

ODYSSEY MARINE EXPLORATION INC

Form 10-Q

November 13, 2018

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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

**Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the quarterly period ended September 30, 2018**

or

**Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the transition period from _____ to _____**

Commission File Number 001-31895

ODYSSEY MARINE EXPLORATION, INC.

(Exact name of registrant as specified in its charter)

Nevada
(State or other jurisdiction of
incorporation or organization)

84-1018684
(I.R.S. Employer
Identification No.)

5215 W. Laurel Street, Tampa, Florida 33607
(Address of principal executive offices) (Zip code)

(813) 876-1776
(Registrant's telephone number, including area code)

(Former name, former address and former fiscal year, if changed since last report)

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definition of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act (Check one).

Large accelerated filer:

Accelerated filer:

Non-accelerated filer:

Smaller reporting company:

Emerging growth company:

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

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

The number of outstanding shares of the registrant's Common Stock, \$.0001 par value, as of October 31, 2018 was 8,466,909.

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| | Unaudited September 30, 2018 | December 31, 2017 |
|--|---|------------------------------|
| ASSETS | | |
| CURRENT ASSETS | | |
| Cash and cash equivalents | \$ 130,364 | \$ 1,108,193 |
| Restricted cash | 10,135 | 10,010 |
| Accounts receivable and other | 667,182 | 232,380 |
| Other current assets | 286,220 | 495,527 |
| Total current assets | 1,093,901 | 1,846,110 |
| PROPERTY AND EQUIPMENT | | |
| Equipment and office fixtures | 11,033,536 | 16,738,898 |
| Accumulated depreciation | (10,838,076) | (16,145,082) |
| Total property and equipment | 195,460 | 593,816 |
| NON-CURRENT ASSETS | | |
| Investment in unconsolidated entity | 529,882 | |
| Other non-current assets | 532,500 | 532,500 |
| Total non-current assets | 1,062,382 | 532,500 |
| Total assets | \$ 2,351,743 | \$ 2,972,426 |
| LIABILITIES AND STOCKHOLDERS EQUITY/(DEFICIT) | | |
| CURRENT LIABILITIES | | |
| Accounts payable | \$ 3,000,858 | \$ 2,396,835 |
| Accrued expenses and other | 8,757,988 | 6,551,335 |
| Loans payable | 25,894,770 | 24,363,442 |
| Total current liabilities | 37,653,616 | 33,311,612 |
| LONG-TERM LIABILITIES | | |
| Loans payable | 3,500,000 | 3,000,000 |
| Revenue participation rights | 4,643,750 | 4,643,750 |

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| | | |
|--|---------------------|---------------------|
| Total long-term liabilities | 8,143,750 | 7,643,750 |
| Total liabilities | 45,797,366 | 40,955,362 |
| Commitments and contingencies (NOTE G) | | |
| STOCKHOLDERS EQUITY/(DEFICIT) | | |
| Preferred stock - \$.0001 par value; 24,984,166 shares authorized; none outstanding | | |
| Common stock \$.0001 par value; 75,000,000 shares authorized; 8,466,909 and 8,466,909 issued and outstanding for each period end presented | 847 | 847 |
| Additional paid-in capital | 213,215,055 | 212,103,344 |
| Accumulated (deficit) | (238,405,502) | (234,709,910) |
| Total stockholders equity/(deficit) before non-controlling interest | (25,189,600) | (22,605,719) |
| Non-controlling interest | (18,256,023) | (15,377,217) |
| Total stockholders equity/(deficit) | (43,445,623) | (37,982,936) |
| Total liabilities and stockholders equity/(deficit) | \$ 2,351,743 | \$ 2,972,426 |

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

Table of Contents**ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES****CONSOLIDATED STATEMENTS OF OPERATIONS - Unaudited**

| | Three Months Ended | | Nine Months Ended | |
|---|---------------------------|-----------------------|--------------------------|-----------------------|
| | September 30, | September 30, | September 30, | September 30, |
| | 2018 | 2017 | 2018 | 2017 |
| REVENUE | | | | |
| Recovered cargo sales and other | \$ 260,763 | \$ 11,854 | \$ 569,083 | \$ 11,854 |
| Marine services | 625,564 | | 1,902,476 | 1,236,623 |
| Total revenue | 886,327 | 11,854 | 2,471,559 | 1,248,477 |
| OPERATING EXPENSES | | | | |
| Marketing, general and administrative | 1,359,898 | 1,863,328 | 4,297,301 | 5,242,884 |
| Operations and research | 1,070,916 | 618,461 | 2,544,559 | 2,821,776 |
| Total operating expenses | 2,430,814 | 2,481,789 | 6,841,860 | 8,064,660 |
| INCOME (LOSS) FROM OPERATIONS | (1,544,487) | (2,469,935) | (4,370,301) | (6,816,183) |
| OTHER INCOME (EXPENSE) | | | | |
| Interest expense | (816,732) | (638,940) | (2,258,149) | (2,018,570) |
| Other | 38,185 | 3,107 | 54,052 | 64,104 |
| Total other income (expense) | (778,547) | (635,833) | (2,204,097) | (1,954,466) |
| (LOSS) BEFORE INCOME TAXES | (2,323,034) | (3,105,768) | (6,574,398) | (8,770,649) |
| Income tax benefit (provision) | | | | |
| NET (LOSS) BEFORE NON-CONTROLLING INTEREST | (2,323,034) | (3,105,768) | (6,574,398) | (8,770,649) |
| Non-controlling interest | 1,013,759 | 854,671 | 2,878,806 | 2,403,404 |
| NET (LOSS) | \$ (1,309,275) | \$ (2,251,097) | \$ (3,695,592) | \$ (6,367,245) |
| NET (LOSS) PER SHARE | | | | |
| Basic and diluted (See NOTE B) | \$ (0.15) | \$ (0.27) | \$ (0.44) | \$ (0.78) |
| Weighted average number of common shares outstanding | | | | |
| Basic | 8,466,909 | 8,388,821 | 8,466,909 | 8,145,689 |
| Diluted | 8,466,909 | 8,388,821 | 8,466,909 | 8,145,689 |

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

Table of Contents**ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES****CONSOLIDATED STATEMENTS OF CASH FLOWS - Unaudited**

| | Nine Months Ended | |
|---|-------------------------------|-------------------------------|
| | September 30, 2018 | September 30, 2017 |
| CASH FLOWS FROM OPERATING ACTIVITIES: | | |
| Net loss before non-controlling interest | \$ (6,574,398) | \$ (8,770,649) |
| Adjustments to reconcile net loss to net cash (used) by operating activities: | | |
| Depreciation and amortization | 375,986 | 604,785 |
| Accrued interest converted into common stock | | 302,274 |
| Gain on sale of equipment | (897,664) | (289,328) |
| Lender financed fees | | 50,000 |
| Note payable interest accretion | 56,962 | 296,142 |
| Non-cash marine services revenue | (529,882) | |
| Share-based compensation | 311,712 | 625,489 |
| (Increase) decrease in: | | |
| Accounts receivable | (455,917) | 210,061 |
| Other assets | 209,307 | 367,358 |
| Increase (decrease) in: | | |
| Accounts payable | 724,504 | 715,512 |
| Accrued expenses and other | 2,407,523 | 1,344,641 |
| NET CASH (USED) BY OPERATING ACTIVITIES | (4,371,867) | (4,543,715) |
| CASH FLOWS FROM INVESTING ACTIVITIES: | | |
| Proceeds from sale of property and equipment | 1,003,662 | 80,000 |
| Purchase of property and equipment | (9,624) | |
| NET CASH PROVIDED BY INVESTING ACTIVITIES | 994,038 | 80,000 |
| CASH FLOWS FROM FINANCING ACTIVITIES: | | |
| Restricted cash held as collateral | (125) | |
| Proceeds from issuance of convertible notes payable | 1,675,000 | 4,500,000 |
| Settlement receipts from contractual obligation | 15,000,000 | |
| Payment of contractual obligation | (14,000,000) | |
| Repayment of debt obligations | (274,875) | (356,722) |
| NET CASH PROVIDED BY FINANCING ACTIVITIES | 2,400,000 | 4,143,278 |
| NET (DECREASE) IN CASH | (977,829) | (320,437) |
| CASH AT BEGINNING OF PERIOD | 1,108,193 | 1,662,643 |
| CASH AT END OF PERIOD | \$ 130,364 | \$ 1,342,206 |

SUPPLEMENTARY INFORMATION:

| | | |
|-----------------------------|------------|------------|
| Interest paid | \$ 867,442 | \$ 423,763 |
| Income taxes paid | \$ | \$ |
| Financed equipment purchase | \$ 74,004 | \$ |

Non-Cash Disclosure:

During the second quarter of 2017, we sold a marine vessel to a related party, Monaco Financial, LLC, for \$650,000. The consideration for this vessel was applied against our loan balance to Monaco in the amount of \$650,000, see NOTE H. During this same period, Epsilon Acquisitions LLC converted their loan principal balance of \$3,050,000 plus accrued interest of \$302,274 into 670,455 of our common shares, see NOTE H.

During the three months ended March 31, 2018, we converted \$1.0 million of amounts advanced related to the contractual obligation settlement to a loan with Monaco Financial, LLC. During April 2018 the parties agreed to treat \$99,366 of back rent owed by us to Monaco as part of this loan, see NOTE H

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

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ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

NOTE A - BASIS OF PRESENTATION

The accompanying unaudited consolidated financial statements of Odyssey Marine Exploration, Inc. and subsidiaries (the Company, Odyssey, us, we or our) have been prepared in accordance with the rules and regulations of the Securities and Exchange Commission and the instructions to Form 10-Q and, therefore, do not include all information and footnotes normally included in financial statements prepared in accordance with generally accepted accounting principles. These interim consolidated financial statements should be read in conjunction with the consolidated financial statements and notes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2017.

In the opinion of management, these financial statements reflect all adjustments, including normal recurring adjustments, necessary for a fair presentation of the financial position as of September 30, 2018 and the results of operations and cash flows for the interim periods presented. Operating results for the nine-month period ended September 30, 2018 are not necessarily indicative of the results that may be expected for the full year.

Recent accounting pronouncements

In May 2014, the Financial Accounting Standards Board, or the FASB, issued Accounting Standards Update 2014-09, Revenue from Contracts with Customers, or ASU 2014-09, which establishes a comprehensive revenue recognition standard under GAAP for almost all industries. The standard applies for annual periods beginning after December 15, 2017, including interim periods therein. Based on management's review of this standard along with the substance of our transactions, management believes this standard has not had and will not have a material impact on our financial statements.

In February 2016, the FASB issued Accounting Standards Update 2016-02, Leases, which establishes a comprehensive lease standard under GAAP for virtually all industries. The standard requires lessees to apply a dual approach, classifying leases as either finance or operating leases based on the principle of whether or not the lease is effectively a financed purchase of the leased asset by the lessee. This classification will determine whether the lease expense is recognized based on an effective interest method or on a straight-line basis over the term of the lease. A lessee is also required to record a right of use asset and a lease liability for all leases with a term of greater than 12 months regardless of their classification. Leases with a term of 12 months or less will be accounted for similar to existing guidance for operating leases. The standard requires lessors to account for leases using an approach that is substantially equivalent to existing guidance for sales type leases, direct financing leases and operating leases. The standard will apply for annual periods beginning after December 15, 2018, including interim periods therein, and requires modified retrospective application. Early adoption is permitted. Based on management's current understanding of this standard along with the underlying substance of our operations, management believes it will not have a material impact on our financial statements.

In May 2017, the FASB issued ASU 2017-09, *Compensation-Stock Compensation (Topic 718), Scope of Modification Accounting*. The amendments in this Update provide guidance about which changes to the terms or conditions of a share-based payment award require an entity to apply modification accounting in Topic 718. The amendments in this update are now effective for all entities for annual periods, and interim periods within those annual periods, beginning after December 15, 2017. Based on management's understanding of this new standard along with the underlying substance of our operations, this standard has not had and will not have a material impact on our financial statements.

In July 2017, the FASB issued Accounting Standards Update No. 2017-11, *Earnings Per Share (Topic 260)*, *Distinguishing Liabilities from Equity (Topic 480)*, *Derivatives and Hedging (Topic 815)*. The amendments in Part I of this Update change the classification analysis of certain equity-linked financial instruments (or embedded features) with down round features. When determining whether certain financial instruments should be classified as liabilities or equity instruments, a down round feature no longer precludes equity classification when assessing whether the instrument is indexed to an entity's own stock. The amendments also clarify existing disclosure requirements for equity-classified instruments. As a result, a freestanding equity-linked financial instrument (or embedded conversion option) no longer would be accounted for as a derivative liability at fair value as a result of the existence of a down round feature. For freestanding equity classified financial instruments, the amendments require entities that present earnings per share (EPS) in accordance with Topic 260 to recognize the effect of the down round feature when it is triggered. That effect is treated as a dividend and as a reduction of income available to common shareholders in basic EPS. Convertible instruments with embedded conversion options that have down round features are now subject to the specialized guidance for contingent beneficial conversion features (in Subtopic 470-20, Debt Debt with Conversion and Other Options), including related EPS guidance (in Topic 260). The amendments in Part II of this Update recharacterize the indefinite deferral of certain provisions of Topic 480 that now are presented as pending content in the Codification, to a scope exception. Those amendments do not have an accounting effect. For public business entities, the amendments in Part I of this Update are effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2018. For all other entities, the amendments in Part I of this Update are effective for fiscal years beginning after

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December 15, 2019, and interim periods within fiscal years beginning after December 15, 2020. Early adoption is permitted for all entities, including adoption in an interim period. If an entity early adopts the amendments in an interim period, any adjustments should be reflected as of the beginning of the fiscal year that includes that interim period. Based on management's current understanding of this new standard along with the underlying substance of our operations, management believes it will not have a material impact on our financial statements.

In March 2018, the FASB issued ASU No. 2018-05, Income Taxes (Topic 740), Amendments to SEC Paragraphs Pursuant to SEC Staff Accounting Bulletin No. 118. The amendments in this update add various SEC paragraphs pursuant to the issuance of SEC Accounting Bulletin No. 118, Income Tax Accounting Implications of the Tax Cuts and Jobs Act (Act) (SAB 118). The SEC issued SAB 118 to address concerns about reporting entities' ability to timely comply with the accounting requirements to recognize all of the effects of the Act in the period of enactment. SAB 118 allows a reporting entity to disclose that timely determination of some or all of the income tax effects from the Act are incomplete by the due date of the financial statements and, if possible, to provide a reasonable estimate. The use of reasonable estimates have been disclosed in NOTE F of the consolidated financial statements.

Other recent accounting pronouncements issued by the FASB, the AICPA and the SEC did not or are not believed by management to have a material effect, if any, on the Company's financial statements.

NOTE B - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

This summary of significant accounting policies of the Company is presented to assist in understanding our financial statements. The financial statements and notes are representations of the Company's management who are responsible for their integrity and objectivity and have prepared them in accordance with our customary accounting practices.

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its direct and indirect wholly owned subsidiaries, both domestic and international. Equity investments in which we exercise significant influence but do not control and of which we are not the primary beneficiary are accounted for using the equity method. All significant inter-company and intra-company transactions and balances have been eliminated. The results of operations attributable to the non-controlling interest are presented within equity and net income and are shown separately from the Company's equity and net income attributable to the Company. Some of the existing inter-company balances, which are eliminated upon consolidation, include features allowing the liability to be converted into equity of a subsidiary, which if exercised, could increase the direct or indirect interest of the Company in the non-wholly owned subsidiaries.

Use of Estimates

Management used estimates and assumptions in preparing these consolidated financial statements in accordance with U.S. GAAP. Those estimates and assumptions affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, and the reported revenues and expenses. Actual results could vary from the estimates that were used.

Revenue Recognition and Accounts Receivable

In accordance with Topic A.1. in SAB 13 as well as ASU 2019-09, Revenue from Contracts: Revenue Recognition, marine services and expedition charter revenue is recognized ratably when realized and earned as time passes throughout the contract period as defined by the terms of the agreement. Expenses related to the marine services

expedition charter revenue (also referred to as marine services revenue) are recorded as incurred and presented under the caption Operations and research on our Consolidated Statements of Operations.

Account receivables are based on amounts billed to customers. Management has elected to record bad debts using the direct write-off method. Generally accepted accounting principles state an estimate is to be made for an allowance for doubtful accounts. The effect of using the direct write-off method, however, is not materially different from the results that would have been obtained had the allowance method been followed. If we were to have a recorded allowance, the accounts receivable would be stated net the recorded allowance.

Cash and Cash Equivalents

Cash, cash equivalents and restricted cash include cash on hand and cash in banks. We also consider all highly liquid investments with a maturity of three months or less when purchased to be cash equivalents. We have \$10,135 of restricted cash for collateral related to a corporate credit card program.

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Long-Lived Assets

Our policy is to recognize impairment losses relating to long-lived assets in accordance with the Accounting Standards Codification (ASC) topic for Property, Plant and Equipment. Decisions are based on several factors, including, but not limited to, management's plans for future operations, recent operating results and projected cash flows. Impairment losses are included in depreciation at the time of impairment.

Property and Equipment and Depreciation

Property and equipment is stated at historical cost. Depreciation is calculated using the straight-line method at rates based on the assets' estimated useful lives which are normally between three and thirty years. Leasehold improvements are amortized over their estimated useful lives or lease term, if shorter. Items that may require major overhauls (such as engines or generators) that enhance or extend the useful life of vessel related assets qualify to be capitalized and depreciated over the useful life or remaining life of that asset, whichever was shorter. Certain major repair items required by industry standards to ensure a vessel's seaworthiness also qualified to be capitalized and depreciated over the period of time until the next scheduled planned major maintenance for that item. All other repairs and maintenance were accounted for under the direct-expensing method and are expensed when incurred.

The smaller vessel we received as consideration when we sold our *Odyssey Explorer* was sold in May 2017 to a related party who we are indebted to credited us \$650,000 towards the indebtedness owed by us as consideration for their acquisition of this vessel, see NOTE H. The amount capitalized for this asset was \$416,329.

Earnings Per Share

Basic earnings per share (EPS) is computed by dividing income available to common stockholders by the weighted-average number of common shares outstanding for the period. In periods when the Company has income, the Company would calculate basic earnings per share using the two-class method, if required, pursuant to ASC 260 *Earnings Per Share*. The two-class method was required effective with the issuance of certain senior convertible notes in the past because these notes qualified as a participating security, giving the holder the right to receive dividends should dividends be declared on common stock. Under the two-class method, earnings for a period are allocated on a pro rata basis to the common stockholders and to the holders of convertible notes based on the weighted average number of common shares outstanding and number of shares that could be issued upon conversion. The Company does not use the two-class method in periods when it generates a loss because the holder of the convertible notes does not participate in losses. Currently, we do not have any outstanding convertible notes that qualify as a participating security.

Diluted EPS reflects the potential dilution that would occur if dilutive securities and other contracts to issue common stock were exercised or converted into common stock or resulted in the issuance of common stock that then shared in our earnings. We use the treasury stock method to compute potential common shares from stock options and warrants and the if-converted method to compute potential common shares from preferred stock, convertible notes or other convertible securities. For diluted earnings per share, the Company uses the more dilutive of the if-converted method or two-class method. When a net loss occurs, potential common shares have an anti-dilutive effect on earnings per share and such shares are excluded from the diluted EPS calculation.

