenses incurred during such period that were duly approved by the compensation committee of the Board and any other non-cash expenses incurred during such period, in each case for which the Board has unanimously agreed to adjust EBITDA for purposes of this Certificate of Designation.

"Equity Incentive Plan" shall mean the First Amended and Restated 2010 IMH Financial Corporation Employee Stock Incentive Plan, as it may be further amended and/or restated from time to time.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended. "Exchange Form" shall have the meaning set forth in Section 6(d)(i).

"Exempted Securities" shall mean the following:

(i) shares of Voting Common Stock, Options or Convertible Securities issued as a dividend or distribution on Series B Preferred Stock;

(ii) shares of Voting Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Voting Common Stock that is covered by Sections 6(f) or 6(g);

(iii) Voting Common Stock and Options granted to employees or directors of, or consultants or advisors to, the Corporation or any Subsidiaries pursuant to the Equity Incentive Plan or the Director Compensation Plan;

(iv) the ITH Warrant;

(v) the Bain Stock Grant;

(vi) the Juniper Warrant;

(vii) the Meris Option;

(viii) the Other Executive Stock Grants;

(ix) the JPM Warrant; or

(x) shares of Voting Common Stock actually issued upon the exercise of Options or shares of Voting Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security.

"Existing Preferred Stock Certificate of Designation" shall mean the Second Amended and Restated Certificate of Designation of Series B-1 Preferred Stock, Series B-2 Preferred Stock and Series B-3 Preferred Stock.

"Extraordinary Expense" shall mean, with respect to any Fiscal Year, any operating expense in excess of $250,000 or capital expenditure in excess of $250,000 that was not set forth in the Approved Annual Budget for such Fiscal Year.

"Financial Reporting Subsidiary" shall have the meaning set forth in Section 1.1.1(b) of SCHEDULE 1.

"Fiscal Year" shall mean each twelve (12) month period commencing on January 1 and ending on December 31.

"GAAP" shall mean generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession), or in such other statements by such entity as may be in general use by significant segments of the U.S. accounting profession.

"Governmental Authority" shall mean any court, board, agency, commission, regulatory agency, office or authority of any nature whatsoever or any governmental unit (federal, state, commonwealth, county, district, municipal, city or otherwise) whether now or hereafter in existence.

"Gross Revenue" means all revenue derived by the Corporation and each Subsidiary from all cash receipts, including, without limitation, (i) with respect to each Individual Property, all Rents payable to the applicable Subsidiary and any other income derived from the use, ownership or operation of such Individual Property, (ii) with respect to the Mortgage Loans, all amounts paid to or received by a Subsidiary under such Mortgage Loans whether as payments of interest, principal charges, fees or otherwise, (iii) proceeds from any Transfer of any Individual Property or Mortgage Loan, (iv) the net proceeds of any loan or other financing obtained by the Corporation or a Subsidiary including prepaid rents (other than security deposits) for a period in excess of one month and (v) any and all other revenue or the value of any in-kind benefit derived by the Corporation and/or a Subsidiary from the ownership, management or operation of their respective businesses.

"Holder" or "Holders" shall have the meaning set forth in Section 3(a).

"Improvements" shall mean the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements erected or located on the land with respect to each Individual Property.

"Indebtedness" shall mean, for any Person, without duplication: (a) all indebtedness of such Person for borrowed money, for amounts drawn under a letter of credit, or for the deferred purchase price of property for which such Person or its assets is liable, (b) all unfunded amounts under a loan agreement, letter of credit, or other credit facility for which such Person would be liable if such amounts were advanced thereunder, (c) all amounts required to be paid by such Person as a guaranteed payment to partners or a preferred or special dividend, including any required redemption of shares or interests, (d) all indebtedness guaranteed by such Person, directly or indirectly, (e) all obligations under leases that constitute capital leases for which such Person is liable, (f) all obligations of such Person under interest rate swaps, caps, floors, collars and other interest hedge agreements, in each case for which such Person is liable or its assets are liable, whether such Person (or its assets) is liable contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss, and (g) any debt securities issued by the Corporation or any Subsidiaries.

"Individual Property" shall mean, as applicable, each of the properties owned by the Corporation or the Subsidiaries together with the Improvements thereon and all personal property relating to such property, together with all rights pertaining to such property and Improvements.

"Insurance Premiums" shall mean premiums paid with respect to any valid and enforceable insurance policies included in an Approved Annual Budget.

"Investment" shall mean to originate and acquire Mortgage Loans, mezzanine loans, other debt instruments and equity and preferred equity interests.

"Investment Agreement" shall mean that certain Amended and Restated Investment Agreement, dated as of February 9, 2018, by and among the Corporation, JPMorgan Chase Funding Inc., a Delaware corporation, and JCP Realty Partners, LLC and Juniper NVM, LLC, as amended from time to time in accordance with its terms and Sections 1.1.3 and 1.1.8 of SCHEDULE 1.

"Investment Committee" shall mean the investment committee of the Board.

"Investment Notice Date" shall mean, with respect to a proposed Investment by the Corporation or any of its Subsidiaries, the date upon which the Preferred Directors serving on the Investment Committee have received from the Corporation an investment proposal package relating to such proposed Investment, including all material terms and conditions relating to such proposed Investment, and all relevant supporting information relating thereto; *provided*, that, if any of such Preferred Directors has raised reasonable questions or made reasonable inquiries regarding such proposed Investment, the Investment Notice Date shall occur only once such questions and inquiries have been addressed in all material respects.

"ITH Warrant" shall mean the warrant to purchase 1,000,000 shares of Common Stock granted to ITH Partners, LLC on July 24, 2014.

"ITH Consulting Agreement" shall mean that certain Consulting Services Agreement, dated as of July 30, 2019 between ITH Partners, LLC and the Corporation.

"JPM" shall mean JPMorgan Chase Funding Inc., its Affiliates, and transferees, including for the avoidance of doubt, any JPM Permitted Transferees.

"JPM Acquisition Date" shall mean (i) April 11, 2017 with respect to the Series B-2 Preferred Stock, (ii) February 9, 2018 with respect to the Series B-3 Preferred Stock, and (iii) September 25, 2019 with respect to the Series B-4 Preferred Stock.

"JPM Permitted Transferee" shall mean each of J.P. Morgan Securities LLC, J.P. Morgan Broker-Dealer Holdings Inc. and any Affiliate of JP Morgan Chase & Co.

"JPM Warrant" shall mean the warrant to purchase 600,000 shares of Common Stock issued to JPMorgan Chase Funding, Inc. on February 9, 2018.

"Junior Stock" shall have the meaning set forth in Section 2.

"Juniper" shall mean Juniper Capital Partners, LLC, its Affiliates (including, without limitation, JCP Realty Partners, LLC and Juniper NVM, LLC), and transferees.

"Juniper Warrant" shall mean the warrant to purchase 1,000,000 shares of Common Stock granted to Juniper NVM, LLC on July 24, 2014.

"Key Personnel" shall mean the Chief Executive Officer and/or the Chief Financial Officer of the Corporation (or any of their respective functional equivalent officers).

"Lease" shall mean any lease, sublease or sub sublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy, all or any portion of any space in any Individual Property, and every modification, amendment or other agreement relating to such lease, sublease, sub sublease or other agreement entered into in connection with such lease, sublease, sub sublease or other agreement and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

"Liquidation Event" shall mean the voluntary or involuntary liquidation, dissolution or winding up of the Corporation or the Subsidiaries, the assets of which constitute all or substantially all of the assets of the business of the Corporation and the Subsidiaries taken as a whole, in a single transaction or series of transactions.

"Liquidation Preference" shall have the meaning set forth in Section 4(a).

"Lost Certificate" shall have the meaning set forth in Section 6(d)(i).

"Major Contract" shall mean any agreement or arrangement, written or oral, entered into outside the ordinary course of the Corporation's business, that will reasonably likely involve payments by the Corporation or any of its Subsidiaries in excess of $250,000 over the term thereof; for the avoidance of doubt, Major Contract shall not include any purchase and sale agreements, loan documents, or other transaction documents entered into in the ordinary course of the Corporation's business.

"Manager" shall mean any Person retained by the Corporation or any Subsidiaries to provide management and other services with respect to an Individual Property.

"Meris Option" shall mean that Nonqualified Stock Option Agreement dated January 6, 2015, by and between William Meris, as grantee, and the Corporation, as grantor.

"Meris Separation Agreement" shall mean that certain Employment Separation and General Release Agreement, dated as of July 24, 2014, by and between the Corporation and William Meris.

"Montes Employment Agreement" shall mean that certain Executive Employment Agreement, dated as of April 11, 2017, by and between the Corporation and Samuel Montes.

"Mortgage Loan" shall mean all mortgage loans made by the Corporation or the Subsidiaries as of the Series B Original Issue Date, together with the loan documents, scheduled monthly payments, principal prepayments, liquidation proceeds (whether upon initial foreclosure, final sale or otherwise), condemnation proceeds, insurance proceeds and all other rights, benefits, proceeds and obligations arising from or in connection with such Mortgage Loan for the benefit of the applicable Subsidiary; and "Mortgage Loan" shall also mean all loans made by the Corporation or any Subsidiary after the Series B Original Issue Date but only if and to the extent the same are in each instance approved in writing by the Investment Committee pursuant to Section 1.1.14 of SCHEDULE 1.

"Mortgaged Property" shall mean the real property and any improvements subject to a Mortgage Loan, constituting security for repayment of the debt evidenced by the related Mortgage Loan.

"Net Income" means, for any period, net income (or loss) of Corporation and its wholly-owned Subsidiaries for such period determined on a consolidated basis (without duplication) in accordance with GAAP.

"non-CEO replacement director" shall have the meaning set forth in Section 5(d).

"Noncompliance Event" means each of the following events or conditions:

(i) the failure by the Corporation (A) to pay the full Dividend to Holders for a fiscal quarter within thirty (30) days following the end of such quarter, (B) to consummate a redemption of the Series B Preferred Stock within ninety (90) days of the Noncompliance Redemption Demand, or Required Redemption Demand, as the case may be, or (C) to consummate a redemption of the Series B Preferred Stock on the thirtieth (30th) day after the applicable Holder's receipt of written notice for an Optional Redemption;

(ii) the breach of any covenant or other noncompliance with any Transaction Document that remains uncured for a period of thirty (30) days following the earlier of the Corporation's knowledge or receipt of written notice thereof;

(iii) the bankruptcy, receivership, liquidation, or assignment for benefit of creditors of the Corporation or any of its Subsidiaries, except for any such event or circumstance relating to a Subsidiary where (A) the event or circumstance has been approved by

the Board, (B) the assets of such Subsidiary have an aggregate tangible book value (as reasonably determined by the Board consistent with the definition of "Tangible Book Value") of less than $8 million, and (C) neither the Corporation nor any of its other Subsidiaries is responsible or liable, directly or indirectly, for the obligations of such Subsidiary; *provided*, that, with respect to an involuntary bankruptcy filing, the Corporation or such Subsidiary has not challenged such filing within thirty (30) days of the filing thereof or such filing is not dismissed within ninety (90) days of the filing thereof;

(iv) the default by the Corporation or any of its Subsidiaries under one or more agreements for Indebtedness for borrowed money that remains uncured for a period of thirty (30) days following the Corporation's knowledge thereof exceeding $2,000,000 in any instance, or $10,000,000 in the aggregate (if there has been more than a single default), that would entitle the holder thereof to accelerate repayment thereof, other than indebtedness to the extent that such default has been approved by unanimous action of the Board;

(v) judgment(s) in excess of $2,000,000 in aggregate rendered against the Corporation or any of its Subsidiaries on and after the Series B Original Issue Date, which judgment(s) are not appealable or otherwise released or cured within ninety (90) days, except for judgments approved by the Board;

(vi) the failure by the Corporation to cause the nomination of a Series B-1 Director, Series B-2 Director, Series B-3 Director, Series B-4 Director or Series B Director designated in accordance with Section 5(c) of this Certificate of Designation and the Existing Preferred Stock Certificate of Designation;

(vii) the failure to comply timely with the Corporation's reporting obligations under the Exchange Act, provided that if the Corporation timely files with the SEC a Form 12b-25 in accordance with Rule 12b-25 under the Exchange Act, and otherwise complies with Rule 12b-25, then upon the filing of such report within the time period permitted by Rule 12b-25, the Corporation shall be deemed to have filed such report on a timely basis; or

(viii) the commencement of any legal proceeding or formal investigation relating to any alleged noncompliance with any Federal or State statute, rules or regulations governing the issuance of securities, the Corporation's status as a public reporting company or the lending, marketing or foreclosure practices of the Corporation or any of its Subsidiaries.

"Noncompliance Redemption Date" shall have the meaning set forth in Section 8(a).

"Noncompliance Redemption Demand" shall have the meaning set forth in Section 8(a).

"Noncompliance Redemption Price" shall have the meaning set forth in Section 8(a).

"Non-Prevailing Party" shall have the meaning set forth in Section 17.

"Notice" shall have the meaning set forth in Section 14.

"Operating Covenants" shall mean any covenants set forth on SCHEDULE 1 to this Certificate of Designation.

"Operating Expenses" shall mean such expenses actually paid or payable by the Corporation in respect of all corporate overhead, including, without limitation, the ownership, operation, management, maintenance, repair and use, as applicable, of each Mortgage Loan and Individual Property, determined on an accrual basis, and, in accordance with GAAP, and, in all cases, subject to the prior written approval by the Required Holders and the Required Series B-4 Holders.

"Option" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Voting Common Stock or Convertible Securities.

"Optional Redemption" shall have the meaning set forth in Section 8(c).

"Optional Redemption Date" shall have the meaning set forth in Section 8(c). "Optional Redemption Price" shall

have the meaning set forth in Section 8(c).

"Original Price" shall mean the price per share of Series B Preferred Stock of $3.2171 for the Series B-1 Preferred Stock and Series B-2 Preferred Stock, $3.40 for the Series B-3 Preferred Stock and $3.20 for the Series B-4 Preferred Stock (subject in each case to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Voting Common Stock or the Series B Preferred Stock outstanding).

"Other Executive Stock Grants" shall mean (1) the restricted stock award agreement dated as of February 20, 2015, granting Jonathan Brohard 150,000 shares of Common Stock; (2) the restricted stock award agreement dated as of February 20, 2015, granting Lisa Jack 100,000 shares of Common Stock; (3) the restricted stock award agreement dated as of February 20, 2015, granting Ryan Muranaka 75,000 shares of Common Stock; (4) the restricted stock award agreement dated as of February 20, 2015, granting Greg Hanss 65,000 shares of Common Stock; (5) the 35,000 shares of Common Stock granted to Greg Hanss under the Executive Employment Agreement dated January 21, 2015 by and between the Corporation and Greg Hanss; and (6) the restricted stock award agreement, dated July 24, 2014, granting Steven Darak 250,000 shares of Common Stock.

"Parity Stock" shall have the meaning set forth in Section 2.

"Person" shall mean any individual, firm, partnership, limited liability company, corporation or other entity, and shall include any successor (by merger or otherwise) of such entity.

"Per Share Book Value" shall mean, as of any date, the Tangible Book Value as of such date, divided by the number of shares of Voting Common Stock Deemed Outstanding as of such date.

"Pre-Authorized Transfer" shall have the meaning set forth in Section 1.1.5 of SCHEDULE 1.

"Preferred Director" shall mean the Series B-1 Director, the Series B-2 Director, the Series B-3 Director, the Series B-4 Director and the Series B Director.

"Preferred Stock" shall have the meaning set forth in the Preamble of this Certificate of Designation.

"Prevailing Party" shall have the meaning set forth in Section 17.

"Pro Rata Share" shall mean, with respect to any Holder at any time, a percentage equal to the number of shares of Common Stock into which such Series B-4 Preferred Stock owned by such Holder are convertible at such time divided by the number of shares of Voting Common Stock Deemed Outstanding with respect to such Series B-4 Preferred Stock at such time (computed separately with respect to each series of Series B-4 Preferred Stock owned by such Holder).

"Real Property" shall mean, collectively, each and every Individual Property. "Redemption Date" shall have the meaning set forth in Section 8(d)(i).

"Redemption Notice" shall have the meaning set forth in Section 8(d).

"Rents" shall mean, with respect to each Individual Property, all rents, rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a bankruptcy proceeding) or in lieu of rent or rent equivalents, royalties (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payment and consideration of whatever form or nature received by or paid to or for the account of or benefit of the Corporation, each Subsidiary, Manager or any of their respective agents or employees from any and all sources arising from or attributable to such Individual Property and the Improvements, including all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Real Property or rendering of services by the Corporation, each Subsidiary, Manager or any of their respective agents or employees.

"Required Holders" shall have the meaning ascribed to such term in the Existing Preferred Stock Certificate of Designation.

"Required Redemption Date" shall have the meaning set forth in Section 8(b).

"Required Redemption Demand" shall have the meaning set forth in Section 8(b).

"Required Redemption Price" shall have the meaning set forth in Section 8(b).

"Required Series B-4 Holders" shall mean, as of any date, holders of at least fifty-one percent (51%) of the shares of Series B-4 Preferred Stock then outstanding as of such date.

"SEC" means the Securities and Exchange Commission.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Senior Preferred Stock" shall have the meaning set forth in Section 2.

"Series B Director" shall have the meaning set forth in the Existing Preferred Stock Certificate of Designation.

"Series B Issue Date" shall mean, with respect to a share of Series B Preferred Stock, the date on which the Corporation issued such share.

"Series B Liquidation Amount" shall have the meaning set forth in Section 4(a).

"Series B Original Issue Date" shall mean July 24, 2014.

"Series B Preferred Stock" shall have the meaning set forth in the Preamble of this Certificate of Designation.

"Series B-1 Director" shall have the meaning set forth in the Existing Preferred Stock Certificate of Designation.

"Series B-1 Preferred Stock" shall have the meaning set forth in Section 1.

"Series B-2 Director" shall have the meaning set forth in the Existing Preferred Stock Certificate of Designation.

"Series B-2 Preferred Stock" shall have the meaning set forth in the Preamble of this Certificate of Designation.

"Series B-3 Director" shall have the meaning set forth in the Existing Preferred Stock Certificate of Designation.

"Series B-3 Preferred Stock" shall have the meaning set forth in the Preamble of this Certificate of Designation.

"Series B-4 Preferred Stock" shall have the meaning set forth in the Preamble of this Certificate of Designation.

"Series B-4 Director" shall have the meaning set forth in Section 5(c)(i).

"Series B-4 Holder" shall have the meaning set forth in Section 5(c)(iii).

"Series B-4 Issue Date" shall mean, with respect to a share of Series B-4 Preferred Stock, the date on which the Corporation issued such share.

"Special Dividend" shall have the meaning set forth in the Certificate of Incorporation.

"Special Preferred Class B Dividends" shall have the meaning set forth in Section 3(e).

"Special Preferred Class B Payment Date" shall have the meaning set forth in Section 3(e).

"Subsidiary" shall mean each of the Persons directly or indirectly owned by the Corporation on and after the Series B Original Issue Date; and "Subsidiaries" shall mean the plural thereof.

"Tangible Book Value" means, of any date, the sum of consolidated stockholders' equity of Corporation and its wholly-owned Subsidiaries determined in accordance with GAAP, less (without duplication) the sum of all intangibles determined in accordance with GAAP (including, without limitation, goodwill and deferred or capitalized acquisition costs) and the equity in non-controlled subsidiaries, in each case, determined as of the end of the most recently completed fiscal quarter of the Corporation.

"Taxes" shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against any Mortgaged Property or Individual Property or part thereof, together with all interest and penalties thereon.

"Transaction Document" shall have the meaning set forth in each subscription agreement entered into between the Corporation and any Holder of Series B-4 Preferred Stock.

"Transfer" shall have the meaning set forth in Section 1.1.5 of SCHEDULE 1.

"Voting Common Stock" shall mean the shares of Voting Common Stock authorized under the Corporation's Certificate of Incorporation.

"Voting Common Stock Deemed Outstanding" means, as of the particular time of determination, the number of shares of Voting Common Stock actually outstanding at such time, plus the number of shares of Voting Common Stock deemed to be outstanding pursuant to Section 6(e)(i) hereof (but (i) excluding any shares of Voting Common Stock owned or held by or for the account of the Corporation, shares of Voting Common Stock issuable under Options and Convertible Securities not then exercisable, exchangeable or convertible and shares of Common Stock issuable upon conversion of shares of Series B Preferred Stock and (ii) taking account of any limitations on exercise, exchange or conversion set forth in such Options or Convertible Securities).

EXHIBIT A

Lost Certificate Affidavit

The undersigned hereby certifies under penalty of perjury and agrees that:

1. the undersigned is the holder of the following certificate (the "Lost Certificate") representing shares of Series B-4 Cumulative Convertible Preferred Stock (the "Series B-4 Preferred Stock"), of IMH Financial Corporation (the "Corporation") immediately prior to the conversion of such shares into shares of Common Stock, par value $0.01 per share, of the Corporation (the "Common Stock");

2. Series B-4 Preferred Stock Certificate Number: [ ]

   Number of shares of Series B-4 Preferred
   Stock Represented by Such Certificate: [_____]

3. the Lost Certificate has been lost, stolen or destroyed and cannot now be produced;

4. the undersigned has made, or caused to be made, a diligent search for the Lost Certificate and has been unable to find or recover such Lost Certificate;

5. the undersigned is the unconditional sole owner of the Lost Certificate, and the Lost Certificate and any rights of the undersigned in the Lost Certificate have not, in whole or in part, been sold, endorsed, assigned, transferred, hypothecated, pledged or otherwise disposed of, and no contract to undertake any of the foregoing has been entered, and no person, firm, corporation or other entity, other than the undersigned, has any right, title, claim, equity or interest, or power of attorney in, to, or respecting such Lost Certificate or the proceeds thereof;

6. the undersigned is making this affidavit for the purpose of inducing the Corporation to (i) deliver to the undersigned a new certificate (the "New Certificate") evidencing ownership of the Common Stock to be issued to the undersigned pursuant to the conversion of the Series B-4 Preferred Stock into Common Stock or (ii) redeem the Series B-4 Preferred Stock;

7. the undersigned will immediately and without consideration return the Lost Certificate to the Corporation should it at any time hereafter come into the hands, custody or power of the undersigned or any other person or entity over which the undersigned has control; and

8. to the fullest extent permitted by law, the undersigned will indemnify, protect and hold harmless the Corporation, its successors and assigns and their respective Affiliates, and their respective, officers, agents, attorneys, directors, transfer agents, registrars, trustees and depositories and any of their respective successors or assigns (collectively, the "Indemnified

Parties") from and against any and all claims, demands, actions, losses, liabilities, damages and suits (whether groundless or otherwise), and reasonable costs and expenses of every nature and character (including counsel fees and expenses of litigation), as the same may arise out of or be made against or be incurred by any of the Indemnified Parties, or to which any of the Indemnified Parties may be subjected, or which any of the Indemnified Parties may sustain, relating to, arising out of or in connection with (i) the Corporation's issuance of the New Certificate or (ii) any person or entity who may present the Lost Certificate stated to have been lost, stolen or destroyed as described above or by reason of any person or entity, other than the undersigned, claiming ownership of, or any right to or interest in, the Lost Certificate or any or all of the Series B-4 Preferred Stock represented by such Lost Certificate.

IN WITNESS WHEREOF, the undersigned has executed this instrument on this , 20 .

[Name of Holder]

By:
Name:
Title:

STATE OF)

COUNTY OF), SS:

I HEREBY CERTIFY, that on this __ day of 20__, before me, a Notary Public of the State of , personally appeared, known (or satisfactorily proven) to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that such person executed the same on behalf of [insert company name] for the purposes therein contained, and in my presence signed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

_____
Notary Public

EXHIBIT B

Exchange Form

Description of shares of Series B-4 Cumulative Convertible Preferred Stock (the "Series B-4 Preferred Stock") of IMH Financial Corporation To Be Exchanged For Common Stock

Name(s) and Address(es) of Registered Holder	Series B-4 Preferred Stock Certificate	No. of Series B-4 Preferred Stock Shares Represented by the Series B-4 Preferred Stock Certificate

The undersigned, being the registered holder of the Series B-4 Preferred Stock listed above, hereby authorizes and directs the Corporation to cancel the Series B-4 Preferred Stock certificates listed above and issue certificates representing the applicable number of shares of Common Stock to the undersigned pursuant to the terms of the Certificate of Designation of the Series B-4 Preferred Stock of IMH Financial Corporation.

[Name of Holder]

By:
Name:
Title:

Exhibit B-1

RLF1 21742428v.1
19568075
19568075.9

Exchange Form

SCHEDULE 1

OPERATING COVENANTS

The Corporation hereby covenants as follows:

1.1.1. Annual Budget; Financial Reporting.

(a) The Corporation shall submit to the holders of the Series B-4 Preferred Stock by November 30 of each year the Annual Budget for the succeeding Fiscal Year for operation of its business and for each applicable Mortgage Loan and each Individual Property. Each Annual Budget shall be subject to the written consent of the Required Series B-4 Holders, which consent, so long as no Noncompliance Event exists, (i) shall not be unreasonably withheld or delayed and (ii) shall be deemed to have been given if the Required Series B-4 Holders fail to object in writing to the Annual Budget within twenty (20) days of the date such draft Annual Budget is furnished thereto. Annual Budgets approved by the Preferred Directors shall hereinafter be referred to as an "Approved Annual Budget". Until such time that any Annual Budget has been approved as provided above, the prior Approved Annual Budget shall apply for all purposes hereunder (with such adjustments as reasonably consented to in writing by the Required Series B-4 Holders to reflect actual increases in Taxes, Insurance Premiums, utilities expenses and any other applicable change and circumstance). Neither the Corporation and the Subsidiaries nor any Manager shall change or modify an Approved Annual Budget that has been approved by the Required Series B-4 Holders as provided above, without the written consent of the Required Series B-4 Holders. The Corporation shall, and shall cause each Subsidiary to, operate in accordance with the Approved Annual Budget, it being agreed and understood that, in any given Fiscal Year, the prior written consent of the Required Series B-4 Holders shall not be required for line item expenditures made in the ordinary course of business that do not, in the aggregate, exceed 105% of the amount budgeted for such line item expenditure, provided, that, in no event will the aggregate of all such excess line item expenditures exceed 103% of total expenditures included in the Approved Annual Budget for such Fiscal Year without the prior written consent of the Required Series B-4 Holders.

(b) Annual Financial Statements. Within ninety (90) days after the end of each Fiscal Year, the Corporation shall, and shall cause each Subsidiary which prepares financial statements relating solely to such Subsidiary (a "Financial Reporting Subsidiary") to, provide to each Holder true and complete copies of its financial statements, which will include a balance sheet, statement of income, statement of cash flows, and statements of stockholders equity prepared

in conformity with GAAP; provided, that so long as the Corporation is subject to the reporting requirements of Section 13 and Section 15 of the Exchange Act and complies timely with its reporting obligations in connection therewith (provided that if the Corporation timely files with the SEC a Form 12b-25 in accordance with Rule 12b-25 under the Exchange Act, and otherwise complies with Rule 12b-25, then upon the filing of such report within the time period permitted by Rule 12b-25, the Corporation shall be deemed to have filed such report on a timely basis), the financial statements included therein shall be deemed to have been delivered on a timely basis to each Holder. All such financial statements shall be audited by a nationally recognized accounting firm reasonably acceptable to the Required Series B-4 Holders. All such financial statements of the Corporation shall include activity of the Corporation and each of the Subsidiaries prepared on a consolidated basis. The Corporation will also provide to each Holder a budget to actual variance analysis with summary explanations as to all material variances. In addition, the Corporation shall, and shall cause each Subsidiary to, provide to each Holder any additional financial information reasonably requested by the Required Series B-4 Holders to the Corporation in writing. All financial information provided to the Holders under this Section 1.1.1(b) shall be accompanied by a Compliance Certificate in a form consistent with Schedule 1.1.1(g) signed by the Chief Financial Officer of the Corporation.

(c) Monthly Financial Statements. Within thirty (30) days after the end of each month, the Corporation shall, and shall cause each Financial Reporting Subsidiary to, provide to each Holder true and complete copies of its unaudited financial statements for such month, which will include a balance sheet, statement of income, statement of cash flows, and statements of stockholders equity prepared in conformity with GAAP. All such unaudited financial statements of the Corporation shall include activity of the Corporation and each of the Subsidiaries prepared on a consolidated basis. In addition, the Corporation shall, and shall cause each Subsidiary to, provide to each Holder any additional financial information reasonably requested by the Required Series B-4 Holders of the Corporation in writing. All financial information provided to the Holders under this Section 1.1.1(c) shall be accompanied by a Compliance Certificate in a form consistent with Schedule 1.1.1(g) signed by the Chief Financial Officer of the Corporation.

(d) Other Monthly Reporting. The Corporation shall, and shall cause each Financial Reporting Subsidiary to, provide to the Holders any other monthly reports as mutually agreed upon by the Corporation and the Required Series B-4 Holders.

(e) Additional Reporting. The Corporation shall, and shall cause each Subsidiary to, provide to the Holders such further documents and information in its possession or control or reasonably obtainable by the Corporation, concerning its operations, properties, ownership, and finances (including of any Subsidiaries) as the Required Series B-4 Holders shall reasonably request in writing of the Corporation at reasonable intervals provided that the scope of such requests shall not significantly disrupt the operations of the Corporation and the Subsidiaries.

(f) GAAP. The Corporation shall, and shall cause each Subsidiary to, maintain systems of accounting established and administered in accordance with sound business practices and sufficient in all respects to permit preparation of financial statements in conformity with GAAP. All financial statements shall be prepared in accordance with GAAP, consistently applied (except for changes required by GAAP).

(g) Certifications of Financial Statements and other Documents; Compliance Certificate. Together with the financial statements and other documents and information provided to the Holders by or on behalf of the Corporation under this Schedule 1.1.1, the Corporation shall, and shall cause each Financial Reporting Subsidiary to, deliver to each Holder a certification, in form and substance reasonably acceptable to the Required Series B-4 Holders executed on behalf of the Corporation by its Chief Executive Officer or Chief Financial Officer stating that, to such officer's actual knowledge, such financial statements are true and complete in all material respects and do not omit any material information without which the same might reasonably be misleading. In addition, where a Compliance Certificate is required in this SCHEDULE 1, the Corporation shall, and shall cause each Subsidiary to, deliver a certificate to the Holders stating that, to its actual knowledge, there does not exist any Noncompliance Event (or if any exists, specifying the same in reasonable detail).

(h) Fiscal Year. Each of the Corporation and the Subsidiaries represents that its fiscal year ends on December 31 and agrees that it shall not change its fiscal year without prior written notice to the Holders and the prior written consent of the Required Series B-4 Holders.

(i) Accountant's Reports. Promptly upon receipt thereof, the Corporation shall, and shall cause each Subsidiary to, deliver to the Holders copies of all significant reports submitted by independent public accountants in connection with each annual, internal or special audit of the financial statements or other affairs of the Corporation and the Subsidiaries made by such accountants, including any comment letter submitted by such accountants to management in connection with the annual audit, any report on internal controls and any other report or correspondence regarding any material weaknesses, significant deficiencies or other material accounting considerations or concerns.

(j) Tax Returns. Within thirty (30) days after filing, the Corporation shall, and shall cause each Subsidiary to, deliver to the Holders a copy of all tax returns of the Corporation and each Subsidiary filed with any federal or state Governmental Authority.

(k) Material Notices. The Corporation shall, and shall cause each Subsidiary to, promptly deliver, or cause to be delivered, to the Holders copies of all notices of default given or received with respect to non-compliance related to any material Indebtedness or Major Contract of the Corporation or the Subsidiaries.

1.1.2. Expenses. The Corporation shall use its reasonable best efforts to ensure that neither it nor any of the Subsidiaries makes, incurs or permits to exist any Extraordinary Expense without the prior written consent of the Required Series B-4 Holders, which approval, so long as no Noncompliance Event exists, shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, if an Extraordinary Expense is incurred, and the Required Series B-4 Holders shall not have consented in writing to such Extraordinary Expense, then the Corporation shall, and shall cause any applicable Subsidiary to, promptly deliver to the Preferred Directors a reasonably detailed explanation of such Extraordinary Expense.

1.1.3 Approval of Major Contracts. Without the prior written consent of the Required Series B-4 Holders, the Corporation shall not, and shall not permit any Subsidiary to, approve any Major Contract or any amendment to or modification of the Consultancy Agreement or the Investment Agreement, other than Major Contracts for actions or expenditures specifically authorized in the Approved Annual Budget for the applicable Fiscal Year or otherwise approved by the Board or Investment Committee.

1.1.4. Insurance. The Corporation shall, on behalf of itself and each Subsidiary (which shall be named as an additional insured), (a) maintain with financially sound, responsible and reputable insurers, insurance with respect to its assets and business against such liabilities, casualties, risks, and contingencies and in such types and amounts, including a fidelity bond and an errors and omissions policy in a minimum amount of $5,000,000 in form and with the coverages, with a company, and with respect to such individuals or groups of individuals, as shall satisfy prevailing requirements applicable to a qualified mortgage institution and otherwise as is customary in the case of Persons engaged in the same or similar businesses and similarly situated, (b) with respect to the Mortgage Loans and each Individual Property, maintain with financially sound, responsible and reputable title insurance companies, which are duly qualified as such under the laws of the states in which the Mortgaged Properties or Individual Properties, as the case may be, are located, duly authorized and licensed in such states to transact the title insurance business and to write the title insurance provided by the title insurance policy or binder issued by it, and approved as an insurer by the Required Series B-4 Holders, (c) with respect to each Individual Property, maintain with financially sound, responsible and reputable insurers, insurance with respect to each Individual Property and any related operations as is customary in the case of Persons engaged in the same or similar businesses and similarly situated including, without limitation, as appropriate, insurance with respect to property, casualty, environmental, builders' risk, auto liability, commercial general liability, boiler and machinery, liquor liability, pollution, workers' compensation, rent, business interruption, and "tees" and "greens", and (d) upon a Holder's request, furnish to such Holder from time to time (i) a summary of its insurance coverage, in form and substance satisfactory to the Required Series B-4 Holders, and (ii) copies of the applicable policies.

1.1.5. Transfers of Interests; Asset Sales. Other than a Transfer that is (WW) a

redemption expressly provided for in Section 8 of this Certificate of Designation, (XX) specifically authorized by the Approved Annual Budget that is made for no less than 95% of the amount therefor in such Approved Annual Budget, (YY) to a JPM Permitted Transferee or (ZZ) contemplated by the Investment Agreement (any Transfer of the type referred to in clauses (WW)–(ZZ), a "Pre-Authorized Transfer"), without the prior written consent of the Required Series B-4 Holders, in each instance, the Corporation and the Subsidiaries nor any other Person having a direct or indirect ownership or beneficial interest in the Corporation and the Subsidiaries shall, and the Corporation shall (i) not permit any Subsidiary to, and (ii) not permit any Subsidiary to permit any Mortgagor to, sell, convey, mortgage, grant, bargain, encumber, pledge, assign or transfer any interest in any Mortgage Loan, any Mortgaged Property, any Real Property or any part thereof, any other material asset of the Corporation or its Subsidiaries, or any interest, direct or indirect, in the Corporation and the Subsidiaries, whether voluntarily or involuntarily (a "Transfer"). A Transfer within the meaning of this Section 1.1.5 shall be deemed to include (x) an installment sales agreement wherein the Corporation and the Subsidiaries agree to sell any Real Property or any part thereof for a price to be paid in installments; or (y) an agreement by the Corporation for the leasing of all or a substantial part of any Real Property for any purpose other than the actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, the Corporation and the Subsidiaries' right, title and interest in and to any Leases or any Rents. Notwithstanding any consent of the Required Series B-4 Holders pursuant to the terms of this Section 1.1.5, if a Transfer requiring consent hereunder results in (A) an ownership change as determined pursuant to Section 382 of the Code, and (B) a material adverse effect on the value and utility of the built-in tax losses of the Corporation and the Subsidiaries, then any such Transfer shall be deemed to be in violation of the terms of this Certificate of Designation and shall be deemed to be void ab initio. For the avoidance of doubt, it is expressly acknowledged and agreed that a Pre-Authorized Transfer of shares of Series B-4 Preferred Stock will not, and will not for any reason be deemed to, be a Transfer in violation of this Section 1.1.5 and no such Transfer will be deemed void or voidable pursuant to this Section 1.1.5. In the event there is any conflict between this Section 1.1.5 and any provision of the Corporation's Bylaws, this Section 1.1.5 shall control.

1.1.6. Dissolution, Mergers, Joint Ventures, etc. Without the prior written consent of the Required Series B-4 Holders, the Corporation shall not, and shall not permit any Subsidiary to, to the fullest extent permitted by applicable law, (i) effect a Liquidation Event or a Deemed Liquidation Event, (ii) engage in any business activity not related to the ownership and operation of the Mortgage Loans or the Real Property, (iii) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of the property or assets of the Corporation and the Subsidiaries, taken as a whole, (iv) cause, permit or suffer to (A) dissolve, wind up or liquidate or take any action, or omit to take any action, as a result of which the Corporation or any of the Subsidiaries would be dissolved, wound up or liquidated in whole or in part, or (B) amend, modify, waive or terminate the operating agreement of any Subsidiary, (v) except as approved by the

Investment Committee, enter into any partnerships or joint ventures or otherwise acquire any equity interest in any Person or (vi) enter into corporate acquisitions or other business combinations.

1.1.7. Change in Business. Without the prior approval of the Required Series B-4 Holders, the Corporation shall not, and shall not permit any Subsidiary to enter into any line of business other than the ownership and operation of the Real Property and the Mortgage Loans and activities strictly incidental thereto.

1.1.8. Affiliate Transactions. Without the prior written consent of the Required Series B-4 Holders, other than the ITH Consulting Agreement, the Consultancy Agreement, the Investment Agreement, the Bain Termination Agreement, the Bain Stock Grant, the Meris Separation Agreement, the Brohard Employment Agreement, the Other Executive Stock Grants, the ITH Warrant and the JPM Warrant in effect on the JPM Acquisition Date, without the prior written consent of the Required Series B-4 Holders, the Corporation shall not, and shall not permit any Subsidiary to, enter into, or be a party to, any transaction with an Affiliate of the Corporation or any of its Subsidiaries or any of the partners, members or stockholders, as applicable, of the Corporation or any of its Subsidiaries, *provided,* the Corporation may, without the prior written consent of the Required Series B-4 Holders, enter into such award agreements as are required pursuant to (i) the Director Compensation Plan; and (ii) the Equity Incentive Plan. Solely for purposes of this Section 1.1.8, the term "Affiliate" shall mean, as to any Person, any other Person (a) that owns directly or indirectly any equity interests in such Person, and/or (b) in which such Person owns five percent (5%) or more of the equity interests, and/or (c) that is in control of, is controlled by or is under common ownership or control with such Person, and/or (d) that is a director or officer of such Person or of an Affiliate of such Person, and/or (e) that is the related by blood, marriage or adoption to such Person or to an Affiliate of such Person. As used in the definition of Affiliate in this Section 1.1.8, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of such Person, whether through ownership of voting securities, by contract or otherwise.

1.1.9. Intentionally Omitted.

1.1.10. Bankruptcy. To the fullest extent permitted by law, without the prior written consent of the Required Series B-4 Holders, the Corporation shall not, and shall not permit any Subsidiary to, (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (i), (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Corporation and the Subsidiaries or for a substantial part of its assets, (iv) file an answer admitting

the allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing.

1.1.11. Certificate of Incorporation and Bylaws. In addition to the provisions of Section 5(b)(i) of the Certificate of Designation, without the prior written consent of the Required Series B-4 Holders, the Corporation shall not amend, alter, waive or repeal any provision of the Certificate of Incorporation or bylaws of the Corporation (whether by merger, consolidation or otherwise) in a manner that would reasonably be expected to have an adverse effect on any Holder or change the rights, powers or preferences of the Series B-4 Preferred Stock.

1.1.12. Dividends. Subject to the right of the holders of the Class B Common Stock to receive the Special Dividend, without the prior written consent of the Required Series B-4 Holders, the Corporation shall not, and shall not permit any Subsidiary to, (i) declare or pay any dividends on or make any other distribution in respect of any interest in it (other than any dividends or distributions paid to another Subsidiary or the Corporation), (ii) make any capital contribution to or purchase, redeem (including any Optional Redemption), acquire or retire any securities in any Person (whether such interests are now or hereafter issued, outstanding or created), or (iii) cause or permit any reduction or retirement of the capital stock, partnership interests, membership interests of the Corporation and the Subsidiaries, as applicable; provided that, the Board may authorize quarterly dividends on the Voting Common Stock of up to $375,000 in aggregate; provided further, that, the Common Dividend Conditions have been satisfied as of the date of declaration of any such dividends on the Voting Common Stock. For any given quarter, if any amounts that would be allowed for the payment of dividends on the Voting Common Stock pursuant to the immediately preceding provisos have not been paid, then an aggregate amount, if any, equal to $375,000 minus the amount of the dividend paid with respect to such quarter may be carried forward to the immediately following quarter (provided that, such amounts are paid to holders of Voting Common Stock before the end of the quarter immediately following the quarter for which such dividend was authorized). Notwithstanding the foregoing, (x) the Corporation shall be permitted to apply the Corporation's assets to the redemption or acquisition of any shares of Voting Common Stock held by employees, advisors, directors, consultants and service providers of the Corporation, other than executive officers of the Corporation, on terms approved by the Board, including each of the Preferred Directors and (y) for the avoidance of doubt, but without limiting any other requirement of consent of the Required Series B-4 Holders, the prior written consent of the Required Series B-4 Holders shall not be required for the declaration or payment of dividends with respect to the Series B-4 Preferred Stock pursuant to Sections 3(a), 3(d) and 3(e) of this Certificate of Designation, payment of the Liquidation Preference and other amounts payable with respect to the Series B-4 Preferred Stock pursuant to Section 4(a) of this Certificate of Designation, conversion of the Series B-4 Preferred Stock and payment of amounts payable in connection therewith pursuant to Section 6 or Section 7 of this Certificate of Designation, redemption of the Series B-4 Preferred Stock pursuant

to Section 8(b) or 8(c) of this Certificate of Designation or payment of the Put Price (as defined in the Investment Agreement) and interest thereon pursuant to the terms of the Investment Agreement.

1.1.13. CEO/CFO. Other than pursuant to the Bain Termination Agreement, the Brohard Employment Agreement, the Montes Employment Agreement, and the Meris Separation Agreement in effect on the effective date of this Certificate of Designation as set forth in ARTICLE FOURTH hereof, the Corporation shall not, and shall not permit any Subsidiary to, enter into, terminate, amend or approve the employment of any Key Personnel, including, without limitation, any change in the compensation or benefits payable to (or waive any obligation of) any Key Personnel, without the written consent of the Required Series B-4 Holders. In the event of any such termination permitted pursuant to this Section 1.1.13, or if any of the Key Personnel become unavailable to perform services for the Corporation by reason of death, incapacity or by reason of any such Key Personnel terminating employment with the Corporation or for reasons otherwise beyond the control of the Corporation, then the Corporation shall deliver written notice to the Required Series B-4 Holders thereof, and the Corporation shall not, and shall not permit any Subsidiary to, replace any such terminated position without the prior written consent of the Required Holders and the Required Series B-4 Holders, which consent, so long as no Noncompliance Event exists, shall not be unreasonably withheld or delayed.

1.1.14. Loans; Advances. Unless approved by the Investment Committee, the Corporation shall not, and shall not permit any Subsidiary to, without the prior written consent of the Required Series B-4 Holders, make any advances or loans to, guarantee for the benefit of, or make any Investment in, any Person (other than a wholly-owned Subsidiary of the Corporation).

1.1.15. Indebtedness. Without the prior written consent of the Required Series B-4 Holders, none of the Corporation and the Subsidiaries, taken as a whole, shall incur any Indebtedness other than (i) Indebtedness not to exceed $10,000,000 in aggregate incurred on and after the Series B Original Issue Date; and (iii) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight drafts) drawn against insufficient funds in the ordinary course of business; *provided*, that, such Indebtedness as described in this subsection (iii) is extinguished within five (5) calendar days of incurrence thereof.

1.1.16 Senior or Parity Stock. Without the prior written consent of the Required Series B-4 Holders, the Corporation shall not create, and shall not permit any Subsidiary to create, or authorize the creation of, or issue, or authorize the issuance of Senior Preferred Stock or Parity Stock, or any security or Indebtedness convertible into, exchangeable for or having option rights to purchase shares of Senior Preferred Stock or Parity Stock, or permit any Subsidiary to take any such action with respect to any security.

1.1.17 Issuance of Subsidiary Stock. Without the prior written consent of the Required Series B-4 Holders, no Subsidiary of the Corporation may issue any equity interests, other than issuances to the Corporation or a wholly-owned Subsidiary of the Corporation.

1.1.18. Reclassification of Voting Common Stock. Without the prior written consent of the Required Series B-4 Holders, the Corporation shall not reclassify any class or series of Voting Common Stock into shares with a preference or priority as to dividends or assets superior to or on a parity with the Series B-4 Preferred Stock.

1.1.19. No Board Committee. Without the prior written consent of the Required Series B-4 Holders, the Corporation shall not establish any Board committee (other than a compensation committee, an audit committee, and an Investment Committee in accordance with any certificate of designation of the Corporation), other than Board committees (i) on which a Series B-1 Director or a Series B-2 Director or, in the case there is no Series B-2 Director, a Series B-3 Director, and in the case there is no Series B-2 Director and no Series B-3 Director, a Series B-4 Director serves (unless both the Series B-1 Director and Series B-2 Director (or in the case there is no Series B-2 Director, the Series B-3 Director, or in the case there is no Series B-2 Director and no Series B-3 Director, the Series B-4 Director) decline to serve) and (ii) which are formed for a special purpose identified in good faith by the Board in an adopting resolution and to which the Board has not, and does not later, delegate powers to act or make decisions that could materially impact the business of the Corporation and its Subsidiaries, taken as a whole; provided that, no Board committee shall be delegated powers or duties in a manner that is inconsistent with, or otherwise limits the rights of the Holders as set forth in this Certificate of Designation. No Subsidiary shall establish any committee of its board of directors.

1.1.20. Auditors. Without the prior written consent of the Required Series B-4 Holders, the Corporation shall not, and shall not permit any Subsidiary to, engage any auditor of the Corporation or any Subsidiary that is not a nationally recognized accounting firm.

1.1.21. Stock Incentive Plans. Without the prior written consent of the Required Series B-4 Holders, the Corporation shall not, and shall not permit any Subsidiary to, issue or otherwise grant any equity-based compensation (including, without limitation, any shares of Voting Common Stock or Options or other rights with respect thereto), other than Voting Common Stock and Options to purchase shares of Voting Common Stock granted to directors, officers, key employees or other service providers of the Corporation and/or its Subsidiaries pursuant to (i) the Equity Incentive Plan, (ii) the Director Compensation Plan, (iii) the ITH Warrant, (iv) the Bain Grant, (v) the Juniper Warrant, (vi) the Other Executive Stock Grants or (vii) the JPM Warrant; *provided*, that, grants under the Equity Incentive Plan and the Director Compensation Plan shall not, in the aggregate, represent more than ten percent (10%) of the number of shares of Voting Common Stock Deemed Outstanding at any time and will have an exercise price of no less than

the greater of (A) the Common FMV and (B) the Corporation's Per Share Book Value as of the date of any such grant.

1.1.22. IPO-related Notices. Without the prior written consent of the Required Series B-4 Holders, the Corporation will not provide a notice to stockholders at any time to the effect that the Corporation will not, or does not intend to, pursue an initial public offering.

Execution Version

Exhibit 4.1

SECOND AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT

THIS SECOND AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT (this "**Agreement**") is made as of September 25th, 2019, by and among IMH Financial Corporation, a Delaware corporation (the "**Company**"), and each of the other Persons signatory hereto or that executes and delivers a joinder agreement pursuant to Section 8. Capitalized terms used but not otherwise defined herein are defined in Section 13.

WHEREAS, the Company and SRE Monarch, LLC, a Delaware limited liability company ("**SRE**"), are parties to the Series B-2 Cumulative Convertible Preferred Stock Subscription Agreement dated as of July 23, 2014 (the "**SRE Purchase Agreement**");

WHEREAS, the Company, JCP Realty Partners, LLC, a Delaware limited liability company ("**JCP Realty**"), and Juniper NVM, LLC, a Delaware limited liability company ("**Juniper NVM**"), are parties to the Series B-1 Cumulative Convertible Preferred Stock Exchange and Subscription Agreement dated as of July 23, 2014 (the "**Juniper Purchase Agreement**");

WHEREAS, in order to induce the Company to enter into the SRE Purchase Agreement and the Juniper Purchase Agreement and to induce SRE, JCP Realty and Juniper NVM (the "**Original Investors**") to invest funds in the Company and otherwise acquire shares of the Series B Preferred Stock, the Company and the Original Investors entered into an Investors' Rights Agreement dated as of July 23, 2014 (the "**Original Agreement**"), to provide the Original Investors with certain registration rights to cause the shares of Common Stock issuable upon conversion of the shares of Series B Preferred Stock owned by the Original Investors to be registered under the Securities Act, and certain other rights as set forth therein;

WHEREAS, the Company, SRE and JPMorgan Chase Funding Inc., a Delaware corporation ("**JPM**"), are parties to the Preferred Stock Purchase Agreement dated as of April 11, 2017 pursuant to which SRE sold all of its Series B-2 Cumulative Convertible Preferred Stock to JPM, and in connection therewith JPM signed a joinder to the Original Agreement and became an Original Investor;

WHEREAS, the Company and JPM are parties to the Series B-3 Cumulative Convertible Preferred Stock Subscription Agreement dated as of February 9, 2018 (the "**Series B-3 Purchase Agreement**");

WHEREAS, in order to induce the Company to enter into the Series B-3 Purchase Agreement and to induce JPM to invest funds in the Company and otherwise acquire shares of the Company's Series B-3 Cumulative Convertible Preferred Stock, the Company, JPM, JCP Realty and Juniper NVM (collectively, the "**Investors**") have agreed to enter into an Amended and Restated Investors' Rights Agreement dated as of February 9, 2018 (the "**Amended and Restated Agreement**") to provide the Investors with certain registration rights to cause the shares of Common Stock issuable upon conversion of the shares of Series B Preferred Stock owned by the Investors to be registered under the Securities Act, and certain other rights as set forth herein;

WHEREAS, the Company and JPM are parties to the Series B-4 Cumulative Convertible Preferred Stock Subscription Agreement dated as of September 25, 2019 (the "**Series B-4 Purchase Agreement**"), pursuant to which JPM is purchasing from the Company 1,875,000 shares of the Company's Series B-4 Cumulative Convertible Preferred Stock, par value $0.01 per share; and

WHEREAS, in order to induce the Company to enter into the Series B-4 Purchase Agreement and to induce JPM to invest funds in the Company and otherwise acquire shares of the Company's Series B-4 Cumulative Convertible Preferred Stock, the Company and the Investors have agreed to enter into this Agreement to provide the Investors with certain registration rights to cause the shares of Common Stock issuable upon conversion of the shares of Series B Preferred Stock owned by the Investors to be registered under the Securities Act, and certain other rights as set forth herein.

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

1. **Demand and Shelf Registrations.**

(a) Demand Registrations. At any time after any of the Company's equity securities are listed on a national securities exchange (provided that if a Lock-Up Period is in effect with respect to the Company's first Underwritten Offering under the Securities Act for cash, after such Lock-Up Period has expired), if the Company has not effected or is not diligently pursuing a Shelf Registration pursuant to Section 1(b), any Major Investor may require the Company to register under the Securities Act all or any portion of such Major Investor's Registrable Securities on (i) Form S-11 or any similar long-form Registration Statement (a "**Long-Form Registration**"), or, if available, (ii) Form S-3 or any similar short-form Registration Statement (a "**Short-Form Registration**") (such Major Investor, an "**Initiating Holder**" and any registration under this Section 1(a), a "**Demand Registration**"), *provided, however*, that any Demand Registration on Form S-11 may only be requested by a Major Investor if the sale of the Registrable Securities requested to be registered by the Initiating Holder(s) of the Registrable Securities is reasonably expected to result in aggregate gross cash proceeds in excess of ten million dollars ($10,000,000) (before deducting any underwriting discount or commission).

(b) Shelf Registration. Provided that any of the Company's equity securities are then listed on a national securities exchange, the Company shall no later than the earlier of (i) forty-five (45) days after the conversion of all of the outstanding Series B Preferred Stock into Common Stock or (ii) forty-five (45) days after any Major Investor has agreed in writing that, within three (3) Business Days after being notified of the effectiveness of the Shelf Registration (as defined below), it will convert all of its shares of Series B Preferred Stock into Common Stock, file a Registration Statement with the Securities and Exchange Commission in accordance with and pursuant to Rule 415 promulgated under the Securities Act (or any successor rule then in effect) (the "**Shelf Registration**"), and shall thereafter, subject to Section 1(c), use its reasonable best efforts to cause such Registration Statement to become effective as promptly as practicable. If any Registrable Securities remain issued

and outstanding after three (3) years following the initial effective date of such Shelf Registration (the "**Initial Shelf Effective Date**"), the Company shall, prior to the expiration of such Shelf Registration, file a new Shelf Registration covering such Registrable Securities and shall thereafter use its reasonable best efforts to cause to be declared effective as promptly as practical, such new Shelf Registration. Any Shelf Registration Statement filed pursuant to this Section 1(b) shall include a "plan of distribution" section in substantially the form attached hereto as Annex I (unless otherwise required pursuant to written comments received from the SEC upon review of the Shelf Registration Statement). The Company shall give prompt written notice of any proposed Shelf Registration at least twenty (20) days before the anticipated filing date (the "**Shelf Notice**") to all Holders. The Shelf Notice shall offer each Holder the opportunity to include in the Registration Statement the number of Registrable Securities as such Holder may request.

(c) Maintenance of Mandatory Shelf Registration. In the event the number of shares available under any Shelf Registration previously filed pursuant to this Section 1 is at any time insufficient to cover all of the Registrable Securities required to be covered by such Registration Statement, the Company shall, as soon as practicable, but in any event not later than the later of (i) thirty (30) days after the Company becomes aware of the necessity therefor and (ii) the earliest date that the Company is permitted by the SEC to file the new Registration Statement as required hereby, file a new Shelf Registration Statement so as to register for resale all of the Registrable Securities not so covered.

(d) Information from Holders. In order to be named as a selling securityholder in the Shelf Registration as of the Initial Shelf Effective Date, each Holder must no later than ten (10) Business Days prior to the Initial Shelf Effective Date, which will be at least twenty (20) days following notice by the Company of the expected Initial Shelf Effective Date, furnish to the Company in writing such information as may be reasonably requested by the Company for the purpose of including such Holder's Registrable Securities in the Shelf Registration (the "**Participating Holder Information**"). The Company shall include in the Shelf Registration Participating Holder Information received by the Company at least ten (10) Business Days prior to the Initial Shelf Effective Date, to the extent necessary and in a manner so that upon Initial Shelf Effective Date the Holder shall be named as a selling securityholder and be permitted to deliver (or be deemed to deliver) a Prospectus relating to the Shelf Registration to purchasers of the Registrable Securities in accordance with applicable law.

From and after the Initial Shelf Effective Date (including with respect to a Shelf that is not the initial Shelf Registration), upon receipt of Participating Holder Information (including any updated Participating Holder Information) in writing (including any amendments to any prior Participating Holder Information), the Company shall use its reasonable best efforts to as soon as practicable but in any event within ten (10) Business Days (in the case of a supplement) or within thirty (30) calendar days (in the case of an amendment), as applicable, after the Company receives such Participating Holder Information, file any post-effective amendments or supplements, as applicable, to the Shelf Registration or a Prospectus relating to the Shelf Registration or the documents incorporated

by reference therein necessary for such Holder to be named as a selling securityholder and permit such Holder to deliver (or be deemed to deliver) a Prospectus relating to the Shelf Registration to purchasers of the Registrable Securities (subject to the Company's rights during any Delay Period or Suspension Period). Holders that do not deliver Participating Holder Information as provided for in this Section 1(d) shall not be named as selling securityholders in the Prospectus relating to the Shelf Registration until such Holder delivers such information. If the Company shall file a post-effective amendment to the Shelf Registration, it shall use its reasonable best efforts to cause such post-effective amendment to be declared effective under the Securities Act as promptly as is reasonably practicable and notify such Holder as promptly as is reasonably practicable after the effectiveness under the Securities Act of any post-effective amendment. If such Participating Holder Information is delivered during a Delay Period or Suspension Period, the Company shall so inform the Holder delivering such Participating Holder Information and shall take the actions set forth in this Section 1(d) upon expiration of the Delay Period or Suspension Period, as applicable, as though such Holder's Participating Holder Information had been delivered on the expiration date of such Delay Period or Suspension Period.

(e) Demand Notices and Requests for Underwritten Shelf Takedowns. The Initiating Holder(s) may request (i) pursuant and subject to Section 1(a) and the other terms and conditions hereof, a Demand Registration that is an Underwritten Offering (a "**Underwritten Demand Offering**"), or (ii) pursuant and subject to Section 1(b) and the other terms and conditions hereof, to sell all or any portion of their Registrable Securities in an Underwritten Offering that is registered pursuant to the Shelf (an "**Underwritten Shelf Takedown**"). Each such request shall be made by giving written notice (an "**Underwritten Offering Notice**") to the Company. Each Underwritten Offering Notice shall specify the approximate number of Registrable Securities requested to be registered, in the case of an Underwritten Demand Offering, or sold, in the case of an Underwritten Shelf Takedown. Within ten (10) days after receipt of any Underwritten Offering Notice, the Company shall give written notice of such requested registration or requested Underwritten Shelf Takedown, as applicable, to all other Holders of Registrable Securities and, subject to the provisions of Section 1(f)(ii) below, shall include in such Underwritten Demand Offering or Underwritten Shelf Takedown, as applicable, all Registrable Securities with respect to which the Company has received written requests for inclusion therein within fifteen (15) days after the receipt of the Company's notice. Following the delivery of an Underwritten Offering Notice in connection with an Underwritten Demand Offering, the Company shall use its reasonable best efforts to make such filing within forty-five (45) days of receipt of such Underwritten Offering Notice (the "**Filing Deadline**"), and shall use its reasonable best efforts to cause such Registration Statement to become effective within one hundred and eighty (180) days after receipt of an Underwritten Offering Notice (the "**Effectiveness Deadline**").

(f) Registrations; Takedowns.

(i) A registration shall not count as one of the permitted Demand Registrations until it has become effective, and any Demand Registration shall not count as a Demand Registration unless the Initiating Holder(s) is able to register and

sell at least seventy percent (70%) of the Registrable Securities requested to be registered by such Initiating Holder(s) in such Demand Registration; provided that the Company shall in any event pay all Registration Expenses in connection with any registration initiated as a Demand Registration whether or not it has become effective and whether or not such registration has counted as one of the permitted Demand Registrations; provided further that a Demand Registration which is withdrawn at the sole request of the Initiating Holder(s) who demanded such Demand Registration will count as a Demand Registration unless the Company is reimbursed by such Initiating Holder(s) for all reasonable out-of-pocket expenses incurred by the Company in connection with such registration.