For the nine-months ended September 30, 2018 and 2017, the weighted average common shares outstanding year-to-date were 8,466,909 and 8,145,689, respectively. For the periods in which net losses occurred, all potential common shares were excluded from diluted EPS because the effect of including such shares would be anti-dilutive.

The potential common shares in the following tables represent potential common shares calculated using the treasury stock method from outstanding options, stock awards and warrants that were excluded from the calculation of diluted EPS:

| | Three Months Ended | | Nine Months Ended | |
|---|---------------------------|---------------------------|---------------------------|---------------------------|
| | September 30, 2018 | September 30, 2017 | September 30, 2018 | September 30, 2017 |
| Average market price during the period | \$ 7.89 | \$ 4.18 | \$ 7.05 | \$ 3.99 |
| In the money potential common shares from options excluded | 14,689 | 7,763 | 13,759 | 7,062 |
| In the money potential common shares from warrants excluded | 66,465 | 18,948 | 60,084 | 14,136 |

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Potential common shares from out of the money options and warrants were also excluded from the computation of diluted EPS because calculation of the associated potential common shares has an anti-dilutive effect on EPS. The following table lists options and warrants that were excluded from diluted EPS:

| Per share exercise price | Three Months Ended | | Nine-Months Ended | |
|-------------------------------------|--------------------|--------------------|--------------------|--------------------|
| | September 30, 2018 | September 30, 2017 | September 30, 2018 | September 30, 2017 |
| Out of the money options excluded: | | | | |
| \$12.48 | 136,833 | 137,666 | 136,833 | 137,666 |
| \$12.84 | 4,167 | 4,167 | 4,167 | 4,167 |
| \$26.40 | 75,158 | 75,158 | 75,158 | 75,158 |
| \$34.68 | | 73,765 | | 73,765 |
| \$39.00 | | 8,333 | | 8,333 |
| \$41.16 | | 833 | | 833 |
| \$42.00 | | 8,333 | | 8,333 |
| Out-of-the-money warrants excluded: | | | | |
| \$12.00 | 50,000 | | 50,000 | |
| Total excluded | 266,158 | 308,255 | 266,158 | 308,255 |

The weighted average equivalent common shares relating to our unvested restricted stock awards that were excluded from potential common shares in the earning per share calculation due to having an anti-dilutive effect are:

| | Three Months Ended | | Nine Months Ended | |
|---|--------------------|--------------------|--------------------|--------------------|
| | September 30, 2018 | September 30, 2017 | September 30, 2018 | September 30, 2017 |
| Potential common shares from unvested restricted stock awards excluded from EPS | 132,826 | 238,921 | 132,826 | 238,921 |

The following is a reconciliation of the numerators and denominators used in computing basic and diluted net income per share:

| | Three Months Ended | | Nine Months Ended | |
|--|--------------------|--------------------|--------------------|--------------------|
| | September 30, 2018 | September 30, 2017 | September 30, 2018 | September 30, 2017 |
| Net income (loss) | \$ (1,309,275) | \$ (2,251,097) | \$ (3,695,592) | \$ (6,367,245) |
| Numerator, basic and diluted net income (loss) available to stockholders | \$ (1,309,275) | \$ (2,251,097) | \$ (3,695,592) | \$ (6,367,245) |

| | | | | |
|---|-----------|-----------|-----------|-----------|
| Denominator: | | | | |
| Shares used in computation basic: | | | | |
| Weighted average common shares outstanding | 8,466,909 | 8,388,821 | 8,466,909 | 8,145,689 |
| Common shares outstanding for basic | 8,466,909 | 8,388,821 | 8,466,909 | 8,145,689 |
| Shares used in computation diluted: | | | | |
| Common shares outstanding for basic | 8,466,909 | 8,388,821 | 8,466,909 | 8,145,689 |
| Shares used in computing diluted net income per share | | | | |
| | 8,466,909 | 8,388,821 | 8,466,909 | 8,145,689 |
| Net (loss) per share basic | \$ (0.15) | \$ (0.27) | \$ (0.44) | \$ (0.78) |
| Net (loss) per share diluted | \$ (0.15) | \$ (0.27) | \$ (0.44) | \$ (0.78) |

Income Taxes

Income taxes are accounted for using an asset and liability approach that requires the recognition of deferred tax assets and liabilities for the expected future tax consequences attributable to differences between financial statement carrying amounts of existing assets and liabilities and their respective tax bases. A valuation allowance is provided when it is more likely than not that some portion or the entire deferred tax asset will not be realized.

Stock-based Compensation

Our stock-based compensation is recorded in accordance with the guidance in the ASC topic for *Stock-Based Compensation* (See NOTE I).

Table of Contents**Fair Value of Financial Instruments**

Financial instruments consist of cash, evidence of ownership in an entity, and contracts that both (i) impose on one entity a contractual obligation to deliver cash or another financial instrument to a second entity, or to exchange other financial instruments on potentially unfavorable terms with the second entity, and (ii) conveys to that second entity a contractual right (a) to receive cash or another financial instrument from the first entity, or (b) to exchange other financial instruments on potentially favorable terms with the first entity. Accordingly, our financial instruments consist of cash and cash equivalents, accounts receivable, accounts payable, accrued liabilities, derivative financial instruments and mortgage and loans payable. We carry cash and cash equivalents, accounts payable and accrued liabilities, and mortgage and loans payable at the approximate fair market value, and, accordingly, these estimates are not necessarily indicative of the amounts that we could realize in a current market exchange. We carry derivative financial instruments at fair value as is required under current accounting standards. Redeemable preferred stock has been carried at historical cost and accreted carrying values to estimated redemption values over the term of the financial instrument.

Derivative financial instruments consist of financial instruments or other contracts that contain a notional amount and one or more underlying variables (e.g., interest rate, security price or other variable), require no initial net investment and permit net settlement. Derivative financial instruments may be free-standing or embedded in other financial instruments. Further, derivative financial instruments are initially, and subsequently, measured at fair value and recorded as liabilities or, in rare instances, assets. We generally do not use derivative financial instruments to hedge exposures to cash-flow, market or foreign-currency risks. However, we have entered into certain other financial instruments and contracts with features that are either (i) not afforded equity classification, (ii) embody risks not clearly and closely related to host contracts, or (iii) may be net-cash settled by the counterparty. As required by ASC 815 *Derivatives and Hedging*, these instruments are required to be carried as derivative liabilities, at fair value, in our financial statements with changes in fair value reflected in our income.

Fair Value Hierarchy

The three levels of inputs that may be used to measure fair value are as follows:

Level 1. Quoted prices in active markets for identical assets or liabilities.

Level 2. Observable inputs other than Level 1 prices, such as quoted prices for similar assets or liabilities, quoted prices in markets with insufficient volume or infrequent transactions (less active markets), or model-derived valuations in which all significant inputs are observable or can be derived principally from or corroborated with observable market data for substantially the full term of the assets or liabilities. Level 2 inputs also include non-binding market consensus prices that can be corroborated with observable market data, as well as quoted prices that were adjusted for security-specific restrictions.

Level 3. Unobservable inputs to the valuation methodology are significant to the measurement of the fair value of assets or liabilities. Level 3 inputs also include non-binding market consensus prices or non-binding broker quotes that we were unable to corroborate with observable market data.

Redeemable Preferred Stock

If we issue redeemable preferred stock instruments (or any other redeemable financial instrument), they are initially evaluated for possible classification as a liability in instances where redemption is certain to occur pursuant to ASC 480 *Distinguishing Liabilities from Equity*. Redeemable preferred stock classified as a liability is recorded and carried

at fair value. Redeemable preferred stock that does not, in its entirety, require liability classification is evaluated for embedded features that may require bifurcation and separate classification as derivative liabilities. In all instances, the classification of the redeemable preferred stock host contract that does not require liability classification is evaluated for equity classification or mezzanine classification based upon the nature of the redemption features. Generally, mandatory redemption requirements or any feature that could require cash redemption for matters not within our control, irrespective of probability of the event occurring, requires classification outside of stockholders' equity. Redeemable preferred stock that is recorded in the mezzanine section is accreted to its redemption value through charges to stockholders' equity when redemption is probable using the effective interest method. We have no redeemable preferred stock outstanding for the periods presented.

Subsequent Events

We have evaluated subsequent events for recognition or disclosure through the date this Form 10-Q is filed with the Securities and Exchange Commission.

Table of Contents**NOTE C ACCOUNTS RECEIVABLE AND OTHER**

Our accounts receivable consists of the following:

| | September 30, 2018 | December 31, 2017 |
|-------------------------------------|-------------------------------|------------------------------|
| Trade | \$ 37,478 | \$ 7,376 |
| Related party | 584,937 | 183,453 |
| Other | 44,767 | 41,551 |
| Total accounts receivable and other | \$ 667,182 | \$ 232,380 |

Monaco and its related affiliates owe us \$555,379 and \$183,453 for the periods ended September 30, 2018 and December 31, 2017, respectively, for support services and marine services rendered on their behalf. See NOTE D for further information regarding Monaco. During the quarter ended September 30, 2018, we began providing services for a deep-sea mineral exploration company in which our Chairman of the Board, Greg Stemm, has a controlling and ownership interest. See NOTE D for further information. At September 30, 2018 and December 31, 2017, the company owed us \$29,558 and \$0, respectively.

NOTE D RELATED PARTY TRANSACTIONS

In December 2015, we entered into an asset acquisition agreement with Monaco Financial, LLC (Monaco) (See NOTE R in our Form 10-K filed with the Securities and Exchange Commission for the period ended December 31, 2017 for further information). We had accounts receivable with Monaco and related affiliates at September 30, 2018 of \$555,379 and at December 31, 2017 of \$183,453. We had general operating payables with Monaco at September 30, 2018 of \$261,042 and at December 31, 2017 of \$80,320. See NOTE H for further debt commitments between the entities. Based on the economic substance of these business transactions, we consider Monaco Financial, LLC to be an affiliated company, thus a related party. We do not own any financial interest in Monaco. During 2018, we performed marine shipwreck search and recovery services for this related party and recognized year to date revenue of \$1.6 million. Until October 2018, we also lease our corporate office space on an annually renewable basis from Monaco at \$20,080 per month; however, the building in which we lease this space was sold during October 2018 to a non-affiliate.

During the three-months ended September 30, 2018, we continued to provide services to a deep-sea mineral exploration company that was organized and is majority owned and controlled by Greg Stemm, the Chairman of the Board for Odyssey. Mr. Stemm's involvement with this company was disclosed to, and approved by, the Odyssey Board of Directors and legal counsel pursuant to the terms of his consulting agreement. We will be providing these services subject to a Master Services Agreement which provides for back office services in exchange for a recurring monthly fee as well as other marine related services on a cost-plus profit basis and will be compensated for these services with a combination of cash and equity in the company. For the quarter ended September 30, 2018, we invoiced the company a total of \$280,021 for related services. This amount is comprised of \$56,035 to be paid in cash and \$223,986 which we will have the option to convert to equity in the company. See NOTE C for related accounts receivable at September 30, 2018.

We account for the investments we make in certain legal entities in which equity investors do not have (1) sufficient equity at risk for the legal entity to finance its activities without additional subordinated financial support, or (2) as a

group, the holders of the equity investment at risk do not have either the power, through voting or similar rights, to direct the activities of the legal entity that most significantly impact the entity's economic performance, or (3) the obligation to absorb the expected losses of the legal entity or the right to receive expected residual returns of the legal entity. These legal entities are referred to as variable interest entities or VIEs.

We would consolidate the results of any such entity in which we determined we had a controlling financial interest. We would have a controlling financial interest in such an entity if we had both the power to direct the activities that most significantly affect the VIE's economic performance and the obligation to absorb the losses of, or right to receive benefits from, the VIE that could be potentially significant to the VIE. On a quarterly basis, we reassess whether we have a controlling financial interest in any investments we have in these legal entities.

We determine whether any of the entities in which we have made investments is a VIE at the start of each new venture and if a reconsideration event has occurred. At this time, we also consider whether we must consolidate a VIE and/or disclose information about its involvement in a VIE. A reporting entity must consolidate a VIE if that reporting entity has a variable interest (or combination of variable interests) that will absorb a majority of the VIE's expected losses, receive a majority of the VIE's expected residual returns, or both. A reporting entity must consider the rights and obligations conveyed by its variable interests and the relationship of its variable interests with variable interests held by other parties to determine whether its variable interests will absorb a majority of a VIE's expected losses, receive a majority of the VIE's expected residual returns, or both. The reporting entity that consolidates a VIE is called the primary beneficiary of that VIE.

In 2018, we entered into a transaction with Mr. Stemm's company to pursue deep water mining permits in foreign waters. Due to the initial structure of the company, we determined this venture to be a VIE consistent with ASU 2015-2. We

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have determined that we are not the primary beneficiary of the VIE and, therefore, we have not consolidated this entity. Additionally, we also will record the investment under the cost method as we have determined we do not exercise significant influence over the entity. We will assess our investment for impairment annually and, if a loss in value is deemed other than temporary, an impairment charge is recorded. At September 30, 2018, the accumulated expected investment in the entity is \$529,882 which is classified as an investment in unconsolidated entity in our consolidated balance sheets. The agreements have not yet been executed nor have we received any equity for our services yet, but the intent is to receive equity as compensation for our services once the agreements have been executed.

NOTE E INVESTMENTS IN UNCONSOLIDATED ENTITIES***Neptune Minerals, Inc. (NMI)***

Our current investment in NMI consists of 3,092,488 Class B Common non-voting shares and 2,612 Series A Preferred non-voting shares. These preferred shares are convertible into an aggregate of 261,200 shares of Class B non-voting common stock. Our holdings now constitute an approximate 14% ownership in NMI. At September 30, 2018, our estimated share of unrecognized NMI equity-method losses is approximately \$21.3 million. We have not recognized the accumulated \$21.3 million in our income statement because these losses exceeded our investment in NMI. Our investment has a carrying value of zero as a result of the recognition of our share of prior losses incurred by NMI under the equity method of accounting. We believe it is appropriate to allocate this loss carryforward of \$21.3 million to any incremental NMI investment that may be recognized on our balance sheet in excess of zero since the losses occurred when they were an equity-method investment. The aforementioned loss carryforward is based on NMI's last unaudited financial statements as of December 31, 2016. We do not believe losses NMI may have incurred in the 2018 period ended September 30, 2018 and year ended December 31, 2017 to be material. We do not have any financial obligations to NMI, and we are not committed to provide financial support to NMI.

Although we are a shareholder of NMI, we have no representation on the board of directors or in management of NMI and do not hold any Class A voting shares. We are not involved in the management of NMI nor do we participate in their policy-making. Accordingly, we are not the primary beneficiary of NMI. As of September 2018, the net carrying value of our investment in NMI was zero in our consolidated financial statements.

Chatham Rock Phosphate, Ltd.

During 2012, we performed deep-sea mining exploratory services for Chatham Rock Phosphate, Ltd. (CRP) valued at \$1,680,000. As payment for these services, CRP issued 9,320,348 ordinary shares to us. During March 2017, Antipodes Gold Limited completed the acquisition of CRP. The surviving entity is now named Chatham Rock Phosphate Limited (CRPL). In exchange for our 9,320,348 shares of CRP, we received 142,100 shares of CPRL, which represents equity ownership of approximately 1% of the surviving entity. Since CRP was a thinly traded stock and pursuant to guidance per ASC 320: *Debt and Equity Securities* regarding readily determinable fair value, we believe it was appropriate to not recognize this amount as an asset nor as revenue during that period. We continue to carry the value of our investment in CPRL at zero in our consolidated financial statements.

NOTE F - INCOME TAXES

During the nine-month period ended September 30, 2018, we generated a federal net operating loss (NOL) carryforward of \$1.7 million and generated \$5.7 million of foreign NOL carryforwards. As of September 30, 2018, we had consolidated income tax NOL carryforwards for federal tax purposes of approximately \$163.3 million and net operating loss carryforwards for foreign income tax purposes of approximately \$37.5 million. The federal NOL

carryforwards from 2005 forward will expire in various years beginning in 2025 and ending through the year 2037.

Deferred income tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred income tax assets and liabilities are measured using enacted tax rates expected to be recovered or settled. We have recorded a net deferred tax asset of \$0 at September 30, 2018. As required by the *Accounting for Income Taxes* topic in the ASC, we have concluded it is more likely than not that those assets would not be realizable without the recovery and rights of ownership or salvage rights of high value shipwrecks or substantial profits from our mining operations and thus a valuation allowance has been recorded as of September 30, 2018. There was no U.S. income tax expense for the nine months ended September 30, 2018 due to the generation of net operating losses.

The increase in the valuation allowance as of September 30, 2018 is due to the generation of approximately \$1.7 million in net operating loss year-to-date.

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The change in the valuation allowance is as follows:

| | |
|-------------------------------|---------------|
| September 30, 2018 | \$ 50,158,228 |
| December 31, 2017 | 49,235,133 |
| Change in valuation allowance | \$ 923,095 |

Our estimated annual effective tax rate as of September 30, 2018 is 25.0% while our September 30, 2017 effective tax rate is 0.0% because of the full valuation allowance. We have reflected the income tax effects of the Tax Cuts and Jobs Act of 2017 (Tax Reform) in accordance with SAB 118 and have made reasonable estimates related to certain impacts of Tax Reform. As a result, the Company will be subject to a 21.0% U.S. federal tax rate for future years. Even with the federal tax rate being reduced, we do not expect any material changes in income tax expense due to the amount of NOL carryforwards.

We have not recognized a material adjustment in the liability for unrecognized tax benefits and have not recorded any provisions for accrued interest and penalties related to uncertain tax positions. The earliest tax year still subject to examination by a major taxing jurisdiction is 2014.

NOTE G COMMITMENTS AND CONTINGENCIES**Legal Proceedings**

The Company may be subject to a variety of claims and suits that arise from time to time in the ordinary course of business. We are currently not a party to any litigation.

Contingency

During March 2016, our Board of Directors approved the grant and potential future issuance of 3.0 million new equity shares of Oceanica Resources, S.R.L. to two attorneys for their future services. This equity is only issuable upon the Mexican government issuance of the Environmental Impact Assessment (EIA) for our Mexican subsidiary. This grant of new shares was also approved by the Administrators of Oceanica Resources, S.R.L. We also owe consultants contingent success fees of up to \$425,000 upon the approval and issuance of the EIA. The EIA has not been issued as of the date of this report.

See NOTE L regarding a contingent liability surrounding a sale of marine equipment to Magellan along with Magellan assuming a certain trade payable debt connected with the sale of this marine equipment.

Going Concern Consideration

We have experienced several years of net losses and may continue to do so. Our ability to generate net income or positive cash flows for the following twelve months is dependent upon our success in developing and monetizing our interests in mineral exploration entities, generating income from exploration charters, collecting on amounts owed to us, and completing the Minera del Norte S.A. de c.v. (MINOSA) and Penelope Mining LLC (Penelope) equity financing transaction approved by our stockholders on June 9, 2015. Our 2018 business plan requires us to generate new cash inflows to effectively allow us to perform our planned projects. We plan to generate new cash inflows through the monetization of our receivables and equity stakes in seabed mineral companies, financings, syndications

or other partnership opportunities. One or more of the planned opportunities for raising cash may not be realized to the extent needed which may require us to curtail our desired business plan until we generate additional cash. Even though we have been able to consistently raise cash in the past, there are no assurances we may be able to do so in the future. On March 11, 2015, we entered into a Stock Purchase Agreement with MINOSA and Penelope, an affiliate of MINOSA, pursuant to which (a) MINOSA agreed to extend debt financing to Odyssey of up to \$14.75 million, and (b) Penelope agreed to invest up to \$101 million over three years in convertible preferred stock of Odyssey. The equity financing is subject to the satisfaction of certain conditions, including the approval of our stockholders, which occurred on June 9, 2015, and MINOSA and Penelope are currently under no obligation to make the preferred share equity investments. (See Management's Discussion and Analysis of Financial Condition and Results of Operations - Financings.) See NOTE H for further detail on MINOSA related debt. Although we executed the Stock Purchase Agreement, Penelope must purchase the shares for us to be able to complete the equity component of the transaction. The Penelope equity transaction is heavily dependent on the outcome of our subsidiary's application approval process for an environmental permit to commercially develop a mineralized phosphate deposit off the coast of Mexico. We pledged the majority of our remaining assets to MINOSA, and its affiliates, and to Monaco Financial LLC, leaving us with few opportunities to raise additional funds from our balance sheet. If cash inflow is not sufficient to meet our desired projected business plan requirements, we will be required to follow a contingency business plan which is based on curtailed expenses and fewer cash requirements. Our consolidated non-restricted cash balance at September 30, 2018 is \$130,364 which is insufficient to support operations for the following 12 months. We have a working capital deficit at September 30, 2018 of \$37.0 million, most of which is convertible into equity. Therefore, the factors noted above raise doubt about our ability to continue as a going concern. These consolidated financial statements do not include any adjustments to the amounts and classification of assets and liabilities that may be necessary should we be unable to continue as a going concern.

Table of Contents**NOTE H LOANS PAYABLE**

The Company's consolidated debt consisted of the following at:

| | September 30, 2018 | December 31, 2017 |
|------------------------|-------------------------------|------------------------------|
| Note 1 Monaco 2014 | \$ 2,800,000 | \$ 2,800,000 |
| Note 2 Monaco 2016 | 1,175,000 | 1,138,441 |
| Note 3 MINOSA 1 | 14,750,001 | 14,750,001 |
| Note 4 Epsilon | 1,000,000 | 1,000,000 |
| Note 5 SMOM | 3,500,000 | 3,000,000 |
| Note 6 MINOSA 2 | 5,050,000 | 4,675,000 |
| Note 7 Monaco 2018 | 1,099,366 | |
| Note 8 Promissory note | 20,403 | |
| | \$ 29,394,770 | \$ 27,363,442 |

Note 1 Monaco 2014

On August 14, 2014, we entered into a Loan Agreement with Monaco Financial, LLC (Monaco), a strategic marketing partner, pursuant to which Monaco agreed to lend us up to \$10.0 million. The loan was issued in three tranches: (i) \$5.0 million (the First Tranche) was advanced upon execution of the Loan Agreement; (ii) \$2.5 million (the Second Tranche) was advanced on October 1, 2014; and (iii) \$2.5 million (the Third Tranche) was advanced on December 1, 2014. The Notes bear interest at a rate equal to 11% per annum. The Notes also contain an option whereby Monaco can purchase shares of Oceanica held by Odyssey (the Share Purchase Option) at a purchase price that is the lower of (a) \$3.15 per share or (b) the price per share of a contemplated equity offering of Oceanica which totals \$1.0 million or more in the aggregate. The share purchase option was not clearly and closely related to the host debt agreement and required bifurcation.

On December 10, 2015, these promissory notes were amended as part of the asset acquisition agreement with Monaco (See NOTE R in our Form 10-K filed with the Securities and Exchange Commission for the period ended December 31, 2017 for further information). The amendment included the following material changes: (i) \$2.2 million of the indebtedness represented by the Notes was extinguished, (ii) \$5.0 million of the indebtedness represented by the Notes ceased to bear interest and is only repayable under certain circumstances from certain sources of cash, and (iii) the maturity date on the Notes was extended to December 31, 2017. During March 2016, the maturity date was further extended to April 1, 2018 and the exercise price of the Share Purchase Option was re-priced to \$1.00 per share. This note has matured, but Monaco has not demanded payment because we are in negotiations with Monaco to set a new maturity date. As of the maturity date, the interest rate was adjusted to the default rate of 18% per annum. See Loan Modification (March 2016) below. For the three-months ended September 30, 2018, interest expense in the amount of \$144,455 was recorded. The outstanding interest-bearing balance of these Notes is \$2.8 million at September 30, 2018.

Note 2 Monaco 2016

In March 2016, Monaco agreed to lend us an additional \$1,825,000. These loan proceeds were received in full during the first quarter of 2016. The indebtedness bears interest at 10.0% percent per year. All principal and any unpaid

interest was payable on April 15, 2018. This note has matured, but Monaco has not demanded payment because we are in negotiations with Monaco to set a new maturity date. As of the maturity date, the interest rate was adjusted to the default rate of 18% per annum. The current outstanding balance as of September 30, 2018 is \$1,175,000. The indebtedness is convertible at any time until the maturity date into shares of Oceanica held by us at a conversion price of \$1.00 per share. Pursuant to this loan and as security for the indebtedness, Monaco was granted a second priority security interest in (a) one-half of the indebtedness evidenced by the Amended and Restated Consolidated Note and Guaranty, dated September 25, 2015 (the ExO Note), in the original principal amount of \$18.0 million, issued by Exploraciones Oceanicas S. de R.L. de C.V. to Oceanica Marine Operations, S.R.L. (OMO), and all rights associated therewith (the OMO Collateral); and (b) all technology and assets in our possession or control used for offshore exploration, including an ROV system, deep-tow search systems, winches, multi-beam sonar, and other equipment. The carrying net book value of this equipment is \$0.3 million. We unconditionally and irrevocably guaranteed all obligations of ours and our subsidiaries to Monaco under this loan agreement. As further consideration for the loan, Monaco was granted an option (the Option) to purchase the OMO Collateral. The Option is exercisable at any time before the earlier of (a) the date that is 30 days after the loan is paid in full or (b) the maturity date of the ExO Note, for aggregate consideration of \$9.3 million, \$1.8 million of which would be paid at the closing of the exercise of the Option, with the balance paid in ten monthly installments of \$750,000. During the three-months ended September 30, 2017, we sold a marine vessel to a related party of Monaco for \$650,000. The consideration for this vessel was applied against our loan balance to Monaco in the amount of \$650,000.

Table of Contents***Accounting considerations***

ASC 815 generally requires the analysis of embedded terms and features that have characteristics of derivatives to be evaluated for bifurcation and separate accounting in instances where their economic risks and characteristics are not clearly and closely related to the risks of the host contract. The option to purchase the OMO Collateral is an embedded feature that is not clearly and closely related to the host debt agreement and thus requires bifurcation. Because the option is out of the money, it has no material fair value as of the inception date or currently. The debt agreement did not contain any additional embedded terms or features that have characteristics of derivatives. However, we were required to consider whether the hybrid contract embodied a beneficial conversion feature (BCF). The calculation of the effective conversion amount did result in a BCF because the effective conversion price was less than the market price on the date of issuance, therefore a BCF of \$456,250 was recorded. This BCF has been fully amortized as of March 31, 2018. For the three-months ended September 30, 2018 and 2017, interest expense related to the discount in the amount of \$0 and \$38,791, respectively, was recorded. For the three-months ended September 30, 2018 and 2017, interest expense in the amount of \$67,455 and \$29,616, respectively, was recorded.

Loan modification (December 2015)

In connection with the Acquisition Agreement entered into with Monaco on December 10, 2015, Monaco agreed to modify certain terms of the loans as partial consideration for the purchase of assets. For the First Tranche (\$5,000,000 advanced on August 14, 2014), Monaco agreed to cease interest as of December 10, 2015 and reduce the loan balance by (i) the cash or other value received from the SS *Central America* shipwreck project (SSCA) or (ii) if the proceeds received from the SSCA project were insufficient to pay off the loan balance by December 31, 2017, then Monaco could seek repayment of the remaining outstanding balance on the loan by withholding Odyssey s 21.25% additional consideration in new shipwreck projects performed for Monaco in the future. For the Second Tranche (\$2,500,000 advanced on October 1, 2014), Monaco agreed to reduce the principal amount by \$2,200,000 leaving a new principal balance of \$300,000 and extension of maturity to December 31, 2017. For the Third Tranche (\$2,500,000 advanced on December 1, 2014), Monaco agreed to the extension of maturity to December 31, 2017.

On December 10, 2015, the Monaco call option related to the Oceanica shares held by us was extended until December 31, 2017.

Loan modification (March 2016)

In connection with the \$1.825 million loan agreement with Monaco in March 2016, the existing \$2.8 million notes were modified. Of the combined total indebtedness of Monaco s Note 1 and Note 2, Monaco can convert this debt into 3,174,603 shares of Oceanica at a fixed conversion price of \$1.00 per share, or \$3,174,603. Any remaining debt in excess of \$3,174,603 is not convertible. Additionally, the modification eliminated Monaco s option (share purchase option) to purchase 3,174,603 shares of Oceanica stock at a price of \$3.15 per share. The modification was analyzed under ASC 480 *Distinguishing Liabilities from Equity* (ASC 480) to determine if extinguishment accounting was applicable. Under ASC 470-50-40-10 a modification or an exchange that adds or eliminates a substantive conversion option as of the conversion date is always considered substantial and requires extinguishment accounting. Since this modification added a substantive conversion option, extinguishment accounting is applicable. In accordance with the extinguishment accounting guidance (a) the share purchase option was first marked to its pre-modification fair value, (b) the new debt was recorded at fair value and (c) the old debt and share purchased option was removed. The difference between the fair value of the new debt and the sum of the pre-modification carrying amount of the old debt and the share purchase option s fair value represented a gain on extinguishment. ASC 470-50-40-2 indicates that debt restructuring with a related party may be in essence a capital transaction and as a result the gain upon extinguishment was recognized in additional paid in capital. We performed the following steps:

Step 1: After the share purchase option has been marked to its pre-modification fair value, the fair value of the new debt is determined. The fair value of the new debt is as follows:

| Monaco loans | Loan one |
|--|-----------------|
| Forward cash flows: | |
| Principal | \$ 2,800,000 |
| Interest | 559,463 |
| Total forward cash flows | \$ 3,359,463 |
| Present value of forward cash flows | \$ 2,554,371 |
| Fair value of equity conversion option | 1,063,487 |
| Fair value of debt | \$ 3,617,858 |

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Significant inputs and results arising from the Binomial Lattice process are as follows for the conversion option that is classified in equity after the modification in March 2016:

| | |
|--|----------------|
| Underlying price on valuation date | \$1.25 |
| Contractual conversion rate | \$1.00 |
| Contractual term to maturity | 1.82 Years |
| Implied expected term to maturity | 1.82 Years |
| Market volatility: | |
| Range of volatilities | 96.0% - 154.0% |
| Equivalent volatilities | 120.1% |
| Risk free rates using zero coupon US Treasury Security rates | 0.29% - 0.68% |
| Equivalent market risk adjusted interest rates | 0.52% |

| Monaco loans | Loan one |
|-----------------------|-----------------|
| Forward cash flows: | |
| Face value | \$ 2,800,000 |
| Fair value | 3,617,858 |
| Difference (premium)* | \$ 817,858 |

* ASC 470-20-25-13 provides that if a convertible debt instrument is issued at a substantial premium, there is a presumption that such premium represents paid in capital. Since the total face amount of the new loans is \$2,800,000, we conclude that the \$817,858 was substantial and recorded that premium to additional paid-in capital.

Step 2: The old debt and call option are removed with any difference between the fair value of the new debt and the sum of the pre-modification carrying amount of the old debt and the call option's fair value recognized as a gain or loss upon extinguishment. The allocation is as follows:

| | Allocation |
|---|-------------------|
| Derivative liabilities (share purchase options) | \$ 1,456,825 |
| Monaco Loan (Old Debt) | 3,372,844 |
| Monaco Loan (New Debt) | (2,800,000) |
| APIC (Premium) | (817,858) |
| Difference to APIC* | \$ 1,211,811 |

* The difference between the fair value of the new debt and the sum of the pre-modification carrying amount of the old debt and the share purchase option's fair value represented a gain on extinguishment. ASC 470-50-40-2 indicates that debt restructuring with a related party may be in essence a capital transaction and as a result the gain upon

extinguishment was recognized in additional paid in capital.

Note 3 MINOSA

On March 11, 2015, in connection with a Stock Purchase Agreement, Minera del Norte, S.A. de C.V. (MINOSA) agreed to lend us up to \$14.75 million. The entire \$14.75 million was loaned in five advances from March 11 through June 30, 2015. The outstanding indebtedness bears interest at 8.0% percent per annum. The Promissory Note was amended on April 10, 2015 and on October 1, 2015 so that, unless otherwise converted as provided in the Note, the adjusted principal balance shall be due and payable in full upon written demand by MINOSA; provided that MINOSA agrees that it shall not demand payment of the adjusted principal balance earlier than the first to occur of: (i) 30 days after the date on which (x) SEMARNAT makes a determination with respect to the current application for the Manifestacion de Impacto Ambiental relating to phosphate deposit project, which determination is other than an approval or (y) Odyssey Marine Enterprises or any of its affiliates withdraws such application without MINOSA s prior written consent; (ii) termination by Odyssey of the Stock Purchase Agreement, dated March 11, 2015 (the Purchase Agreement), among Odyssey, MINOSA, and Penelope Mining, LLC (the Investor); (iii) the occurrence of an event of default under the Promissory Note; (iv) December 31, 2015; or (v) if and only if the Investor shall have terminated the Purchase Agreement pursuant to Section 8.1(d)(iii) thereof, March 30, 2016. This debt is classified as short-term debt. In connection with the loans, we granted MINOSA an option to purchase our 54% interest in Oceanica for \$40.0 million (the Oceanica Call Option). On March 11, 2016, the Oceanica Call has expired. Completion of the transaction requires amending the Company s articles of incorporation to (a) effect a reverse stock split, which was done on February 19, 2016, (b) adjusting the Company s authorized capitalization, which was also done on February 19, 2016, and (c) establishing a classified board of directors (collectively, the Amendments). The Amendments have been or will be set forth in certificates of amendment to the Company s articles of incorporation filed or to be filed with the Nevada Secretary of State. As collateral for

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the loan, we granted MINOSA a security interest in the Company's 54% interest in Oceanica. The outstanding principal balance of this debt was \$14.75 million at September 30, 2018. The maturity date of this note has been amended and matured on March 18, 2017. Per Note 6 MINOSA 2 below, the Minosa Purchase Agreement amended the due date of this note to a due date which may be no earlier than December 31, 2017, that is at least 60 days subsequent to written notice that Minosa intends to demand payment. See Note 6 MINOSA 2 for further qualifications. During December 2017, MINOSA transferred this debt to its parent company. For the three-months ended September 30, 2018 and 2017, interest expense in the amount of \$297,425 and \$297,425, respectively, was recorded.

Accounting considerations

We have accounted for this transaction as a financing transaction, wherein the net proceeds received were allocated to the financial instruments issued. Prior to making the accounting allocation, we evaluated for proper classification under ASC 480 *Distinguishing Liabilities from Equity* (ASC 480), ASC 815 *Derivatives and Hedging* (ASC 815) and ASC 320 *Property, Plant and Equipment* (ASC 320).

This debt agreement did not contain any embedded terms or features that have characteristics of derivatives. The Oceanica Call Option is considered a freestanding financial instrument because it is both (i) legally detachable and (ii) separately exercisable. The Oceanica Call Option did not fall under the guidance of ASC 480. Additionally, it did not meet the definition of a derivative under ASC 815 because the option has a fixed value of \$40.0 million and does not contain an underlying variable which is indicative of a derivative. This instrument is considered an option contract for a sale of an asset. The guidance applied in this case is ASC 360-20, which provides that in situations when a party lends funds to a seller and is given an option to buy the property at a certain date in the future, the loan shall be recorded at its present value using market interest rates and any excess of the proceeds over that amount credited to an option deposit account. If the option is exercised, the deposit shall be included as part of the sales proceeds; if not exercised, it shall be credited to income in the period in which the option lapses.

Based on the previous conclusions, we allocated the cash proceeds first to the debt at its present value using a market rate of 15%, which is management's estimate of a market rate loan for the Company, with the residual allocated to the Oceanica Call Option, as follows:

| | Tranche 1 | Tranche 2 | Tranche 3 | Tranche 4 | Tranche 5 | Total |
|--|--------------|--------------|--------------|--------------|--------------|---------------|
| Promissory Note | \$ 1,932,759 | \$ 5,826,341 | \$ 2,924,172 | \$ 1,960,089 | \$ 1,723,492 | \$ 14,366,853 |
| Deferred Income (Oceanica Call Option) | 67,241 | 173,659 | 75,828 | 39,911 | 26,509 | 383,148 |
| Proceeds | \$ 2,000,000 | \$ 6,000,000 | \$ 3,000,000 | \$ 2,000,000 | \$ 1,750,000 | \$ 14,750,001 |

The call option amount of \$383,148 represented a debt discount. This discount has been fully accreted up to face value using the effective interest method.

Note 4 Epsilon

On March 18, 2016 we entered into a Note Purchase Agreement (Purchase Agreement) with Epsilon Acquisitions LLC (Epsilon). Pursuant to the Purchase Agreement, Epsilon loaned us \$3.0 million in two installments of \$1.5 million on March 31, 2016 and April 30, 2016. The indebtedness bears interest at a rate of 10% per annum and

was due on March 18, 2017. We were also responsible for \$50,000 of the lender's out of pocket costs. This amount is included in the loan balance. In pledge agreements related to the loans, we granted security interests to Epsilon in (a) the 54 million cuotas (a unit of ownership under Panamanian law) of Oceanica Resources S. de R.L. (Oceanica) held by our wholly owned subsidiary, Odyssey Marine Enterprises, Ltd. (OME), (b) all notes and other receivables from Oceanica and its subsidiary owed to the Odyssey Pledgors, and (c) all of the outstanding equity in OME. Epsilon has the right to convert the outstanding indebtedness into shares of our common stock upon 75 days' notice to us or upon a merger, consolidation, third party tender offer, or similar transaction relating to us at the conversion price of \$5.00 per share, which represents the five-day volume-weighted average price of Odyssey's common stock for the five trading day period ending on March 17, 2016. On January 25, 2017, Epsilon provided notice to us that it would convert the initial \$3.0 million plus accrued interest per the Restated Note Purchase Agreement at \$5.00 per share in accordance with the terms of the agreement. The conversion and issuance of new shares was effective April 10, 2017 and included accrued interest of \$302,274 for a total 670,455 shares. Upon the occurrence and during the continuance of an event of default, the conversion price was to be reduced to \$2.50 per share. Following any conversion of the indebtedness, Penelope Mining LLC (an affiliate of Epsilon) (Penelope), may elect to reduce its commitment to purchase preferred stock of Odyssey under the Stock Purchase Agreement, dated as of March 11, 2015 (as amended, the Stock Purchase Agreement), among Odyssey, Penelope, and Minera del Norte, S.A. de C.V. (MINOSA) by the amount of indebtedness converted.