(ii) An underwritten sale of Registrable Securities shall not count as one of the permitted Underwritten Shelf Takedowns unless the Initiating Holder(s) is able sell at least seventy percent (70%) of the Registrable Securities requested to be sold in such Underwritten Shelf Takedown; provided that an Underwritten Shelf Takedown which is withdrawn at the sole request of such Initiating Holder(s) will count as an Underwritten Shelf Takedown unless the Company is reimbursed by such Initiating Holder(s) for all reasonable out-of-pocket expenses incurred by the Company in connection with any such Underwritten Shelf Takedown.

(g) Short-Form Registrations. The Company shall use its reasonable best efforts to become and remain eligible to use Short-Form Registration (a "**Short-Form Shelf**") for registration of the Registrable Securities pursuant to Rule 415 at all times after any of the Company's equity securities are listed on a national securities exchange. Any Shelf Registration shall be a Short-Form Shelf so long as the Company is eligible to use a Short-Form Registration and the Company shall use its reasonable best efforts to convert any Shelf Registration effected as a Long-Form Registration to a Short-Form Shelf as promptly as reasonably practicable after the Company is eligible to use a Short-Form Registration.

(h) Priority on Underwritten Demand Offerings and Underwritten Shelf Takedowns. The Company shall not include in any Underwritten Demand Offering or Underwritten Shelf Takedown any securities which are not Registrable Securities without the prior written consent of the Holder(s) of a majority of the Registrable Securities included in such registration. If any managing underwriter(s) advises the Company in writing that in its opinion the number of Registrable Securities and, if permitted hereunder, other securities requested to be included in an Underwritten Demand Offering or Underwritten Shelf Takedown exceeds the number of Registrable Securities and other securities, if any, which can be sold in an orderly manner in such offering within a price range acceptable to the Holder(s) of a majority of the Registrable Securities requesting such Underwritten Demand Offering or requesting to be included in the Underwritten Shelf Takedown, as applicable, the Company shall include in such Underwritten Demand Offering or Underwritten Shelf Takedown the number which can be so sold in the following order of priority: first, the Registrable Securities requested to be included in such registration, which in the opinion of such underwriter(s) can be sold in an orderly manner within the price range of such offering, *pro rata* among the respective Holder(s) of such Registrable Securities on

the basis of the number of shares of Common Stock owned by each such Holder(s), second, the securities to be sold for the account of the Company, and third, any other securities requested to be included in such registration to the extent permitted hereunder.

(i) Effectiveness Period. The Company shall use its reasonable best efforts to keep each Registration Statement filed pursuant to this Section 1 continuously effective and usable for the resale of the Registrable Securities covered thereby (i) in the case of a registration that is not a Shelf Registration, for a period of one hundred eighty (180) days from the date on which the SEC declares such Registration Statement effective and (ii) in the case of a Shelf Registration, for a period of three (3) years from the date on which the SEC declares such Registration Statement effective; *provided, however*, that the time period for which the Company is required to maintain the effectiveness of any Registration Statement relating to a Demand Registration shall be extended by the aggregate number of days of all applicable Delay Periods and Suspension Periods occurring with respect to such registration, and such period and any extension thereof is hereinafter referred to as the "**Effectiveness Period**." Notwithstanding the foregoing, the Company shall have no obligation to keep a Registration Statement effective after the earlier to occur of (i) the date all securities covered by such Registration Statement have been sold by the Holders and (ii) the date on which the securities covered by such Registration Statement cease to be Registrable Securities, and the Effectiveness Period shall end on such date.

(j) Restrictions on Registrations and Underwritten Offerings. Notwithstanding anything contained herein to the contrary, the Company shall not be obligated to:

(i) effect in the aggregate, more than three (3) Demand Registrations or Shelf Registrations (whether by Short-Form Registration, Long-Form Registration or Underwritten Shelf Takedown), no more than two of which can be (2) Long-Form Demand Registrations;

(ii) file a Registration Statement for a Demand Registration or Shelf Registration within one-hundred twenty (120) days after the effective date of a previous Demand Registration or Shelf Registration; or

(iii) effect an Underwritten Offering within ninety (90) days (or one hundred and eighty (180) days with respect to the Company's first Underwritten Offering under the Securities Act for cash) after the later of the closing of (x) an Underwritten Offering pursuant to this Section 1, or (y) a Piggyback Registration in which Holders were able to sell at least seventy (70%) of the Registrable Securities requested to be included in such Piggyback Registration.

(k) Selection of Underwriters. The Holder(s) of a majority of the Registrable Securities included in an Underwritten Demand Offering or an Underwritten Shelf Takedown, as applicable, shall have the right to select the investment banker(s) and manager(s), subject to the Company's approval (such approval not to be unreasonably withheld, conditioned or delayed); *provided, however*, in connection with the Company's first Underwritten Offering under the Securities Act for cash that is registered under the

Securities Act pursuant to this Agreement, the Holder(s) of a majority of the Registrable Securities to be included in such registration and the Company shall mutually select the investment banker(s) and manager(s).

(l) Other Registrations. The Company shall not grant to any Person the right (other than as set forth herein and except to employees and directors of the Company with respect to registrations on Form S-8 and with respect to registrations on Form S-4 (or any successor forms thereto)), to request the Company to register any securities of the Company, except such rights as are (i) not more favorable than or inconsistent with the rights granted to the Holders, and (ii) that do not adversely affect the priorities of the Holders set forth herein.

(m) Postponement of Registration. Notwithstanding the foregoing, the Company shall not be obligated to effect, or take action to effect, any Demand Registration, Shelf Registration or Underwritten Shelf Takedown during the period in which the board of directors of the Company (the "**Board**") determines that in its reasonable judgment and in good faith that the registration and distribution of the Registrable Securities covered or to be covered by such Demand Registration, Shelf Registration or Underwritten Shelf Takedown, as applicable, would materially interfere with any proposed or pending material financing, acquisition or corporate reorganization or other material corporate development involving the Company or any of its subsidiaries or would require premature disclosure thereof, and such disclosure would be materially adverse to the Company, and the Company may, at its option, direct that such request be delayed for a reasonable period of time (a "**Delay Period**") and the Company shall notify the Initiating Holders to such effect; *provided, however*, that (i) the Company shall be entitled to a maximum of one (1) Delay Period in any twelve (12) month period and (ii) no Delay Period shall last for more than forty-five (45) consecutive days.

Furthermore, in the event that the Board determines that in its reasonable judgment and in good faith it is advisable to suspend for a period of time (a "**Suspension Period**") the use of a Prospectus included in a Registration Statement because the use of such Prospectus would materially interfere with any pending material financing, acquisition or corporate reorganization or other material corporate development involving the Company or any of its subsidiaries or would require premature disclosure thereof, and such disclosure would be materially adverse to the Company, the Company shall, in connection with a Prospectus relating to an offering that is not underwritten, notify the Holders whose securities are included in such Prospectus and, if the Prospectus relates to an underwritten offering, notify the managing underwriter(s), to such effect, and, upon receipt of such notice, such Holders or managing underwriter(s), as applicable, shall immediately discontinue any sales of Registrable Securities pursuant to such Registration Statement until:

(i) such Holders or managing underwriter(s), as applicable, have been advised that the Prospectus has been filed with the SEC and, if required by terms of an underwriting agreement relating to Registrable Securities covered by such

Registration Statement, the managing underwriter(s) has received copies of a Prospectus; or

(ii) such Holders and managing underwriter(s), as applicable, are advised in writing by the Company that the then current Prospectus may be used and, if required by terms of an underwriting agreement relating to Registrable Securities covered by such Registration Statement, the managing underwriter has received copies of any additional or supplemental filings that are incorporated or deemed incorporated by reference in such Prospectus.

Notwithstanding anything to the contrary contained herein, (i) the Company shall be entitled to a maximum of one (1) Suspension Period in any twelve (12) month period and (ii) no Suspension Period shall last for more than forty-five (45) consecutive days. Furthermore, the Company shall not be entitled to initiate or continue a Delay Period or a Suspension Period unless it shall (A) concurrently prohibit sales by all holders of the Company's equity securities who are not Holders ("**Other Holders**") under Registration Statements covering securities held by such Other Holders and (B) in accordance with the Company's policies from time to time in effect, if applicable, forbid purchases and sales in the open market by directors and executive officers of the Company.

(n) Rights Upon Postponement of Demand Registration. In the event of any Delay Period or Suspension Period, the Initiating Holder(s) shall have the right (x) in the case of a delay of the filing or effectiveness of a Registration Statement in connection with a Demand Registration that is delayed or suspended by operation of Section 1(m), upon the affirmative approval of the Holders of not less than a majority of the Registrable Securities initially requesting such Demand Registration, to withdraw such request by giving written notice to the Company within twenty (20) days after receipt of such notice of delay or, if earlier, the termination of such Delay Period, and, if such request is withdrawn, such Demand Registration shall not count as one of the permitted Demand Registrations hereunder, and the Company shall pay all Registration Expenses in connection with such registration, (y) in the case of a suspension of a Prospectus (including the suspension of filing any Prospectus supplement) in connection with an Underwritten Shelf Takedown, upon the affirmative approval of the Holders of not less than a majority of the Registrable Securities requesting to be included in such Underwritten Shelf Takedown, to withdraw such request by giving written notice to the Company within twenty (20) days after receipt of such notice of suspension or, if earlier, the termination of such Suspension Period, and, if such request is withdrawn, such Underwritten Shelf Takedown shall not count as one of the permitted Underwritten Shelf Takedowns hereunder and (z) in the case of a suspension of sales in connection with a Demand Registration, to receive an extension of the registration period equal to the number of days of the Suspension Period. If the Initiating Holder(s) exercises such right to withdraw such request for a Demand Registration as set forth in (x) and such request for an Underwritten Shelf Takedown as set forth in (y), the Company shall abandon or withdraw such Registration Statement; *provided, however*, that if the Company and the Holders participating in a Demand Registration or Underwritten Shelf Takedown, as applicable, have requested to be included in such Demand Registration or Underwritten

Shelf Takedown, as applicable, Registrable Securities in the aggregate amount of at least $10,000,000, then the Company and such Holders shall have the right to continue with such Demand Registration regardless of the withdrawal of the Initiating Holder(s).

(o) Effect of Failure to File and Obtain and Maintain Effectiveness of Registration Statement. In the event that the Registration Statement (containing such number of Registrable Securities as is permitted by the SEC) is not declared effective by the Effectiveness Deadline, then, in addition to any other rights the Holders of Registrable Securities may have hereunder or under applicable law, the Company shall pay to each Holder of Registrable Securities on each monthly anniversary of the Effectiveness Deadline (if the Registration Statement has not been declared effective) until the Registration Statement has been declared effective an amount, as partial liquidated damages and not as a penalty, equal to 0.1% of the purchase price paid by such Holder for such Registrable Securities, provided, however, the Company shall not pay to any Holder of Registrable Securities more than 0.6% of the purchase price paid by such Holder for such Registrable Securities pursuant to this Section 1(o).

2. **Piggyback Offerings**.

(a) Right to Piggyback. Whenever the Company proposes to register any of its equity securities under the Securities Act (other than pursuant to a Demand Registration and other than pursuant to a Registration Statement on Form S-8, Form S-4 or any successor forms thereto), or otherwise proposes to offer any of its equity securities under the Securities Act in an Underwritten Offering either for its own account or for the account of one or more securityholders and the Company is eligible to use a registration form for such offering that may be used for the registration of Registrable Securities (a "**Piggyback Offering**"), the Company shall give prompt written notice to all Holders of Registrable Securities of its intention to effect such a registration (which notice shall be given not less than fifteen (15) days prior to the expected filing date of the Company's Registration Statement; *provided, however*, that in the case of an Underwritten Offering under a Shelf Registration, such notice shall be given not less than seven (7) Business Days prior to the date of commencement of marketing efforts for such offering) and shall, subject to the provisions of Section 2(c) below, include in such Piggyback Offering all Registrable Securities with respect to which the Company has received written requests for inclusion therein within five (5) Business Days after the receipt of the Company's notice. Notwithstanding anything to the contrary contained herein, the Company may determine not to proceed with a registration which is the subject of such notice. A Piggyback Offering shall not be considered a Demand Registration for purposes of this Agreement and the rights to Piggyback Offerings may be exercised an unlimited number of occasions.

(b) Piggyback Expenses. The Registration Expenses of the Holders of Registrable Securities shall be paid by the Company in all Piggyback Offerings.

(c) Priority on Registrations.

(i) If a Piggyback Offering is an Underwritten Offering on behalf of the Company, and the managing underwriter(s) advises the Company in writing that in its opinion the number of securities requested to be included in such registration exceeds the number which can be sold in an orderly manner in such offering within a price range acceptable to the Company, the Company shall include in such registration the number which can be so sold in the following order of priority: first, the securities to be sold for the account of the Company, second, the Registrable Securities requested to be included in such registration (*pro rata* among the Holder(s) of such Registrable Securities on the basis of the number of shares of Common Stock owned by each such Holder), and third, any other securities requested to be included in such registration.

(ii) If a Piggyback Offering is an Underwritten Offering on behalf of Other Holders and the managing underwriter(s) advises the Company in writing that in its opinion the number of equity securities requested to be included in such Piggyback Offering exceeds the number which can be sold in an orderly manner in such offering within a price range acceptable to the Other Holders, the Company shall include in such registration the number which can be so sold in the following order of priority: first, the securities requested to be included therein by the Other Holders requesting such registration, second, the Registrable Securities requested to be included in such registration (*pro rata* among the Holder(s) of such Registrable Securities on the basis of the number of shares of Common Stock owned by each such Holder) and third, other securities requested to be included in such registration.

(iii) If, as a result of the proration provisions of this Section 2(c), any Holder shall not be entitled to include all Registrable Securities in a Piggyback Offering that such Holder has requested be included, such Holder may elect to withdraw its request to include Registrable Securities in such Piggyback Offering or may reduce the number requested to be included; *provided, however*, that (A) such request must be made in writing prior to commencement of marketing activities in connection with such Piggyback Offering and (B) such withdrawal shall be irrevocable and, after making such withdrawal, such Holder shall no longer have any right to include Registrable Securities in the Piggyback Offering as to which such withdrawal was made.

(d) Selection of Underwriters. If any Piggyback Offering is an Underwritten Offering, the Company will have the right to select the investment banker(s) and manager(s) for the offering.

3. **Holdback Agreements**.

(a) Holders of Registrable Securities. If requested by the lead managing underwriter, each Holder who "beneficially owns" (as such term is defined under and determined pursuant to Rule 13d-3 promulgated under the Exchange Act) five percent (5.0%) or more of the issued and outstanding Common Stock of the Company and each Holder including Registrable Securities in any Underwritten Demand Offering,

Underwritten Shelf Takedown or Piggyback Offering shall not effect any public sale or distribution (including sales pursuant to Rule 144) of equity securities of the Company, or any securities convertible into or exchangeable or exercisable for such securities, (i) with respect to the Company's first Underwritten Offering under the Securities Act for cash, for the seven (7) days prior to and the one hundred eighty (180) days beginning on the effective date of such registration *plus* up to an additional eighteen (18) days to the extent necessary to comply with applicable regulatory requirements following the effective date of such registration, (ii) with respect to any other Underwritten Demand Offering or Piggyback Offering in which Registrable Securities are included, the seven (7) days prior to and the ninety (90)-day period beginning on the effective date of such registration, and (iii) upon notice from the Company of the commencement of a distribution in connection with any other Underwritten Offering (including, but not limited to, any distribution in connection with any Shelf Registration) by or on behalf of the Company, the seven (7) days prior to and the ninety (90)-day period beginning on the date of commencement of such distribution (the "**Lock-Up Period**"), in each case except as part of such Underwritten Offering, and in each case unless the underwriters managing such Underwritten Offering otherwise agree; *provided, however*, that (i) notwithstanding the foregoing, no Holder shall be subject to the provisions hereof unless all of the Company's directors and officers (and their respective Affiliates) are subject to the Lock-Up Period and (ii) if any Other Holder of Registrable Securities of the Company or any of the Company's directors and officers (or any of their respective Affiliates) shall be subject to a shorter period or receives more advantageous terms relating to the Lock-Up Period, then the Lock-Up Period shall be such shorter period and also on such more advantageous terms. The restrictions set forth in this Section 3(a) shall not be applicable to Transfers by Holders to Affiliates who agree to be bound by the provisions hereof, Transfers related to securities owned by Holders as a result of open market purchases made following the closing of the applicable offerings, and other Transfers to which the underwriters managing such Underwritten Offering agree; *provided, however*, that nothing herein shall prevent a Holder that is a partnership or corporation from making a distribution of Registrable Securities to the partners or shareholders thereof that is otherwise in compliance with applicable securities laws, so long as such distributees agree to be bound by the terms hereof. The provisions of this Section 3(a) will no longer apply to a Holder once such Holder ceases to hold Registrable Securities.

(b) The Company. If requested by the lead managing underwriter, the Company (i) shall not effect any public sale or distribution of its equity securities, or any securities convertible into or exchangeable or exercisable for such securities (except pursuant to registrations on Form S-8, Form S-4 or any successor forms thereto), with respect to any Underwritten Demand Offering, Underwritten Shelf Takedown or any Piggyback Offering that is an Underwritten Offering in which Registrable Securities are included, during the seven (7) days prior to and the ninety (90)-day period beginning on the pricing of such Underwritten Offering, and (ii) shall, to the extent permitted by Regulation FD of the Exchange Act and assuming such person agrees to be bound by a reasonable confidentiality agreement, use its reasonable best efforts to cause each Person who "beneficially owns" (as such term is defined under and determined pursuant to Rule 13d-3 promulgated under the Exchange Act) five percent (5.0%) or more of the issued and outstanding Common Stock,

or any securities convertible into or exchangeable or exercisable for Common Stock, purchased from the Company at any time after the date of this Agreement in a transaction not required to be registered under the Securities Act to agree not to effect any public sale or distribution (including sales pursuant to Rule 144) of any such securities during such period, in each case except as part of such Underwritten Offering, and in each case unless the underwriters managing the Underwritten Offering otherwise agree.

4. **Registration Procedures**. Whenever any Holder(s) of Registrable Securities has requested that any Registrable Securities be registered pursuant to this Agreement, the Company shall use its reasonable best efforts to effect the registration and the sale of such Registrable Securities in accordance with the intended method of disposition thereof, and pursuant thereto the Company shall as promptly as practicable:

(a) prepare and file with the SEC a Registration Statement with respect to such Registrable Securities in accordance with the provisions hereof, provided that before filing a Registration Statement or Prospectus or any amendments or supplements thereto, the Company shall furnish to the Holder(s) who is including such Registrable Securities in such Registration Statement, their counsel ("**Counsel to the Holders**"), and the managing underwriters (if any), copies of all such documents proposed to be filed, which documents shall be subject to the prompt review and comment of such Counsel to the Holders and such other documents reasonably requested by such counsel, including any comment letter from the SEC, and, if requested by such counsel, provide such counsel reasonable opportunity to participate in the preparation of such Registration Statement and each Prospectus included therein, provided, that the Company shall not have any obligation to modify any information if the Company reasonably expects that so doing would cause such Registration Statement or Prospectus to contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading. The Company shall not include any information relating to a Holder in any such Registration Statement or Prospectus or any amendments or supplements thereto (including such documents that, upon filing, would be incorporated or deemed to be incorporated by reference therein) to which the Holder (if such Registration Statement includes Registrable Securities of such Holder) shall object, in writing, on a timely basis, unless, in the opinion of the Company, the inclusion of such information is necessary to comply with applicable law. No later than the second Business Day following the effective date of any Registration Statement, the Company shall file with the SEC, in accordance with Rule 424(b)(4) under the Securities Act, the final prospectus to be used in connection with sales pursuant to such Registration Statement. The Company shall use its reasonable best efforts to confirm that (i) no Registration Statement or Prospectus (nor any amendment or supplement to any Registration Statement or Prospectus) shall, upon filing with the SEC, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make any statements therein (in the case any Prospectus or any amendment or supplement thereto, in light of the circumstances under which they were made) not misleading and (ii) no issuer free writing prospectus relating to any Registration Statement shall include any information that conflicts with the information in such Registration Statement;

(b) notify each Holder of Registrable Securities of the effectiveness of each Registration Statement filed pursuant hereto and prepare and file with the SEC such amendments and post-effective amendments to each Registration Statement as may be necessary to keep such Registration Statement continuously effective during the Effectiveness Period and comply in all material respects with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement; and cause the related Prospectus to be supplemented by any Prospectus supplement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of the securities covered by such Registration Statement, and as so supplemented to be filed pursuant to Rule 424 (or any similar provisions then in force) under the Securities Act;

(c) furnish to each Holder of Registrable Securities and each managing underwriter, if any, without charge, at least one (1) copy of such Registration Statement, each amendment and supplement thereto, and the Prospectus included in such Registration Statement and Prospectus supplements, if applicable, and each post-effective amendment thereto;

(d) deliver to each Holder of Registrable Securities, and the underwriters, if any, without charge, as many copies of the Prospectus or Prospectuses (including each form of Prospectus) and each amendment or supplement thereto as such Participating Holder or underwriters may reasonably request in connection with the distribution of the Registrable Securities; and the Company hereby consents to the use of such Prospectus and each amendment or supplement thereto by each Holder of Registrable Securities and the underwriters, if any, in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any such amendment or supplement thereto;

(e) use its reasonable best efforts (i) to register or qualify such Registrable Securities under such other securities or blue sky laws of any jurisdictions as any underwriter reasonably requests, (ii) to keep such registration or qualification in effect for so long as such Registration Statement remains in effect, and (iii) to do any and all other acts and things which may be reasonably necessary or advisable to enable any such underwriter to consummate the disposition in such jurisdictions of the Registrable Securities (provided that the Company shall not be required to (x) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this subsection, (y) subject itself to taxation in any such jurisdiction or (z) consent to general service of process in any such jurisdiction);

(f) notify Counsel to the Holders and each underwriter (i) at any time when a Prospectus relating thereto is required to be delivered under the Securities Act, as soon as practicable after (A) the happening of any event that causes the Registration Statement or related Prospectus to contain an untrue statement of a material fact or to omit any fact necessary to make the statements therein not misleading in light of the circumstances in which they were made, and, at the request of such Holder or any underwriter, the Company shall promptly prepare a supplement or amendment to such Prospectus, furnish (or make

available) a reasonable number of copies of such supplement or amendment to each seller of such Registrable Securities, Counsel to the Holders and the underwriters and file such supplement or amendment with the Securities and Exchange Commission so that, as thereafter delivered (or deemed to be delivered) to the purchasers of such Registrable Securities, such Registration Statement or related Prospectus shall not contain an untrue statement of a material fact or omit to state any fact necessary to make the statements therein not misleading in light of the circumstances in which they were made, (B) the Company becomes aware of any request by the Securities and Exchange Commission or any Federal or state governmental authority for amendments or supplements to a Registration Statement or related Prospectus covering Registrable Securities or for additional information relating thereto, (C) the Company becomes aware of the issuance or threatened issuance by the Securities and Exchange Commission of any stop order suspending or threatening to suspend the effectiveness of a Registration Statement, or (D) the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any Registrable Security for sale in any jurisdiction, or the initiation or threatening of any Proceeding for such purpose, and (ii) as soon as reasonably practicable after each Registration Statement or any amendment thereto has been filed with the Securities and Exchange Commission and after each Registration Statement or any post-effective amendment thereto has become effective;

(g) for a reasonable period prior to the filing of any Registration Statement or the commencement of marketing efforts for an Underwritten Shelf Takedown, as applicable, provide any Participating Holder holding more than forty percent (40%) of all participating Registrable Securities, any Major Investor if it is a Participating Holder, any underwriter participating in any disposition pursuant to a Registration Statement, Counsel to the Holders and counsel to the underwriters (each, an "**Inspector**" and, collectively, the "**Inspectors**"), a reasonable opportunity to participate (including, but not limited to, reviewing, commenting on and attending all meetings) in the preparation of such Registration Statement, each Prospectus included therein or filed with the SEC and each amendment or supplement thereto;

(h) provide and cause to be maintained a transfer agent and registrar for all such Registrable Securities registered pursuant hereto and a CUSIP number for all such Registrable Securities, in each case, no later than the effective date of such registration.

(i) enter into such customary agreements and take all such other customary actions reasonably requested by the Holders of a majority of the Registrable Securities being sold in connection therewith (including those reasonably requested by the managing underwriters, if any) to expedite or facilitate the disposition of such Registrable Securities, and in such connection, (i) make such representations and warranties to the underwriters, if any, with respect to the business of the Company and its subsidiaries, and the Registration Statement, any Prospectus and documents, if any, incorporated or deemed to be incorporated by reference therein, in each case, in form, substance and scope as are customarily made by issuers in underwritten offerings, and, if true, confirm the same if and when requested, (ii) use its reasonable best efforts to furnish to the Participating Holders and the underwriters,

if any, opinions and "negative assurance letters" of counsel to the Company and updates thereof (which counsel and opinions (in form, scope and substance) shall be reasonably satisfactory to the managing underwriters, if any, and counsels to the Participating Holders), addressed to each Participating Holders and each of the underwriters, if any, covering the matters customarily covered in opinions requested in underwritten offerings, (iii) use its reasonable best efforts to obtain "comfort" letters and updates thereof from the independent registered public accounting firm of the Company (and, if necessary, any other independent registered public accounting firms of any subsidiary of the Company or of any business acquired by the Company for which financial statements and financial data are, or are required to be, included in the Registration Statement) who have certified the financial statements included in such Registration Statement, addressed to each Participating Holder (unless such accountants shall be prohibited from so addressing such letters by applicable standards of the accounting profession) and each of the underwriters, if any, such letters to be in customary form and covering matters of the type customarily covered in "comfort" letters in connection with underwritten offerings, (iv) if an underwriting agreement is entered into, the same shall contain indemnification provisions and procedures substantially to the effect set forth in Section 6 with respect to all parties to be indemnified pursuant to said Section 6 except as otherwise agreed by the Holders and (v) deliver such documents and certificates as may be reasonably requested by the managing underwriters, if any, to evidence the continued validity of the representations and warranties made pursuant to Section 4(i) above and to evidence compliance with any customary conditions contained in the underwriting agreement or other agreement entered into by the Company. The above shall be done at each closing under such underwriting or similar agreement, or as and to the extent required thereunder;

(j) make available for inspection by and copying by the Inspectors all financial and other records, pertinent corporate documents and properties of the Company, and its subsidiaries and cause the officers, directors, employees and independent accountants of the Company and its subsidiaries to respond to such inquiries and to supply all information reasonably requested by any such Inspector in connection with such Registration Statement, *provided, however*, that recipients of such financial and other records and pertinent corporate documents agree in writing to keep the confidentiality thereof pursuant to a written agreement reasonably acceptable to the Company (which shall contain customary exceptions thereto);

(k) use its reasonable best efforts to avoid the issuance of any order suspending the effectiveness of a Registration Statement or the lifting of any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, or, if issued, to obtain the withdrawal or lifting of any such order or suspension as promptly as practicable;

(l) use its reasonable best efforts to cause the Registrable Securities covered by the Registration Statement to be registered with or approved by such other governmental agencies or authorities within the United States, except as may be required solely as a consequence of the nature of any Holder's business, in which case the Company will

cooperate in all reasonable respects with the filing of such Registration Statement and the granting of such approvals, as may be necessary to enable such selling Holder or the underwriters, if any, to consummate the disposition of such Registrable Securities;

(m) use its reasonable best efforts to (i) prevent the issuance of any stop order by the SEC, and in the event of such issuance, to obtain the withdrawal of any such stop order and (ii) obtain the withdrawal of any order suspending or preventing the use of any related Prospectus or suspending the qualification of any Registrable Securities included in such Registration Statement for sale in any jurisdiction at the earliest practicable date;

(n) cause all shares of Registrable Securities covered by such Registration Statement to be authorized to be listed on any national securities exchange if any other shares of the particular class of Registrable Securities are at that time, or will be immediately following the offering, listed on such exchange;

(o) otherwise use its reasonable best efforts to comply with all applicable rules and regulations of the Securities and Exchange Commission, obtain all other approvals, consents, exemptions or authorizations from such governmental agencies or authorities as may be necessary and required of the Company to enable the Participating Holders and underwriters to consummate the disposition of Registrable Securities, and make available to its security holders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve (12) months beginning with the first day of the Company's first full calendar quarter after the effective date of the Registration Statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder;

(p) use its reasonable best efforts to timely file all material required to be filed pursuant to Section 13, 14 or 15(d) of the Exchange Act;

(q) use its reasonable best efforts to cause all such Registrable Securities to be listed on each securities exchange, if any, on which similar securities issued by the Company are then listed;

(r) cause appropriate officers as are reasonably requested by a managing underwriter to use their reasonable best efforts to support the marketing of the Registrable Securities covered by the Registration Statement (including participation in "road shows"), taking into account the Company's business needs;

(s) (i) prepare and file with the SEC such amendments and supplements to each Registration Statement as may be necessary to comply with the provisions of the Securities Act, including post effective amendments to each Registration Statement as may be necessary to keep such Registration Statement continuously effective for the applicable time period required hereunder and if applicable, file any Registration Statements pursuant to Rule 462(b) promulgated under the Securities Act, (ii) cause the related Prospectus to be supplemented by any required Prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 (or any similar provisions then in force) promulgated under the

Securities Act; and (iii) provide additional information related to each Registration Statement as requested by, and obtain any required approval necessary from, the SEC or any Federal or state governmental authority;

(t) if requested by any Participating Holder or underwriter, promptly include in a Prospectus supplement or amendment such information as the Holder or managing underwriters may reasonably request, including in order to permit the intended method of distribution of such securities (including information to reflect any transfer by such Holder of any Registrable Securities, or of any securities convertible into (or exercisable or exchangeable for) any Registrable Securities, to any other Person that is (or in connection with such transfer, pursuant to Section 8, becomes) a Holder and to permit the sale by such transferee of such Registrable Securities pursuant to such Registration Statement), and make all required filings of such Prospectus supplement or such amendment as soon as reasonably practicable after the Company has received such request;

(u) in the case of certificated Registrable Securities, cooperate with any Participating Holder and the underwriters to facilitate the timely preparation and delivery of certificates (not bearing any legends) representing Registrable Securities to be sold after receiving written representations from each Participating Holder that the Registrable Securities represented by the certificates so delivered by such Holder will be transferred in accordance with the Registration Statement, and enable such Registrable Securities to be in such denominations and registered in such names as the Participating Holders or underwriters may reasonably request at least three (3) Business Days prior to any sale of Registrable Securities;

(v) cooperate with each Participating Holder and each underwriter or agent participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with FINRA;

(w) use its reasonable best efforts to assist a Holder in facilitating private sales of Registrable Securities by, among other things, providing officers' certificates and other customary closing documents; and

(x) use its reasonable best efforts to take all other actions necessary to effect the registration of the Registrable Securities contemplated hereby.

5. **Registration Expenses.**

(a) Expenses. Except as otherwise provided in this Agreement, all expenses incident to the Company's performance of or compliance with this Agreement, including all registration and filing fees, fees and expenses of compliance with securities or blue sky laws, printing expenses, messenger and delivery expenses, fees and disbursements of custodians, and fees and disbursements of counsel for the Company and of all independent certified public accountants, underwriters (excluding discounts and commissions) and other Persons retained by the Company (all such expenses being herein called "**Registration Expenses**"), shall be borne by the Company. For the avoidance of doubt, the Company

shall, in any event, pay its internal expenses (including all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit or quarterly review, the expense of any liability insurance and the expenses and fees for listing the securities to be registered on each securities exchange on which similar securities issued by the Company may then be listed.

(b) Reimbursement of Counsel. In connection with each Demand Registration, each Underwritten Shelf Takedown and each Piggyback Offering, the Company shall reimburse the Holders of Registrable Securities included in such registration for the reasonable fees and disbursements of Counsel to the Holders; *provided, however*, the amount of such reimbursement shall not exceed $50,000 in the aggregate for all Counsel to the Holders, unless agreed to in advance by the Company and the Major Investors.

(c) Payment of Certain Expenses by Holders of Registrable Securities. Underwriting discounts selling commissions and transfer taxes relating to the Registrable Securities included in any registration hereunder, and all fees and expenses of counsel for any Holders of Registrable Securities (other than fees and expenses to be reimbursed by the Company as set forth in Section 5(b) above) shall be borne and paid by all sellers of securities included in such registration in proportion to the aggregate selling price of the securities to be so registered.

6. **Indemnification; Contribution.**

(a) Indemnification by the Company. The Company shall indemnify and hold harmless, to the fullest extent permitted by law, each Holder, the officers, directors, partners, members, managers, shareholders, affiliates, accountants, attorneys, agents and employees of each of them, each Person who controls each such Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors, partners, members, managers, shareholders, accountants, attorneys, agents and employees of each such controlling Person, each underwriter (in connection with an Underwritten Offering), if any, the officers, directors, partners, members, managers, shareholders, affiliates, accountants, attorneys, agents and employees of such underwriter and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) such underwriter (collectively, "**Holder Indemnitees**"), from and against any and all losses, claims, damages, liabilities, costs (including reasonable attorneys' fees and any legal or other fees or expenses reasonably incurred by such party in connection with any Proceeding), expenses, judgments, fines, penalties, charges and amounts paid in settlement (collectively, "**Losses**"), as incurred, arising out of or based upon any untrue statement (or alleged untrue statement) of a material fact contained in any Registration Statement, Prospectus, any amendment (including any post-effective amendment) or supplement to any Registration Statement or Prospectus, any filing made in connection with the qualification of the offering under the securities or other "blue sky" laws of any jurisdiction in which Registrable Securities are offered, or any other offering document (including any related notification, or the like) incident to any such registration, qualification or compliance, or based on any omission (or alleged omission) to state therein a material

fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus, in light of the circumstances under which they were made) not misleading, or any violation by the Company of the Securities Act or of the Exchange Act, and will reimburse each Holder Indemnitee for any legal and any other expenses reasonably incurred in connection with investigating and defending or settling any such claim, loss, damage, liability, or action, *provided, however*, that the Company will not be liable in any such case to the extent that any such claim, loss, damage, liability, or expense arises out of or is based on any untrue statement (or alleged untrue statement) or omission (or alleged omission) by any Holder or underwriter, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such Registration Statement, Prospectus or other offering document in reliance upon and in conformity with written information furnished to the Company by such Holder or underwriter expressly for inclusion in such Registration Statement, Prospectus or other offering document. It is agreed that the indemnity agreement contained in this Section 6(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld or delayed). Such indemnity agreement shall remain in full force and effect regardless of any investigation made by or on behalf of any Holder Indemnitee and shall survive the transfer of Registrable Securities by any such Holder Indemnitee.

(b) Indemnification by Holders of Registrable Securities. In connection with any Registration Statement in which a Holder includes Registrable Securities, such Holder agrees to indemnify, to the fullest extent permitted by law, individually and not jointly and severally, the Company, each other Holder which includes Registrable Securities in such Registration Statement, their respective directors, officers, employees, attorneys, accountants, agents, representatives and each Person who controls the Company and such Holders (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act) (collectively, "**Company/Holder Indemnitees**"), from and against all Losses arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any such Registration Statement, Prospectus, or other offering document, or any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus, in light of the circumstances under which they were made) not misleading, and will reimburse the Company and each Holder Indemnitee for any legal or any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such Registration Statement, Prospectus, or other offering document in reliance upon and in conformity with written information furnished to the Company by such Holder expressly for inclusion in such Registration Statement, Prospectus, or other offering document; *provided, however*, that the obligations of such Holder hereunder shall not apply to amounts paid in settlement of any such claims, losses, damages or liabilities (or actions in respect thereof) if such settlement is effected without the consent of such Holder (which consent shall not be unreasonably withheld or delayed); and *provided, further*, that the liability of each Holder hereunder shall be limited to the net proceeds received by such Holder from the sale of

Registrable Securities giving rise to such indemnification obligation. Furthermore, in connection with an Underwritten Offering, each Holder shall provide customary indemnification to the underwriters, their officers and directors and each Person who controls such underwriters (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act).

(c) Conduct of Indemnification Proceedings. If any Person shall be entitled to indemnity hereunder (an "**indemnified party**"), such indemnified party shall give prompt notice to the party from which such indemnity is sought (the "**indemnifying party**") of any claim or of the commencement of any Proceeding with respect to which such indemnified party seeks indemnification or contribution pursuant hereto; *provided, however*, that the delay or failure to so notify the indemnifying party shall not relieve the indemnifying party from any obligation or liability except (and only) to the extent that the indemnifying party has been prejudiced in defending the claim by such delay or failure. The indemnifying party shall have the right, exercisable by giving written notice to an indemnified party promptly after the receipt of written notice from such indemnified party of such claim or Proceeding, to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party. Notwithstanding the indemnifying party's rights in the prior sentence, an indemnified party shall have the right to employ its own counsel (and one local counsel), and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the indemnifying party to represent the indemnified party would in the reasonable judgment of the indemnified party present such counsel with a conflict of interest; (ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the indemnifying party and, based on advice of counsel to the indemnified party, the indemnified party shall have legal defenses available to it and/or other indemnified parties that are inconsistent with or in addition to those available to the indemnifying party; (iii) the indemnifying party shall not have employed counsel reasonably satisfactory to the indemnified party to represent the indemnified party within a reasonable time after written notice of the institution of such action has been delivered to the indemnifying party; or (iv) the indemnifying party shall have requested the indemnified party to employ separate counsel at the expense of the indemnifying party. No indemnifying party shall, in connection with any one action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general circumstances or allegations, be liable for the fees and expenses of more than one separate firm of attorneys (in addition to any local counsel) for all indemnified parties. If such defense is assumed, the indemnifying party shall not be subject to any liability for any settlement made by the indemnified party without its consent (but such consent shall not be unreasonably withheld). No indemnifying party, in the defense of any such claim or litigation, shall, except with the consent of each indemnified party, consent to entry of any judgment or enter into any settlement or compromise that does not include as an unconditional term thereof the giving by the claimant or plaintiff therein, to such indemnified party, of a release, in form and substance reasonably satisfactory to the indemnified party, from all liability in respect of such claim or litigation for which such indemnified party would be entitled to indemnification hereunder or that includes any admission of fault or culpability of such indemnified party.

(d) Survival of Indemnification. The indemnification provided for under this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, director or controlling Person of such indemnified party and shall survive the Transfer of Registrable Securities.

(e) Contribution. If the indemnification required by this Section 6 from the indemnifying party is unavailable to an indemnified party hereunder in respect of any Losses referred to in this Section 6:

(i) The indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such Losses, in such proportion as is appropriate to reflect the relative fault of the indemnifying party, on the one hand, and such indemnified party, on the other hand, in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such indemnifying party, on the one hand, and indemnified party, on the other hand, shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, has been taken by, or relates to information supplied by, such indemnifying party or indemnified party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent any such action, statement or omission.

(ii) The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 6(e) were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in the immediately preceding paragraph. Notwithstanding the provisions of this Section 6(e), an indemnifying party that is a Holder shall not be required to contribute any amount in excess of the amount by which the net proceeds to the indemnifying party from the sale of the Registrable Securities sold in a transaction that resulted in Losses in respect of which contribution is sought in such proceeding pursuant to this Section 6(e), exceed the amount of any damages that such indemnifying party has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission (including as a result of any indemnification obligation hereunder). No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

(iii) The indemnity and contribution agreements contained in this Section 6 are in addition to any other liability that the indemnifying parties may otherwise have to the indemnified parties; *provided, however*, that in no event shall any Holder be liable to any indemnified parties with respect to any untrue statement or alleged untrue statement or omission or alleged omission in any Registration Statement, Prospectus or other offering document for any amount in excess of the amount by

which the net proceeds to the indemnifying party from the sale of the Registrable Securities sold in the transaction that resulted in any liability, exceeds the amount of any damages that such indemnifying party has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission (including as a result of any indemnification or contribution obligation hereunder). Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

7. **Holders' Obligations.**

(a) It shall be a condition precedent to the obligations of the Company to include Registrable Securities of any Holder in any Registration Statement or Prospectus, as the case may be, that such Holder shall timely furnish to the Company (as a condition precedent to such Holder's participation in such registration) its Participating Holder Information in accordance with the terms hereof. Each Participating Holder shall timely provide the Company with such information as may be reasonably requested to enable the Company to prepare a supplement or post-effective amendment to any Shelf Registration or a supplement to any Prospectus relating to such Shelf Registration.

(b) At the managing underwriter's request, no Person may participate in any registration hereunder which is underwritten unless such Person (i) agrees to sell such Person's securities on the basis provided in any underwriting arrangements in customary form approved by the Person or Persons entitled hereunder to approve such arrangements and (ii) completes and executes such underwriting agreement and other documents reasonably required in connection with such underwriting arrangements, provided that no Holder of Registrable Securities included in any underwritten registration shall be required to make any representations or warranties to the Company or the underwriters (other than representations and warranties regarding such Holder (including with respect to such Holder's ownership of and title to its Registrable Securities) and such Holder's intended method of distribution) or to undertake any indemnification obligations to the Company with respect thereto, except as otherwise provided in Section 6(b), or to the underwriters with respect thereto, except to the extent of the indemnification being given to the Company and its controlling persons in Section 6(b).

8. **Transfer of Registration Rights**. The rights of a Holder hereunder may be Transferred in connection with a Transfer of Registrable Securities (or any securities convertible into Registrable Securities). Notwithstanding the foregoing, such rights may only be Transferred provided that all of the following additional conditions are satisfied: (a) such Transfer is effected in accordance with applicable securities laws; (b) such transferee agrees in writing to become subject to the terms of this Agreement as a Holder by delivering to the Company a duly executed joinder agreement in form attached hereto as Exhibit A; and (c) the Company is given written notice by such Holder of such Transfer, stating the

name and address of such transferee and identifying the Registrable Securities with respect to which such rights are being Transferred.

9. **Rule 144; Removal of Restrictions.**

(a) Rule 144. The Company shall (i) file the reports required to be filed by it under the Securities Act and the Exchange Act in a timely manner, and (ii) furnish to each Holder forthwith upon written request, (x) a written statement by the Company as to its compliance with the reporting requirements of Rule 144, the Securities Act and the Exchange Act, (y) a copy of the most recent annual or quarterly report of the Company, and (z) such other reports and documents so filed by the Company as such Holder may reasonably request in availing itself of Rule 144, all to the extent required from time to time to enable such Holder to sell Registrable Securities without registration under the Securities Act within the limitations of the exemption provided by Rule 144.

(b) Removal of Restrictions. The Company shall, promptly upon the request of any Holder (and, to the extent necessary, the delivery of such Registrable Securities to the transfer agent therefor), cause any legend or stop-transfer instructions with respect to restrictions on transfer under the Securities Act of such Registrable Securities to be removed or otherwise eliminated if (i) such Registrable Securities are sold pursuant to an effective Registration Statement, (ii) in connection with a sale transaction, such Holder provides the Company with an opinion of counsel, in a generally acceptable form, to the effect that a public sale, assignment or transfer of the Registrable Securities may be made without registration under the Securities Act, (iii) such Holder provides the Company reasonable assurances that the Securities have been or are being sold pursuant to, or can then be sold by such Holder without restriction or limitation under, Rule 144, or (iv) such Holder certifies that such Holder is not an Affiliate of the Company and has not been an Affiliate during the preceding three months and either (A) a holding period (determined as provided in Rule 144(d)) of at least six (6) months has elapsed since the acquisition of such Registrable Securities from the Company or an Affiliate of the Company and such Holder will only sell the Registrable Securities in accordance with Rule 144 (including, as applicable the, public information requirement thereof) or pursuant to an effective Registration Statement, or (B) a holding period (determined as provided in Rule 144(d)) of at least one (1) year has elapsed since the acquisition of such Registrable Securities from the Company or an Affiliate of the Company. The Company shall be responsible for the fees and expenses of its transfer agent and The Depository Trust Company (the "**DTC**") associated with the issuance of the Registrable Securities to the Holder and any legend or stop-transfer instruction removal or elimination in accordance herewith.

10. **Redemption of Class C Common Stock**. The Company may not redeem any shares of Class C Common Stock without the unanimous approval of the Board.

11. **Information Rights.**

(a) The Company shall deliver to each Major Investor (i) unaudited financial reports of the Company within thirty (30) days after the end of each calendar month (provided

that in the event that the Company is no longer a reporting Person under the Exchange Act, the Company shall provide each Major Investor with audited financial reports within ninety (90) days after the end of the Company's fiscal year and quarterly unaudited financial reports within forty-five (45) days after the end of each of the Company's fiscal quarter), (ii) an annual budget and business plan of the Company within thirty (30) days of the beginning of the Company's fiscal year and (iii) such other information relating to the financial condition, business, prospects, or corporate affairs of the Company and its Affiliates as any Major Investor may from time to time reasonably request.

(b) The Company shall permit each Major Investor, at such Major Investor's expense, to visit and inspect the Company's properties, to examine the Company's books of account and records and to discuss the Company's affairs, finances and accounts with its officers, all at such reasonable times as may be requested by the Major Investor.

(c) Each Major Investor shall, so long as neither it nor any of its Affiliates are then a member of the Board, and there is not then an effective registration statement pursuant to which such Major Investor is a selling stockholder, have the right, but not the obligation, to deliver a written notice (a "**Stop Notice**") to the Company requesting that, notwithstanding any provision contained herein or in any of the other Transaction Documents, none of the Company nor any of its Affiliates, agents or other representatives provide any material non-public information regarding the Company or any of its Affiliates to such Major Investor. Following the Company's receipt of any such Stop Notice from a Major Investor and until such time as such Major Investor elects to again receive material non-public information by delivering a written notice to that effect to the Company (an "**Initiation Notice**"; and the period beginning with a Major Investor's delivery of a Stop Notice and ending on the Company's receipt of an Initiation Notice from such Major Investor is referred to as a "**Restriction Period**"), the Company shall not provide, and shall cause its Affiliates, agents and other representatives, to cease providing, any material non-public information to such Major Investor.

12. **Confidentiality**. Each Major Investor agrees that neither it nor its Representatives shall use or disclose at any time, either during the term of this Agreement or thereafter, any Confidential Information of which any such Investor Party is or becomes aware pursuant to this Agreement, provided that any Investor Party may disclose any such information to any other Investor Party, and use such information, in connection with customary activities incident to such Major Investor's investment in the Company, including monitoring, reporting or analysis with respect thereto, but not in connection with effecting any transactions in securities of the Company. Notwithstanding the foregoing, any Investor Party may truthfully respond to a lawful and valid subpoena or other legal process, but shall give the Company prior written notice thereof (to the extent lawfully permitted to do so), and any Investor Party may disclose such Confidential Information to the extent necessary or appropriate in connection with any audit or review by any governmental or regulatory authority. In any event, each Major Investor will be responsible for any breach of this Section 12 by any of its Representatives and agrees, at its sole expense, to take all reasonable measures

to assure that its Representatives do not make any prohibited or unauthorized disclosure or use (including in legal proceedings) of the Confidential Information.

13. **Definitions.**

"**Affiliate**" of any Person means any other Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlling," "controlled by" and "under common control with") as used with respect to any Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"**Agreement**" has the meaning specified in the preamble hereto.

"**Amended and Restated Agreement**" has the meaning specified in the preamble hereto.

"**Board**" has the meaning specified in Section 1(m).

"**Business Day**" means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in New York City are generally authorized or obligated by law or executive order to close.

"**Certificates of Designation**" means the Second Amended and Restated Certificate of Designation of Series B-1 Cumulative Convertible Preferred Stock, Series B-2 Cumulative Convertible Preferred Stock and Series B-3 Cumulative Convertible Preferred Stock that was filed with the Secretary of State of the State of Delaware on February 9, 2018 (as the same may be amended and/or restated from time to time) and the Certificate of Designation of Series B-4 Cumulative Convertible Preferred Stock that was filed with the Secretary of State of the State of Delaware on September 25, 2019 (as the same may be amended and/or restated from time to time).

"**Class C Common Stock**" means, the Company's Class C Common Stock, par value $0.01 per share, having the rights and preferences set forth with respect thereto in the Certificate of Incorporation of the Company.

"**Common Stock**" means, collectively, the classes of Voting Common Stock, par value $0.01 par value per share, of the Company, having the rights and preferences set forth with respect thereto in the Certificate of Incorporation of the Company.

"**Company**" has the meaning specified in the preamble hereto.

"**Company/Holder Indemnitees**" has the meaning specified in Section 6(b).

"**Confidential Information**" means information not generally known to the public that any such Investor Party obtains from the Company, any of its Affiliates or any of their authorized representatives or agents regarding the business, operations, financial condition, prospects or plans of the Company or any of its Affiliates, including, but not limited to, material non-public information

of the Company. Confidential Information, however, at any time, shall not include any information that is generally available to the public as of such date (other than as a result of any breach hereof by an Investor Party), nor shall it include any information that any Investor Party obtained from any Person other than the Company, its Affiliates and their representatives or agents, provided that any such Person was not known by the corresponding Investor Party to be subject to a duty or contractual obligation to maintain such information in confidence.

"**Counsel to the Holders**" has the meaning specified in Section 4(a).

"**Delay Period**" has the meaning specified in Section 1(m).

"**Demand Registration**" has the meaning specified in Section 1(a).

"**Effectiveness Deadline**" has the meaning specified in Section 1(e).

"**Effectiveness Period**" has the meaning specified in Section 1(i).

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations promulgated thereunder.

"**Filing Deadline**" has the meaning specified in Section 1(e).

"**Holder**" means (i) any Person signatory hereto (other than the Company) and any Affiliate of such Person, (ii) any Transferee who becomes a signatory hereto pursuant to Section 8 and any Affiliate of such Transferee, provided that such Transferee (a) alone or together with its Affiliates, holds Registrable Securities (or securities convertible into Registrable Securities) representing beneficial ownership of at least one percent (1%) of the Company's issued and outstanding Common Stock or (b) cannot sell all of its Registrable Securities freely pursuant to Rule 144(b)(1).

"**Holder Indemnitees**" has the meaning specified in Section 6(a).

"**indemnified party**" has the meaning specified in Section 6(c).

"**indemnifying party**" has the meaning specified in Section 6(c).

"**Initial Shelf Effective Date**" has the meaning specified in Section 1(b).

"**Initiating Holders**" has the meaning specified in Section 1(a).

"**Initiation Notice**" has the meaning specified in Section 11(c).

"**Inspector**" has the meaning specified in Section 4(g).

"**Investor Party**" means, each Major Investor and each of its Representatives.

"**Investors**" has the meaning specified in the preamble hereto.

"**JCP Realty**" has the meaning specified in the preamble hereto.

"**JPM**" has the meaning specified in the preamble hereto.

"**Juniper NVM**" has the meaning specified in the preamble hereto.

"**Juniper Purchase Agreement**" has the meaning specified in the preamble hereto.

"**Lock-Up Period**" has the meaning specified in Section 3(a).

"**Long-Form Registration**" has the meaning specified in Section 1(a).

"**Losses**" has the meaning specified in Section 6(a).

"**Major Investor**" shall mean each Investor and any respective subsequent transferee (or any subsequent transferees thereof) of such Investor, as long as such Investor (together with its Affiliates) and/or such transferee(s) beneficially own(s) thirty percent (30%) or more of any single series of the Series B Preferred Stock; *provided, however*, if there is no Major Investor, (i) the functions (or rights) of the Major Investors shall be performed by (or granted to) the Holders of a majority of the Registrable Securities covered by a specific Registration Statement and (ii) with respect to Section 1(a) of this Agreement, the Holders of 50% of the Registrable Securities then issued and outstanding may request registration under the Securities Act as provided in Section 1(a) of this Agreement.

"**Original Agreement**" has the meaning specified in the preamble hereto.

"**Other Holders**" has the meaning specified in Section 1(m).

"**Participating Holder Information**" has the meaning specified in Section 1(d).

"**Participating Holders**" means Holders participating, or electing to participate, in an offering of Registrable Securities.

"**Person**" shall mean any natural person, corporation, limited partnership, general partnership, limited liability company, joint stock company, joint venture, association, company, estate, trust, bank trust company, land trust, business trust, or other organization, whether or not a legal entity, custodian, trustee-executor, administrator, nominee or entity in a representative capacity and any government or agency or political subdivision thereof.

"**Piggyback Offering**" has the meaning specified in Section 2(a).

"**Proceeding**" shall mean an action, claim, suit, arbitration or proceeding (including an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

"**Prospectus**" shall mean any prospectus included in, or relating to, any Registration Statement (including any preliminary prospectus, any prospectus that discloses information previously omitted from a prospectus filed as part of an effective Registration Statement in reliance

upon Rule 430A or Rule 430B promulgated under the Securities Act and any "issuer free writing prospectus" (as defined in Rule 433 under the Securities Act)), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by such Registration Statement, and all other amendments and supplements to such prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such prospectus.

"**Registrable Securities**" means any Common Stock issued (or transferred) on or after the date hereof to Persons who are parties hereto or become a party hereto pursuant to the conversion of the Series B Preferred Stock or other Common Stock issued or issuable with respect to any of the foregoing securities by way of a stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization, or upon conversion or exercise of any such securities; provided that such securities shall cease to be Registrable Securities when (A) they have been sold pursuant to an effective Registration Statement, (B) they have been distributed to the public through a broker, dealer or market maker pursuant to Rule 144 or (C) with respect to any Person and such Person's Affiliates, the number of Registrable Securities held by such Persons (x) represents less than five percent (5%) beneficial ownership of the outstanding Common Stock of the Company and (y) such securities may be sold under Rule 144(b)(1). For the purposes of this Agreement, a Person shall be deemed to be a Holder of Registrable Securities whenever such Person has the right to acquire such Registrable Securities (upon conversion or exercise in connection with a Transfer of securities or otherwise, but disregarding any restrictions or limitation upon the exercise of such right), whether or not such acquisition has been effected.

"**Registration Expenses**" has the meaning specified in Section 5(a).

"**Registration Statement**" means any registration statement of the Company under the Securities Act which permits the public offering of any of the Registrable Securities in accordance with the intended methods of distribution thereof pursuant to the provisions of this Agreement, including any related Prospectus, amendments and supplements to such registration statement or Prospectus, including post-effective amendments, all exhibits and all material incorporated by reference or deemed to be incorporated by reference in such registration statement, including, but not limited to, each Demand Registration filed pursuant to Section 1(a) and each Shelf Registration filed pursuant to Section 1(b).

"**Representatives**" means the directors, officers, employees, members, managers, partners, agents or representatives of each Major Investor.

"**Restriction Period**" has the meaning specified in Section 11(c).

"**Rule 144**" means Rule 144 promulgated under the Securities Act, as such Rule may be amended from time to time, or any similar or successor rule or regulation hereafter adopted by the SEC.

"**SEC**" or "**Securities and Exchange Commission**" means the United States Securities and Exchange Commission or any successor governmental agency.

"**Securities Act**" means the Securities Act of 1933, as amended from time to time, and the rules and regulations promulgated thereunder.

"**Series B Preferred Stock**" means the Company's Series B-1 Cumulative Convertible Preferred Stock, par value $0.01 per share, the Company's Series B-2 Cumulative Convertible Preferred Stock, par value $0.01 per share, the Company's Series B-3 Cumulative Convertible Preferred Stock, par value $0.01 per share and the Company's Series B-4 Cumulative Convertible Preferred Stock, par value $0.01 per share.

"**Series B-3 Purchase Agreement**" has the meaning specified in the preamble hereto.

"**Series B-4 Purchase Agreement**" has the meaning specified in the preamble hereto.

"**Shelf Notice**" has the meaning specified in Section 1(b).

"**Shelf Registration**" has the meaning specified in Section 1(b).

"**Short-Form Registration**" has the meaning specified in Section 1(a).

"**Short-Form Shelf**" has the meaning specified in Section 1(g).

"**SRE**" has the meaning specified in the preamble hereto.

"**SRE Purchase Agreement**" has the meaning specified in the preamble hereto.

"**Stop Notice**" has the meaning specified in Section 11(c).

"**Suspension Period**" has the meaning specified in Section 1(m).

"**Transaction Documents**" means this Agreement, the SRE Purchase Agreement, the Juniper Purchase Agreement, the Series B-3 Purchase Agreement, the Series B-4 Purchase Agreement and the Certificates of Designation.

"**Transfer**" or "**Transferred**" means any direct or indirect sale, assignment, transfer, gift, hypothecation, pledge, encumbrance or other disposition of Registrable Securities, in a single transaction or a series of related transactions, whether with or without consideration, whether voluntarily or involuntarily, or by operation of law.

"**Underwritten Demand Offering**" has the meaning specified in Section 1(e).

"**Underwritten Offering**" means an offering in which securities of the Company are sold to one or more underwriters (as defined in Section 2(a)(11) of the Securities Act) in a firm commitment underwritten offering for resale to the public, including an Underwritten Demand Offering and an Underwritten Shelf Takedown.

"**Underwritten Offering Notice**" has the meaning specified in Section 1(e).

"**Underwritten Shelf Takedown**" has the meaning specified in Section 1(e).

14. **Amendment; Waivers; Further Assurances.**

(a) Amendment. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to or departures from the provisions hereof may not be given, without the written consent of the Company and the Holders holding at least fifty percent (50%) of the Registrable Securities then issued and outstanding; provided that no such amendment, modification, supplement, waiver, consent or departure that would have an adverse effect on any Holder of Registrable Securities shall be effective against such Holder without its written consent.

(b) No Waivers. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

(c) Further Assurances. Each of the parties hereto shall execute all such further instruments and documents and take all such further action as any other party hereto may reasonably require in order to effectuate the terms and purposes of this Agreement.

15. **Miscellaneous.**

(a) Remedies; Specific Performance. Any Person having rights under any provision of this Agreement shall be entitled to enforce such rights specifically, to recover damages caused by reason of any breach of any provision of this Agreement and to exercise all other rights existing in their favor. The parties hereto agree and acknowledge that money damages would not be an adequate remedy for any breach of the provisions of this Agreement and that any party may in its sole discretion apply to any court of law or equity of competent jurisdiction for specific performance and/or injunctive relief (without posting any bond or other security) in order to enforce or prevent violation of the provisions of this Agreement and shall not be required to prove irreparable injury to such party or that such party does not have an adequate remedy at law with respect to any breach of this Agreement (each of which elements the parties admit). The parties hereto further agree and acknowledge that each and every obligation applicable to it and contained in this Agreement shall be specifically enforceable against it and hereby waives and agrees not to assert any defenses against an action for specific performance of their respective obligations hereunder.

(b) Successors and Assigns. All provisions of this Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of the parties hereto whether so expressed or not.

(c) Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

(d) Counterparts. This Agreement may be executed simultaneously in two or more counterparts, anyone of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same Agreement.