Pursuant to the Purchase Agreement (a) we agreed to waive our rights to terminate the Stock Purchase Agreement in accordance with the terms thereof until December 31, 2016, and (b) MINOSA agreed to extend, until March 18, 2017, the maturity date of the \$14.75 million loan extended by MINOSA to OME pursuant to the Stock Purchase Agreement. The indebtedness may be accelerated upon the occurrence of specified events of default including (a) OME's failure to pay any amount payable on the date due and payable; (b) OME or we fail to perform or observe any term, covenant, or agreement in the

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Purchase Agreement or the related documents, subject to a five-day cure period; (c) an event of default or material breach by OME, us or any of our affiliates under any of the other loan documents shall have occurred and all grace periods, if any, applicable thereto shall have expired; (d) the Stock Purchase Agreement shall have been terminated; (e) specified dissolution, liquidation, insolvency, bankruptcy, reorganization, or similar cases or actions are commenced by or against OME or any of its subsidiaries, in specified circumstances unless dismissed or stayed within 60 days; (f) the entry of judgment or award against OME or any of its subsidiaries in excess of \$100,000; and (g) a change in control (as defined in the Purchase Agreement) occurs.

In connection with the execution and delivery of the Purchase Agreement, we and Epsilon entered into a registration rights agreement pursuant to which we agreed to register new shares of our common stock with a formal registration statement with the Securities and Exchange Commission upon the conversion of the indebtedness.

Accounting considerations

We have accounted for this transaction as a financing transaction, wherein the net proceeds received were allocated to the financial instruments issued. Prior to making the accounting allocation, we evaluated the transaction for proper classification under ASC 480 *Distinguishing Liabilities from Equity* (ASC 480), ASC 815 *Derivatives and Hedging* (ASC 815) and ASC 320 *Property, Plant and Equipment* (ASC 320).

This debt agreement did not contain any embedded terms or features that have characteristics of derivatives. However, we were required to consider whether the hybrid contract embodied a beneficial conversion feature (BCF). The calculation of the effective conversion amount did result in a BCF because the effective conversion price was less than the Company's stock price on the date of issuance, therefore a BCF of \$96,000 was recorded. The BCF represents a debt discount which was amortized over the life of the loan.

Loan modification (October 1, 2016)

On October 1, 2016 Odyssey Marine Enterprises, Ltd. (OME), entered into an Amended and Restated Note Purchase Agreement (the Restated Note Purchase Agreement) with Epsilon Acquisitions LLC (Epsilon). In connection with the existing \$3.0 million loan agreement, Epsilon agreed to lend an additional \$3.0 million of secured convertible promissory notes. The convertible promissory notes bear an interest rate of 10.0% per annum and are due and payable on March 18, 2017. Epsilon has the right to convert all amounts outstanding under the Restated Note into shares of our common stock upon 75 days' notice to OME or upon a merger, consolidation, third party tender offer, or similar transaction relating to us at the applicable conversion price, which is (a) \$5.00 per share with respect to the \$3.0 million already advanced under the Restated Note and (b) with respect to additional advances under the Restated Note, the five-day volume-weighted average price of our common stock for the five trading day period ending on the trading day immediately prior to the date on which OME submits a borrowing notice for such advance.

Notwithstanding anything herein to the contrary, we shall not issue any of our common stock upon conversion of any outstanding tranche (other than the first \$3.0 million already advanced) under this Restated Note in excess of 1,388,769 shares of common stock. The additional tranches were issued as follows: (a) \$1,000,000 (Tranche 3) was issued on October 16, 2016 with a conversion price of \$3.52 per share; (b) \$1,000,000 (Tranche 4) was issued on November 15, 2016 with a conversion price of \$4.19 per share; and (c) \$1,000,000 (Tranche 5) was issued on December 15, 2016 with a conversion price of \$4.13 per share. During 2017, Epsilon assigned Tranche 4 and 5 totaling \$2,000,000 of this debt to MINOSA under the same terms as the original debt. See Note MINOSA 2 below for further detail.

As an inducement for the issuance of the additional \$3.0 million of promissory notes, we also delivered to Epsilon a common stock purchase warrant (the Warrant) pursuant to which Epsilon has the right to purchase up to 120,000

shares of our common stock at an exercise price of \$3.52 per share, which exercise price represents the five-day volume-weighted average price of our common stock for the five trading day period ending on the trading day immediately prior to the day on which the Warrant was issued. Epsilon may exercise the Warrant in whole or in part at any time during the period ending October 1, 2021. The Warrant includes a cashless exercise feature and provides that, if Epsilon is in default of its obligations to fund any advance pursuant to and in accordance with the Restated Note Purchase Agreement, then, thereafter, the maximum aggregate number of shares of common stock that may be purchased under the Warrant shall be the number determined by multiplying 120,000 by a fraction, (a) the numerator of which is the aggregate principal amount of advances that have been extended to the OME by Epsilon pursuant to the Restated Note Purchase Agreement on or after the date of the Warrant and prior to the date of such failure and (b) the denominator of which is \$3.0 million.

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We evaluated for proper classification under ASC 480 *Distinguishing Liabilities from Equity* (ASC 480), ASC 815 *Derivatives and Hedging* (ASC 815) and ASC 320 *Property, Plant and Equipment* (ASC 320). This debt agreement did not contain any embedded terms or features that have characteristics of derivatives. Additionally, the warrant agreement did not contain any terms or features that would preclude equity classification. We were required to consider whether the hybrid contract embodied a beneficial conversion feature (BCF). The allocations of the three additional tranches were as follows.

| | Tranche 3 | Tranche 4 | Tranche 5 |
|--|--------------|--------------|--------------|
| Promissory Note | \$ 981,796 | \$ 939,935 | \$1,000,000 |
| Beneficial Conversion Feature (BCF)* | 18,204 | 60,065 | |
| Proceeds | \$ 1,000,000 | \$ 1,000,000 | \$ 1,000,000 |

A beneficial conversion feature arises when the calculation of the effective conversion price is less than the Company's stock price on the date of issuance. Tranche 5 did not result in a BCF because the effective conversion price was greater than the company's stock price on the date of issuance.

The warrants fair values were calculated using Black-Scholes Merton (BSM). The aggregate fair value of the warrants totaled \$303,712. Since the warrants were issued as an inducement to Epsilon to issue additional debt, we recorded an inducement expense of \$303,712. For the three-months ended September 30, 2018 and 2017, interest expense in the amount of \$25,205 and \$47,123, respectively, was recorded.

Term Extension (March 21, 2017)

On March 21, 2017 we entered into an amendment to the Restated Note Purchase Agreement with Epsilon. In connection with the existing \$6.0 million loan agreement, the adjusted principal balance is due and payable in full upon the earlier of (i) written demand by Epsilon or (ii) such time as Odyssey or the guarantor pays any other indebtedness for borrowed money prior to its stated maturity date. As such the Company amortized the notes up to their face value of \$6,050,000 and they are classified as short-term. However, since Epsilon converted the first \$3.0 million into 670,455 of our common shares and assigned \$2.0 million to MINOSA, the current principal indebtedness at September 30, 2018 is \$1.0 million.

Note 5 SMOM

On May 3, 2017, we entered into a Loan and Security Agreement (Loan Agreement) with SMOM. Pursuant to the Loan Agreement, SMOM agreed to loan us up to \$3.0 million as evidenced by a convertible promissory note. As a commitment fee, we assigned the remaining 50% of our Neptune Minerals, LLC receivable to SMOM. This receivable had zero carrying value on our balance sheet and due to the age and collectability was deemed to have no fair value. The indebtedness bears interest at a rate of 10% per annum and matures on the second anniversary of this Loan Agreement which is May 3, 2019. On April 20, 2018, the loan was amended, and the principal amount of the Loan was increased to \$3,500,000. The loan balance at September 30, 2018 is \$3.5 million. The holder has the option to convert up to \$2.0 million of any unpaid principal and interest into up to 50% of the equity interest held by Odyssey in Aldama Mining Company, S.de R.L. de C.V. which is a wholly owned subsidiary of ours. The conversion value of \$1.0 million equates to 10% of the equity interest in Aldama. If the holder elects to acquire the entire 50% of the

equity interest, the Holder has to pay the deficiency in cash. As additional consideration for the loan, the holder has the right to purchase from Odyssey all or a portion of the equity collateral (up to the 50% of the equity interest of Aldama) for the option consideration (\$1.0 million for each 10% of equity interests) during the period that is the later of (i) one year after the maturity date and (ii) one year after the loan is repaid in full, the expiration date. The lender may also choose to extend the expiration date annually by paying \$500,000 for each year extended. For the three-months ended September 30, 2018 and 2017, interest expense in the amount of \$88,219 and \$75,616, respectively, was recorded.

Accounting considerations

We have accounted for this transaction as a financing transaction, wherein the net proceeds received were allocated to the financial instruments issued. Prior to making the accounting allocation, we evaluated for proper classification under ASC 480 *Distinguishing Liabilities from Equity* (ASC 480), ASC 815 *Derivatives and Hedging* (ASC 815) and ASC 320 *Property, Plant and Equipment* (ASC 320).

This debt agreement did not contain any embedded terms or features that have characteristics of derivatives. However, we were required to consider whether the hybrid contract embodied a beneficial conversion feature (BCF). The calculation of the effective conversion amount did not result in a BCF because the effective conversion price was equal to the Company's stock price on the date of issuance.

Note 6 MINOSA 2

On August 10, 2017, we entered into a Note Purchase Agreement (the Minosa Purchase Agreement) with MINOSA. Pursuant to the Minosa Purchase Agreement, whereas MINOSA will loan Enterprises up to \$3.0 million. During 2017, we borrowed \$2.7 million against this facility and Epsilon assigned \$2.0 million of its debt to MINOSA. At September 30, 2018, the outstanding principal balance, including the Epsilon assignment, is \$5.05 million. The indebtedness is evidenced by a secured convertible promissory note (the Minosa Note) and bears interest at a rate equal to 10.0% per annum. Unless otherwise converted as described below, the entire outstanding principal balance under this Minosa Note and all accrued interest and fees are due and payable upon written demand by MINOSA; provided, that MINOSA agreed not make a demand for payment prior to the earlier of (a) an event of default (as defined in the Minosa Note) or (b) a date, which may be no earlier than December 31, 2017, that is at least 60 days subsequent to written notice that MINOSA intends to demand payment. MINOSA has not provided

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any notice they intend to issue a payment demand notice. We unconditionally and irrevocably guaranteed all of the obligations under the Minosa Purchase Agreement and the Minosa Note. MINOSA has the right to convert all amounts outstanding under the Minosa Note into shares of our common stock upon 75 days' notice to us or upon a merger, consolidation, third party tender offer, or similar transaction relating to us at the conversion price of \$4.41 per share. During December 2017, MINOSA transferred this debt to its parent company.

This debt agreement did not contain any embedded terms or features that have characteristics of derivatives. However, we were required to consider whether the hybrid contract embodied a beneficial conversion feature (BCF). The calculation of the effective conversion amount did result in a BCF because the effective conversion price was less than the Company's stock price on the date of issuance, therefore a BCF of \$62,925 was recorded. As of December 31, 2017, all of the BCF has been accreted to the income statement. The BCF represented a debt discount that was amortized over the life of the loan. For the three-months ended September 30, 2018, interest expense in the amount of \$127,288 was recorded.

As previously reported, Epsilon loaned us an aggregate of \$6.0 million pursuant to an amended and restated convertible promissory Minosa Note, dated as of March 18, 2016, as further amended and restated on October 1, 2016 (the Epsilon Note). Since then, Epsilon has assigned \$2.0 million of the indebtedness under the Epsilon Note to MINOSA. Along with Epsilon, we entered into a second amended and restated convertible promissory note (the Second AR Epsilon Note), which further amends and restates the Epsilon Note. The stated principal amount of the Second AR Epsilon Note is \$1.0 million (which reflects the outstanding principal balance remaining after giving effect to Epsilon's (x) previous assignment of \$2.0 million of the indebtedness under the Epsilon Note to MINOSA and (y) conversion of \$3.0 million of the indebtedness under the Epsilon Note into shares of our common stock). The Second AR Epsilon Note further provides that the outstanding principal balance under the Second AR Epsilon Note and all accrued interest and fees are due and payable upon written demand by Epsilon; provided, that Epsilon agreed not make a demand for payment prior to the earlier of (a) an event of default (as defined in the Second AR Epsilon Note) or (b) a date, which may be no earlier than December 31, 2017, that is at least 60 days subsequent to written notice that MINOSA intends to demand payment.

Upon the closing of the Minosa Purchase Agreement, along with MINOSA, and Penelope Mining LLC, an affiliate of Minosa (Penelope), executed and delivered a Second Amended and Restated Waiver and Consent and Amendment No. 5 to Promissory Note and Amendment No. 2 to Stock Purchase Agreement (the Second AR Waiver). Pursuant to the Second AR Waiver, Minosa and Penelope consented to the transactions contemplated by the Minosa Purchase Agreement and waived any breach of any representation or warranty and violation of any covenant in the Stock Purchase Agreement, dated as of March 11, 2015, as amended April 10, 2015 (the SPA), by and among us, Minosa, and Penelope, arising out of the Company's execution and delivery of the Minosa Purchase Agreement and the consummation of the transactions contemplated thereby. Pursuant to the Second AR Waiver, we also waived, and agreed not to exercise our right to terminate the SPA pursuant to Section 8.1(c)(ii) thereto, both (a) until after the earlier of (i) July 1, 2018, (ii) the date that MINOSA fails, refuses, or declines to fund (or otherwise does not fund) any subsequent loan under the Minosa Purchase Agreement and (iii) demand is made for repayment of all or any part of the indebtedness outstanding under the Minosa Note, the Second AR Epsilon Note, or the Promissory Note, dated as of March 11, 2015, as amended (the SPA Note), in the principal amount of \$14.75 million that was issued by us to MINOSA under the SPA, and (b) unless on or prior to such termination, the Notes are paid in full.

The Second AR Waiver (x) further provides that following any conversion of the indebtedness evidenced by the Minosa Note, Penelope may elect to reduce its commitment to purchase our preferred stock under the SPA by the amount of indebtedness converted by MINOSA and (y) amends the SPA Note to provide that the outstanding principal balance under the SPA Note and all accrued interest and fees are due and payable upon written demand by MINOSA; provided, that Minosa agreed not make a demand for payment prior to the earlier of (a) an event of default

(as defined in the Minosa Note) or (b) a date, which may be no earlier than December 31, 2017, that is at least 60 days subsequent to written notice that Minosa intends to demand payment.

The obligations under the Minosa Note may be accelerated upon the occurrence of specified events of default including (a) our failure to pay any amount payable under the Minosa Note on the date due and payable; (b) our failure to perform or observe any term, covenant, or agreement in the Minosa Note or the related documents, subject to a five-day cure period; (c) the occurrence and expiration of all applicable grace periods, if any, of an event of default or material breach by us under any of the other loan documents; (d) the termination of the SPA; (e) commencement of certain specified dissolution, liquidation, insolvency, bankruptcy, reorganization, or similar cases or actions by or against us, in specified circumstances unless dismissed or stayed within 60 days; (f) the entry of a judgment or award against us in excess of \$100,000; and (g) the occurrence of a change in control (as defined in the Minosa Note).

Pursuant to second amended and restated pledge agreements (the Second AR Pledge Agreements) entered into by us in favor of MINOSA, we pledged and granted security interests to MINOSA in (a) the 54 million cuotas (a unit of ownership under Panamanian law) of Oceanica held by us, (b) all notes and other receivables from Oceanica and its subsidiary owed to us, and (c) all of the outstanding equity in our wholly owned subsidiary, Odyssey Marine Enterprises, Ltd.

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In connection with the execution and delivery of the Minosa Purchase Agreement, Odyssey and MINOSA entered into a second amended and restated registration rights agreement (the **Second AR Registration Rights Agreement**) pursuant to which Odyssey agreed to register the offer and sale of the shares (the **Conversion Shares**) of our common stock issuable upon the conversion of the indebtedness evidenced by the Minosa Note. Subject to specified limitations set forth in the Second AR Registration Rights Agreement, including that we are eligible to use Form S-3, the holder of the Minosa Note can require us to register the offer and sale of the Conversion Shares if the aggregate offering price thereof (before any underwriting discounts and commissions) is not less than \$3.0 million. In addition, we agreed to file a registration statement relating to the offer and sale of the Conversion Shares on a continuous basis promptly (but in no event later than 60 days after) after the conversion of the Minosa Note into the Conversion Shares and to thereafter use its reasonable best efforts to have such registration statement declared effective by the Securities and Exchange Commission.

Note 7 Monaco 2018

During the period ended March 31, 2018, Monaco advanced us \$1.0 million that was applied to a loan agreement that was executed on April 20, 2018. Monaco also agreed to treat \$99,366 of back rent owed by us to Monaco as part of this loan resulting in an aggregate principal amount of \$1,099,366 at September 30, 2018. The indebtedness bears interest at 10.0% percent per year. All principal and any unpaid interest is to be payable on the first anniversary of this agreement, April 20, 2019. This debt is secured by cash proceeds, if any, from our future shipwreck projects we have contracted with Magellan. As additional consideration, their share purchase option expiration date, as discussed in Note 1 Monaco 2014 and Note 2 Monaco 2016 above, has been extended from 30 days to seven months after the note becomes paid in full. For the three-months ended September 30, 2018, interest expense in the amount of \$28,498 was recorded.

Note 8 Promissory note

On July 12, 2018, we entered into a Note and Warrant Purchase Agreement (the **Purchase Agreement**) with two individuals (the **Lenders**), one of whom holds in excess of 5.0% of our outstanding common stock. Pursuant to the Purchase Agreement, the Lenders agreed to lend an aggregate of \$1,050,000 to us, which was advanced in three tranches on July 12, 2018, \$500,000, August 17, 2018, \$300,000 and October 4, 2018, \$250,000. The indebtedness is evidenced by secured convertible promissory notes (the **Notes**) and bears interest at a rate equal to 8.0% per annum. Unless otherwise converted as described below, the entire outstanding principal balance under the Notes and all accrued interest and fees are due and payable on July 12, 2019.

At any time after to the first to occur of (a) a sale by us of additional Notes or (b) September 12, 2018, the Lenders have the right to convert all amounts outstanding under the Notes into either (x) shares of our common stock at the conversion rate of \$8.00 per share, (y) \$500,000 of the indebtedness owed by Exploraciones Oceanicas S. de R. L. de C.V. (**ExO**) to Oceanica Marine Operations, S.R.L. (**OMO**), or (z) a 7.5% interest in Aldama Mining Company, S. de R. L. de C.V. (**Aldama**). We indirectly hold a controlling interest in ExO; OMO and Aldama are indirect, wholly owned subsidiaries of ours.

In connection with the issuance and sale of the Notes, we issued warrants to purchase common stock (the **Warrants**) to the Lenders. The Lenders may exercise the Warrants to purchase an aggregate of 50,000 shares of our common stock at an exercise price of \$12.00 per share. The Warrants are exercisable during the period commencing on the date on which the Notes are converted into shares of our common stock and ending on July 12, 2021.

Pursuant to a Pledge Agreement, dated as of July 12, 2018 (the **Pledge Agreement**), our obligations under the Notes are secured by a pledge of a portion of Odyssey's ownership interest in Aldama and another entity.

Pursuant to a Registration Rights Agreement (the Rights Agreement) among us and the Lenders, we granted the Lenders piggy-back registration rights with respect to the shares of our common stock issuable upon conversion of the Notes and the exercise of the Warrants.

The Purchase Agreement, the Notes, the Warrants, the Pledge Agreement, and the Rights Agreement include representations and warranties and other covenants, conditions, and other provisions customary for comparable transactions.

We have accounted for this transaction as a financing transaction, wherein the net proceeds received were allocated to the financial instruments issued. Prior to making the accounting allocation, we evaluated the transaction for proper classification under ASC 480 Distinguishing Liabilities from Equity (ASC 480), ASC 815 Derivatives and Hedging (ASC 815).