(e) Descriptive Headings; Interpretation; No Strict Construction. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a substantive part of this Agreement. Whenever required by the context, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular forms of nouns, pronouns, and verbs shall include the plural and vice versa. Reference to any agreement, document, or instrument means such agreement, document, or instrument as amended or otherwise modified from time to time in accordance with the terms thereof, and, if applicable, hereof. The words "include," "includes" or "including" in this Agreement shall be deemed to be followed by "without limitation." The use of the words "or," "either" or "any" shall not be exclusive. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

(f) Governing Law. The internal laws of the State of Delaware shall govern the enforceability and validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties, without regard to its principles of conflicts of laws that would implicate the substantive or procedural laws of any other jurisdiction.

(g) Jurisdiction. Any Proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in any federal or state court located in the County and State of Delaware, and each party hereby consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such Proceeding and irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such Proceeding in any such court or that any such Proceeding which is brought in any such court has been brought in an inconvenient forum. Process in any such Proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 15(j) shall be deemed effective service of process on such party.

(h) Attorneys' Fees. In the event that any Proceeding is instituted under or in relation to this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing or defending any right of such prevailing party under or with respect to this Agreement, including without limitation, such reasonable fees and expenses of attorneys and accountants (which shall include, without limitation, all fees, costs and expenses of appeals).

(i) Waiver of Jury Trial. Each of the parties to this Agreement hereby agrees to waive its respective rights to a jury trial of any claim or cause of action based upon or arising

out of this Agreement. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this Agreement, including contract claims, tort claims and all other common law and statutory claims. Each party hereto acknowledges that this waiver is a material inducement to enter into this Agreement, that each has already relied on this waiver in entering into this Agreement, and that each will continue to rely on this waiver in their related future dealings. Each party hereto further warrants and represents that it has reviewed this waiver with its legal counsel and that it knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 15(i) AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

(j) Notices. All notices, requests, consents and other communications required or permitted hereunder shall be in writing and shall be hand delivered or mailed postage prepaid by registered or certified mail or by facsimile transmission (with immediate telephone confirmation thereafter) and, in the case of the Holders, shall also be sent via e-mail,

If to the Company, to:

IMH Financial Corporation
7001 N. Scottsdale Rd, Suite 2050
Scottsdale, Arizona 85253
Attention: Lawrence D. Bain, CEO
Facsimile: (480) 840-8401

with a copy to (which shall not constitute notice):

Ulmer & Berne LLP
1660 West 2nd Street, Suite 1100
Cleveland, Ohio 44113
Attention: Howard Groedel, Esq.
Telephone: (216) 583-7118
Facsimile: (216) 583-7119

If to the Holders to the address set forth in Exhibit B and if to any transferee of any Holder, to the address of such transferee set forth in the Transfer documentation provided to the Company, in each case with copies to (which copies shall not constitute notice) their respective counsel at the address set forth in Exhibit B, or at such other address as such party each may specify by written notice to the others, and each such notice, request, consent and other communication shall for all purposes of the Agreement be treated as being effective or having been given when delivered personally, upon one (1) Business Day after being

deposited with a courier if delivered by courier, upon receipt of facsimile confirmation (if transmitted during the normal business hours of the recipient, otherwise such notice shall be deemed to be effective or have been given on the next Business Day), or, if sent by mail, at the earlier of its receipt or seventy two (72) hours after the same has been deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and postage prepaid as aforesaid.

(k) Delivery by Facsimile or other Electronic Means. This Agreement, the agreements referred to herein, and each other agreement or instrument entered into in connection herewith or therewith or contemplated hereby or thereby, and any amendments hereto or thereto, to the extent signed and delivered by facsimile or other electronic means, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto shall reexecute original forms thereof and deliver them to all other parties. No party hereto or to any such agreement or instrument shall raise the use of a facsimile machine or other electronic means to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine or other electronic means as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

(l) Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes and replaces all other prior agreements, written or oral, among the parties hereto with respect to the subject matter hereof.

(m) Termination. This Agreement may be terminated at any time by a written instrument signed by all parties hereto. Unless sooner terminated in accordance with the preceding sentence, this Agreement (other than Section 6) shall terminate in its entirety on such date as there shall be no Registrable Securities held by the Holders.

(n) No Third Party Beneficiaries. Nothing herein expressed or implied is intended to confer upon any Person, other than the parties hereto or their respective permitted assigns and successors any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as set forth in Section 6.

(o) Sophisticated Parties; Advice of Counsel. Each of the parties to this Agreement specifically acknowledges that (i) it is a knowledgeable, informed, sophisticated Person capable of understanding and evaluating the provisions set forth in this Agreement and (ii) it has been fully advised and represented by legal counsel of its own independent selection and has relied wholly upon its independent judgment and the advice of such counsel in negotiating and entering into this Agreement.

(p) Amended and Restated Agreement. This Agreement amends, restates and supersedes in its entirety the Amended and Restated Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, this Agreement has been duly executed by each of the parties hereto as of the date first above written.

COMPANY:

IMH FINANCIAL CORPORATION

By: /s/ Lawrence D. Bain
Name: Lawrence D. Bain
Title: Co-Chairman and Interim CEO

HOLDERS:

JCP REALTY PARTNERS, LLC

By: /s/ Jay Wolf
Name: Jay Wolf
Title: Managing Partner

JUNIPER NVM, LLC

By: Juniper Capital Partners, LLC
Its: Sole Member

By: /s/ Jay Wolf
Name: Jay Wolf
Title: Manager

JPMORGAN CHASE FUNDING INC.

By: /s/ Chadwick S. Parson

Name: Chadwick S. Parson

Title: Managing Director

Exhibit A

Form of Joinder Agreement

Attention: President

Ladies and Gentlemen:

Reference is made to the Second Amended and Restated Investors' Rights Agreement, dated as of September ____, 2019 (as such agreement may have been or may be amended from time to time) (the "**Investors' Rights Agreement**"), by and among IMH Financial Corporation, a Delaware corporation (the "**Company**"), each of the other parties signatory thereto and any other parties identified on the signature pages of any joinder agreements substantially similar to this joinder agreement executed and delivered pursuant to Section 8 of the Investors' Rights Agreement. Capitalized terms used but not otherwise defined herein have the meanings set forth in the Investors' Rights Agreement.

In consideration of the transfer to the undersigned of Registrable Securities of the Company, the undersigned represents that it is a transferee of **[insert name of transferor]** and agrees that, as of the date written below, the undersigned shall become a party to the Investors' Rights Agreement, and shall be fully bound by, and subject to, all of the covenants, terms and conditions of the Investors' Rights Agreement as though an original party thereto.

[SIGNATURE PAGE FOLLOWS]

Executed as of the _____ day of _____, 20___.

TRANSFEREE: **[insert name of transferee]**

By:
: _
Name:
Title:

Address:_
_
_

Acknowledged and agreed by:

IMH FINANCIAL CORPORATION

By: _
Name:
Title: President

Exhibit B

JCP Realty Partners, LLC
11150 Santa Monica Blvd., Suite 1400
Los Angeles, CA 90025

with a copy to (which shall not constitute notice):

Munger Tolles & Olson LLP
350 South Grand Avenue, 48th Fl.
Los Angeles, CA 90071
Attention: C. David Lee, Esq.
Telephone: (213) 683-9285
Facsimile: (213) 593-2885

Juniper NVM, LLC
11150 Santa Monica Blvd., Suite 1400
Los Angeles, CA 90025

with a copy to (which shall not constitute notice):

Munger Tolles & Olson LLP
350 South Grand Avenue, 48th Fl.
Los Angeles, CA 90071
Attention: C. David Lee, Esq.
Telephone: (213) 683 9285
Facsimile: (213) 593-2885

JPMorgan Chase Funding Inc.
383 Madison Avenue
New York, New York 10179

with a copy to (which shall not constitute notice):

Fried, Frank, Harris, Shriver & Jacobson LLP
One New York Plaza
New York, New York 10004
Attention: Julian Chung
Telephone: (212) 859-8957
Facsimile: (212) 859-4000

ANNEX I

PLAN OF DISTRIBUTION

We are registering the shares of common stock to permit the resale of these shares of common stock by the selling stockholders from time to time after the date of this prospectus. We will not receive any of the proceeds from the sale by the selling stockholders of the shares of common stock. We will bear all fees and expenses incident to our obligation to register the shares of common stock.

The selling stockholders may sell all or a portion of the shares of common stock beneficially owned by them and offered hereby from time to time directly or through one or more underwriters, broker-dealers or agents. If the shares of common stock are sold through underwriters or broker-dealers, the selling stockholders will be responsible for underwriting discounts or commissions or agent's commissions. The shares of common stock may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of the sale, at varying prices determined at the time of sale or at negotiated prices. These sales may be effected from time to time pursuant to one or more of the following methods, which may involve crosses or block transactions:

- on any national securities exchange or U.S. inter-dealer quotation system of a registered national securities association on which the securities may be listed or quoted at the time of sale;
- in the over-the-counter market;
- in transactions otherwise than on these exchanges or systems or in the over-the-counter market;
- through the writing of options, whether such options are listed on an options exchange or otherwise;
- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- public or privately negotiated transactions;
- short sales;
- sales pursuant to Rule 144;

- broker-dealers may agree with the selling stockholders to sell a specified number of such shares at a stipulated price per share;

- a combination of any such methods of sale; or

- any other method permitted pursuant to applicable law.

If the selling stockholders effect such transactions by selling shares of common stock to or through underwriters, broker-dealers or agents, such underwriters, broker-dealers or agents may receive commissions in the form of discounts, concessions or commissions from the selling stockholders or commissions from purchasers of the shares of common stock for whom they may act as agent or to whom they may sell as principal (which discounts, concessions or commissions as to particular underwriters, broker-dealers or agents may be in excess of those customary in the types of transactions involved). In connection with sales of the shares of common stock or otherwise, the selling stockholders may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the shares of common stock in the course of hedging in positions they assume. The selling stockholders may also sell shares of common stock short and deliver shares of common stock covered by this prospectus to close out short positions, and to return borrowed shares in connection with such short sales, provided that the short sales are made after the registration statement is declared effective. The selling stockholders may also loan or pledge shares of common stock to broker-dealers in connection with bona fide margin accounts secured by the shares of common stock, which shares broker-dealers could in turn sell if the selling stockholders default in the performance of their respective secured obligations.

The selling stockholders may pledge or grant a security interest in some or all of the shares of common stock owned by them and, if any of them defaults in the performance of its secured obligations, the pledgees or secured parties may offer and sell the shares of common stock from time to time pursuant to this prospectus or any amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act of 1933, amending, if necessary, the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus. The selling stockholders also may transfer and donate the shares of common stock in other circumstances in which case the transferees, donees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

The selling stockholders and any broker-dealer participating in the distribution of the shares of common stock may be deemed to be “underwriters” within the meaning of the Securities Act of 1933, and any commission paid, or any discounts or concessions allowed to, any such broker-dealer may be deemed to be underwriting commissions or discounts under the Securities Act of 1933. At the time a particular offering of the shares of common stock is made, a prospectus supplement, if required, will be distributed which will set forth the aggregate amount of shares of common stock being offered and the terms of the offering, including the name or names of any broker-dealers or agents, any discounts, commissions and other terms constituting compensation from the selling stockholders and any discounts, commissions or concessions allowed or reallowed or paid to broker-dealers.

Under the securities laws of some states, the shares of common stock may be sold in such states only through registered or licensed brokers or dealers. In addition, in some states the shares of common stock may not be sold unless such shares have been registered or qualified for sale in such state or an exemption from registration or qualification is available and is complied with.

There can be no assurance that any selling stockholder will sell any or all of the shares of common stock registered pursuant to the registration statement, of which this prospectus forms a part.

The selling stockholders and any other person participating in such distribution will be subject to applicable provisions of the Securities Exchange Act of 1934, and the rules and regulations thereunder, including, without limitation, Regulation M of the Securities Exchange Act of 1934, which may limit the timing of purchases and sales of any of the shares of common stock by the selling stockholders and any other participating person. Regulation M may also restrict the ability of any person engaged in the distribution of the shares of common stock to engage in market-making activities with respect to the shares of common stock. All of the foregoing may affect the marketability of the shares of common stock and the ability of any person or entity to engage in market-making activities with respect to the shares of common stock.

We will pay all expenses of the registration of the shares of common stock pursuant to the investor rights agreement, including, without limitation, SEC filing fees and expenses of compliance with state securities or "blue sky" laws; *provided*, *however*, that the selling stockholders will pay all underwriting discounts and selling commissions, if any. We will indemnify the selling stockholders against liabilities, including liabilities under the Securities Act of 1933, in accordance with the investor rights agreement, or the selling stockholders will be entitled to contribution. We may be indemnified by the selling stockholders against civil liabilities, including liabilities under the Securities Act of 1933, that may arise from any written information furnished to us by the selling stockholders specifically for use in this prospectus, in accordance with the related investor rights agreement, or we may be entitled to contribution.

Once sold under the registration statement, of which this prospectus forms a part, the shares of common stock will be freely tradable in the hands of persons other than our affiliates.

Any shares covered by this prospectus that qualify for sale pursuant to Rule 144 of the Securities Act of 1933 may be sold under Rule 144, rather than pursuant to this prospectus.

Execution Version

Exhibit 10.1

SERIES B-4 CUMULATIVE CONVERTIBLE PREFERRED STOCK SUBSCRIPTION AGREEMENT

THIS SERIES B-4 CUMULATIVE CONVERTIBLE PREFERRED STOCK SUBSCRIPTION AGREEMENT (this "**Agreement**"), is made as of the 25th day of September, 2019 by and among IMH Financial Corporation, a Delaware corporation (the "**Company**"), and JPMorgan Chase Funding Inc. (the "**Purchaser**"). The Company and the Purchaser may each be referred to herein as a "**Party**" or collectively as the "**Parties**".

WHEREAS:

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

B. The Purchaser desires to purchase from the Company, and the Company wishes to sell to the Purchaser, upon the terms and conditions stated in this Agreement, shares of Series B-4 Cumulative Convertible Preferred Stock of the Company, $0.01 par value per share (the "**Series B-4 Preferred Stock**").

C. The Company has duly adopted and filed with the Secretary of State of the State of Delaware on or before the Closing the Certificate of Designation of Series B-4 Cumulative Convertible Preferred Stock of the Company in the form attached hereto as Exhibit A (the "**Series B-4 Certificate**").

D. The Board of Directors of the Company (the "**Board**") has, by the vote of a requisite majority of the directors serving thereon and pursuant to Section 141 of the Delaware General Corporation Law ("**DGCL**"), (a) determined that it is in the best interests of the Company and its shareholders, and declared it advisable, to enter into this Agreement with the Purchaser, and (b) duly approved the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated in connection therewith.

E. The Required Holders (as defined in the Second Amended and Restated Series B-1, B-2 and B-3 Certificate) of the shares of the Company's Series B Preferred Stock outstanding immediately prior to the date of this Agreement have approved the Company's entry into this Agreement and its creation of the Series B-4 Preferred Stock and the issuance of the Shares in accordance with the terms and conditions of the Series B-4 Certificate.

NOW THEREFORE, the Parties, hereby agree as follows:

1. Purchase and Sale of Series B-4 Preferred Stock.

Exhibit 10.1

1.1 Number of Shares; Purchase Price. Subject to the terms and conditions of this Agreement, at the Closing, the Purchaser agrees to purchase and the Company agrees to sell and issue to the Purchaser 1,875,000 shares of Series B-4 Preferred Stock at a price of $3.20 per share (the "**Purchase Price**"). The shares of Series B-4 Preferred Stock issued to the Purchaser pursuant to this Agreement shall be referred to in this Agreement as the "**Shares**".

1.2 Closing; Delivery.

(a) The purchase and sale of the Shares shall take place remotely via the exchange of documents and signatures, on the date of this Agreement (the "**Closing**").

(b) At the Closing, (i) the Purchaser shall pay to the Company for the Shares to be issued and sold to the Purchaser at the Closing an amount equal to the Purchase Price, by wire transfer of immediately available funds to the account designated by the Company; (ii) the Company shall enter the Shares in the Purchaser's name in the books and records of the Company and deliver to the Purchaser at the Closing (A) a notice of issuance executed by an officer of the Company with respect to the Shares against payment of the Purchase Price, and (B) a certificate by an authorized officer of the Company certifying (I) the Series B-4 Certificate and (II) resolutions of the Board and of the Required Holders, each approving the creation of Series B-4 Preferred Stock, the Transaction Documents and the Transactions; and (iii) each of the Investment Agreement and the Investors' Rights Agreement shall have been duly executed and delivered by all parties.

1.3 Use of Proceeds. The Company shall use the proceeds from the sale of the Shares to purchase or otherwise acquire fee interests in real estate, joint venture interests in fee interests in real estate, mortgage loans secured exclusively by real estate or interests in joint ventures formed to make mortgage loans secured exclusively by real estate, mezzanine loans made exclusively for the financing of real estate and which are secured by a first lien position on the entire ownership interests of the entity owning the real estate, and other assets and financial instruments that are considered "qualifying assets" or "real estate-related assets" and for general corporate purposes.

1.4 Defined Terms Used in this Agreement. In addition to the terms defined above, the following terms used in this Agreement shall have the meanings set forth or referenced below.

(a) "**Affiliate**" of any Person means any other Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlling," "controlled by" and "under common control with") as used with respect to any Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

(b) "**Agreement**" has the meaning set forth in the Preamble.

(c) "**Board**" has the meaning set forth in the Recitals.

(d) "**Bylaws**" means the Third Amended and Restated Bylaws of the Company, as amended and in effect.

(e) "**Capital Stock**" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, and any and all equivalent ownership interests in a Person (other than a corporation).

(f) "**Class A Common Stock**" has the meaning set forth in Section 2.2(a)(i).

(g) "**Class B Common Stock**" has the meaning set forth in Section 2.2(a)(i).

(h) "**Class B-1 Common Stock**" has the meaning set forth in Section 2.2(a)(i).

(i) "**Class B-2 Common Stock**" has the meaning set forth in Section 2.2(a)(i).

(j) "**Class B-3 Common Stock**" has the meaning set forth in Section 2.2(a)(i).

(k) "**Class B-4 Common Stock**" has the meaning set forth in Section 2.2(a)(i).

(l) "**Class C Common Stock**" has the meaning set forth in Section 2.2(a)(i).

(m) "**Class D Common Stock**" has the meaning set forth in Section 2.2(a)(i).

(n) "**Closing**" has the meaning set forth in Section 1.2(a).

(o) "**Code**" means the Internal Revenue Code of 1986, as amended.

(p) "**Common Stock**" has the meaning set forth in Section 2.2(a).

(q) "**Company**" has the meaning set forth in the Preamble.

(r) "**Company Covered Person**" means, with respect to the Company as an "issuer" for purposes of Rule 506 of Regulation D, any Person listed in the first paragraph of Rule 506(d)(1) of Regulation D.

(s) "**Company Entity**" means, collectively, the Company and each of the Subsidiaries.

(t) "**DGCL**" has the meaning set forth in the Recitals.

(u) "**Disclosure Schedule**" means the schedule attached hereto as Exhibit B.

(v) "**Disqualifying Event**" has the meaning set forth in Section 2.4(b).

(w) "**ERISA**" has the meaning set forth in Section 2.11(b).

(x) "**Exchange Act**" means the Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations promulgated thereunder.

(y) "**Fee Assets**" means real estate assets owned by any of the Company Entities.

(z) "**GAAP"** means United States generally accepted accounting principles.

(aa) "**Governmental Authority**" means any court or governmental or regulatory authority of the United States, any State or locality thereof or any foreign jurisdiction.

(bb) "**Investment Agreement**" means that certain Third Amended and Restated Investment Agreement among the Company, the Purchaser and the other investors identified therein dated as of the Closing, in the form of Exhibit C attached hereto.

(cc) "**Investors' Rights Agreement**" means the Second Amended and Restated Investors' Rights Agreement among the Company and the Purchaser and certain other shareholders of the Company dated as of the date of the Closing, in the form of Exhibit D attached hereto.

(dd) "**Knowledge**" including the phrases "**to the Knowledge of the Company**", "**to the Company's Knowledge**" or similar language means the actual knowledge as of the date hereof of the Chief Executive Officer, the Chief Financial Officer, the General Counsel and the Executive Vice President of Hospitality, including knowledge any such person would reasonably be expected to obtain in the ordinary course of their position and supervision of their direct reports.

(ee) "**Laws**" means all present or future federal, state local or foreign laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative or judicial orders, consent agreements, directed duties, requests, licenses, authorizations and permits of, and agreements with, any governmental entity.

(ff) "**Leased Assets**" means real estate assets leased by the Company Entities.

(gg) "**Lien**" means with respect to any asset or property, any mortgage, lien, pledge, hypothecation, charge, security interest, encumbrance or adverse claim of any kind and any restrictive covenant, condition, restriction or exception of any kind that has the practical effect of creating a mortgage, lien, pledge, hypothecation, charge, security interest, encumbrance or adverse claim of any kind (including any of the foregoing created by, arising under or evidenced by any conditional sale or other title retention agreement, the interest of a lessor with respect to any obligation that is required to be classified and accounted for as a capital lease on a balance sheet of such Person prepared in accordance with GAAP, and the amount of such obligation shall be the capitalized amount thereof, determined in accordance with GAAP, or any financing lease having substantially the same economic effect as any of the foregoing).

(hh) "**Material Adverse Effect**" means any event, state of facts, circumstance, development, change or effect that, individually or in the aggregate with all other events, states of fact, circumstances, developments, changes and effects, (i) would materially adversely affect the ability of the Company to consummate the Transactions, or to perform its obligations under any of the Transaction Documents, in a timely manner or (ii) is materially adverse to the business, assets, liabilities, condition (financial or otherwise) or results of operations of the Company Entities, taken as a whole, other than in the case of clause (ii) above, any event, state of facts, circumstances, development, change, effect or occurrence resulting from (A) changes in general economic, regulatory or political conditions or in the securities, credit or financial markets in general, (B) general changes or developments in the business in which the Company Entities operate, (C) any acts of terrorism or war or any natural disaster or weather-related event, or (D) any failure to meet internal or published projections, forecasts or revenue or earning predictions or any downward revisions for any period (provided that this clause (D) shall not be construed as providing that the change, event, circumstance, development, occurrence or state of facts giving rise to such failure does not constitute or contribute to a Material Adverse Effect on the Company), except, in the case of the foregoing clause (A), (B) or (C), to the extent such changes or developments referred to therein would reasonably be expected to have a materially disproportionate negative impact on the Company Entities, taken as a whole, compared to other comparable participants in the Company's industries.

(ii) "**Most Recent 10-Q**" has the meaning set forth in Section 2.9(a).

(jj) "**Most Recent Balance Sheet**" has the meaning set forth in Section 2.9(a).

(kk) "**Options**" means any rights, warrants or options to subscribe for or purchase shares of common stock or any other stock or securities directly or indirectly convertible into or exchangeable or exercisable for shares of common stock.

(ll) "**Party**" has the meaning set forth in the Preamble.

(mm) "**Person**" means any individual, corporation, partnership, trust, limited liability company, association or other entity.

(nn) "**Preferred Stock**" has the meaning set forth in Section 2.2(a)(ii).

(oo) "**Purchase Price**" has the meaning set forth in the Section 1.1.

(pp) "**Purchaser**" has the meaning set forth in the Preamble.

(qq) "**Real Estate Assets**" means the Fee Assets and the Leased Assets.

(rr) "**Regulation D**" has the meaning set forth in the Recitals.

(ss) "**Related Party Transactions**" has the meaning set forth in Section 2.21.

(tt) "**Requested Documents**" has the meaning set forth in Section 3.3.

(uu) **"Required Holders**" has the meaning set forth in the Second Amended and Restated Series B-1, B-2 and B-3 Certificate.

(vv) "**Sarbanes-Oxley Act**" has the meaning set forth in Section 2.10(a).

(ww) "**SEC**" has the meaning set forth in the Recitals.

(xx) "**SEC Reports**" has the meaning set forth in Section 2.9(a).

(yy) "**Securities**" means, collectively, the Shares.

(zz) "**Securities Act**" has the meaning set forth in the Recitals.

([[) "**Securities Laws**" means the securities laws (including "Blue Sky" laws), legislation and regulations of, and the instruments, policies, rules, orders, codes, notices and interpretation notes of, the securities regulatory authorities (including the SEC) of the United States and any applicable states and other jurisdictions.

(aaa) "**Second Amended and Restated Series B-1, B-2 and B-3 Certificate**" has the meaning set forth in Section 2.2(a)(ii).

(bbb) **"Series A Preferred Stock"** has the meaning set forth in Section 2.2(a)(ii).

(ccc) **"Series A Preferred Stock Certificate"** has the meaning set forth in Section 2.2(a)(ii).

(ddd) "**Series B-1 Preferred Stock**" has the meaning set forth in Section 2.2(a)(ii).

(eee) "**Series B-2 Preferred Stock**" has the meaning set forth in Section 2.2(a)(ii).

(fff) "**Series B-3 Preferred Stock**" has the meaning set forth in Section 2.2(a)(ii).

(ggg) **"Series B-4 Preferred Stock**" has the meaning set forth in the Recitals.

(hhh) "**Shares**" has the meaning set forth in Section 1.1.

(iii) "**Stock Plan**" has the meaning set forth in Section 2.2(b).

(jjj) "**Subsidiaries**" means any Person in which the Company, directly or indirectly, (a) owns an amount of voting securities or other interests that is sufficient to enable the Company to elect at least a majority of the members of such Person's board of directors or other governing body or at least 50% of the outstanding equity or similar interests of such Person or (b) controls or operates all or any part of the business, operations or administration of such Person, and each of the foregoing, is individually referred to herein as a "**Subsidiary.**"

(kkk) "**Tax**" means any federal, state, local, or non-U.S. income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not and including any obligations to indemnify or otherwise assume or succeed to the Tax liability of any other Person.

(lll) "**Tax Returns**" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

(mmm) "**Transaction Documents**" means this Agreement; the Series B-4 Certificate; the Investment Agreement; and the Investors' Rights Agreement.

(nnn) "**Transactions**" means the sale and issuance of the Shares to the Purchaser and the execution and delivery of the Transaction Documents and the consummation by the Company of all of the transactions contemplated therein.

2. Representations and Warranties of the Company. Except (a) as disclosed in the Disclosure Schedule delivered or (b) as set forth in the SEC Reports filed with or furnished to the SEC prior to the third (3rd) business day immediately preceding the date of this Agreement (other than any disclosures in such documents referred to in the "Risk Factors" or "Forward Looking Statements" sections thereof or any other disclosures in such documents which are forward looking or predictive in nature) (provided that nothing disclosed in the SEC Reports shall be deemed to be a qualification of or modification to the representations or warranties set forth in Sections 2.1, 2.2, 2.3 and 2.4), and, in each case, to the extent the applicability of the disclosure to such representation and warranty is reasonably apparent from the text of the disclosure made, the Company represents and warrants to the Purchaser as follows:

2.1 Organization, Good Standing, Corporate Power and Qualification. Except as set forth on Section 2.1 of the Disclosure Schedule, each Company Entity is a corporation, limited liability company, or other entity and is duly organized or formed and validly existing in good standing under the laws of the jurisdiction in which it is incorporated or organized and has the requisite corporate, limited liability company or other organizational power and authority to own its properties and to carry on its business as now being conducted and as proposed to be conducted by the Company Entities. Other than with respect to the entities as disclosed in the SEC Reports, the Company does not, directly or indirectly, own any security or beneficial ownership interest, in any other Person (including through joint venture or partnership agreements) or have any interest in any other Person. Each Company Entity is duly qualified to transact business and is in good standing in each jurisdiction in which its ownership or lease of property or the nature of the business conducted or proposed to be conducted by such Company Entity will make such qualification necessary, except where such failure to qualify could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as set forth on Section 2.1 of the Disclosure Schedule, the Company holds all right, title and interest in and to 100% of the Capital Stock, equity or similar interests of each of the Subsidiaries, in each case, free and clear of any Liens or any other restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of free and clear ownership by a current holder.

2.2 Capitalization.

(a) The authorized capital of the Company consists immediately prior to Closing of:

(i) 200,000,000 shares of common stock, $0.01 par value per share (the "**Common Stock**"), of which (1) 16,559,315 shares were issued and outstanding immediately prior to the Closing and (2)(A) 150,208,500 shares have been designated Common Stock (the "**Class A Common Stock**"), of which 1,909,338 shares are issued and outstanding as of the date of this Agreement; (B) 4,023,400 shares of which have been designated Class B-1 Common Stock (the "**Class B-1 Common Stock**"), of which 3,376,821 are issued and outstanding as of the date of this Agreement; (C) 4,023,400 shares of which have been designated Class B-2 Common

Stock (the "**Class B-2 Common Stock**"), of which 3,377,953 are issued and outstanding as of the date of this Agreement; (D) 8,165,700 shares of which have been designated Class B-3 Common Stock (the "**Class B-3 Common Stock**"), of which 6,912,510 are issued and outstanding as of the date of this Agreement; (E) 781,644 shares of which have been designated Class B-4 Common Stock (the "**Class B-4 Common Stock**"), of which 313,790 are issued and outstanding as of the date of this Agreement and, together with the Class B-1 Common Stock, Class B-2 Common Stock and Class B-3 Common Stock (the "**Class B Common Stock**"), of which 13,981,074 are issued and outstanding as of the date of this Agreement; (F) 15,803,212 shares of which have been designated Class C Common Stock (the "**Class C Common Stock**"), of which 668,903 are issued and outstanding as of the date of this Agreement; and (G) 16,994,144 shares of which have been designated Class D Common Stock (the "**Class D Common Stock**"), none of which are issued and outstanding as of the date of this Agreement. As of June 30, 2019, the Company holds 2,370,181 shares of Common Stock in its treasury.

(ii) 100,000,000 shares of preferred stock, $0.01 par value per share (the "**Preferred Stock**"), of which (1) 10,574,941 shares were issued and outstanding immediately prior to the Closing and of which (2)(A) 2,604,852 shares have been designated as Series B-1 Cumulative Convertible Preferred Stock (the "**Series B-1 Preferred Stock**"), of which 2,604,852 shares are issued and outstanding as of the date of this Agreement; (B) 5,595,148 shares have been designated as Series B-2 Cumulative Convertible Preferred Stock (the "**Series B-2 Preferred Stock**"), of which 5,595,148 shares are issued and outstanding as of the date of this Agreement; (C) 2,352,941 shares have been designated as Series B-3 Cumulative Convertible Preferred Stock (the "**Series B-3 Preferred Stock**"), of which 2,352,941 shares are issued and outstanding immediately prior to the Closing; (D) 22,000 shares have been designated as Series A Perpetual Preferred Stock (the "**Series A Preferred Stock**"), of which 22,000 shares are issued and outstanding immediately prior to the Closing; and (E) 1,875,000 shares have been designated as Series B-4 Preferred Stock, of which none are issued and outstanding immediately prior to the Closing. In addition to the rights, privileges and preferences provided by the DGCL, the rights, privileges and preferences of shares of (i) the Series B-1 Preferred Stock, Series B-2 Preferred Stock and Series B-3 Preferred Stock are as stated in the Second Amended and Restated Series B-1, B-2 and B-3 Certificate; (ii) the Series B-4 Preferred Stock as are stated in the Series B-4 Certificate; and (iii) of the Series A Preferred Stock are as stated in the Certificate of Designation of Series A Senior Perpetual Preferred Stock of IMH Financial Corporation (the **"Series A Certificate"**). The Company holds no Preferred Stock in its treasury.

(b) The Company has reserved 2,700,000 (which shall automatically be increased to 3,300,000 shares in connection with an initial public offering under the Securities Act, of Common Stock) shares of Common Stock for issuance to officers, directors, employees and consultants of the Company pursuant to the First Amended and Restated 2010 IMH Financial Corporation Employee Stock Incentive Plan duly adopted by the Board and approved by the Company's shareholders (the "**Stock Plan**"). Of such reserved shares of Common Stock, 540,386 shares have been issued pursuant to restricted stock purchase agreements, options to purchase

1,211,817 shares (net of forfeitures) have been granted and are currently outstanding and 947,797 shares of Common Stock remain available for issuance under the Stock Plan. No shares of Common Stock or Preferred Stock are reserved for issuance under any plan, agreement or arrangement, other than shares of Common Stock reserved for issuance under the Stock Plan.

(c) Section 2.2(c) of the Disclosure Schedule sets forth the capitalization of the Company immediately following the Closing including the number of shares of the following: (i) issued and outstanding Common Stock (including the number of shares designated as Class A Common Stock, Class B-1 Common Stock, Class B-2 Common Stock, Class B-3 Common Stock, Class B-4 Common Stock, Class C Common Stock and Class D Common Stock); (ii) granted Options under the Stock Plan, including vesting schedules and exercise prices; (iii) shares of Common Stock reserved for future award grants under the Stock Plan; (iv) issued and outstanding Preferred Stock (including the number of shares designated as Series B-1 Preferred Stock, Series B-2 Preferred Stock, Series B-3 Preferred Stock, and Series B-4 Preferred Stock); and (v) warrants or stock purchase rights, if any. All of the outstanding or issuable shares of Capital Stock of the Company have been duly authorized and have been, or upon issuance will be, validly issued and are, or upon issuance will be, fully paid and nonassessable.

Except for (A) the conversion privileges of the Shares to be issued under this Agreement, (B) the rights provided in Section 4 of the Investment Agreement, (C) the securities and rights described in Section 2.2(a)(ii) of this Agreement and as set forth on Section 2.2(c) of the Disclosure Schedule or (D) to the extent disclosed in SEC Reports:

(i) no shares of the Capital Stock of any Company Entity are subject to preemptive rights or any other similar rights or any Liens suffered or permitted by any Company Entity;

(ii) there are no outstanding Options, calls or commitments of any character whatsoever relating to, or securities or rights convertible into or exercisable for, any shares of Capital Stock of any Company Entity, or contracts by which any Company Entity is or may become bound to issue additional shares of Capital Stock of any Company Entity or Options, calls or commitments of any character whatsoever relating to, or securities or rights convertible into or exercisable for, any shares of Capital Stock of any Company Entity;

(iii) there are no agreements or arrangements under which any Company Entity is obligated to register the sale of any of its securities under the Securities Act;

(iv) there are no outstanding securities or instruments of any Company Entity that contain any redemption or similar provisions, and there are no contracts by which any Company Entity is or may become bound to redeem a security of such Company Entity, and there are no other shareholder agreements or similar agreements to which any Company Entity or, to the Company's Knowledge, any holder of the Company's Capital Stock is a party;

(v) there are no securities or instruments containing anti-dilution or similar provisions that will or may be triggered by the issuance of the Shares;

(vi) the Company does not have any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement; and

(vii) to the Company's Knowledge, no officer or director of the Company or beneficial owner of any of the Company's outstanding Common Stock has pledged Common Stock in connection with a margin account or other loan secured by such Common Stock.

2.3 Authorization.

(a) The Company has the requisite corporate power to enter into and perform its obligations under this Agreement and the Transaction Documents, including without limitation to issue the Shares at the Closing and the Common Stock issuable upon conversion of the Shares. All action on the part of the officers of the Company necessary for the execution and delivery of the Transaction Documents, the performance of all obligations of the Company under the Transaction Documents to be performed as of the Closing and the issuance and delivery of the Shares has been taken as of the Closing.

(b) The execution and delivery of the Transaction Documents by the Company and the consummation by the Company of the Transactions, including the issuance of the Shares have been duly authorized by the Board and the Required Holders and no further consent or authorization is required by any Company Entity, any of the Board (or any committee thereof) or the shareholders of the Company, other equityholders or holders of beneficial interests of the Company. Without limiting the foregoing: (x) the Board has, by the vote of a requisite majority of the directors serving thereon, (I) determined that it is in the best interests of the Company and its shareholders, and declared it advisable, to enter into this Agreement with the Purchaser and (II) approved the execution, delivery and performance of this Agreement and the consummation of the Transactions, including the issuance of the Shares to the Purchaser and the adoption of the Series B-4 Certificate; and (y) the Required Holders have consented in writing to (A) the creation of the Series B-4 Preferred Stock and (B) the Transactions, in each case, in accordance with the Series B-4 Certificate.

(c) The Transaction Documents have been duly executed and delivered by the Company and constitute valid and legally binding obligations of the Company Entities, enforceable against the Company Entities in accordance with their respective terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other laws of general application relating to or affecting the enforcement of creditors' rights generally, or (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

2.4 Valid Issuance of Shares.

(a) The Shares being issued, sold and delivered in accordance with the terms and for the consideration set forth in this Agreement, upon issuance will be validly issued, fully paid and nonassessable, free of taxes and Liens with respect to the issuance and free of restrictions on transfer other than restrictions on transfer under the Transaction Documents, applicable state and federal Securities Laws and any liens or encumbrances created by the Purchaser. Assuming the accuracy of the representations of the Purchaser in Section 3 of this Agreement and subject to any Disqualifying Event (as described below), the Shares will be issued in compliance with all applicable federal and state Securities Laws.

(b) No "bad actor" disqualifying event described in Rule 506(d)(1)(i) through (viii) of the Securities Act (a "**Disqualifying Event**") is applicable to the Company or, to the Company's Knowledge, any Company Covered Person, except for a Disqualifying Event as to which Rule 506(d)(2)(ii) through (iv) or (d)(3), is applicable.

2.5 Governmental Consents and Filings. Assuming the accuracy of the representations made by the Purchaser in Section 3 of this Agreement, no consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with or notification to, any federal, state or local governmental authority is required on the part of the Company in connection with the consummation of the transactions contemplated by this Agreement, except for (a) the filing of the Series B-4 Certificate, which has been filed with and accepted by the Secretary of State of the State of Delaware as of the Closing and (b) the applicable filings under the Exchange Act, the Securities Act and any relevant state securities administrators or related to the blue sky laws of various states, which have been made or will be made by the Company in a timely manner after the Closing.

2.6 Litigation; Compliance with Laws. Except as set forth on Section 2.6 of the Disclosure Schedule or the SEC Reports, there is no action, claim, dispute, arbitration, audit, hearing, inquiry, investigation, administrative enforcement proceeding, litigation or suit (whether civil, criminal, administrative or investigative) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority or arbitration tribunal pending or, to the Knowledge of the Company, threatened against any Company Entity, and there is no judgment, decree or order against any Company Entity, in each case, that would be reasonably likely to adversely affect the Company's ability to perform its obligations under this Agreement or to have a Material Adverse Effect. Each Company Entity is in compliance in all material respects with all Laws applicable to the Company's business as presently conducted, except where the failure to be in compliance would not be reasonably likely to adversely affect the Company's ability to perform its obligations under this Agreement or to have a Material Adverse Effect. Except as set forth on Section 2.6 of the Disclosure Schedule or the SEC Reports, no Company Entity has received written notice that it is in default in any material respect with respect to any judgment, order, writ, injunction, decree, rule or regulation of any arbitrator or Governmental Authority.

2.7 Compliance with Other Instruments. Except as set forth on Section 2.7 of the Disclosure Schedule, the execution and delivery of this Agreement and the other Transaction Documents by the Company and the performance of its obligations hereunder and thereunder and the consummation by the Company of the Transactions (including the issuance of the Shares) will not: (a) result in a violation of its Certificate of Incorporation, as amended, the Series B-4 Certificate or Bylaws; (b) conflict with, or constitute a breach or default (or an event which, with the giving of notice or passage of time or both, constitutes or would constitute a breach or default) under, or give to others any right of termination, amendment, acceleration or cancellation of, or other remedy with respect to, any note, indenture, deed of trust, guaranty, indemnity, or mortgage, lease, sublease, agreement or contract to which it is a party or by which it or its assets is bound; or (c) result in a violation of any Law applicable to the Company or by which any property or asset of any Company Entity is bound or affected. The execution, delivery and performance of the Transaction Documents, the consummation of the Transactions, and the exercise by the Purchaser of its rights and remedies under the Transaction Documents will not result in any such violation or be in conflict with or constitute a default under items set forth in (a), (b) and (c) of this Section 2.7. The Company has not sent a notice to the stockholders of the Company stating that the Board has determined not to pursue an initial public offering of the Common Stock under the Securities Act.

Neither the Company nor any of its Subsidiaries is in violation of any term of its certificate or articles of incorporation, certificate or articles of organization, bylaws, operating agreement or any other governing document, as applicable. Neither the Company nor any of its Subsidiaries is or has been in violation of any term of or in default under (or with the giving of notice or passage of time or both would be in violation of or default under) any agreement or contract, mortgage, indebtedness, indenture, instrument, judgment, decree or order or any Law applicable to any Company Entity, except where such violation or default could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or result in the acceleration of any indebtedness or other obligation of any Company Entity. The business of the Company and its Subsidiaries have not been and are not being conducted in violation of any Law or any judgment, order, writ, injunction, decree, rule or regulation of any arbitrator or Governmental Authority except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

2.8 Voting Rights. The Company is not a party to any agreements with the shareholders of the Company with respect to the voting of Capital Stock of the Company and, to the Company's Knowledge, none of the Company's shareholders have entered into any agreements with respect to the voting of Capital Stock of any Company Entity.

2.9 Financial Statements; Accuracy of SEC Reports.

(a) Since December 31, 2014, the Company has filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the Exchange Act. All of the foregoing items filed with the SEC (but not those items that merely were furnished to the SEC) prior to the date hereof but after December

31, 2014, are referred to herein as the "**SEC Reports**." The Company's consolidated balance sheet as of June 30, 2019, as included in the Company's quarterly report on Form 10-Q for the periods then ended, as filed with the SEC on August 14, 2019 (the "**Most Recent 10-Q**"), is referred to herein as the "**Most Recent Balance Sheet**". As of their respective dates, the SEC Reports complied in all material respects with the Securities Laws. None of the SEC Reports, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Since the filing of each of the SEC Reports, no event has occurred that would require an amendment or supplement to any such SEC Report and as to which such an amendment or supplement has not been filed and made publicly available on the SEC's EDGAR system no less than five (5) business days prior to the date hereof.

(b) As of their respective filing dates, the audited consolidated financial statements and unaudited interim financial statements of the Company Entities included in the SEC Reports have been prepared in accordance with GAAP applied on a consistent basis (except as may be indicated therein or in the notes thereto) and fairly present, in all material respects, the financial position of the Company as at the dates thereof and the results of its operations and cash flows for the periods then ended subject, in the case of the unaudited interim financial statements, to normal year-end adjustments and any other adjustments described in such financial statements.

(c) There is no material transaction, arrangement or other relationship between the Company and an unconsolidated or other off-balance-sheet entity that is required to be disclosed by the Company in its reports pursuant to the Exchange Act that has not been so disclosed in the SEC Reports at least five (5) business days prior to the date of this Agreement.

(d) Except as set forth on Section 2.9(d) of the Disclosure Schedule, since December 31, 2014, there have been no internal or SEC inquiries or investigations (formal or informal) regarding accounting or revenue recognition discussed with, reviewed by or initiated at the direction of any executive officer, board of directors or any committee thereof of any of the Company Entities.

(e) The Company has never been a "shell company" (as defined in Rule 12b-2 under the Exchange Act).

2.10 Sarbanes-Oxley Compliance; Internal Accounting Controls; Disclosure Controls and Procedures; Books and Records.

(a) Since December 31, 2014, there is and has been no failure on the part of the Company or any of the Company's directors or officers (in their capacities as such) to comply in all material respects with any provision of the Sarbanes-Oxley Act of 2002, as amended, and the rules and regulations promulgated in connection therewith (the "**Sarbanes-Oxley Act**"), including Section 402 related to loans and Sections 302 and 906 related to certifications.

(b) Since December 31, 2014, no Company Entity nor any director or officer of any Company Entity has received any complaint, allegation, assertion or claim, whether written or oral, regarding the accounting or auditing practices, procedures, methodologies or methods of any Company Entity or its internal accounting controls, including any complaint, allegation, assertion or claim that any Company Entity has engaged in any improper accounting or auditing practices.

(c) Since December 31, 2014, no attorney representing any Company Entity, whether or not employed by a Company Entity, has reported evidence of a material violation of Securities Laws, breach of fiduciary duty or similar violation by any Company Entity or any of their respective officers, directors, employees or agents to their respective boards of directors or any committee thereof or pursuant to Section 307 of Sarbanes-Oxley Act.

(d) The Company has kept, and has caused each of the Subsidiaries to, at all times since December 31, 2014, keep, books, records and accounts with respect to all of such Person's business activities, in accordance with GAAP consistently applied. Each Company Entity maintains a system of internal accounting controls sufficient to provide reasonable assurance that (A) transactions are executed in accordance with management's general or specific authorizations, (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset and liability accountability, (C) access to assets or incurrence of liability is permitted only in accordance with management's general or specific authorization and (D) the recorded accountability for assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and appropriate action is taken with respect to any differences.

(e) The Company maintains internal control over financial reporting required by Rule 13a-14 or Rule 15d-14 under the Exchange Act; and such internal control is effective and does not have any material weaknesses.

(f) The Company maintains disclosure controls and procedures required by Rule 13a-15 or Rule 15d-15 under the Exchange Act; such disclosure controls and procedures are, and at all times since December 31, 2014 have been, effective to ensure that the information required to be disclosed by the Company in the reports that it files with or submits to the SEC (A) is recorded, processed, summarized and reported accurately within the time periods specified in the SEC's rules and forms and (B) is accumulated and communicated to the Company's management, including its principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

2.11 Employee Matters.

(a) No Company Entity is delinquent in payments to any of its respective employees, consultants or independent contractors for any wages, salaries, commissions, bonuses or other direct compensation or reimbursements for any service performed for it through the date hereof. To the Company's Knowledge, each of the Company Entities has complied in all material

respects with all applicable state and federal equal employment opportunity laws and with other laws related to employment. Each Company Entity has withheld and paid to the appropriate Governmental Authority or is holding for payment not yet due to such Governmental Authority all amounts required to be withheld from employees of such Company Entity and is not liable for any arrears of wages, taxes, penalties or other sums for failure to comply with any of the foregoing.

(b) Section 2.11 of the Disclosure Schedule sets forth each employee benefit plan maintained, established or sponsored by any Company Entity, or which the Company Entities participate in or contributes to, which is subject to the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"). The Company Entities have made all required contributions and have no liability to any such employee benefit plan, other than liability for health plan continuation coverage described in Part 6 of Title I(B) of ERISA, and has complied in all material respects with all applicable Laws for any such employee benefit plan.

2.12 Absence of Certain Changes. Since the date of the Most Recent Balance Sheet, no Company Entity has sold any assets outside of the ordinary course of business, and except as set forth on Section 2.12 of the Disclosure Schedule, no Company Entity has had any capital expenditures outside the ordinary course of its business or has had or made, as applicable, any (i) grant or provision of severance or termination payments or benefits to any director or officer of any Company Entity or employee, independent contractor or consultant of such Company Entity in any material amount, (ii) material increase in the compensation, perquisites or benefits payable to any director, officer, employee, independent contractor or consultant of any Company Entity, (iii) grant of material equity or equity-based awards that may be settled in shares of Common Stock, Preferred Stock or any other securities of any Company Entity or the value of which is linked directly or indirectly, in whole or in part, to the price or value of any shares of Common Stock, Preferred Stock or other securities of any Company Entity, (iv) acceleration in the vesting or payment of compensation payable or benefits provided or to become payable or provided to any current or former director, officer, employee, independent contractor or consultant in any material amount or (v) material change in the terms of any outstanding Option with respect to any shares of the Company's Common Stock or any other securities of the Company.

2.13 No Material Adverse Effect. Since the date of the Most Recent Balance Sheet, there has been no Material Adverse Effect and no event, state of facts, circumstance, development, change or effect has occurred that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

2.14 No Undisclosed Liabilities. Except (i) as and to the extent disclosed or reserved against on the Most Recent Balance Sheet or specifically described in the notes to the financial statements set forth in the Most Recent 10-Q, (ii) as incurred since the date of the Most Recent Balance Sheet in the ordinary course of business consistent with past practice, or (iii) as set forth on Section 2.14 of the Disclosure Schedule, no Company Entity has any material liabilities or obligations of any nature, whether fixed or unfixed, known or unknown, secured or unsecured,

absolute, accrued, contingent or otherwise and whether due or to become due. No representation or warranty or other statement made by the Company in this Agreement or any of the other Transaction Documents, the Disclosure Schedules or any certificate or instrument delivered pursuant to this Agreement contains any untrue statement or omits to state a material fact necessary to make any such statement, in light of the circumstances in which it was made, not misleading.

2.15 Tax Returns and Payments. There are no federal, state, county, local or foreign Taxes, taxes, levies, impositions, levies or assessments material in amount that are due and payable by the Company which have not been timely paid, whether or not disputed. There have been no examinations or audits of any Tax Returns or reports by any applicable federal, state, local or foreign governmental agency within the last three calendar years, and to the Company's Knowledge, none are currently expected by any officer of the Company. The Company has duly and timely filed all federal, state, county, local and foreign Tax Returns required to have been filed by it within the last three calendar years, and there are in effect no waivers of applicable statutes of limitations with respect to Taxes for any such years. There are no Liens for Taxes (other than Taxes not yet due and payable) upon any of the assets of the Company. The Company is not a United States real property holding corporation within the meaning of Code §897(c)(2) during the applicable period specified in Code §897(c)(1)(A)(ii). The Company is not and has not been a party to any "reportable transaction," as defined in Code §6707A(c)(1) and Reg. §1.6011-4(b). Section 2.15 of the Disclosure Schedule sets forth the net operating losses of the Company for U.S. federal and state income tax purposes as of December 31, 2018, and identifies the nature and extent of any limitations or other restrictions on the availability of such net operating losses under Section 382 of the Code or any comparable provision of state law (as well as the date of any "ownership changes" within the meaning of Section 382(g) of the Code giving rise to such limitations).

2.16 Permits. Each Company Entity has all franchises, permits, certificates of occupancy, licenses and any similar authority necessary for the conduct of its business, except for such franchises, permits, certificates of occupancy, licenses and similar authorities the lack of which could not reasonably be expected to have a Material Adverse Effect. None of the Company Entities is in default in any material respect under any of such franchises, permits, licenses or other similar authority that is material to the business of any Company Entity.

2.17 Disclosure. The Company has made available to the Purchaser correct and complete copies of all of its corporate records, financial statements, SEC Reports, to the extent not otherwise available on EDGAR, and all other information in the possession of or available to the Company that the Purchaser has requested to evaluate whether it desires to acquire the Shares.

2.18 No General Solicitation. No Company Entity, nor any Person acting on the behalf of any of the foregoing, has engaged or will engage in any form of general solicitation or general advertising (within the meaning of Regulation D under the Securities Act), including advertisements, articles, notices, or other communications published in any newspaper, magazine or similar media or broadcast over radio, television or internet or any seminar or meeting whose

attendees have been invited by general solicitation or general advertising, in connection with the offer or sale of the Shares.

2.19 No Integrated Offering. No Company Entity, nor any Person acting on the behalf of any of the foregoing, has, directly or indirectly, made any offers or sales of any security or solicited any offers to purchase any security, under circumstances that would require registration of any of the Securities under the Securities Act or cause this offering of the Securities to be integrated with prior offerings by the Company for purposes of the Securities Act.

2.20 Insurance. Each of the Company Entities are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as management of the Company believes to be prudent for the businesses in which each of the Company Entities are engaged. No Company Entity has been refused any insurance coverage sought or applied for, and no Company Entities has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not reasonably be expected to have a Material Adverse Effect.

2.21 Transactions with Related Parties. Except as set forth on Section 2.21 of the Disclosure Schedule, there have been no transactions that are required to be reported under 17 C.F.R. 229.404(a) ("**Related Party Transactions**"), that have not already been disclosed in the SEC Reports.

2.22 Real Property.

(a) At least twenty-five (25) percent of the Company's consolidated gross revenues for the 12 months ended December 31, 2018 were, and at least twenty-five (25) percent of the Company's consolidated total assets as of the date hereof (measured on a fair value basis as determined by the Company's management) are, derived from the Company Entity's direct ownership of real property and ownership of interests in limited liability companies, limited partnerships and other business entities that directly own real property.

(b) Other than as set forth in Section 2.22 of the Disclosure Schedule, the Company has good and marketable fee or leasehold title to its Real Estate Assets, as applicable, subject only to liens securing indebtedness for money borrowed identified on in the Disclosure Schedule or disclosed in the SEC Reports and such other encumbrances as do not have, or could not reasonably be expected to have, a Material Adverse Effect.

(c) Except as, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (i) no Company Entity has received any notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with environmental laws with regard to the assets or the business operated by such Company Entity that is not fully and finally resolved, other than as set forth in the SEC

Reports or Section 2.22 of the Disclosure Schedule and (ii) to the Company's Knowledge, the assets and all operations of each Company Entity are in compliance with all applicable environmental laws.

(d) Each Fee Asset of the Company Entities is in good condition, has been properly maintained in such manner as a reasonably prudent owner of real estate would maintain such assets and is free from material defects except where such failure does not have or could not reasonably be expected to have a Material Adverse Effect.

(e) Except as set forth in the SEC Reports and Section 2.22 of the Disclosure Schedule, no foreclosure of a mortgage or deed of trust on the landlord's interest in a Leased Asset or termination of superior possessory interest in a Leased Asset will terminate the interests of any Company Entity in a Leased Asset so long such Company Entity complies with its obligations under the applicable lease creating the Leased Asset.

(f) With respect to the Real Estate Assets, the Company has no outstanding obligations to fund loan proceeds, capital contributions, provide letters of credit or other credit enhancements, fund tenant allowances or provide "free rent" and other lease concessions that have or could reasonably be expected to have a Material Adverse Effect.

(g) Except as set forth in the SEC Reports and Section 2.22 of the Disclosure Schedule, no Real Estate Asset has been damaged by any uninsured, unrepaired casualty that has or could reasonably be expected to have a Material Adverse Effect since the Most Recent Balance Sheet Date.

(h) There are no obligations in connection with the Real Estate Assets of any so-called "recapture agreement" involving refund for sewer extension, oversizing utility, lighting or like expense or charge for work or services done upon or relating to the Real Estate Assets that have or could reasonably be expected to have a Material Adverse Effect.

2.23 Investment Company. The Company is not, and upon the Closing will not be, an "investment company," a company controlled by an "investment company," or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company," as such terms are defined in the Investment Company Act. The Company is not relying on an exclusion from the definition of "investment company" in Section 3(b) or 3(c) of the Investment Company Act or an exclusion in any rule promulgated under the Investment Company Act.

2.24 Adequate Capital. To the Knowledge of the Company, the Company has adequate capital with which to conduct the businesses in which it is engaged as such businesses are now conducted and are presently proposed to be conducted after the Closing and (ii) has not become, or is not presently, financially insolvent within the meaning of the bankruptcy laws or the insolvency laws of any jurisdiction.

2.25 Brokers or Finders. No agent, broker, investment banker or other Person acting on behalf of the Company, or under the authority thereof, is or will be entitled to any brokers' or finders' fee or any other commission or similar fee directly or indirectly from any of the Parties in connection with any of the Transactions.

2.26 No Conversion. As of the date hereof, (a) the Company has not received any notice from any holder of the Series B Preferred Stock of such holder's intent to exercise its right to convert all or any portion of the Series B Preferred Stock into shares of Common Stock pursuant to Section 6 of the Second Amended and Restated Series B-1, B-2 and B-3 Certificate, and (b) no event that would trigger the Automatic Conversion Time (as defined in the Second Amended and Restated Series B-1, B-2 and B-3 Certificate) pursuant to Section 7 of the Second Amended and Restated Series B-1, B-2 and B-3 Certificate has occurred.

2.27 Investment Agreement. The Investment Agreement is (i) in full force and effect, (ii) a valid, binding obligation of the Company and, to the Knowledge of the Company, the other parties thereto, and (iii) enforceable against the Company in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other Laws of general applicability relating to or affecting creditors' rights and to general equity principles. There does not exist any breach, violation or default (with or without notice, passage of time, or both) on the part of the Company or, to the Knowledge of the Company, any other party thereto, and, to the Knowledge of the Company, there does not exist any event, occurrence or condition, including the consummation of the Transactions, which (with or without notice, passage of time, or both) would, or would reasonably be expected to, constitute such a breach, violation or default.

3. Representations and Warranties of the Purchaser. The Purchaser hereby represents and warrants to the Company that:

3.1 Authorization. The Purchaser has full power and authority to enter into the this Agreement and each of the Transaction Documents to which it is a party, and each Transaction Document to which the Purchaser is a party constitutes valid and legally binding obligations of the Purchaser, enforceable in accordance with its terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and any other laws of general application affecting enforcement of creditors' rights generally, or (b) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

3.2 Purchase Entirely for Own Account. The Purchaser is acquiring the Shares for investment for the Purchaser's own account, not as a nominee or agent for any other Person, and not with a view to the resale or distribution of any part thereof, and the Purchaser has no present intention of selling, granting any participation in or otherwise distributing the Shares. The Purchaser does not presently have any contract, undertaking, agreement or arrangement with any Person to sell, transfer or grant participations in any of the Shares. The Purchaser has not been formed for the specific purpose of acquiring the Shares.

3.3 Disclosure of Information. The Purchaser has received or received access to all documents and information requested by the Purchaser from the Company in connection with the Transactions (the "**Requested Documents**") for the Purchaser's evaluation of the risks of investing in the Shares. The Purchaser has had an opportunity to discuss the Requested Documents and the Company's business, management, financial affairs, terms and conditions of the offering of the Shares and any other related matters with the Company's officers and directors.

3.4 Restricted Securities. The Purchaser understands that the Shares have not been, and will not be, registered under the Securities Act, by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of the Purchaser's representations as expressed herein. The Purchaser understands that the Shares are "restricted securities" under applicable federal and state Securities Laws and that, pursuant to such laws, the Purchaser must hold the Shares indefinitely unless they are registered with the U.S. Securities and Exchange Commission and qualified by applicable state authorities, or an exemption from such registration and qualification requirements is available. The Purchaser acknowledges that the Company has no obligation to register or qualify the Shares or the Common Stock into which it may be converted for resale except as set forth in the Investors' Rights Agreement. The Purchaser further acknowledges that if an exemption from registration or qualification is available, it may be conditioned on various requirements including, without limitation, the time and manner of sale, the holding period for the Shares and on requirements relating to the Company which are outside of the Purchaser's control and which the Company is under no obligation and may not be able to satisfy.

3.5 No Public Market. The Purchaser understands that no public market now exists for the Shares, and that the Company has made no assurances that a public market will ever exist for the Shares.

3.6 Forward-Looking Information. The Purchaser understands that the Company may provide the Purchaser with certain projections and other forward-looking information regarding the Company and the Shares. Projections and forward-looking information are inherently uncertain and should not be, and the Purchaser acknowledges that they are not being, relied upon by the Purchaser in making the decision to purchase the Shares. Actual results may vary significantly from such projections or forward-looking information.

3.7 Compliance with Other Instruments. The execution and delivery of the Transaction Documents, the consummation of the Transactions and the performance of the Purchaser's obligations thereunder will not conflict with, or result in any violation of or default under, any provision of any governing instrument applicable to the Purchaser or any agreement or other instrument to which the Purchaser is a party or by which the Purchaser or any of the Purchaser's properties are bound or any permit, franchise, judgment, order, writ, decree, statute, rule or regulation applicable to the Purchaser or the Purchaser's properties; except, in any such case, as would not, and would not reasonably be expected to, prohibit the Purchaser from purchasing the Shares.