We determined that the debt achieved conventional convertible status and that the equity conversion option was in the money at inception which required the calculation of a beneficial conversion feature (BCF). The fair value of the warrants and BCF component exceeded the amount of proceeds, therefore, they were limited to the cash proceeds of \$800,000 at September 30, 2018. As a result, there was no value allocated to the debt at inception. The debt is being accreted to face value over its term using the effective interest method. For the three months ended September 30, 2018, we recorded \$20,403 in interest expense associated with the accretion of the debt discount and the carrying value of the notes at September 30, 2018 was \$20,403. Therefore, the book balance of this debt at September 30, 2018 is \$20,403 and the actual face value is \$1.050 million.

Table of Contents**NOTE I STOCKHOLDERS EQUITY (DEFICIT)****Convertible Preferred Stock**

On March 11, 2015, we entered into a Stock Purchase Agreement (the *Purchase Agreement*) with Penelope Mining LLC (the *Investor*), and, solely with respect to certain provisions of the *Purchase Agreement*, Minera del Norte, S.A. de C.V. (the *Lender*). The *Purchase Agreement* provides for the Company to issue and sell to the *Investor* shares of the Company's preferred stock in the amounts set forth in the following table (numbers have been adjusted for the February 2016 reverse stock split):

| Convertible Preferred Stock | Shares | Price Per Share | Total Investment |
|------------------------------------|---------------|------------------------|-------------------------|
| Series AA-1 | 8,427,004 | \$ 12.00 | \$ 101,124,048 |
| Series AA-2 | 7,223,145 | \$ 6.00 | 43,338,870 |
| | 15,650,149 | | \$ 144,462,918 |

The *Investor*'s option to purchase the Series AA-2 shares is subject to the closing price of the Common Stock on the NASDAQ market having been greater than or equal to \$15.12 per share for a period of twenty (20) consecutive business days on which the NASDAQ market is open.

The closing of the sale and issuance of shares of the Company's preferred stock to the *Investor* is subject to certain conditions, including the Company's receipt of required approvals from the Company's stockholders, the receipt of regulatory approval, performance by the Company of its obligations under the *Stock Purchase Agreement*, the listing of the underlying common stock on the NASDAQ Stock Market and the *Investor*'s satisfaction, in its sole discretion, with the viability of certain undersea mining projects of the Company. This transaction received stockholders' approval on June 9, 2015. Completion of the transaction requires amending the Company's articles of incorporation to (a) effect a reverse stock split, which was done on February 19, 2016, (b) adjusting the Company's authorized capitalization, which was also done on February 19, 2016, and (c) establishing a classified board of directors (collectively, the *Amendments*). The *Amendments* have been or will be set forth in certificates of amendment to the Company's articles of incorporation filed or to be filed with the Nevada Secretary of State.

Series AA Convertible Preferred Stock Designation

The *Purchase Agreement* provides for the issuance of up to 8,427,004 shares of Series AA-1 Convertible Preferred Stock, par value \$0.0001 per share (the *Series AA-1 Preferred*) and 7,223,145 shares of Series AA-2 Convertible Preferred Stock, par value \$0.0001 per share (the *Series AA-2 Preferred*), subject to stockholder approval which was received on June 9, 2015 and satisfaction of other conditions. Significant terms and conditions of the Series AA Preferred are as follows:

Dividends. If and when the Company declares a dividend and any other distribution (including, without limitation, in cash, in capital stock (which shall include, without limitation, any options, warrants or other rights to acquire capital stock) of the Company, then the holders of each share of Series AA Preferred Stock are entitled to receive, a dividend or distribution in an amount equal to the amount of dividend or distribution received by the holders of common stock for which such share of Series AA Preferred Stock is convertible.

Liquidation Preference. The Liquidation Preference on each share of Series AA Preferred Stock is its Stated Value plus accretion at the rate of 8% per annum compounded on each December 31 from the date of issue of such share until the date such share is converted. For any accretion period which is less than a full year, the Liquidation Preference shall accrete in an amount to be computed on the basis of a 360-day year of twelve 30-day months and the actual number of days elapsed.

Voting Rights. The holders of Series AA Preferred will be entitled to one vote for each share of common stock into which the Series AA Preferred is convertible and will be entitled to notice of meetings of stockholders.

Conversion Rights. At any time after the Preferred Shares have been issued, any holder of shares of Series AA Preferred may convert any or all of the shares of preferred stock into one fully paid and non-assessable share of Common Stock.

Adjustments to Conversion Rights. If Odyssey pays a dividend or makes a distribution on its common stock in shares of common stock, subdivides its outstanding common stock into a greater number of shares, or combines its outstanding common stock into a smaller number of shares, or if there is a reorganization, or a merger or consolidation of Odyssey with or into any other entity which results in a conversion, exchange, or cancellation of the common stock, or a sale of all or substantially all of

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Odyssey's assets, then the conversion rights described above will be adjusted appropriately so that each holder of Series AA Preferred will receive the securities or other consideration the holder would have received if the holder's Series AA Preferred had been converted before the happening of the event. The conversion price in effect from time to time is also subject to downward adjustment if we issue or sell shares of common stock for a purchase price less than the conversion price or if we issue or sell shares convertible into or exercisable for shares of common stock with a conversion price or exercise price less than the conversion price for the Series AA Preferred.

Accounting considerations

As stated above, the issuance of the Series AA Convertible Preferred Stock is subject to certain contingencies. No accounting treatment determination is required until these contingencies are met and the Series AA Convertible Preferred Stock has been issued. However, we have analyzed the instrument to determine the proper accounting treatment that will be necessary once the instruments have been issued.

ASC 480 generally requires liability classification for financial instruments that are certain to be redeemed, represent obligations to purchase shares of stock or represent obligations to issue a variable number of common shares. We concluded that the Series AA Preferred was not within the scope of ASC 480 because none of the three conditions for liability classification was present.

ASC 815 generally requires the analysis of embedded terms and features that have characteristics of derivatives to be evaluated for bifurcation and separate accounting in instances where their economic risks and characteristics are not clearly and closely related to the risks of the host contract. However, in order to perform this analysis, we were first required to evaluate the economic risks and characteristics of the Series AA Convertible Preferred Stock in its entirety as being either akin to equity or akin to debt. Our evaluation concluded that the Series AA Convertible Preferred Stock was more akin to an equity-like contract largely due to the fact that most of its features were participatory in nature. As a result, we concluded that the embedded conversion feature is clearly and closely related to the host equity contract and will not require bifurcation and liability classification.

The option to purchase the Series AA-2 Convertible Preferred Stock was analyzed as a freestanding financial instrument and has terms and features of derivative financial instruments. However, in analyzing this instrument under applicable guidance it was determined that it is both (i) indexed to the Company's stock and (ii) meet the conditions for equity classification.

Warrants

In conjunction with the Restated Note Purchase Agreement related to Note 4 Epsilon in NOTE H, we issued warrants tied to each of the three tranches of debt issued. A total of 120,000 warrants were granted. These warrants have an expiration date of October 1, 2021. All of these 120,000 warrants have an exercise price of \$3.52. Each single warrant is exercisable to purchase one share of our common stock.

In conjunction with the Note and Warrant Purchase Agreement related to Note 8 Operating loan 2018 in NOTE H, we issued warrants to purchase 50,000 shares of common stock in connection with the notes that were issued. These warrants have an expiration date of July 21, 2021. These warrants have an exercise price of \$12.00 and are convertible into a comparable amount of our common stock.

Stock-Based Compensation

We have two stock incentive plans. The first is the 2005 Stock Incentive Plan that expired in August 2015. After the expiration of this plan, equity instruments cannot be granted but this plan shall continue in effect until all outstanding awards have been exercised in full or are no longer exercisable and all equity instruments have vested or been forfeited.

On June 9, 2015, our shareholders approved our 2015 Stock Incentive Plan (the Plan) that was adopted by our Board of Directors (the Board) on January 2, 2015, which is the effective date. The plan expires on the tenth anniversary of the effective date. The Plan provides for the grant of incentive stock options, non-qualified stock options, restricted stock awards, restricted stock units and stock appreciation rights. This plan was initially capitalized with 450,000 shares that may be granted. The Plan is intended to comply with Section 162(m) of the Internal Revenue Code, which stipulates that the maximum aggregate number of Shares with respect to one or more Awards that may be granted to any one person during any calendar year shall be 83,333, and the maximum aggregate amount of cash that may be paid in cash to any person during any calendar year with respect to one or more Awards payable in cash shall be \$2,000,000. The original maximum number of shares that were to be used for Incentive Stock Options (ISO) under the Plan was 450,000. During our June 2016 stockholders meeting, the stockholders approved the addition of 200,000 incremental shares to the Plan. With respect to each grant of an ISO to a participant who is not a ten percent stockholder, the exercise price shall not be less than the fair market value of a share on the date the ISO is granted. With respect to each grant of an ISO to a participant who is a ten percent stockholder, the exercise price shall not be less than one

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hundred ten percent (110%) of the fair market value of a share on the date the ISO is granted. If an award is a non-qualified stock option (NQSO), the exercise price for each share shall be no less than (1) the minimum price required by applicable state law, or (2) the fair market value of a share on the date the NQSO is granted, whichever price is greatest. Any award intended to meet the performance based exception must be granted with an exercise price not less than the fair market value of a share determined as of the date of such grant.

Share-based compensation expense recognized during the period is based on the value of the portion of share-based payment awards that is ultimately expected to vest. As share-based compensation expense recognized in the statement of operations is based on awards ultimately expected to vest, it can be reduced for estimated forfeitures. The ASC topic Stock Compensation requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. The share-based compensation charged against income for the three and nine-month periods ended September 30, 2018 and 2017 as \$103,904 and \$208,496 and \$311,712 and \$625,489, respectively.

We did not grant employee stock options in the three-month periods ended September 30, 2018 and 2017. When granted, the weighted average fair value of stock options granted is determined using the Black-Scholes option-pricing model, which values options based on the stock price at the grant date, the expected life of the option, the estimated volatility of the stock, the expected dividend payments, and the risk-free interest rate over the life of the option. The Black-Scholes option valuation model was developed for estimating the fair value of traded options that have no vesting restrictions and are fully transferable. Because option valuation models require the use of subjective assumptions, changes in or variations from these assumptions can materially affect the fair value of the options.

NOTE J CONCENTRATION OF CREDIT RISK

We maintain the majority of our cash at one financial institution. At September 30, 2018, our uninsured cash balance was \$47,946.

We do not currently have any debt obligations with variable interest rates.

NOTE K REVENUE PARTICIPATION RIGHTS

The Company's participating revenue rights consisted of the following at:

| | September 30, 2018 | December 31, 2017 |
|--|-------------------------------|------------------------------|
| <i>Cambridge</i> project | \$ 825,000 | \$ 825,000 |
| <i>Seattle</i> project | 62,500 | 62,500 |
| Galt Resources, LLC (HMS <i>Victory</i> project) | 3,756,250 | 3,756,250 |
| Total revenue participation rights | \$ 4,643,750 | \$ 4,643,750 |

***Cambridge* project**

We previously sold Revenue Participation Certificates (RPCs) that represent the right to share in our future revenues derived from the *Cambridge* project, which is also referred to as the HMS *Sussex* shipwreck project. The *Cambridge* RPC units constitute restricted securities.

Each \$50,000 convertible *Cambridge* RPC entitles the holder to receive a percentage of the gross revenue received by us from the *Cambridge* project, which is defined as all cash proceeds payable to us as a result of the *Cambridge* project, less any amounts paid to the British Government or their designee(s); provided, however, that all funds received by us to finance the project are excluded from gross revenue. The *Cambridge* project holders are entitled to 100% of the first \$825,000 of gross revenue, 24.75% of gross revenue from \$4 - 35 million, and 12.375% of gross revenue above \$35 million generated by the project.

***Seattle* project**

In a private placement that closed in September 2000, we sold units consisting of *Republic* Revenue Participation Certificates and Common Stock. Each \$50,000 unit entitled the holder to 1% of the gross revenue generated by the now named *Seattle* project (formerly referred to as the *Republic* project), and 100,000 shares of Common Stock. Gross revenue is defined as all cash proceeds payable to us as a result of the *Seattle* project, excluding funds received by us to finance the project.

The participating rights balance will be amortized under the units of revenue method once management can reasonably estimate potential revenue for each of these projects. The RPCs for the *Cambridge* and *Seattle* projects do not have a termination date, therefore these liabilities will be carried on the books until revenue is recognized from these projects or we permanently abandon either project.

Table of Contents**Galt Resources, LLC**

In February 2011, we entered into a project syndication deal with Galt Resources LLC (Galt) for which they invested \$7,512,500 representing rights to future revenues of any one project Galt selected prior to December 31, 2011. If the project is successful and generates sufficient proceeds, Galt will recoup their investment plus three times the investment. Galt's investment return will be paid out of project proceeds. Galt will receive 50% of project proceeds until this amount is recouped. Thereafter, they will share in additional net proceeds of the project at the rate of 1% for every million invested. Subsequent to the original syndication deal, we reached an agreement permitting Galt to bifurcate their selection between two projects, the SS *Gairsoppa* and HMS *Victory* with the residual 1% on additional net proceeds assigned to the HMS *Victory* project only. The bifurcation resulted in \$3,756,250 being allocated to each of the two projects. Therefore, Galt will receive 7.5125% of net proceeds from the HMS *Victory* project after they recoup their investment of \$3,756,250 plus three times the investment. Galt has been paid in full for their share of the *Gairsoppa* project investment. There are no future payments remaining due to Galt for the *Gairsoppa* project. Based on the timing of the proceeds earmarked for Galt, the relative corresponding amount of Galt's revenue participation right of \$3,756,250 was amortized into revenue in 2012 based upon the percent of Galt-related proceeds from the sale of silver as a percentage of total proceeds that Galt earned under the revenue participation agreement (\$15.0 million). There is no expiration date on the Galt deal for the HMS *Victory* project. If the archaeological excavation of the shipwreck is performed and insufficient proceeds are obtained, then the deferred income balance will be recognized as other income. If the archaeological excavation of the shipwreck is performed and sufficient proceeds are obtained, then the deferred income balance will be recognized as revenue.

NOTE L OTHER DEBT

We currently owe a vendor approximately \$0.6 million as a trade payable. This trade payable bears a simple annual interest rate of 12%. As collateral, they were granted a primary lien on certain of our equipment. The carrying value of this equipment is zero. This agreement matured in August of 2018. During the three-months ended June 30, 2018, we sold various marine equipment to Magellan for \$1.0 million and the assumption of this vendor's trade payable and accrued interest, however, we remain as guarantor on this trade payable. We recorded a gain of approximately \$0.9 million from the cash proceeds alone. Included in this equipment is the equipment noted above the vendor has a primary lien on. The vendor has consented to Magellan's assumption of this debt but did not release us from our obligations. If Magellan defaults and the vendor forecloses on this equipment currently in possession of Magellan we then have a contingent liability to Magellan in the amount of \$0.5 million for two of the key assets.

NOTE M SUBSEQUENT EVENT

On October 31, 2018 we and certain investors entered into a securities purchase agreement pursuant to which we agreed to sell an aggregate of 700,000 shares of our common stock and warrants to purchase up to 700,000 shares of common stock to such investors. The common stock and warrants will be sold in units, with each unit consisting of one share of common stock and a warrant to purchase one shares of common stock. The purchase price for each unit is \$7.155.

The warrants have an exercise price of \$7.155 per share of common stock and will be exercisable in accordance with their terms at any time on or before the close of business on November 2, 2023.

The net proceeds to us from the registered direct public offering, after deducting placement agent fees and its estimated offering expenses, and excluding the proceeds, if any, from the exercise of the warrants issued in the offering, are expected to be approximately \$4.6 million. We agreed to pay the placement agent a fee equal to 8.0% of the gross proceeds of the sale of the units sold by them in the offering. We also agreed to reimburse the placement

agent for up to \$25,000 of incurred costs by it in connection with this offering.

The transaction closed on November 2, 2018, subject to satisfaction of customary closing conditions.

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ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion will assist in the understanding of our financial condition and results of operations. The information below should be read in conjunction with the financial statements, the related notes to the financial statements and our Annual Report on Form 10-K for the year ended December 31, 2017.

In addition to historical information, this discussion contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 regarding the Company's expectations concerning its future operations, earnings and prospects. On the date the forward-looking statements are made, the statements represent the Company's expectations, but the expectations concerning its future operations, earnings and prospects may change. The Company's expectations involve risks and uncertainties and are based on many assumptions that the Company believes to be reasonable, but such assumptions may ultimately prove to be inaccurate or incomplete, in whole or in part. Accordingly, there can be no assurances that the Company's expectations and the forward-looking statements will be correct. Please refer to the Company's most recent Annual Report on Form 10-K for a description of risk factors that could cause actual results to differ from the expectations stated in this discussion. Odyssey disclaims any obligation to update any of these forward-looking statements except as required by law.

Operational Update

Additional information regarding our announced projects can be found in our Annual Report on Form 10-K for the year ended December 31, 2017. Only projects material in nature or with material status updates are discussed below. We may have other projects in various stages of planning or execution that may not be disclosed for security or legal reasons until considered appropriate by management or required by law.

We have numerous marine projects in various stages of development around the world for ourselves and on behalf of clients. In order to protect the targets of our planned survey, search or recovery operations, we may defer disclosing specific information relating to our projects until we have located shipwrecks, mineral deposits or other potentially valuable sources of interest and determined a course of action to protect our property rights and those of our clients. With respect to mineral deposits, SEC Industry Guide 7 outlines the Commission's basic mining disclosure policy and what information may be disclosed in public filings. With respect to shipwrecks, the identity of the ship may be indeterminable and the nature and amount of cargo may be uncertain, thus before completing any recovery, specific information about the project may be unavailable. If work is conducted on behalf of a client, release of information may be limited by the client.

We own specialized marine services survey and recovery equipment that we mobilize for customers on leased vessels. This proprietary equipment is operated by our technical team when conducting operations worldwide. This allowed us to launch the CLIO Offshore services program, increasing the utilization and leverage of the technical team and assets between our projects. CLIO Offshore is focused on third-party survey, remotely operated vehicle (ROV) and recovery projects down to 6,000 meters in depth. This program also offers services for deep-ocean resource explorations, ship and airplane wreck explorations, archaeological recovery and conservation and insurance documentation.

Subsea Mineral Mining Exploration Projects

Oceanica Resources, S. de R.L.

In February 2013, we disclosed Odyssey's ownership interest, through Odyssey Marine Enterprises, Ltd., a wholly owned Bahamian company (Enterprises), in Oceanica Resources, S. de R.L., a Panamanian company (Oceanica), and

Exploraciones Oceanicas, S. De R.L. De C.V. (ExO), a subsidiary of Oceanica. ExO is in the business of mineral exploration and controls exclusive permits in an area in Mexican waters that contains a large amount of phosphate mineralized material. Phosphate is a key ingredient of fertilizers. In March 2014, Odyssey completed a first NI 43-101 compliant report on the deposit and periodically updates this report. This deposit is currently our main mineral project, and success of this project is important to Odyssey's future. Odyssey believes that this deposit contains a large amount of high-grade phosphate rock that can be extracted on a financially attractive basis (essentially a dredging operation) and that the product will be attractive to Mexican and other world producers of fertilizers.