3.8 Legends. The Purchaser understands that the Shares and any securities issued in respect of or exchange for the Shares, may be notated (in either certificated or book-entry form) with one or all of the following legends:

(a) "THESE SHARES OF SERIES B-4 CUMULATIVE CONVERTIBLE PREFERRED STOCK HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND HAVE BEEN ACQUIRED FOR INVESTMENT PURPOSES ONLY AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO TRANSFER OF THESE SHARES MAY BE EFFECTUATED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM REASONABLY SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933, AS AMENDED."

(b) Any legend required by the Securities Laws of any state to the extent such laws are applicable to securities represented by a certificate, an instrument or in book-entry notation.

3.9 Accredited Investor. The Purchaser is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act and has sufficient knowledge and experience in finance, securities, investments and other business matters to be able to protect its interests in connection with the transactions contemplated by this Agreement.

3.10 Reliance. The Purchaser acknowledges that it is not relying upon any Person in making its investment or decision to invest in the Company. The Purchaser is not relying on any representations and warranties concerning the Company made by the Company or any officer, employee or agent of the Company, other than those contained in this Agreement or the SEC Reports.

3.11 Residence. For purposes of complying with state Securities Laws, the Purchaser is a resident of New York.

3.12 Disclosure. All information that the Purchaser has provided or will provide to the Company in connection with this Agreement, including, without limitation, all of the information regarding the Purchaser that is contained in the Transaction Documents, is correct and complete as of the date of this Agreement. The Purchaser will promptly provide to the Company with written notice of any material changes in such information and such information will be correct and complete as of the date given and as of the date of the Closing. The Purchaser acknowledges and understands that the Company will rely on the representations contained herein in order to comply with relevant exemptions from federal and state Securities Laws.

4. [reserved].

5. Miscellaneous.

5.1 Form D and Blue Sky. The Company agrees to timely file a Form D with respect to the Securities as required under Regulation D and to provide a copy thereof to the Purchaser promptly after such filing. The Company shall make all filings and reports relating to the offer and sale of the Securities required under applicable Securities Laws of the states of the United States following the Closing.

5.2 Expenses. Each Party shall be responsible for all of its out-of-pocket costs incurred in connection with this Agreement and the transactions contemplated in connection therewith (including, without limitation, legal fees and expenses and due diligence related costs and expenses).

5.3 Survival of Representations and Warranties. Unless otherwise set forth in this Agreement, the representations and warranties of the Company and the Purchaser shall survive the execution and delivery of this Agreement and the Closing for a period of eighteen (18) months after the Closing, provided that any claim made by the Company or the Purchaser with regard to such representations or warranties shall survive until resolved, and shall in no way be affected by any investigation or knowledge of the subject matter thereof made by or on behalf of the Purchaser or the Company. Notwithstanding the foregoing, the representations and warranties made in Sections 2.1, 2.2, 2.3 and 2.4 shall survive indefinitely.

5.4 Successors and Assigns; No Third Party Beneficiaries or Obligations. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the Parties or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement. Nothing in this Agreement, including any reference to any officer, director, employee, agent, consultant, representative or Affiliate of either Party to this Agreement, is intended to, or shall, create any express or implied liability or obligation on the part of any such Person other than the Parties hereto, nor is any representation, warranty or covenant contained in this Agreement made by or on behalf of any person other than the Party making such representation, warranty or covenant contained in this Agreement.

5.5 Governing Law. This Agreement shall be governed by the internal law of the State of Delaware.

5.6 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes. Neither Party shall raise the use of a facsimile machine or electronic mail as a means of delivering a signature to this Agreement or any amendment hereto or the fact that such signature was transmitted or

communicated through the use of a facsimile machine or electronic mail delivery as a defense to the formation or enforceability of a contract and each Party forever waives any such defense.

5.7 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

5.8 Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt, or (a) personal delivery to the Party to be notified, (b) when sent, if sent by electronic mail or facsimile during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (c) five business days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt. All communications shall be sent to the Parties at their respective addresses as set forth on the signature page hereto, or to such electronic mail address, facsimile number or address as subsequently modified by written notice given in accordance with this Section 5.8. If notice is given to the Company, a copy shall also be sent by registered or certified mail to Ulmer & Berne LLP, 1660 West 2nd Street, Suite 1100, Cleveland, Ohio 44113, attention Howard Groedel, Esq., or by electronic mail to hgroedel@ulmer.com. If notice is given to the Purchaser, a copy shall also be sent by registered or certified mail to Fried Frank Harris Shriver & Jacobson LLP, One New York Plaza, New York, New York 10004, attention: Julian Chung, or by electronic mail to Julian.Chung@friedfrank.com.

5.9 No Finder's Fees. Each Party represents that it neither is nor will be obligated for any finder's fee or commission in connection with any of the Transactions.

5.10 Attorneys' Fees. If any action at law or in equity (including, without limitation, arbitration) is necessary to enforce or interpret the terms of any of the Transaction Documents, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such Party may be entitled.

5.11 Amendments and Waivers. Any term of this Agreement may be amended, terminated or waived only with the written consent of the Company and/or the Purchaser, as the case may be.

5.12 Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision.

5.13 Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to any Party, upon any breach or default of the other Party, shall impair any such right, power or remedy of such non-breaching or non-defaulting Party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a

waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any Party of any breach or default under this Agreement, or any waiver on the part of any Party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any Party, shall be cumulative and not alternative.

5.14 Entire Agreement. This Agreement (including the Exhibits hereto), the Series B-4 Certificate and the other Transaction Documents constitute the full and entire understanding and agreement between the Parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the Parties are expressly canceled.

5.15 Dispute Resolution. The Parties (a) hereby irrevocably and unconditionally submit to the jurisdiction of the state courts of the State of Delaware and to the jurisdiction of the United States District Court sitting in the State of Delaware for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement, (b) agree not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in the state courts of the State of Delaware or the United States District Court sitting in the State of Delaware, and (c) hereby waive, and agree not to assert, by way of motion, as a defense or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.

5.16 Waiver of Jury Trial. EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS, THE SHARES OR THE SUBJECT MATTER HEREOF OR THEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THE TRANSACTIONS CONTEMPLATED BY THE TRANSACTION DOCUMENTS, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

[*Remainder of page intentionally left blank; signature pages follow*]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

COMPANY:

IMH FINANCIAL CORPORATION, a Delaware corporation

By: /s/ Lawrence D. Bain
Name: Lawrence D. Bain
Title: Co-Chairman and Interim Chief Executive Officer

Address: 7001 North Scottsdale Road
Suite 2050
Scottsdale,
Arizona 85253

[Signature Page to Series B-4 Cumulative Convertible Preferred Stock Subscription Agreement]

PURCHASER:

JPMORGAN CHASE FUNDING INC.

By: /s/ Chadwick S. Parson
Name: Chadwick S. Parson
Title: Managing Director

Address: 383 Madison Ave

New

York, NY 10179

[Signature Page to Series B-4 Cumulative Convertible Preferred Stock Subscription Agreement]

19691978.6

EXHIBIT A

FORM OF SERIES B-4 CERTIFICATE

19691978.6

EXHIBIT B

DISCLOSURE SCHEDULE

EXHIBIT C

FORM OF INVESTMENT AGREEMENT

19691978.6

EXHIBIT D

FORM OF INVESTORS' RIGHTS AGREEMENT

19691978.6

Execution Version

Exhibit 10.2

THIRD AMENDED AND RESTATED INVESTMENT AGREEMENT

This THIRD AMENDED AND RESTATED INVESTMENT AGREEMENT (this "***Agreement***") is entered into as of the 25th day of September, 2019 by and among JPMorgan Chase Funding Inc., a Delaware corporation ("***JPM***"), JCP Realty Partners, LLC, a Delaware limited liability company ("***JCP***"), Juniper NVM, LLC, a Delaware limited liability company ("***Juniper***"; together with JCP, "***Juniper Parties***" and, together with JPM and JCP, "***Investors***"), and IMH Financial Corporation, a Delaware corporation (the "***Company***" and, together with Investors, the "***Parties***").

WHEREAS, the Company, JPM and SRE Monarch, LLC, a Delaware limited liability company ("***Seller***") entered into that certain Preferred Stock Purchase Agreement dated as of April 11, 2017 (the "***Purchase Agreement***"), pursuant to which JPM purchased from Seller all of the outstanding shares (the "***B-2 Purchased Shares***") of the Company's Series B-2 Cumulative Convertible Preferred Stock, $0.01 par value per share (the "***Series B-2 Stock***"), on the terms and conditions set forth in the Purchase Agreement;

WHEREAS, concurrently with the execution of the Purchase Agreement, the Company and Investors entered into that certain Investment Agreement dated as of April 11, 2017 (the "***Original Agreement***") in order to set forth their rights and obligations with respect to certain matters related to the Company, the B-2 Purchased Shares and Investors' ownership of the Company's Series B-1 Cumulative Convertible Preferred Stock, $0.01 par value per share (the "***Series B-1 Stock***") and the Series B-2 Stock, as applicable;

WHEREAS, the Company and JPM entered into that certain Series B-3 Cumulative Convertible Preferred Stock Subscription Agreement dated as of February 9, 2018 (the "***B-3 Subscription Agreement***"), pursuant to which JPM purchased from the Company 2,352,941 shares (the "***B-3 Purchased Shares***") of the Company's Series B-3 Cumulative Convertible Preferred Stock, $0.01 par value per share (the "***Series B-3 Stock***" and together with the Series B-1 Stock and the Series B-2 Stock, the "***Existing Series B Preferred Stock***"), on the terms and conditions set forth in the B-3 Subscription Agreement;

WHEREAS, in connection with the transactions contemplated by the B-3 Subscription Agreement, the Company and Investors entered into that certain Amended and Restated Investment Agreement dated as of February 9, 2018 (the "***Restated Agreement***"), in order to amend and restate the Original Agreement in its entirety;

WHEREAS, in connection with the transactions contemplated by the Purchase Agreement, the Certificate of Designation of the Company's Series B Cumulative Preferred Stock in effect as of April 10, 2017 (the "***Original Certificate***") was amended and restated in the form attached as Exhibit A to the Original Agreement (the "***Existing Certificate***"), and in connection with the transactions contemplated by the B-3 Subscription Agreement, the Existing Certificate was amended and restated in the form attached as Exhibit A hereto (the "***B-123 Certificate***") concurrently with the closing of the transactions contemplated by the B-3 Subscription Agreement;

Exhibit 10.2

WHEREAS, the Company and JPM entered into that certain Series A Senior Perpetual Preferred Stock Subscription Agreement (the "***Series A Subscription Agreement***"), pursuant to which JPM purchased from the Company 22,000 shares (the "***Series A Purchased Shares***") of the Company's Series A Senior Perpetual Preferred Stock, $0.01 par value per share (the "***Series A Preferred Stock***"), on the terms and conditions set forth in the Series A Subscription Agreement;

WHEREAS, in connection with the transactions contemplated by the Series A Subscription Agreement, the Company and Investors entered into that certain Second Amended and Restated Investment Agreement, dated as of May 31, 2018 (the "***Second Restated Agreement***"), in order to amend and restate the Restated Agreement in its entirety;

WHEREAS, concurrently with the execution of this Agreement, the Company and JPM are entering into that certain Series B-4 Cumulative Convertible Preferred Stock Subscription Agreement, dated as of the date hereof (the "***B-4 Subscription Agreement***"), pursuant to which JPM is purchasing from the Company 1,875,000 shares (the "***B-4 Purchased Shares***" and together with the B-2 Purchased Shares, the B-3 Purchased Shares and the Series A Purchased Shares, the "***Purchased Shares***") of the Company's Series B-4 Cumulative Convertible Preferred Stock, $0.01 par value per share (the "***Series B-4 Stock***" and together with the Existing Series B Preferred Stock, the "***Series B Preferred Stock***"), on the terms and conditions set forth in the B-4 Subscription Agreement;

WHEREAS, the Company has obtained the requisite approval of the holders of the Existing Series B Preferred Stock pursuant to the B-123 Certificate authorizing the Company to enter into and consummate the transactions contemplated by the B-4 Subscription Agreement;

WHEREAS, in connection with the transactions contemplated by the B-4 Subscription Agreement, the Company's board of directors has duly authorized, and the Company has filed with the Secretary of State of the State of Delaware (the "**Delaware Secretary**") Certificate of Designation of Series B-4 Cumulative Convertible Preferred Stock in the form attached as Exhibit B hereto (the "***B-4 Certificate***") immediately prior to the closing of the transactions contemplated by the B-4 Subscription Agreement, which filing has been accepted by the Delaware Secretary; and

WHEREAS, in order to induce JPM, and as a condition to JPM's willingness, to enter into the B-4 Subscription Agreement and purchase the B-4 Purchased Shares the Company and Investors are entering into this Agreement in order to amend and restate the Second Restated Agreement in its entirety as set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter set forth, the Parties hereby agree as follows:

Article 1
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Investors that:

Section 1.1 Representations in the Purchase Agreement and the Subscription Agreement. Each of the representations and warranties of the Company set forth (a) in Article 3 of the Purchase Agreement was true and correct as of the date thereof, (b) in Article 2 of the B-3 Subscription Agreement was true and correct as of the date thereof, (c) in Article 2 of the Series A Subscription Agreement was true and correct as of the date thereof and (d) in Article 2 of the B-4 Subscription Agreement is true and correct as of the date hereof.

Section 1.2 Authority; Execution; Enforceability. The Company has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution and delivery of this Agreement, the performance of its obligations hereunder, and the consummation of the transactions contemplated hereby, including the filing of the B-4 Certificate with the Secretary of State of the State of Delaware, by the Company have been duly authorized by all requisite action on the part of the Company and its stockholders and no other action on the part of the Company or its stockholders is necessary to authorize the execution, delivery and performance of this Agreement by the Company or the consummation of the transactions contemplated hereby. Assuming due execution and delivery of this Agreement by Investors, this Agreement constitutes the valid and legally binding obligation of the Company, enforceable against it in accordance with its terms and conditions, subject to (a) bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally and (b) general principles of equity.

Section 1.3 No Conflicts. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement will conflict with or constitute on the part of the Company a breach of or default (or an event which, with notice or lapse of time or both, would constitute a default) or give rise to any right of termination, amendment, cancellation or acceleration under (a) its certificate of incorporation, as amended, including the certificates of designation of any preferred stock of the Company; (b) its by-laws, as amended; (c) any loan or credit agreement, note, bond, mortgage, indenture, lease, permit, concession, franchise, license, contract, agreement or other instrument, arrangement, understanding or obligation to which the Company or any of its subsidiaries is a party or by which any of them or any of their properties or assets may be bound; or (d) the Delaware General Corporation Law, or any other federal, state or local law, statute, ordinance, rule, regulation or any decree, writ, injunction, judgment or order from any court or governmental or regulatory authority of the United States, any State or locality thereof or any foreign jurisdiction (each, a "***Governmental Authority***") or any arbitration award which is either applicable to, binding upon or enforceable against the Company. Notwithstanding the generality of the foregoing, the Company's grant to Investors of the rights set forth in Article 4 do not, and when and if exercised by Investors in accordance with their terms will not, conflict with or constitute a default or breach under any of the items described in clauses (a), (b), (c) or (d) that are applicable to the Company, including the B-123 Certificate and the B-4 Certificate (it being understood that the Company is not representing that the exercise of the rights set forth in Article 4 would not result, directly or indirectly, in a Noncompliance Event (as defined in the B-123 Certificate or the B-4 Certificate, as applicable) under the B-123 Certificate or the B-4 Certificate, as applicable).

Section 1.4 Consents and Approvals. Other than the filing of a Current Report on Form 8-K with the Securities and Exchange Commission ("***SEC***"), no notices, reports, registrations or other filings are required to be made by the Company with, nor are any consents, approvals or authorizations required to be obtained by the Company from any Governmental Authority or any other person under any contract, agreement or other obligation to which the Company is party or by which its assets are bound, in connection with the valid execution, delivery or performance of this Agreement and all other agreements and instruments contemplated hereby by the Company or the consummation by the Company of the transactions contemplated by this Agreement and all other agreements and instruments contemplated hereby that has not already been obtained in each case except for such notices, reports, registrations and other filings or consents, approvals or authorizations the failure of which to make or obtain, individually or in the aggregate, are not material to the Company's ability to perform its obligations hereunder and would not reasonably be expected to have a material adverse effect on the Company, its assets, properties, liabilities or condition (financial or otherwise). Notwithstanding the generality of the foregoing, the Company's grant to Investors of the rights set forth in Article 4 do not, and, if exercised by Investors in accordance with their terms immediately following the date hereof (assuming such rights were then exercisable) would not, require any such notices, filings or consents with or from any Governmental Authority (other than the filing of a Current Report on Form 8-K with the SEC), the Company's Board of Directors, any stockholder of the Company or any other person, or under the B-123 Certificate or the B-4 Certificate (it being understood that the Company is not representing that the exercise of the rights set forth in Article 4 would not result, directly or indirectly, in a Noncompliance Event (as defined in the B-123 Certificate or the B-4 Certificate, as applicable) under the B-123 Certificate or the B-4 Certificate, as applicable).

Section 1.5 Litigation; Compliance with Laws. Except as set forth in Schedule 1.5 (a) attached hereto and incorporated herein, there is no action, claim, dispute, arbitration, audit, hearing, inquiry, investigation, administrative enforcement proceeding, litigation or suit (whether civil, criminal, administrative or investigative) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority or arbitration tribunal pending or, to the knowledge of the Company, threatened against the Company, and there is no judgment, decree or order against the Company, in each case, that would be reasonably likely to adversely affect the Company's ability to perform its obligations under this Agreement or to have a material adverse effect on the Company, its assets, properties, liabilities or condition (financial or otherwise). The Company is in compliance in all material respects with all laws applicable to the Company's business as presently conducted, except where the failure to be in compliance would not be reasonably likely to adversely affect the Company's ability to perform its obligations under this Agreement or to have a material adverse effect on the Company, its assets, properties, liabilities or condition (financial or otherwise). Except as set forth in Schedule 1.5(b) attached hereto and incorporated herein, neither the Company nor any of its subsidiaries has received written notice that it is in default in any material respect with respect to any judgment, order, writ, injunction, decree, rule or regulation of any arbitrator or Governmental Authority.

Section 1.6 Net Operating Losses. As of the end of its 2018 taxable year, the Company had a net operating loss carryover for federal income tax purposes of at least $300,000,000. The net operating loss carryover of the Company is not subject to any annual use limitation pursuant to

Section 382 of the Internal Revenue Code of 1986, as amended (the "Code"), or any use limitation pursuant to the separate return limitation year provisions of Treasury Regulation Section 1.1502-21(c).

Section 1.7 Real Estate Holdings. At least twenty-five (25) percent of the Company's consolidated gross revenues for the 12 months ended June 30, 2019 were, and at least twenty-five (25) percent of the Company's consolidated total assets as of the date hereof (measured on a fair value basis as determined by the Company's management) are, derived from the Company's and its subsidiaries' direct ownership of real property or ownership of interests in limited liability companies, limited partnerships and other business entities that directly own real property.

Section 1.8 Investment Company Act. The Company is not an "investment company" as defined in Section 3(a)(1) of the Investment Company Act of 1940, as amended (the "***1940 Act***"), and it is not relying on an exclusion from the definition of "investment company" in Section 3(b) or Section 3(c) of the 1940 Act or an exclusion in any rule promulgated under the 1940 Act.

Section 1.9 Ability to Perform. The Company does not believe, and to the knowledge of the Company it does not have any reason or cause to believe, that it cannot perform each and every covenant of the Company contained in this Agreement, the Purchase Agreement, the B-3 Subscription Agreement, the B-4 Subscription Agreement, the Series A Subscription Agreement or any of the documents and agreements delivered pursuant hereto or thereto to which it is a party.

Section 1.10 Taxes. The Company has timely filed or caused to be filed all required federal and other material tax returns and has paid all U.S. federal and other material taxes imposed on it and any of its assets by any Governmental Authority except for any such taxes as are being contested in good faith by appropriate proceedings and with respect to which adequate reserves have been provided in accordance with United States Generally Accepted Accounting Principles ("***GAAP***"). No tax liens have been filed against any of the Company's assets and no claims are being asserted in writing with respect to any such taxes (except for (i) liens and with respect to taxes not yet due and payable or liens or claims with respect to taxes that are being contested in good faith and for which adequate reserves have been established in accordance with GAAP and (ii) any such liens and claims that in the aggregate are not in excess of $1,000,000).

Section 1.11 Adequate Capital. To the knowledge of the Company, the Company (i) has adequate capital with which to conduct the businesses in which it is engaged as such businesses are now conducted and are presently proposed to be conducted after the Closing (as defined in the B-4 Subscription Agreement) and (ii) has not become, or is not presently, financially insolvent within the meaning of the bankruptcy laws or the insolvency laws of any jurisdiction.

Section 1.12 Financial Information. Complete and accurate copies of the Company's audited financial statements consisting of the balance sheet of the Company as at December 31 in each of the years 2018, 2017 and 2016 and the related statements of income and retained earnings, stockholders' equity and cash flow for the years then ended (the "***Financial Statements***") have been delivered to the Purchaser (as defined in the B-4 Subscription Agreement). The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the periods involved. The Financial Statements are based on the books and records of the Company, and fairly

present in all material respects the financial condition of the Company as of the respective dates they were prepared and the results of the operations of the Company for the periods indicated. The Company maintains a standard system of accounting established and administered in accordance with GAAP. Other than such adjustments that are proposed by the Company's independent accountants that are both, individually and in the aggregate, immaterial to the Financial Statements, taken as a whole, neither the Company nor any subsidiary has received any advice or notification from its independent accountants that it has used any improper accounting practice that would have the effect of not reflecting or incorrectly reflecting in the books and records of any of the Company's or its subsidiaries' properties, assets, liabilities, revenues, expenses, equity accounts or other accounts.

Section 1.13 No Other Representations or Warranties. Except for the representations and warranties contained in this Article 1 (including the related portions of the Schedules incorporated therein), the Officer's Certificate delivered to the Investors on the date hereof in connection with the filing of the B-4 Certificate (the "Officer's Certificate"), neither the Company nor any other person or entity has made or makes any other express or implied representation or warranty, either written or oral, on behalf of the Company, including any representation or warranty as to the accuracy or completeness of any information regarding the Purchased Shares or the Company, its assets, properties, liabilities, condition (financial or otherwise) or future prospects, furnished or made available to Investors and its directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents (including, without limitation, any information, documents or material delivered or made available to Investors in expectation of the transactions contemplated hereby) or as to the future revenue, profitability or success of the Company's operations, or any representation or warranty arising from statute or otherwise in law.

Section 1.14 Knowledge of the Company. As used in this Article 1 or elsewhere in this Agreement, the phrases "to the knowledge of the Company", "the Company's knowledge" or similar language, shall mean the knowledge as of the date of this Agreement of any member of the Company's management team (which shall include any individual who is as of the date hereof a Vice President or a more senior employee of the Company), including knowledge any such person would reasonably be expected to obtain in the ordinary course of their position and supervision of their direct reports.

Article 2
REPRESENTATIONS AND WARRANTIES OF INVESTORS

Each Investor, severally and not jointly, represents and warrants to the Company that (except, however, that neither JCP nor Juniper will be deemed to make the representation and warranty contained in Section 2.1 or 2.4):

Section 2.1 Representations in the Purchase Agreement and the Subscription Agreement. Each of the representations and warranties of JPM set forth (a) in Article 4 of the Purchase Agreement was true and correct as of the date thereof, (b) in Article 3 of the B-3 Subscription Agreement was true and correct as of the date thereof, (c) in Article 3 of the Series A Subscription Agreement was true and correct as of the date thereof and (d) in Article 3 of the B-4 Subscription Agreement is true and correct as of the date hereof.

Section 2.2 Authority; Execution; Enforceability. Such Investor has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution and delivery of this Agreement, the performance of its obligations hereunder, and the consummation of the transactions contemplated hereby, by such Investor have been duly authorized by all requisite action on the part of such Investor and no other action on the part of such Investor is necessary to authorize the execution, delivery and performance of this Agreement by such Investor or the consummation of the transactions contemplated hereby. Assuming due execution and delivery of this Agreement by the Company and the other Investors, this Agreement constitutes the valid and legally binding obligation of such Investor, enforceable against it in accordance with its terms and conditions, subject to (a) bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally and (b) general principles of equity.

Section 2.3 Consents and Approvals. No notices, reports, registrations or other filings are required to be made by such Investor with, nor are any consents, approvals or authorizations required to be obtained by Investor from, any Governmental Authority or any other person under any contract, agreement or other obligation to which such Investor is party or by which its assets are bound, in connection with the valid execution, delivery or performance of this Agreement and all other agreements and instruments contemplated hereby by such Investor or the consummation by such Investor of the transactions contemplated by this Agreement and all other agreements and instruments contemplated hereby, in each case except for such notices, reports, registrations and other filings the failure of which to make or obtain, individually or in the aggregate, are not material to such Investor's ability to perform its obligations hereunder and such notices, reports, registrations, filings, consents, approvals and authorizations as have been made or obtained.

Section 2.4 Independent Investigation. JPM has conducted its own independent investigation, review and analysis of the Company and the Purchased Shares, and acknowledges that it has been provided with such access to the personnel, properties, assets, premises, books and records, and other documents and data of the Company that it has requested for such purpose. JPM acknowledges and agrees that: (a) in making its decision to enter into the Purchase Agreement, the B-3 Subscription Agreement, the Series A Subscription Agreement, the B-4 Subscription Agreement and this Agreement and to consummate the transactions contemplated hereby, JPM has relied solely upon its own investigation and the express representations and warranties of the Company set forth in Article 1 of this Agreement (including related portions of the Schedules incorporated therein), in the Purchase Agreement, in the B-3 Subscription Agreement, in the Series A Subscription Agreement and in the B-4 Subscription Agreement; and (b) neither the Company nor any other person or entity has made any representation or warranty as to the Purchased Shares or the Company, its assets, properties, liabilities, condition (financial or otherwise) or future prospects or this Agreement, except as expressly set forth in the Purchase Agreement, in the B-3 Subscription Agreement, in the Series A Subscription Agreement, in the B-4 Subscription Agreement or in Article 1 of this Agreement (including the related portions of the Schedules incorporated therein) and JPM expressly disclaims reliance on any representation or warranty of the Company not contained in Article 1 of this Agreement, in the Purchase Agreement, in the B-3 Subscription Agreement, in the Series A Subscription Agreement or in the B-4 Subscription Agreement.

Section 2.5 No Other Representations or Warranties. No Investor (nor any other person or entity on behalf of an Investor) has made or makes to any other Investor, any representation or warranty, express or implied, written or oral, with respect to any matter pertaining to the Company, the Purchased Shares, this Agreement, the Purchase Agreement, the B-3 Subscription Agreement, the Series A Subscription Agreement, the B-4 Subscription Agreement, the B-123 Certificate, the B-4 Certificate or any transactions contemplated by, or any matter pertaining to, any of the foregoing agreements or instruments.

ARTICLE 3
COVENANTS

Section 3.1 Compliance and Reporting Obligations of the Company.

(a) Until such time as it becomes eligible for the Designated Exclusion, the Company covenants and agrees that it shall not be an "investment company" as defined in Section 3(a)(1) of the 1940 Act without relying on an exclusion from the definition of "investment company" in Section 3(b) or Section 3(c) of the 1940 Act or an exclusion in any rule promulgated under the 1940 Act.

(b) The Company shall proceed in good faith and take all commercially reasonable actions as are reasonably necessary for the Company to be eligible to rely on the exclusion from the definition of "investment company" set forth in Section 3(c)(5)(C) of the 1940 Act (the "***Designated Exclusion***") and use its best efforts to remain eligible for the Designated Exclusion at all times thereafter. Promptly (and in any event no more than five (5) days) after the Company has become eligible for the Designated Exclusion, the Company shall deliver a 1940 Act Compliance Statement (defined below) to each Investor evidencing the Company's eligibility for the Designated Exclusion. Without the prior written consent of each Investor, which consent may be withheld for any or no reason, the Company will not take any action the result of which would reasonably be expected to cause the Company to become ineligible for the Designated Exclusion (whether or not the Company is then eligible for any other exclusion from the definition of "investment company" in Section 3(b) or Section 3(c) of the 1940 Act or in any rule promulgated thereunder).

(c) Within five (5) business days after the earlier of (i) the date the Company files with the SEC a quarterly report on Form 10-Q, or an annual report on Form 10-K, with respect to the fiscal quarter, or year, then ended (beginning with the quarter ending June 30, 2017) and (ii) the last date on which the Company could timely file the report in respect of the applicable fiscal quarter, or year, referenced in clause (i) in accordance with applicable law, the Company shall deliver to each Investor (a) a written statement in the form of Exhibit C attached hereto (a "***1940 Act Compliance Statement***") setting forth in reasonable detail the information and calculations contemplated thereby and otherwise reasonably necessary for such Investor to determine whether the Company is then in compliance with the Designated Exclusion based on fair value accounting and all guidance issued by the Staff of the SEC with respect to calculations under Section 3(c)(5)(C) asset composition requirements under the 1940 Act, or (b) in the event the Company is not then in compliance with the Designated Exclusion, a written opinion of the Company's outside legal counsel in the form of Exhibit D attached hereto (a "***1940 Act Opinion***") that the Company is not an "investment company" as defined in Section 3(a)(1) of the 1940 Act without relying on an

exclusion from the definition of "investment company" in Section 3(b) or Section 3(c) of the 1940 Act or an exclusion in any rule promulgated under the 1940 Act. If, at any time after the Company relies on the Designated Exclusion, the Company becomes aware of any fact or circumstance, or any action is taken or not taken (including any agreement to act or not act) by or on behalf of the Company or any of its subsidiaries, the result of which would be that the Company is then not in compliance, or would be reasonably likely to be out of compliance, with the Designated Exclusion, the Company will (x) provide prompt (in any event within two (2) calendar days) written notice (a "***Noncompliance Notice***") to each Investor describing the circumstances thereof, and including a 1940 Act Compliance Statement illustrating such non-compliance or expected non-compliance, and (y) at the request of JPM following delivery of a Noncompliance Notice, will promptly (in any event within 5 business days of such request) deliver to the Investors a 1940 Act Opinion. The Company shall provide each Investor with access to records of the Company as are reasonably requested by such Investor in connection with its review of any 1940 Act Compliance Statement or Noncompliance Notice.