ExO has conducted extensive scientific testing of the mineralized phosphate material and of the environmental impact of recovering the mineralized material from the seafloor. ExO has been working with leading environmental experts on the impact assessment and permitting process, with Royal Boskalis Westminster N.V on the extraction and processing program, and with JPMorgan and the AHMSA group of companies on the strategic growth alternatives.

ExO applied for and was granted additional mining concession areas by the Mexican government. These additional areas are adjacent to the zones with the highest concentration of mineralization in the original mining concession area. ExO also relinquished certain parts of the granted concession areas where the mineral concentration levels were less attractive for mining purposes.

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In September 2014, ExO reported that the EIA for proposed dredging and recovery of phosphate sands from the deposit had been filed with the Mexican Secretary of Environment and Natural Resources (SEMARNAT). Approval of this EIA application is needed in order to obtain an environmental permit to begin the commercial extraction of phosphate from the tenement area. In November 2014, SEMARNAT held a public hearing on the EIA in Mexico and asked supplemental questions to ExO on its EIA application. In full compliance with the SEMARNAT process, a response to the questions was filed in March 2015. In addition to providing supplemental scientific information and studies, the response included additional mitigation and economic considerations to reinforce ExO's commitment to being good corporate citizens and stewards of the environment. In June 2015, ExO withdrew its EIA application to allow additional time for review and regional briefings. The EIA was re-submitted in June 2015, and additional information was filed in August 2015. A public hearing on this application was conducted by SEMARNAT on October 8, 2015, additional questions were received from SEMARNAT in November 2015, and ExO's responses to the questions were filed with SEMARNAT on December 3, 2015. On April 8, 2016, SEMARNAT denied the application for this environmental license as presented.

On March 21, 2018, the Superior Court of the Federal Court of Administrative Justice in Mexico ruled unanimously in favor of our subsidiary, ExO, nullifying the April 2016 denial of the environmental license application for the extraction of phosphate sand from ExO's deposit. In May 2018, after the statutory period for appeal of the ruling had passed with no appeals filed, the Mexican court published the full ruling on their website.

On October 18, 2018 we were notified that SEMARNAT repeated their refusal to issue the environmental approval for the phosphate deposit controlled by ExO in opposition to the unanimous ruling and Court Order issued by Mexico's Federal Court of Administrative Justice. On October 22, 2018, legal counsel for ExO filed an action before the Court requesting sanctions be imposed upon SEMARNAT and a requirement for SEMARNAT to promptly issue the permit as directed in the Court Order.

To move to the next phase of development of the deposit, Odyssey and its subsidiaries need the issuance of this environmental permit. Odyssey and its subsidiary ExO continue to work with our Mexican partners to obtain the necessary environmental permission as noted in the Court's ruling.

Enterprises initially held 77.6 million of Oceanica's 100.0 million outstanding shares. Subsequently, Enterprises sold and transferred to Mako Resources, LLC (Mako) 15.0 million shares for a purchase price of \$1.00 per share, or \$15.0 million, and granted Mako options to purchase an additional 15.0 million shares at the purchase price of \$2.50 per share before December 31, 2013.

In June 2013, Mako agreed to exercise a portion of these options to purchase 8.0 million shares at a reduced exercise price of \$1.25 per share. As part of Odyssey's strategy to maintain a control position in Oceanica, in parallel with the early exercise, Enterprises purchased 1.0 million shares of Oceanica from another Oceanica shareholder at \$1.25 per share. This transaction also provided Odyssey voting rights on an additional 3.0 million shares of Oceanica held by such other Oceanica shareholder so long as there is no change in control of Odyssey.

An option to purchase an additional 1.0 million shares was exercised by Mako on December 30, 2013 for a total amount of \$2.5 million. The options on the remaining 6.0 million shares were extended in 2014 and 2015. On March 11, 2015, these options were terminated in exchange for the issuance of 0.3 million shares (post-split) of our common stock to Mako. In August 2014, we entered into a loan agreement with Monaco Financial, LLC, a marketing partner. Under terms of that agreement, Monaco may convert all or part of the loan balance into Oceanica shares held by us to purchase Oceanica shares from us at a pre-defined price (See NOTE H). This loan was amended on December 10, 2015 and again in March 2016, extending the maturity date of the loan to April 1, 2018 and allowing Monaco to retain the call option on the \$10 million worth of Oceanica shares held by Odyssey until April 1, 2018. In

March 2015, Odyssey entered into a loan arrangement with Minera del Norte, S.A. de C.V. (MINOSA) whereby Odyssey pledged all of its shares in Oceanica as collateral for a \$14.75 million loan from MINOSA. The MINOSA loan has been amended several times and matured December 31, 2017, coupled with other stipulations, see NOTE H for further information.

Shipwreck and Other Exploration Projects

Other Projects

Odyssey began conducting offshore services for our shipwreck business partner, Magellan Limited, in 2016. In 2017 the search and inspection phase of a major shipwreck project covering multiple valuable targets was successfully completed. Recovery operations are currently underway on this project. The master services agreement governing this project provides Odyssey will be paid cost plus a specified mark-up and Odyssey will receive 21.25% of net returns, if any, from this project.

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During the three-months ended June 30, 2018, we began providing mineralogy and other technical services to a deep-sea mineral exploration company (see NOTE D).

Critical Accounting Policies and Changes to Accounting Policies

There have been no material changes in our critical accounting estimates since December 31, 2017, nor have we adopted any accounting policy that has or will have a material impact on our consolidated financial statements.

Results of Operations

The dollar values discussed in the following tables, except as otherwise indicated, are approximations to the nearest \$1,000,000 and therefore do not necessarily sum in columns or rows. For more detail refer to the Financial Statements in Part I, Item 1.

Three-months ended September 30, 2018, compared to three-months ended September 30, 2017

| Increase/(Decrease) (Dollars in millions) | 2018 | 2017 | 2018 vs. 2017 | |
|--|-------------|-------------|----------------------|----------|
| | | | \$ | % |
| Total revenues | \$ 0.9 | \$ 0.0 | \$ 0.9 | 0% |
| Marketing, general and administrative | 1.4 | 1.9 | (0.5) | 27% |
| Operations and research | 1.1 | 0.6 | 0.5 | 73% |
| Total operating expenses | \$ 2.4 | \$ 2.5 | \$ (0.1) | 2% |
| Other income (expense) | \$ (0.8) | \$ (0.6) | \$ (0.1) | 22% |
| Income tax benefit (provision) | \$ 0.0 | \$ 0.0 | \$ 0.0 | 0% |
| Non-controlling interest | \$ 1.0 | \$ 0.9 | \$ 0.2 | 19% |
| Net income (loss) | \$ (1.3) | \$ (2.3) | \$ 0.9 | 42% |

Revenue

Revenue is primarily generated through the sale of marine services either through expedition charters or for the services from our crew and equipment that are on a leased basis.

Total revenue in the current quarter was \$0.9 million, a \$0.9 million increase over the revenue in the same period a year ago. The revenue generated in each period was a result of performing marine research, search and recovery operations for our customers and related parties. We provided these services to our related party customer Magellan during both of these periods as well as providing marine related services to the deep-sea mineral exploration company owned and controlled by our Chairman of the Board (see NOTE D).

Operating Expenses

Marketing, general and administrative expenses primarily include all costs within the following departments: Executive, Finance & Accounting, Legal, Information Technology, Human Resources, Marketing & Communications, Sales and Business Development. Marketing, general and administrative expenses decreased by \$0.5 million from \$1.9 million in 2017 to \$1.4 million in 2018 primarily as a result of (i) a reduction of \$0.3 million of admiralty legal fees, (ii) a \$0.1 million decrease in independent director meeting fees and (iii) a \$0.1 million reduction financing fees.

Operations and research expenses primarily include all costs within Archaeology, Conservation, Exhibits, Research, and Marine operations, which includes all vessel and charter operations. Operations and research expenses increased by \$0.5 million from 2017 to 2018 primarily as a result of the following offsetting items: (i) increases of \$0.1 million for our deep-sea mining concession fee, (ii) \$0.5 million increase in marine labor directly tied to the incremental revenue and (iii) a \$0.1 million decrease related to marine depreciation and insurance.

Table of Contents**Other Income and Expense**

Other income and expense has generally consisted of interest expense on our debt financing arrangements as well as, from time to time, the fair value change of derivatives carried on the balance sheet. Total other income and expense came in at \$0.8 and \$0.6 million in net expenses for 2018 and 2017, respectively. This current interest expense primarily relates to our outstanding convertible debt balances, see NOTE H for further details.

Taxes and Non-Controlling Interest

Due to losses, we did not accrue any taxes in either period ending 2018 or 2017.

Starting in 2013, we became the controlling shareholder of Oceanica. Our financial statements thus include the financial results of Oceanica. Except for intercompany transactions that are fully eliminated upon consolidation, Oceanica's revenues and expenses, in their entirety, are shown in our consolidated financial statements. The share of Oceanica's net losses corresponding to the equity of Oceanica not owned by us is subsequently shown as the Non-Controlling Interest in the consolidated statements of operations. The non-controlling interest adjustment in the third quarter of 2018 was \$1.0 million as compared to \$0.9 million in the third quarter of 2017. This increase is mainly attributable to the compounding debt interest on our Mexican subsidiary's balance sheet.

Nine-months ended September 30, 2018, compared to nine-months ended September 30, 2017

| Increase/(Decrease) (Dollars in millions) | 2018 | 2017 | 2018 vs. 2017 | |
|--|----------|----------|---------------|-----|
| | | | \$ | % |
| Total revenues | \$ 2.5 | \$ 1.2 | \$ 1.2 | 98% |
| Marketing, general and administrative | 4.3 | 5.2 | (0.9) | 18% |
| Operations and research | 2.5 | 2.8 | (0.3) | 10% |
| Total operating expenses | \$ 6.8 | \$ 8.1 | \$ (1.2) | 15% |
| Other income (expense) | \$ (2.2) | \$ (2.0) | \$ (0.2) | 13% |
| Income tax benefit (provision) | \$ 0.0 | \$ 0.0 | \$ 0.0 | 0% |
| Non-controlling interest | \$ 2.9 | \$ 2.4 | \$ 0.5 | 20% |
| Net income (loss) | \$ (3.7) | \$ (6.4) | \$ 2.7 | 42% |

Revenue

Total revenue was \$2.5 million, a \$1.2 million increase over the revenue in the same period a year ago. This increase was mainly the result of services provided to two customers. The revenue generated in each period was a result of performing marine research, search and recovery operations for our customers and related parties. We provided these services to our related party customer Magellan during both of these periods. During 2018, we began providing these marine related services, mainly land-based, to the deep-sea mineral exploratory company owned and controlled by our Chairman of the Board (see NOTE D).

Operating Expenses

Marketing, general and administrative expenses decreased by \$0.9 million from \$5.2 million in 2017 to \$4.3 million in 2018 primarily as a result of (i) a reduction of \$0.3 million of personnel compensation and related expenses which includes share-based compensation and (ii) a \$0.2 million decrease in independent director meeting fees and (iii) a decrease of \$0.4 million directly related to admiralty legal fees that were expended in 2017.

Operations and research expenses decreased by \$0.3 million from 2017 to 2018 primarily as a result of the following offsetting items: (i) increase of \$0.2 million for our deep-sea mining concession fee, (ii) an net increase of \$0.4 million in marine service operations resulting from a \$0.6 million increase in staffing related to the incremental revenue and a reduction of \$0.2 million marine equipment rental and, (iii) a gain of \$0.9 million from the sale of certain marine equipment.

Table of Contents**Other Income and Expense**

Other income and expense has generally consisted of interest expense on our debt financing arrangements as well as, from time to time, the fair value change of derivatives carried on the balance sheet. Total other income and expense came in as a net expense \$2.2 and \$2.0 million for 2018 and 2017, respectively. These amounts are comprised mainly of interest expense relating to our outstanding convertible debt balances, see NOTE H for further details.

Taxes and Non-Controlling Interest

Due to losses, we did not accrue any taxes in either period ending 2018 or 2017.

Starting in 2013, we became the controlling shareholder of Oceanica. Our financial statements thus include the financial results of Oceanica. Except for intercompany transactions that are fully eliminated upon consolidation, Oceanica's revenues and expenses, in their entirety, are shown in our consolidated financial statements. The share of Oceanica's net losses corresponding to the equity of Oceanica not owned by us is subsequently shown as the Non-Controlling Interest in the consolidated statements of operations. The non-controlling interest adjustment in the first nine months of 2018 was \$2.9 million as compared to \$2.4 million in the first nine months of 2017. This increase is mainly attributable to the compounding debt interest on our Mexican subsidiary's balance sheet.

Liquidity and Capital Resources

| (In thousands) | Nine-Months Ended | |
|--|-------------------|----------------|
| | September 2018 | September 2017 |
| Summary of Cash Flows: | | |
| Net cash used by operating activities | \$ (4,372) | \$ (4,544) |
| Net cash provided by investing activities | 994 | 80 |
| Net cash provided by financing activities | 2,400 | 4,143 |
| Net (decrease) increase in cash and cash equivalents | \$ (978) | \$ (321) |
| Beginning cash and cash equivalents | 1,108 | 1,663 |
| Ending cash and cash equivalents | \$ 130 | \$ 1,342 |

Discussion of Cash Flows

Net cash used by operating activities for the first nine months of 2018 was \$4.4 million, a decrease of \$0.1 million compared to the same period in 2017. This net cash used by operating activities reflects a net loss before non-controlling interest of \$(6.6) million offset in part by non-cash items of \$(0.7) million which primarily include depreciation and amortization of \$0.3 million and share-based compensation of \$0.2 million and a gain on sale of marine equipment of \$0.9 million as well as a noncash use of \$0.5 million for an investment in an unconsolidated entity. Other operating activity changes resulted in an increase in working capital of \$2.8 million. Changes to accrued expenses, accounts receivable, accounts payable and other assets in 2018 comprised the \$2.8 million.

Cash flows provided by investing activities for the first nine months of 2018 were \$1.0 million compared to \$0.1 million for the same period in 2017. 2018 includes a payment of \$1.0 million from Magellan for the purchase of

certain marine assets, see NOTE L.

Cash flows provided by financing activities for the first nine months of 2018 were \$2.4 million. During this period, we borrowed the final tranche of \$0.4 million from MINOSA, \$0.5 million from SMOM and \$1.0 million from Monaco and an operating loan of \$0.8 million from an investor (see NOTE H). This cash inflow was partially offset by repayment of debt obligations of \$0.3 million. Cash flows provided by financing activities for the same period of 2017 were \$4.1 million which were partially offset by repayment of debt obligations of \$0.4 million.

Other Cash Flow and Equity Areas

General Discussion

At September 30, 2018, we had cash and cash equivalents of \$0.1 million, a decrease of \$1.0 million from the December 31, 2017 balance of \$1.1 million. This decrease was primarily the net result of cash flows associated with the year-to-date operating net cash used that is partially offset by the Monaco loan of \$1.0 million, SMOM loan of \$0.5 million, MINOSA loan of \$0.4 million, promissory note of \$0.8 million and repayment of debt obligations of \$0.3 million (NOTE H) and the \$1.0 million marine asset purchase payment from Magellan (NOTE L).

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Financial debt of the company, excluding the derivative or beneficial conversion feature components of such debt, increased by \$2.8 million in the first nine months of 2018, from a balance of \$27.4 million at December 31, 2017 to a balance of \$30.2 million at September 30, 2018. This is due to the Monaco loan of \$1.1 million, the SMOM loan of \$0.5 million, the final tranche of debt provided by MINOSA in the amount of \$0.4 million and an operating loan of \$0.8 million from an investor. All of which are discussed above in the Discussion of Cash Flows.

Financings**Stock Purchase Agreement**

On March 11, 2015, we entered into a Stock Purchase Agreement (the *Purchase Agreement*) with Penelope Mining LLC (the *Investor*), and, solely with respect to certain provisions of the Purchase Agreement, Minera del Norte, S.A. de C.V. (the *MINOSA*). The Purchase Agreement provides for us to issue and sell to the Investor shares of the our preferred stock in the amounts and at the prices set forth below (the numbers set forth below have been adjusted to reflect the 1-for-12 reverse stock split of February 19, 2016):

| Series | No. of Shares | Price per Share |
|---------------|----------------------|------------------------|
| Series AA-1 | 8,427,004 | \$ 12.00 |
| Series AA-2 | 7,223,145 | \$ 6.00 |

The closing of the sale and issuance of shares of the Company's preferred stock to the Investor is subject to certain conditions, including the Company's receipt of required approvals from the Company's stockholders (received on June 9, 2015), the receipt of regulatory approval, performance by the Company of its obligations under the Purchase Agreement, receipt of certain third party consents, the listing of the underlying common stock on the NASDAQ Stock Market and the Investor's satisfaction, in its sole discretion, with the viability of certain undersea mining projects of the Company. Completion of the transaction requires amending the Company's articles of incorporation to (a) effect a reverse stock split, which was done on February 19, 2016, (b) adjusting the Company's authorized capitalization, which was also done on February 19, 2016, and (c) establishing a classified board of directors (collectively, the *Amendments*). The Amendments have been or will be set forth in certificates of amendment to the Company's articles of incorporation filed or to be filed with the Nevada Secretary of State.

The purchase and sale of 2,916,667 shares of Series AA-1 Preferred Stock at an initial closing and for the purchase and sale of the remaining 5,510,337 shares of Series AA-1 Preferred Stock according to the following schedule, is subject to the satisfaction or waiver of specified conditions set forth in the Purchase Agreement:

| Date | No. Series AA-1 Shares | Total Purchase Price |
|-------------------|-------------------------------|-----------------------------|
| March 1, 2016 | 1,806,989 | \$ 21,683,868 |
| September 1, 2016 | 1,806,989 | \$ 21,683,868 |
| March 1, 2017 | 1,517,871 | \$ 18,214,446 |
| March 1, 2018 | 378,488 | \$ 4,541,856 |

The Investor may elect to purchase all or a portion of the Series AA-1 Preferred Stock before the other dates set forth above. The initial closing and the closing scheduled for March 1, 2016, have not yet occurred because certain conditions to closing have not yet been satisfied or waived. After completing the purchase of all AA-1 Preferred Stock, the Investor has the right, but not the obligation, to purchase all or a portion the 7,223,145 shares of Series

AA-2 Preferred Stock at any time after the closing price of the Common Stock on the NASDAQ Stock Market has been \$15.12 or more for 20 consecutive trading days. The Investor's right to purchase the shares of Series AA-2 Preferred Stock will terminate on the fifth anniversary of the initial closing under the Purchase Agreement.

The Purchase Agreement contains certain restrictions, subject to certain exceptions described below, on the Company's ability to initiate, solicit or knowingly encourage or facilitate an alternative acquisition proposal, to participate in any discussions or negotiations regarding an alternative acquisition proposal, or to enter into any acquisition agreement, merger agreement or similar definitive agreement, or any letter of intent, memorandum of understanding or agreement in principle, or any other agreement relating to an alternative acquisition proposal. These restrictions will continue until the earlier to occur of the termination of the Purchase Agreement pursuant to its terms and the time at which the initial closing occurs.

The Purchase Agreement also includes customary termination rights for both the Company and the Investor and provides that, in connection with the termination of the Purchase Agreement under specified circumstances, including in the event of a termination by the Company in order to accept a Superior Proposal, the Company will be required to pay to the Investor a termination fee of \$4.0 million.

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The Purchase Agreement contains representations, warranties and covenants of the parties customary for a transaction of this type.

Subject to the terms set forth in the Purchase Agreement, the Lender provided the Company, through a subsidiary of the Company, with loans of \$14.75 million, the outstanding amount of which, plus accrued interest, will be repaid from the proceeds from the sale of the shares of Series AA-1 Preferred Stock at the initial closing. The outstanding principal balance of the loan at September 30, 2018 was \$14.75 million.

The obligation to repay the loans is evidenced by a promissory note (the Note) in the amount of up to \$14.75 million and bears interest at the rate of 8.0% per annum, and, pursuant to a pledge agreement (the Pledge Agreement) between the Lender and Odyssey Marine Enterprises Ltd., an indirect, wholly owned subsidiary of the Company (OME), is secured by a pledge of 54.0 million shares of Oceanica Resources S. de R.L., a Panamanian limitada (Oceanica), held by OME. In addition, OME and the Lender entered into a call option agreement (the Oceanica Call), pursuant to which OME granted the Lender an option to purchase the 54.0 million shares of Oceanica held by OME for an exercise price of \$40.0 million at any time during the one-year period after the Oceanica Call was executed and delivered by the parties. The Oceanica Call option expired on March 11, 2016 without being executed or extended. On December 15, 2015, the Promissory Note was amended to provide that, unless otherwise converted as provided in the Note, the adjusted principal balance shall be due and payable in full upon written demand by MINOSA; provided that MINOSA agrees that it shall not demand payment of the adjusted principal balance earlier than the first to occur of: (i) 30 days after the date on which (x) SEMARNAT makes a determination with respect to the current application for the Manifestacion de Impacto Ambiental relating to our phosphate deposit project, which determination is other than an approval or (y) Enterprises or any of its affiliates withdraws such application without MINOSA s prior written consent; (ii) termination by Odyssey of the Stock Purchase Agreement, dated March 11, 2015 (the Purchase Agreement), among Odyssey, MINOSA, and Penelope Mining, LLC (the Investor); (iii) the occurrence of an event of default under the Promissory Note; (iv) March 30, 2016; or (v) if and only if the Investor shall have terminated the Purchase Agreement pursuant to Section 8.1(d)(iii) thereof, March 30, 2016. On March 18, 2016 the agreements with MINOSA and Penelope were further amended and extended the maturity date of the loan to March 18, 2017(see NOTE H).

On March 18, 2016, Odyssey entered into a \$3.0 million Note Purchase Agreement with Epsilon Acquisitions LLC (see below and NOTE H).

Epsilon is an investment vehicle of Mr. Alonso Ancira who is Chairman of the Board of AHMSA, an entity that controls MINOSA.

Class AA Convertible Preferred Stock

Pursuant to a certificate of designation (the Designation) to be filed with the Nevada Secretary of State, each share of Series AA-1 Convertible Preferred Stock and Series AA-2 Convertible Preferred Stock (collectively, the Class AA Preferred Stock) will be convertible into one share of Common Stock at any time and from time to time at the election of the holder. Each share of Class AA Preferred Stock will rank pari passu with all other shares of Class AA Preferred Stock and senior to shares of Common Stock and all other classes and series of junior stock. If the Company declares a dividend or makes a distribution to the holders of Common Stock, the holders of the Class AA Preferred Stock will be entitled to participate in the dividend or distribution on an as-converted basis. Each share of Class AA Preferred Stock shall entitle the holder thereof to vote, in person or by proxy, at any special or annual meeting of stockholders, on all matters voted on by holders of Common Stock, voting together as a single class with other shares entitled to vote thereon. So long as a majority of the shares of the Class AA Preferred Stock are outstanding, the Company will be prohibited from taking specified extraordinary actions without the approval of the holders of a majority of the

outstanding shares of Class AA Preferred Stock. In the event of the liquidation of the Company, each holder of shares of Class AA Preferred Stock then outstanding shall be entitled to be paid, out of the assets of the Corporation available for distribution to its stockholders, an amount in cash equal to the greater of (a) the amount paid to the Company for such holder's shares of Class AA Preferred Stock, plus an accretion thereon of 8.0% per annum, compounded annually, and (b) the amount such holder would be entitled to receive had such holder converted such shares of Class AA Preferred into Common Stock immediately prior to such time at which payment will be made or any assets distributed.

Stockholder Agreement

The Purchase Agreement provides that, at the initial closing, the Company and the Investor will enter into a stockholder agreement (the "Stockholder Agreement"). The Stockholder Agreement will provide that (a) in connection with each meeting of the Company's stockholders at which directors are to be elected, the Company will (i) nominate for election as members of the Company's board of directors a number of individuals designated by the Investor ("Investor Designees") equivalent to the Investor's proportionate ownership of the Company's voting securities (rounded up to the next highest integer) less the number of Investor Designees who are members of the board of directors and not subject to election at such meeting, and (ii) use its reasonable best efforts to cause such nominees to be elected to the board of directors; (b) the Company will cause one of the Investor Designees to serve as a member of (or at such Investor Designee's election, as an observer to) each committee of the

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Company's board of directors; and (c) each Investor Designee shall have the right to enter into an indemnification agreement with the Company (an "Indemnification Agreement") pursuant to which such Investor Designee is indemnified by the Company to the fullest extent allowed by Nevada law if, by reason of his or her serving as a director of the Company, such Investor Designee is a party or is threatened to be made a party to any proceeding or by reason of anything done or not done by such Investor Designee in his or her capacity as a director of the Company.

The Stockholder Agreement will provide the Investor with pre-emptive rights with respect to certain equity offerings of the Company and restricts the Company from selling equity securities until the Investor has purchased all the Class AA Preferred Stock or no longer has the right or obligation to purchase any of the Class AA Preferred Stock. The Stockholder Agreement will also provide the Investor with certain "first look" rights with respect to certain mineral deposits discovered by the Company or its subsidiaries. Pursuant to the Stockholder Agreement, the Company will grant the Investor certain demand and piggy-back registration rights, including for shelf registrations, with respect to the resale of the shares of Common Stock issuable upon conversion of the Class AA Preferred Stock.

Other loans

Promissory Note

On March 18, 2016 we entered into a Note Purchase Agreement ("Purchase Agreement") with Epsilon Acquisitions LLC ("Epsilon"). Pursuant to the Purchase Agreement, Epsilon loaned us \$3.0 million in two installments of \$1.5 million on March 31, 2016 and April 30, 2016. The indebtedness bears interest at a rate of 10% per annum and was due on March 18, 2017. We were also responsible for \$50,000 of the lender's out of pocket costs. This amount is included in the loan balance. In pledge agreements related to the loans, we granted security interests to Epsilon in (a) the 54 million cuotas (a unit of ownership under Panamanian law) of Oceanica Resources S. de R.L. ("Oceanica") held by our wholly owned subsidiary, Odyssey Marine Enterprises, Ltd. ("OME"), (b) all notes and other receivables from Oceanica and its subsidiary owed to the Odyssey Pledgors, and (c) all of the outstanding equity in OME. Epsilon has the right to convert the outstanding indebtedness into shares of our common stock upon 75 days' notice to us or upon a merger, consolidation, third party tender offer, or similar transaction relating to us at the conversion price of \$5.00 per share, which represents the five-day volume-weighted average price of Odyssey's common stock for the five trading day period ending on March 17, 2016. Upon the occurrence and during the continuance of an event of default, the conversion price will be reduced to \$2.50 per share. Following any conversion of the indebtedness, Penelope Mining LLC (an affiliate of Epsilon) ("Penelope"), may elect to reduce its commitment to purchase preferred stock of Odyssey under the Stock Purchase Agreement, dated as of March 11, 2015 (as amended, the "Stock Purchase Agreement"), among Odyssey, Penelope, and Minera del Norte, S.A. de C.V. ("MINOSA") by the amount of indebtedness converted.

Pursuant to the Purchase Agreement (a) we agreed to waive our rights to terminate the Stock Purchase Agreement in accordance with the terms thereof until December 31, 2016, and (b) MINOSA agreed to extend, until March 18, 2017, the maturity date of the \$14.75 million loan extended by MINOSA to OME pursuant to the Stock Purchase Agreement. The indebtedness may be accelerated upon the occurrence of specified events of default including (a) OME's failure to pay any amount payable on the date due and payable; (b) OME or we fail to perform or observe any term, covenant, or agreement in the Purchase Agreement or the related documents, subject to a five-day cure period; (c) an event of default or material breach by OME, us or any of our affiliates under any of the other loan documents shall have occurred and all grace periods, if any, applicable thereto shall have expired; (d) the Stock Purchase Agreement shall have been terminated; (e) specified dissolution, liquidation, insolvency, bankruptcy, reorganization, or similar cases or actions are commenced by or against OME or any of its subsidiaries, in specified circumstances unless dismissed or stayed within 60 days; (f) the entry of judgment or award against OME or any of its subsidiaries in excess of \$100,000; and (g) a change in control (as defined in the Purchase Agreement) occurs.

In connection with the execution and delivery of the Purchase Agreement, we and Epsilon entered into a registration rights agreement pursuant to which we agreed to register new shares of our common stock with a formal registration statement with the Securities and Exchange Commission upon the conversion of the indebtedness.

Accounting considerations: Note Purchase Agreement

We have accounted for this agreement as a financing transaction, wherein the net proceeds received were allocated to the financial instruments issued. Prior to making the accounting allocation, we evaluated the transaction for proper classification under ASC 480 *Distinguishing Liabilities from Equity* (ASC 480), ASC 815 *Derivatives and Hedging* (ASC 815) and ASC 320 *Property, Plant and Equipment* (ASC 320).

This debt agreement did not contain any embedded terms or features that have characteristics of derivatives. However, we were required to consider whether the hybrid contract embodied a beneficial conversion feature (BCF). The calculation of the effective conversion amount did result in a BCF because the effective conversion price was less than the Company's stock price on the commitment date, therefore a BCF of \$96,000 was recorded. The BCF represents a debt discount which will be amortized over the life of the loan. For the year ended December 31, 2017, interest expense related to the discount in the amount of \$68,194 was recorded.

Table of Contents***Loan modification (October 1, 2016)***

On October 1, 2016 Odyssey Marine Enterprises, Ltd. (OME), entered into an Amended and Restated Note Purchase Agreement (the Restated Note Purchase Agreement) with Epsilon Acquisitions LLC (Epsilon). In connection with the existing \$3.0 million loan agreement, Epsilon agreed to lend an additional \$3.0 million of secured convertible promissory notes. The convertible promissory notes bear an interest rate of 10.0% per annum and was due and payable on March 18, 2017. Epsilon has the right to convert all amounts outstanding under the Restated Note into shares of our common stock upon 75 days notice to OME or upon a merger, consolidation, third party tender offer, or similar transaction relating to us at the applicable conversion price, which is (a) \$5.00 per share with respect to the \$3.0 million already advanced under the Restated Note and (b) with respect to additional advances under the Restated Note, the five-day volume-weighted average price of our common stock for the five trading day period ending on the trading day immediately prior to the date on which OME submits a borrowing notice for such advance. Notwithstanding anything herein to the contrary, we shall not issue any of our common stock upon conversion of any outstanding tranche (other than the first \$3.0 million already advanced) under this Restated Note in excess of 1,388,769 shares of common stock. The additional tranches were issued as follows: (a) \$1,000,000 (Tranche 3) was issued on October 16, 2016 with a conversion price of \$3.52 per share; (b) \$1,000,000 (Tranche 4) was issued on November 15, 2016 with a conversion price of \$4.19 per share; and (c) \$1,000,000 (Tranche 5) was issued on December 15, 2016 with a conversion price of \$4.13 per share. During 2017, Epsilon assigned Tranche 4 and 5 totaling \$2,000,000 of this debt to MINOSA under the same terms as the original debt.

As an inducement for the issuance of the additional \$3.0 million of promissory notes, we also delivered to Epsilon a common stock purchase warrant (the Warrant) pursuant to which Epsilon has the right to purchase up to 120,000 shares of our common stock at an exercise price of \$3.52 per share, which exercise price represents the five-day volume-weighted average price of our common stock for the five trading day period ending on the trading day immediately prior to the day on which the Warrant was issued. Epsilon may exercise the Warrant in whole or in part at any time during the period ending October 1, 2021. The Warrant includes a cashless exercise feature and provides that, if Epsilon is in default of its obligations to fund any advance pursuant to and in accordance with the Restated Note Purchase Agreement, then, thereafter, the maximum aggregate number of shares of common stock that may be purchased under the Warrant shall be the number determined by multiplying 120,000 by a fraction, (a) the numerator of which is the aggregate principal amount of advances that have been extended to the OME by Epsilon pursuant to the Restated Note Purchase Agreement on or after the date of the Warrant and prior to the date of such failure and (b) the denominator of which is \$3.0 million.

Accounting considerations: Loan Modification

We evaluated for proper classification under ASC 480 *Distinguishing Liabilities from Equity* (ASC 480), ASC 815 *Derivatives and Hedging* (ASC 815) and ASC 320 *Property, Plant and Equipment* (ASC 320). This debt agreement did not contain any embedded terms or features that have characteristics of derivatives. Additionally, the warrant agreement did not contain any terms or features that would preclude equity classification. We were required to consider whether the hybrid contract embodied a beneficial conversion feature (BCF). The allocations of the three additional tranches were as follows.

| | Tranche 3 | Tranche 4 | Tranche 5 |
|--|------------|------------|--------------|
| Promissory Note | \$ 981,796 | \$ 939,935 | \$ 1,000,000 |
| Beneficial Conversion Feature (BCF)* | 18,204 | 60,065 | |

| | | | |
|----------|--------------|--------------|--------------|
| Proceeds | \$ 1,000,000 | \$ 1,000,000 | \$ 1,000,000 |
|----------|--------------|--------------|--------------|

A beneficial conversion feature arises when the calculation of the effective conversion price is less than the Company's stock price on the date of issuance. Tranche 5 did not result in a BCF because the effective conversion price was greater than the company's stock price on the date of issuance.

The warrants fair values were calculated using Black-Scholes Merton (BSM). The aggregate fair value of the warrants totaled \$303,712. Since the warrants were issued as an inducement to Epsilon to issue additional debt, we recorded an inducement expense of \$303,712.

Term Extension (March 21, 2017)

On March 21, 2017 we entered into an amendment to the Restated Note Purchase Agreement with Epsilon. In connection with the existing \$6.0 million loan agreement, the adjusted principal balance is due and payable in full upon the earlier of (i) written demand by Epsilon or (ii) such time as Odyssey or the guarantor pays any other indebtedness for borrowed money prior to its stated maturity date. As such the Company amortized the notes up to their face value of \$6,050,000 and they are classified as short-term. However, since Epsilon converted the first \$3.0 million into 670,455 of our common shares and assigned \$2.0 million to MINOSA, the current principal indebtedness at September 30, 2018 is \$1.0 million.

Table of Contents**Promissory Note**

On April 15, 2016, Odyssey Marine Exploration, Inc. (Odyssey) and its wholly owned subsidiaries Oceanica Marine Operations, S.R.L. (OMO), Odyssey Marine Services, Inc. (OMS), and Odyssey Marine Enterprises, Ltd. (OME) executed a Loan and Security Agreement (the Loan Agreement) with Monaco Financial LLC (Monaco) pursuant to which Odyssey borrowed \$1,825,000 from Monaco. The current balance is now \$1,175,000. Monaco advanced the entire amount to us in March 2016 upon execution of a Letter of Intent. The indebtedness is evidenced by a Convertible Promissory Note (the Note) that provides for interest at the rate of 10.0% per annum on the outstanding amount of principal, with the entire unpaid principal sum outstanding, together with any unpaid interest thereon, being due and payable on April 15, 2018. This note has matured, but Monaco has not demanded payment since we are in negotiations with Monaco to set a new maturity date. As of the maturity date, the interest rate was adjusted to the default rate of 18% per annum. Odyssey has the right to prepay the indebtedness, in whole or in part, upon 30 days notice to Monaco.

Pursuant to the Loan Agreement and as security for the indebtedness, Monaco was granted a security interest in (a) one-half of the indebtedness evidenced by the Amended and Restated Consolidated Note and Guaranty, dated September 25, 2015 (the ExO Note), in the original principal amount of \$18.0 million, issued by Exploraciones Oceanicas S. de R.L. de C.V. to OMO, and all rights associated therewith (the OMO Collateral); and (b) all marine technology and assets in OMS s possession or control used for offshore exploration, including a deep-tow search systems, winches, multi-beam sonar, and other equipment. OME unconditionally and irrevocably guaranteed all obligations of Odyssey, OMO, and OMS to Monaco under the Loan Agreement.

As further consideration for the loan, Monaco was granted an option (the Option) to purchase the OMO Collateral. The Option is exercisable at any time before the earlier of (a) the date that is 30 days after the loan is paid in full or (b) the maturity date of the ExO Note, for aggregate consideration of \$9.3 million, \$1.8 million of which would be paid at the closing of the exercise of the Option, with the balance paid in ten monthly installments of \$750,000.

The Loan Agreement also contains customary representations and warranties of the parties, covenants, and events of default. Of the combined total indebtedness of Monaco s Note 1 of \$2.8 million (NOTE H) and this agreement, Note 2, (see NOTE H), Monaco can convert this combined debt into 3,174,603 shares of Oceanica at a fixed conversion price of \$1.00 per share, or \$3,174,603. Any remaining debt in excess of \$3,174,603 is not convertible. The Note further provides that the maximum number of Oceanica cuotas that can be acquired by Monaco upon conversion is 3,174,603 cuotas. During the three-months ended June 30, 2017, we sold a marine vessel to a related party of Monaco for \$650,000. The consideration for this vessel was applied to our loan balance to Monaco in the amount of \$650,000.

Promissory Note

On May 3, 2017, we entered into a Loan and Security Agreement (Loan Agreement) with SMOM. Pursuant to the Loan Agreement, SMOM agreed to loan us up to \$3.0 million as evidenced by a convertible promissory note. As a commitment fee, we assigned the remaining 50% of our Neptune Minerals, LLC receivable to SMOM. This receivable had zero carrying value on our balance sheet and due to the age and collectability was deemed to have no fair value. The indebtedness bears interest at a rate of 10% per annum and matures on the second anniversary of this Loan Agreement which is May 3, 2019. On April 20, 2018, the loan was amended, and the principal amount of the Loan was increased to \$3.5 million. The loan balance at June 30, 2018 is \$3.5 million. The holder has the option to convert up to \$2.0 million of any unpaid principal and interest into up to 50% of the equity interest held by Odyssey in Aldama Mining Company, S.de R.L. de C.V. which is a wholly owned subsidiary of ours. The conversion value of \$1.0 million equates to 10% of the equity interest in Aldama. If the holder elects to acquire the entire 50% of the equity interest, the Holder has to pay the deficiency in cash. As additional consideration for the loan, the holder has

the right to purchase from Odyssey all or a portion of the equity collateral (up to the 50% of the equity interest of Aldama) for the option consideration (\$1.0 million for each 10% of equity interests) during the period that is the later of (i) one year after the maturity date and (ii) one year after the loan is repaid in full, the expiration date. The lender may also choose to extend the expiration date annually by paying \$500,000 for each year extended.