Section 3.2 Bank Holding Company Act. The Company does not and, until such time as JPM determines, in its sole discretion, that JPM could not be deemed to be an affiliate of the Company for purposes of the Bank Holding Company Act of 1956, as amended (such act, the "***BHCA***" and such an affiliate, a "***BHCA Affiliate***"), the Company will not, and will not allow its BHCA Affiliates to: (a) engage in proprietary trading, as defined in Section 13 of the BHCA and the rules and regulations adopted thereunder, as amended (collectively, the "***Volcker Rule***"); (b) sponsor or hold an ownership interest in a covered fund, as such terms are defined in the Volcker Rule; or (c) engage in any transaction with a covered fund in violation of the "Super 23A" and "Super 23B" provisions of the Volcker Rule set forth in 12 CFR 248.14. Within ten (10) business days after the first day of each calendar quarter, an executive officer of the Company shall deliver to the Investors a certificate (a "***BHCA Certificate***") certifying that the Company is in compliance with the provisions of this Section 3.2 as of such date and was in compliance with such provisions at all times during the prior calendar quarter.

Section 3.3 Affiliated Transactions. The Company hereby represents and acknowledges that the Company is deemed an Affiliate (as defined under 12 CFR Part 223.2) of JPM for purposes of the affiliated transactions rules under section 23A and 23B of the Federal Reserve Act and Regulation W thereunder, 12 CFR Part 223 (collectively, "***Reg W***"), and, as such, the Company shall at all times comply with the applicable requirements of Reg W and cooperate with JPM as reasonably necessary in connection therewith.

Section 3.4 Compliance Breach. Notwithstanding anything to the contrary in this Agreement, each Investor hereby agrees that JPM shall have the sole and exclusive power under this Agreement to determine, in its sole discretion, on behalf of the Investors (i) whether the Company has failed, in whole or in part, to perform or comply with any of the covenants and agreements set forth in Section 3.1, Section 3.2 and Section 3.3, (ii) whether or not any failure by the Company shall be excused, modified or waived by the Investors, and (iii) whether or not to pursue any one or more of the remedies contemplated by this Agreement with respect to such failure, including, without limitation, whether the Investors shall have the right to exercise the Put Right as a result of such failure.

Section 3.5 Certain Matters Relating the Series B-4 Stock; Agreement Regarding "Required Holders". For so long as the Juniper Parties own at least 781,456 shares of Series B-1 Stock (as adjusted for stock splits, stock dividends, combinations, recapitalizations and the like), the Company and the Investors agree that:

(a) notwithstanding anything to the contrary set forth in the B-123 Certificate or B-4 Certificate, (i) any matter requiring the approval or consent of the "Required Holders" pursuant to the B-123 Certificate or the B-4 Certificate shall not be approved or consented to, or deemed to be approved or consented to, unless the matter requiring such approval or consent is approved or consented to by holders of at least ninety-three percent (93%) of the outstanding shares of Existing Series B Preferred Stock entitled to vote thereon, (ii) the Company shall not, directly or indirectly, whether by merger, consolidation or otherwise, take or commit to take any action requiring the approval or consent of the Required Holders (as defined in the B-123 Certificate and the B-4 Certificate) under the B-123 Certificate or the B-4 Certificate, without the prior consent or approval of the holders of at least ninety-three percent (93%) of the shares of Existing Series B Preferred Stock then outstanding (in addition to any other vote required by applicable law and the Company's certificate of incorporation, including the B-123 Certificate and B-4 Certificate, and bylaws), and (iii) any matter requiring the approval or consent of the "Required Holders" pursuant to the B-123 Certificate or the B-4 Certificate that does not receive the prior consent or approval of the holders of at least ninety-three percent (93%) of the shares of Existing Series B Preferred Stock then outstanding pursuant to this Section 3.5 shall be void *ab initio*;

(b) on any matter requiring the vote, consent or approval of (i) the holders of the Existing Series B Preferred Stock pursuant to the B-123 Certificate and (ii) the holders of the Series B-4 Stock pursuant to the B-4 Certificate, including, without limitation, all matters set forth on Schedule I to the B-4 Certificate, JPM shall vote, or cause to be voted, all of its shares of Series B-4 Stock for or against any such matter (or provide or withhold, or cause to be provided or withheld, its consent in respect of such matter), as applicable, to the end that the outcome of the vote for approval (or non-approval) of, or consent (or non-consent) to, such matter by the holders of Series B-4 Stock is the same result of the vote for approval (or non-approval) of, or consent (or non-consent) to, such matter by the holders of the Existing Series B Preferred Stock; and

(c) no Investor shall Transfer (as defined in the B-123 Certificate and the B-4 Certificate) such Investor's shares of Series B Preferred Stock unless the transferee shall have executed a written instrument pursuant to which such transferee agrees to be bound by the provisions of this Section 3.5 as if such transferee were an Investor.

The Company and the Investors further agree that, in the event the shares of Existing Series B Preferred Stock and the shares of Series B-4 Stock are, pursuant to the B-123 Certificate and B-4 Certificate, respectively, entitled to receive payment in respect of dividends, redemption, liquidation or otherwise, the Existing Series B Preferred Stock and the Series B-4 Stock will be treated *pari passu*, and to the extent the Company has insufficient funds to pay all such amounts in their entirety, any amounts available for such payments shall be applied ratably among the shares of each series of Existing Series B Preferred Stock and the Series B-4 Stock based on the aggregate amounts each such series of stock is entitled in the relevant circumstance. Each of the Company and the Investors

shall take all actions reasonably requested by the Company or any Investor to carry out the purposes of this Section 3.5.

ARTICLE 4
INVESTOR PUT RIGHT

Section 4.1 Grant. Subject to Section 4.2, the Company hereby grants to each Investor an irrevocable, perpetual, right to require the Company to purchase (the "***Put Right***"), and upon exercise of the Put Right in accordance with this Article 4, the Company shall have the unconditional obligation to purchase from such Investor up to all of the shares of Series B-1 Stock, Series B-2 Stock, Series B-3 Stock and Series B-4 Stock, as applicable, then held by such Investor (or any affiliate of such Investor then holding any such shares) for a price per share equal to the Required Redemption Price (in the case of the Existing Series B Preferred Stock, as defined in the B-123 Certificate or, in the case of the Series B-4 Stock, as defined in the B-4 Certificate) for such shares (the "***Put Price***").

Section 4.2 Exercise Mechanics. Subject in all cases to Section 3.4, if (a) the Company breaches any covenant set forth in Section 3.1 or Section 3.2 or (b) at any time after becoming eligible for the Designated Exclusion, the Company is not eligible for the Designated Exclusion, and such breach or ineligibility is not cured within sixty (60) calendar days of the occurrence of such breach or ineligibility (*provided* that the cure period for failure to deliver a 1940 Act Compliance Statement, a 1940 Act Opinion or a BHCA Certificate within the time periods required therefor shall be five (5) calendar days) (the end of such cure period, the "***Put Activation Date***"), JPM may in its discretion exercise the Put Right by providing written notice of such exercise to the Company and the other Investors, and if and only if JPM exercises the Put Right, each other Investor may in its discretion exercise the Put Right by providing written notice of such exercise to the Company, in any case, specifying the number of shares of Series B-1 Stock, Series B-2 Stock, Series B-3 Stock or Series B-4 Stock, as the case may be, for which the Put Right is being exercised, and the aggregate Put Price therefor (an "***Exercise Notice***"), at any time (i) in the case of JPM, after the Put Activation Date and (ii) in the case of the other Investors, after receipt of JPM's Exercise Notice, unless such breach or ineligibility is cured (and the Company has delivered written notice setting forth in reasonable detail how such breach or ineligibility has been cured and evidence thereof) prior to the delivery of an Exercise Notice; *provided* that unless such Investor otherwise informs the Company in writing prior to the Put Closing Date, in the event JPM (or any of its affiliates) provides the Company with an Exercise Notice, each Investor (other than JPM) and its affiliates (if any) shall be deemed to have provided the Company with an Exercise Notice with respect to all (or a proportionate portion thereof in the event the Exercise Notices of JPM and its affiliates are for less than all of the Series B Preferred Stock held by them) of the Series B Preferred Stock of such Investor (or affiliate). As between JPM and the other Investors, any determination as to whether any breach or ineligibility by the Company giving rise to the right to exercise the Put Right has been cured will be made by JPM in its sole discretion.

Section 4.3 Closing of Put Right Purchase. If the Company receives an Exercise Notice from JPM, then the Company shall promptly, but no later than three (3) calendar days after its receipt of such Exercise Notice, notify the other Investors in writing of such Exercise Notice and provide

such other Investors with a copy of such Exercise Notice. On the thirtieth (30th) day after receipt of JPM's Exercise Notice (the "***Put Closing Date***"), the Company shall purchase from JPM (and its affiliates, as applicable) and from all other Investors who provide (including for the avoidance of doubt, those Investors and their affiliates who are deemed to have provided) an Exercise Notice to the Company prior to the Put Closing Date, the number of shares of Series B-1 Stock, Series B-2 Stock, Series B-3 Stock or Series B-4 Stock as applicable, set forth in such Exercise Notices (the "***Subject Shares***"). To the extent that the Company fails to purchase any of the Subject Shares as required by the preceding sentence (such Subject Shares not purchased, the "***Remaining Shares***"), dividends shall continue to accrue on the Remaining Shares as provided in the B-123 Certificate or in the B-4 Certificate (as applicable), whether or not declared, until all such Remaining Shares are purchased and all rights of such shares shall remain in full force and effect until purchased by the Company. If the Company does not have sufficient funds available to purchase all of the Subject Shares, the Company shall purchase from all such Investors, on a pro rata basis in proportion to the aggregate Put Price payable to each such Investor as set forth in the Exercise Notice provided or deemed to have been provided by such Investor ("***Pro Rata Share***"), as many of such shares as it is able out of any available funds, and shall purchase the Remaining Shares from all such Investors, on a pro rata basis in proportion to their Pro Rata Share, that are not transferred as provided in Section 4.4 with all available funds of the Company thereafter until all of such Remaining Shares have been purchased and the Put Price therefor (and the interest thereon, if any, as set forth in Section 4.4) has been paid in full.

Section 4.4 Put Closing Default. In addition to the provisions of Section 4.3, if the Company fails to consummate the purchase of all of the Subject Shares set forth in any Exercise Notices delivered in accordance with this Article 4 on or prior to the applicable Put Closing Date (a "***Put Closing Default***"), any portion of the applicable Put Price not then paid shall bear interest at a rate of thirteen percent (13%) per annum compounding monthly until the Remaining Shares that are not transferred as provided in the following sentence are purchased and the applicable Put Price is paid in full. In addition and notwithstanding anything to the contrary herein, from and after a Put Closing Default, each Investor to whom such Put Closing Default relates may, in its discretion, Transfer (in the case of the Existing Series B Preferred Stock, as defined in the B-123 Certificate or, in the case of the Series B-4 Stock, as defined in the B-4 Certificate) any Remaining Shares to any third party (to the extent of any Remaining Shares not purchased by the Company prior to such Transfer as required by Section 4.3) without obtaining any consent of the Board (as defined in the B-4 Subscription Agreement) or the holders of the Series B Preferred Stock.

Section 4.5 Series A Acceleration Notice. The Company agrees to deliver the Acceleration Notice (as defined in the Series A Certificate) to holders of the Series A Preferred Stock as and when required by the Certificate of Designation of Series A Preferred Stock, as may be amended, modified, supplemented or restated from time to time (the "Series A Certificate").

ARTICLE 5
CALL RIGHT

Section 5.1 Call Right.

(a) Upon the occurrence of a Noncompliance Liquidation Event, JPM may, in its sole discretion by written notice to the Company and Juniper Parties (the "***Call Exercise Notice***") delivered within thirty (30) days of the occurrence of such Noncompliance Liquidation Event (the "***Call Period***"), elect to purchase from Juniper Parties (the "***Call Right***") all, but not less than all shares of Series B-1 Stock then held by Juniper Parties (the "***Call Shares***") for an aggregate purchase price (the "***Call Purchase Price***") equal to the Noncompliance Redemption Price (as defined in the B-123 Certificate) that would apply to the Call Shares if there were a Noncompliance Redemption Demand (as defined in the B-123 Certificate) delivered concurrently with the Call Exercise Notice in respect of the Noncompliance Event (as defined below) that gave rise to the Noncompliance Liquidation Event. If the Call Right is timely exercised, Investors and the Company shall consummate the transfer of the Call Shares as promptly as practicable but in no event later than ten (10) business days following the date the Call Exercise Notice is delivered (such 10th business day, the "***Call Purchase Date***").

For purposes of this Section 5.1, a "***Noncompliance Liquidation Event***" shall occur if, at any time following a Noncompliance Event (in the case of the Existing Series B Preferred Stock, as defined in the B-123 Certificate or, in the case of the Series B-4 Stock, as defined in the B-4 Certificate), the Company fails to pay in full, as applicable, the amounts described in clause (i) or clause (ii) of Section 4(e) of the B-123 Certificate or of the B-4 Certificate, as applicable, when specified in such clause.

(b) The Company hereby consents to and approves, and represents and warrants to Investors that the Board (as defined in the B-4 Subscription Agreement) has duly adopted resolutions consenting to and approving, the transfer of the Call Shares contemplated by and in accordance with this Section 5.1 in all respects at such time as the Call Right may be exercised in accordance herewith, which approvals shall be effective for all purposes of the B-123 Certificate, the B-4 Certificate, the bylaws of the Company and any other governing document, agreement or arrangement pursuant to which the transfer of the Call Shares upon exercise of the Call Right requires or could be deemed to require the prior consent or approval of the Company or the Board.

(c) The Company and Investors agree and acknowledge that, notwithstanding Section 4(e) of the B-123 Certificate and Section 4(e) of the B-4 Certificate, if a Noncompliance Liquidation Event occurs, the Company shall not be required by any such Section 4(e) to take any action with respect to any liquidation, dissolution or wind-down of the Company prior to the later to occur of (i) the expiration of the Call Period and (ii) if the Call Right is exercised, the consummation of the transfer of the Call Shares to JPM (or, if JPM has not paid the Call Purchase Price in full on the Call Purchase Date, the business day after the Call Purchase Date).

ARTICLE 6
SURVIVAL; INDEMNIFICATION

Section 6.1 Survival. All representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby until the date that is one year from the date of this Agreement; *provided*, that the representations and warranties in Section 1.10 shall survive until thirty (30) days after the

expiration of the applicable statute of limitations, and Sections 1.1, 1.2, 1.3, 1.6, 1.7, 1.12, 1.13 and Sections 2.1, 2.2, 2.3, 2.4 and 5.1(b) shall survive indefinitely. All covenants and agreements of the parties contained herein shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby indefinitely or for the period explicitly specified therein.

Section 6.2 Indemnification by Company.

(a) The Company (the "***Company Indemnifying Party***") shall indemnify and hold harmless each Investor, its affiliates and stockholders, directors and officers (collectively, the "***Company Indemnified Parties***") from and against any and all liabilities, obligations, deficiencies, demands, claims, suits, actions, causes of action, assessments, losses, costs and expenses (including reasonable attorneys' fees) (collectively, "***Claims***"), sustained or incurred by any such Company Indemnified Party, resulting from (i) any breach of a representation or warranty made by the Company Indemnifying Party in this Agreement, and (ii) any breach of a covenant made by the Company Indemnifying Party in this Agreement. The provisions of this Section 6.2 are intended to be for the benefit of, and shall be enforceable by, each Company Indemnified Party. In no event shall any Company Indemnifying Party be liable to any Company Indemnified Party for any punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value or any damages based on any type of multiple, except to the extent paid by a Company Indemnified Party to a third party in respect of the claim for which such Company Indemnified Party is entitled to indemnification hereunder. For the avoidance of doubt, the Company shall not be in breach of its representations and warranties in Section 1.6 unless and until there is a "determination," as such term is defined in Section 1313(a) of the Code, that results in any such representation or warranty not being true and correct as of the date such representation or warranty was made.

(b) Without limiting the foregoing, in the event one or more Company Indemnified Parties receive one or more payments from the Company ("***Indemnity Proceeds***") in respect of any Claim for a breach of a representation or warranty of the Company in Article 1 (including, as a result of Section 1.1, any breach of a representation or warranty of the Company in Article 3 of the Purchase Agreement, in Article 2 of the B-3 Subscription Agreement, in Article 2 of the Series A Subscription Agreement or in Article 2 of the B-4 Subscription Agreement, in each case, determined in accordance with the terms of such agreement) or a covenant made by the Company in this Agreement or any other Claim ancillary or related to any such breach (a "***Specified Breach****")*, such Indemnity Proceeds (net of the costs of obtaining such Indemnity Proceeds, including attorneys' fees and expenses, which costs shall be reimbursed from the Indemnity Proceeds to the applicable Investor Indemnified Party(ies) incurring such costs, the "***Net Indemnity Proceeds***") shall be allocated among, and disbursed to, all of the Investors in respect of such Specified Breach, on a pro rata basis in proportion to the sum of (i) (a) the aggregate Liquidation Preference (as defined in the B-123 Certificate) of all shares of the Existing Series B Preferred Stock and (b) the aggregate Series B-4 Liquidation Preference (as defined in the B-4 Certificate) of all shares of the Series B-4 Stock and (ii) (a) the aggregate Conversion Price (as defined in the B-123 Certificate) of those shares of the Company's Common Stock that were issued upon conversion of the Existing

Series B Preferred Stock and (b) the aggregate Conversion Price (as defined in the B-4 Certificate) of those shares of the Company's Common Stock that were issued upon conversion of the Series B-4 Stock, in the case of each of clauses (i) and (ii), held by them at the time the Company pays the Indemnity Proceeds. Each Investor agrees to cooperate in the determination of any required allocation of Net Indemnity Proceeds pursuant to this Section 6.2(b), and agrees, if applicable, to pay to the other Investors such portion of the Net Indemnity Proceeds received by such Investor as is required hereunder. For the avoidance of doubt: (i) in the event JPM asserts Claims against the Company that are not with respect to a Specified Breach but that are based upon facts that would support a Claim for a Specified Breach, then for purposes of this Section 6.2(b), all of the recoveries by JPM from the Company in respect of such Claims shall be deemed to have arisen from a Specified Breach and shall be allocated among, and disbursed to, all of the Investors pursuant to and in accordance with this Section 6.2(b), regardless of whether the other Investors have asserted or are able to assert such Claims; and (ii) the provisions of this Section 6.2(b) shall not apply to any Claims asserted against the Company by JPM or any of its affiliates or direct or indirect subsidiaries with respect to any agreement (including, without limitation, any loan made to the Company by JPM or any of its affiliates or direct or indirect subsidiaries) other than this Agreement or by the Investors with respect to the Officer's Certificate.

Section 6.3 Indemnification by Investors. Each Investor (the "***Investor Indemnifying Party***") shall indemnify and hold harmless, individually and not jointly and severally, the Company, its affiliates and stockholders, directors and officers (collectively, the "***Investor Indemnified Parties***") from and against any and all Claims sustained or incurred by any such Investor Indemnified Party, resulting from (i) any breach of a representation or warranty made by the Investor Indemnifying Party in this Agreement, and (ii) any breach of a covenant made by the Investor Indemnifying Party in this Agreement. The provisions of this Section 6.3 are intended to be for the benefit of, and shall be enforceable by, each Investor Indemnified Party. In no event shall any Investor Indemnifying Party be liable to any Investor Indemnified Party for any punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value or any damages based on any type of multiple, except to the extent paid by an Investor Indemnified Party to a third party in respect of the claim for which such Investor Indemnified Party is entitled to indemnification hereunder.

Section 6.4 Parity of Investors. Notwithstanding anything to the contrary in any of this Agreement, the Purchase Agreement, the B-3 Subscription Agreement, the B-4 Subscription Agreement, the B-123 Certificate or the B-4 Certificate, and except to the extent (i) provided in Section 3.4 of this Agreement and (ii) provided in Section 11 of the B-123 Certificate and of the B-4 Certificate and Section 1.1.5 of Schedule I to the B-123 Certificate and to the B-4 Certificate as relates to a Pre-Authorized Transfer to a JPM Permitted Transferee (each as defined in the B-123 Certificate or the B-4 Certificate, as applicable), each Party acknowledges that it is the intent and desire of the Parties, and each Party agrees, that, the terms of the Purchase Agreement, the Existing Certificate and the Original Agreement shall not modify or otherwise alter the parity between the Series B-1 Stock and the Series B-2 Stock that existed pursuant to the terms of the Original Certificate immediately prior to the Original Agreement. In the event of any such modification or alteration of such parity in a manner that is adverse to an Investor, then: (a) the other Parties shall reasonably

cooperate with such Investor to attempt to restore or otherwise accomplish such parity; and (b) if, after reasonably cooperating, the Parties are unable to restore or otherwise accomplish such parity, then the Company shall indemnify such Investor for the damages and other losses (including diminution in value) suffered by such Investor from such absence of parity, and such indemnification shall be such Investor's sole remedy with respect to such inability to restore or otherwise accomplish parity unless the Company is unable to restore or otherwise accomplish such parity in full. Each Investor hereby agrees that the maximum amount it shall, and shall be entitled to, claim and recover as damages and other losses pursuant to this Section 6.4 from another Investor (the "Advantaged Investor") is: (x) one hundred fifty percent (150%) of the sum of (A) the Original Price (as defined in the B-123 Certificate) per share of all the Series B-1 Stock or Series B-2 Stock, as applicable, held by such Investor plus (B) the Dividends (as defined in the B-123 Certificate) accrued and unpaid thereon, whether or not declared, through the date such Investor brings its claim against the Advantaged Investor; *minus* (y) any amounts such Investor (or its affiliates) recover from the Advantaged Investor with respect to its (or their) claim pursuant to Section 6.2(b). For the avoidance of doubt, the immediately preceding sentence does not limit any Investor's ability to claim and recover against the Company pursuant to this Section 6.4.

ARTICLE 7
GENERAL PROVISIONS

Section 7.1 Notices. All notices, requests and other communications to any Party shall be in writing and shall be delivered in person, by electronic mail, mailed by certified or registered mail, return receipt requested, or sent by facsimile transmission.

If to JPM, to:

JPMorgan Chase Funding Inc.
383 Madison Avenue
New York, New York 10179
Attention: Chadwick S. Parson
Email: chad.s.parson@jpmorgan.com
Fax: (212) 834-6671

With a copy which shall not constitute notice, to:

Fried, Frank, Harris, Shriver & Jacobsen LLP
One New York Plaza
New York, New York 10004
Attention: Julian Chung
Email: julian.chung@friedfrank.com
Fax: (212) 859-4000

If to JCP or Juniper, to:

11150 Santa Monica Blvd., Suite 1400
Los Angeles, California 90025

Attention: Jay Wolf
Email: jay@junipercptl.com
Fax: (213) 633-2323

With a copy which shall not constitute notice, to:

Munger, Tolles & Olson LLP
350 South Grand Avenue, 50th Floor
Los Angeles, California 90071
Attention: C. David Lee
Email: david.lee@mto.com
Fax: (213) 593-2885

If to the Company, to:

IMH Financial Corporation
7001 N. Scottsdale Rd, Suite 2050
Scottsdale, Arizona 85253
Attention: Lawrence D. Bain, CEO
Email: ldb@imhfc.com
Fax: (480) 840-8401

And to:

IMH Financial Corporation
7001 N. Scottsdale Rd, Suite 2050
Scottsdale, Arizona 85253
Attention: Legal Department
Email: legal@imhfc.com
Fax: (480) 840-8401

With a copy which shall not constitute notice, to:

Ulmer & Berne LLP
1660 West 2nd Street, Suite 1100
Cleveland, Ohio 44113-1448
Attention: Howard M. Groedel, Esq.
Email: hgroedel@ulmer.com
Fax: (216) 583-7119

Section 7.2 Fees and Expenses. Each Party shall pay its own costs and expenses incurred in connection with the preparation, negotiation, execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

Section 7.3 Entire Agreement; Amendments. This Agreement (together with the B-123 Certificate, the B-4 Certificate, the Purchase Agreement, the B-3 Subscription Agreement, the B-4 Subscription Agreement, the Series A Subscription Agreement and the Investors' Rights Agreement

(as defined in the B-4 Subscription Agreement)) is the entire agreement of the Parties and supersedes all prior agreements and understandings with respect to the subject matter hereof. No amendment or modification (or termination or cancellation unless pursuant to the express terms) of this Agreement shall be effective unless made in writing by each Party.

Section 7.4 Severability. Any provision of this Agreement that is invalid, unenforceable or illegal in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such invalidity, unenforceability or illegality without affecting the remaining provisions hereof and without affecting the validity, enforceability or legality of such provision in any other jurisdiction.

Section 7.5 Specific Enforcement; Cumulative Remedies. The Parties acknowledge that money damages may not be an adequate remedy for violations of this Agreement and that any Party, in addition to any other rights and remedies which the Parties may have hereunder or at law or in equity, may, in its sole discretion, apply to a court of competent jurisdiction for specific performance or injunction or such other relief as such court may deem just and proper in order to enforce this Agreement or prevent any violation hereof and, to the extent permitted by applicable law, each party waives any objection to the imposition of such relief. All rights, powers and remedies provided under this Agreement or otherwise available in respect hereof at law or in equity shall be cumulative and not alternative, and the exercise or beginning of the exercise of any thereof by any party shall not preclude the simultaneous or later exercise of any other such rights, powers or remedies by such Party. In no event shall either Party be liable to the other Party for any punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value or any damages based on any type of multiple, except to the extent paid by a Party to a third party in respect of a claim arising from such breach or alleged breach.

Section 7.6 Amendment; Waiver. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance, and either retroactively or prospectively) only with the written consent of the Parties; *provided*, that any provision hereof may be waived by any waiving Party on its own behalf, without the consent of the other Party.

Section 7.7 Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, and no other person or entity shall have any rights, interests or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise except the Company Indemnified Parties and the Investor Indemnified Parties and their respective rights under Article 6. No Party may assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of the other Party; *provided* that each Investor may assign its rights under this Agreement without the consent of the Company to any such Investor's affiliate to which shares of Series B-1 Stock, Series B-2 Stock, Series B-3 Stock or Series B-4 Stock, as applicable, are transferred pursuant to a transfer permitted under the B-123 Certificate or the B-4 Certificate, as applicable. Any purported assignment in violation of this Section shall be void and of no effect.

Section 7.8 Applicable Law; Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed in all respects, including but not limited to, validity, interpretation and effect, by the laws of the State of New York regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof. Any litigation against any party to this Agreement arising out of or in any way relating to this Agreement shall be brought solely in any federal or state court located in the State of New York in New York County and each of the Parties submits to the exclusive jurisdiction of such courts for the purpose of any such litigation. Each party irrevocably and unconditionally agrees not to assert (a) any objection which it may ever have to the laying of venue of any such litigation in any federal or state court located in the State of New York in New York County, (b) any claim that any such litigation brought in any such court has been brought in an inconvenient forum and (c) any claim that such court does not have jurisdiction with respect to such litigation. Each Party irrevocably and unconditionally waives, to the extent permitted by applicable law, any right to a trial by jury.

Section 7.9 Interpretation. The section headings contained herein are for reference purposes only and will not in any way affect the interpretation or meaning of this Agreement.

Section 7.10 Counterparts. This Agreement may be executed in one or more original or electronic counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.

[*Remainder of page left intentionally blank*.]

IN WITNESS WHEREOF, the Parties have set their hands to this Investment Agreement to be effective as of the date first written above.

THE COMPANY:

IMH Financial Corporation

By: /s/ Lawrence D. Bain
Name: Lawrence D. Bain
Title: Chairman and CEO

JPM:

JPMorgan Chase Funding Inc.

By: /s/ Chadwick S. Parson
Name: Chadwick S. Parson
Title: Managing Director

JCP:

JCP Realty Partners, LLC

By: /s/ Jay Wolf
Name: Jay Wolf
Title: Managing Partner

JUNIPER:

Juniper NVM, LLC

By: Juniper Capital Partners, LLC
Its: Sole Member

By: /s/ Jay Wolf
Name: Jay Wolf
Title: Manager

Exhibit A

Second Amended and Restated Certificate of Designation of Series B-1 Cumulative Convertible Preferred Stock, Series B-2 Cumulative Convertible Preferred Stock and Series B-3 Cumulative Convertible Preferred Stock

See attached.

Exhibit B

Certificate of Designation of Series B-4 Cumulative Convertible Preferred Stock

See attached.

Exhibit C

1940 Act Compliance Statement

See attached.

Exhibit D

1940 Act Opinion

See attached.

Schedule 1.5(a)

Material Litigation

See attached.

Schedule 1.5(b)

Notices of Default

None.