Promissory Note

On August 10, 2017, we entered into a Note Purchase Agreement (the *Minosa Purchase Agreement*) with MINOSA. Pursuant to the *Minosa Purchase Agreement*, whereas MINOSA will loan Enterprises up to \$3.0 million. During 2018, this debt was fully funded and Epsilon assigned \$2.0 million of its debt to MINOSA. At September 30, 2018, the outstanding principal balance, including the Epsilon assignment, is \$5.1 million. The indebtedness is evidenced by a secured convertible promissory note (the *Minosa Note*) and bears interest at a rate equal to 10.0% per annum. Unless otherwise converted as described below, the entire outstanding principal balance under this *Minosa Note* and all accrued interest and fees are due and payable upon written demand by MINOSA; provided, that MINOSA agreed not make a demand for payment prior to the earlier of (a) an event of default (as defined in the *Minosa Note*) or (b) a date, which may be no earlier than December 31, 2017, that is at least 60 days subsequent to written notice that MINOSA intends to demand payment. MINOSA has not provided any notice they intend to issue a payment demand notice. We unconditionally and irrevocably guaranteed all of the obligations under the *Minosa Purchase*

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Agreement and the Minosa Note. MINOSA has the right to convert all amounts outstanding under the Minosa Note into shares of our common stock upon 75 days' notice to us or upon a merger, consolidation, third party tender offer, or similar transaction relating to us at the conversion price of \$4.41 per share. During December 2017 MINOSA, transferred this debt to its parent company.

This debt agreement did not contain any embedded terms or features that have characteristics of derivatives. However, we were required to consider whether the hybrid contract embodied a beneficial conversion feature (BCF). The calculation of the effective conversion amount did result in a BCF because the effective conversion price was less than the Company's stock price on the date of issuance, therefore a BCF of \$62,925 was recorded. As of December 31, 2017, all of the BCF has been accreted to the income statement. The BCF represented a debt discount which is being amortized over the life of the loan.

As previously reported, Epsilon loaned us an aggregate of \$6.0 million pursuant to an amended and restated convertible promissory Minosa Note, dated as of March 18, 2016, as further amended and restated on October 1, 2016 (the Epsilon Note). Since then, Epsilon has assigned \$2.0 million of the indebtedness under the Epsilon Note to MINOSA. Along with Epsilon, we entered into a second amended and restated convertible promissory note (the Second AR Epsilon Note), which further amends and restates the Epsilon Note. The stated principal amount of the Second AR Epsilon Note is \$1.0 million (which reflects the outstanding principal balance remaining after giving effect to Epsilon's (x) previous assignment of \$2.0 million of the indebtedness under the Epsilon Note to MINOSA and (y) conversion of \$3.0 million of the indebtedness under the Epsilon Note into shares of our common stock). The Second AR Epsilon Note further provides that the outstanding principal balance under the Second AR Epsilon Note and all accrued interest and fees are due and payable upon written demand by Epsilon; provided, that Epsilon agreed not make a demand for payment prior to the earlier of (a) an event of default (as defined in the Second AR Epsilon Note) or (b) a date, which may be no earlier than December 31, 2017, that is at least 60 days subsequent to written notice that MINOSA intends to demand payment.

Upon the closing of the Minosa Purchase Agreement, along with MINOSA, and Penelope Mining LLC, an affiliate of Minosa (Penelope), executed and delivered a Second Amended and Restated Waiver and Consent and Amendment No. 5 to Promissory Note and Amendment No. 2 to Stock Purchase Agreement (the Second AR Waiver). Pursuant to the Second AR Waiver, Minosa and Penelope consented to the transactions contemplated by the Minosa Purchase Agreement and waived any breach of any representation or warranty and violation of any covenant in the Stock Purchase Agreement, dated as of March 11, 2015, as amended April 10, 2015 (the SPA), by and among us, Minosa, and Penelope, arising out of the Company's execution and delivery of the Minosa Purchase Agreement and the consummation of the transactions contemplated thereby. Pursuant to the Second AR Waiver, we also waived, and agreed not to exercise our right to terminate the SPA pursuant to Section 8.1(c)(ii) thereto, both (a) until after the earlier of (i) July 1, 2018, (ii) the date that MINOSA fails, refuses, or declines to fund (or otherwise does not fund) any subsequent loan under the Minosa Purchase Agreement and (iii) demand is made for repayment of all or any part of the indebtedness outstanding under the Minosa Note, the Second AR Epsilon Note, or the Promissory Note, dated as of March 11, 2015, as amended (the SPA Note), in the principal amount of \$14.75 million that was issued by us to MINOSA under the SPA, and (b) unless on or prior to such termination, the Notes are paid in full.

The Second AR Waiver (x) further provides that following any conversion of the indebtedness evidenced by the Minosa Note, Penelope may elect to reduce its commitment to purchase our preferred stock under the SPA by the amount of indebtedness converted by MINOSA and (y) amends the SPA Note to provide that the outstanding principal balance under the SPA Note and all accrued interest and fees are due and payable upon written demand by MINOSA; provided, that Minosa agreed not make a demand for payment prior to the earlier of (a) an event of default (as defined in the Minosa Note) or (b) a date, which may be no earlier than December 31, 2017, that is at least 60 days subsequent to written notice that Minosa intends to demand payment.

The obligations under the Minosa Note may be accelerated upon the occurrence of specified events of default including (a) our failure to pay any amount payable under the Minosa Note on the date due and payable; (b) our failure to perform or observe any term, covenant, or agreement in the Minosa Note or the related documents, subject to a five-day cure period; (c) the occurrence and expiration of all applicable grace periods, if any, of an event of default or material breach by us under any of the other loan documents; (d) the termination of the SPA; (e) commencement of certain specified dissolution, liquidation, insolvency, bankruptcy, reorganization, or similar cases or actions by or against us, in specified circumstances unless dismissed or stayed within 60 days; (f) the entry of a judgment or award against us in excess of \$100,000; and (g) the occurrence of a change in control (as defined in the Minosa Note).

Pursuant to second amended and restated pledge agreements (the Second AR Pledge Agreements) entered into by us in favor of MINOSA, we pledged and granted security interests to MINOSA in (a) the 54 million cuotas (a unit of ownership under Panamanian law) of Oceanica held by us, (b) all notes and other receivables from Oceanica and its subsidiary owed to us, and (c) all of the outstanding equity in our wholly owned subsidiary, Odyssey Marine Enterprises, Ltd.

In connection with the execution and delivery of the Minosa Purchase Agreement, Odyssey and MINOSA entered into a second amended and restated registration rights agreement (the Second AR Registration Rights Agreement) pursuant to which Odyssey agreed to register the offer and sale of the shares (the Conversion Shares) of our common stock issuable upon the

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conversion of the indebtedness evidenced by the Minosa Note. Subject to specified limitations set forth in the Second AR Registration Rights Agreement, including that we are eligible to use Form S-3, the holder of the Minosa Note can require us to register the offer and sale of the Conversion Shares if the aggregate offering price thereof (before any underwriting discounts and commissions) is not less than \$3.0 million. In addition, we agreed to file a registration statement relating to the offer and sale of the Conversion Shares on a continuous basis promptly (but in no event later than 60 days after) after the conversion of the Minosa Note into the Conversion Shares and to thereafter use its reasonable best efforts to have such registration statement declared effective by the Securities and Exchange Commission.

Promissory Note

During the period ended March 31, 2018, Monaco advanced us \$1.0 million that was converted to a loan agreement that was executed April 20, 2018. The indebtedness bears interest at 10.0% percent per year. All principal and any unpaid interest is to be payable on the first anniversary of this agreement, April 20, 2019. This debt is secured by cash proceeds, if any, from our future shipwreck projects we have contracted with Magellan. As additional consideration, their share purchase option expiration date, as discussed in Note 1 Monaco 2014 and Note 2 Monaco 2016 above, has been extended from 30 days to seven months after the note becomes paid in full.

Promissory Note

On July 12, 2018, we entered into a Note and Warrant Purchase Agreement (the Purchase Agreement) with two individuals (the Lenders), one of whom holds in excess of 5.0% of our outstanding common stock. Pursuant to the Purchase Agreement, the Lenders agreed to lend an aggregate of \$500,000 to us, all of which was advanced on July 12, 2018. The indebtedness is evidenced by secured convertible promissory notes (the Notes) and bears interest at a rate equal to 8.0% per annum. Unless otherwise converted as described below, the entire outstanding principal balance under the Notes and all accrued interest and fees are due and payable on July 12, 2019. The Purchase Agreement provides for the possible sale of up to an additional \$500,000 principal amount of Notes in one subsequent closing no later than September 12, 2018.

At any time after to the first to occur of (a) a sale by us of additional Notes or (b) September 12, 2018, the Lenders have the right to convert all amounts outstanding under the Notes into either (x) shares of our common stock at the conversion rate of \$8.00 per share, (y) \$500,000 of the indebtedness owed by Exploraciones Oceanicas S. de R. L. de C.V. (ExO) to Oceanica Marine Operations, S.R.L. (OMO), or (z) a 7.5% interest in Aldama Mining Company, S. de R. L. de C.V. (Aldama). We indirectly hold a controlling interest in ExO; OMO and Aldama are indirect, wholly owned subsidiaries of ours.

In connection with the issuance and sale of the Notes, we issued warrants to purchase common stock (the Warrants) to the Lenders. The Lenders may exercise the Warrants to purchase an aggregate of 31,250 shares of our common stock at an exercise price of \$12.00 per share. The Warrants are exercisable during the period commencing on the date on which the Notes are converted into shares of our common stock and ending on July 12, 2021.

Pursuant to a Pledge Agreement, dated as of July 12, 2018 (the Pledge Agreement), our obligations under the Notes are secured by a pledge of a portion of Odyssey s ownership interest in Aldama and another entity.

Pursuant to a Registration Rights Agreement (the Rights Agreement) among us and the Lenders, we granted the Lenders piggy-back registration rights with respect to the shares of our common stock issuable upon conversion of the Notes and the exercise of the Warrants.

The Purchase Agreement, the Notes, the Warrants, the Pledge Agreement, and the Rights Agreement include representations and warranties and other covenants, conditions, and other provisions customary for comparable transactions.

We determined that the debt achieved conventional convertible status and that the equity conversion option was in the money at inception which required the calculation of a beneficial conversion feature (BCF). The fair value of the warrants and BCF component exceeded the amount of proceeds. As a result, there was no value allocated to the debt at inception. The debt is being accreted to face value over its term using the effective interest method.

Going Concern Consideration

We have experienced several years of net losses and may continue to do so. Our ability to generate net income or positive cash flows for the following twelve months is dependent upon our success in developing and monetizing our interests in mineral exploration entities, generating income from exploration charters, collecting on amounts owed to us, and completing the Minera del Norte S.A. de c.v. (MINOSA) and Penelope Mining LLC (Penelope) equity financing transaction approved by our stockholders on June 9, 2015. Our 2018 business plan requires us to generate new cash inflows to effectively allow us to perform our planned projects. We plan to generate new cash inflows through the monetization of our receivables and equity stakes in seabed mineral companies, financings, syndications or other partnership opportunities. One or more of the planned opportunities

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for raising cash may not be realized to the extent needed which may require us to curtail our desired business plan until we generate additional cash. Even though we have been able to consistently raise cash in the past, there are no assurances we may be able to do so in the future. On March 11, 2015, we entered into a Stock Purchase Agreement with MINOSA and Penelope, an affiliate of MINOSA, pursuant to which (a) MINOSA agreed to extend debt financing to Odyssey of up to \$14.75 million, and (b) Penelope agreed to invest up to \$101 million over three years in convertible preferred stock of Odyssey. The equity financing is subject to the satisfaction of certain conditions, including the approval of our stockholders, which occurred on June 9, 2015, and MINOSA and Penelope are currently under no obligation to make the preferred share equity investments. (See Management's Discussion and Analysis of Financial Condition and Results of Operations - Financings.) See NOTE H for further detail on MINOSA related debt. Although we executed the Stock Purchase Agreement, Penelope must purchase the shares for us to be able to complete the equity component of the transaction. The Penelope equity transaction is heavily dependent on the outcome of our subsidiary's application approval process for an environmental permit to commercially develop a mineralized phosphate deposit off the coast of Mexico. We pledged the majority of our remaining assets to MINOSA, and its affiliates, and to Monaco Financial LLC, leaving us with few opportunities to raise additional funds from our balance sheet. If cash inflow is not sufficient to meet our desired projected business plan requirements, we will be required to follow a contingency business plan which is based on curtailed expenses and fewer cash requirements. Our consolidated non-restricted cash balance at September 30, 2018 is \$130,364 which is insufficient to support operations for the following 12 months. We have a working capital deficit at September 30, 2018 of \$37.0 million, most of which is convertible into equity. Therefore, the factors noted above raise doubt about our ability to continue as a going concern. These consolidated financial statements do not include any adjustments to the amounts and classification of assets and liabilities that may be necessary should we be unable to continue as a going concern.

New Accounting Pronouncements

In May 2014, the Financial Accounting Standards Board, or the FASB, issued Accounting Standards Update 2014-09, Revenue from Contracts with Customers, or ASU 2014-09, which establishes a comprehensive revenue recognition standard under GAAP for almost all industries. The standard applies for annual periods beginning after December 15, 2017, including interim periods therein. Based on management's review of this standard along with the substance of our transactions, management believes this standard has not had and will not have a material impact on our financial statements.

In February 2016, the FASB issued Accounting Standards Update 2016-02, Leases, which establishes a comprehensive lease standard under GAAP for virtually all industries. The standard requires lessees to apply a dual approach, classifying leases as either finance or operating leases based on the principle of whether or not the lease is effectively a financed purchase of the leased asset by the lessee. This classification will determine whether the lease expense is recognized based on an effective interest method or on a straight-line basis over the term of the lease. A lessee is also required to record a right of use asset and a lease liability for all leases with a term of greater than 12 months regardless of their classification. Leases with a term of 12 months or less will be accounted for similar to existing guidance for operating leases. The standard requires lessors to account for leases using an approach that is substantially equivalent to existing guidance for sales type leases, direct financing leases and operating leases. The standard will apply for annual periods beginning after December 15, 2018, including interim periods therein, and requires modified retrospective application. Early adoption is permitted. Based on management's current understanding of this standard along with the underlying substance of our operations, management believes it will not have a material impact on our financial statements.

In May 2017, the FASB issued ASU 2017-09, *Compensation-Stock Compensation (Topic 718), Scope of Modification Accounting*. The amendments in this Update provide guidance about which changes to the terms or conditions of a share-based payment award require an entity to apply modification accounting in Topic 718. The amendments in this

update are now effective for all entities for annual periods, and interim periods within those annual periods, beginning after December 15, 2017. Based on management's understanding of this new standard along with the underlying substance of our operations, this standard has not had and will not have a material impact on our financial statements.

In July 2017, the FASB issued Accounting Standards Update No. 2017-11, *Earnings Per Share (Topic 260)*, *Distinguishing Liabilities from Equity (Topic 480)*, *Derivatives and Hedging (Topic 815)*. The amendments in Part I of this Update change the classification analysis of certain equity-linked financial instruments (or embedded features) with down round features. When determining whether certain financial instruments should be classified as liabilities or equity instruments, a down round feature no longer precludes equity classification when assessing whether the instrument is indexed to an entity's own stock. The amendments also clarify existing disclosure requirements for equity-classified instruments. As a result, a freestanding equity-linked financial instrument (or embedded conversion option) no longer would be accounted for as a derivative liability at fair value as a result of the existence of a down round feature. For freestanding equity classified financial instruments, the amendments require entities that present earnings per share (EPS) in accordance with Topic 260 to recognize the effect of the down round feature when it is triggered. That effect is treated as a dividend and as a reduction of income available to common shareholders in basic EPS. Convertible instruments with embedded conversion options that have down round features are now subject to the specialized guidance for contingent beneficial conversion features (in Subtopic 470-20, *Debt with Conversion and Other Options*), including related EPS guidance (in Topic 260). The amendments in Part II of this Update recharacterize the indefinite deferral of certain provisions of Topic 480 that now are presented as pending content in the

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Codification, to a scope exception. Those amendments do not have an accounting effect. For public business entities, the amendments in Part I of this Update are effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2018. For all other entities, the amendments in Part I of this Update are effective for fiscal years beginning after December 15, 2019, and interim periods within fiscal years beginning after December 15, 2020. Early adoption is permitted for all entities, including adoption in an interim period. If an entity early adopts the amendments in an interim period, any adjustments should be reflected as of the beginning of the fiscal year that includes that interim period. Based on management's current understanding of this new standard along with the underlying substance of our operations, management believes it will not have a material impact on our financial statements.

In March 2018, the FASB issued ASU No. 2018-05, Income Taxes (Topic 740), Amendments to SEC Paragraphs Pursuant to SEC Staff Accounting Bulletin No. 118. The amendments in this update add various SEC paragraphs pursuant to the issuance of SEC Accounting Bulletin No. 118, Income Tax Accounting Implications of the Tax Cuts and Jobs Act (Act) (SAB 118). The SEC issued SAB 118 to address concerns about reporting entities' ability to timely comply with the accounting requirements to recognize all of the effects of the Act in the period of enactment. SAB 118 allows a reporting entity to disclose that timely determination of some or all of the income tax effects from the Act are incomplete by the due date of the financial statements and, if possible, to provide a reasonable estimate. The use of reasonable estimates have been disclosed in NOTE F of the consolidated financial statements.

Other recent accounting pronouncements issued by the FASB, the AICPA and the SEC did not or are not believed by management to have a material effect, if any, on the Company's financial statements.

Off-Balance Sheet Arrangements

We do not engage in off-balance sheet financing arrangements. In particular, we do not have any interest in so-called limited purpose entities, which include special purpose entities (SPEs) and structured finance entities.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Market risk is the exposure to loss resulting from changes in interest rates, foreign currency exchange rates, commodity prices and equity prices. We currently do not have any debt obligations with variable interest rates.

ITEM 4. CONTROLS AND PROCEDURES

We maintain a set of disclosure controls and procedures designed to ensure that information required to be disclosed in reports that we file or submit under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms. As of the end of the period covered by this report, based on an evaluation carried out under the supervision and with the participation of our management, including the Chief Executive Officer (CEO) and Chief Financial Officer (CFO), of the effectiveness of our disclosure controls and procedures, the CEO and CFO have concluded that our disclosure controls and procedures are effective. There have been no significant changes in our internal controls over financial reporting to date in 2018 that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. Legal Proceedings

The Company is not currently a party to any litigation. From time to time in the ordinary course of business, we may be subject to or may assert a variety of claims or lawsuits.

ITEM 1A. Risk Factors

For information regarding risk factors, please refer to Item 1A in the Company's Annual Report on Form 10-K for the year ended December 31, 2017. Investors should consider such risk factors, as well as the risk factor set forth below, prior to making an investment decision with respect to the Company's securities.

The issuance of shares at conversion prices lower than the market price at the time of conversion and the sale of such shares could adversely affect the price of our common stock. We may enter into convertible debt deals whereas our shares may be acquired from time to time upon conversion of the outstanding debt. At times, conversion prices could be lower than market price of our common stock at the time of conversion.

Our common stock is listed on the NASDAQ Capital Market, which imposes, among other requirements, a minimum bid requirement and a minimum market capitalization requirement. If we are not compliant with these continued listing requirements, we could be de-listed from the NASDAQ Capital Market.

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Our ability to continue as a going concern is largely dependent upon our ability to raise capital, including consummating the transactions contemplated by the Stock Purchase Agreement with Minera del Norte S.A. de c.v. (MINOSA) and Penelope Mining LLC (Penelope), an affiliate of MINOSA. MINOSA's and Penelope's obligation to consummate the transactions is conditioned upon, among other things, their satisfaction with the viability, including our receipt of the necessary permits, of our project to develop a mineralized phosphate deposit in Mexico's exclusive economic zone in the Pacific Ocean. Our environmental permit application filed in June 2015 was denied on April 8, 2016, but we are still seeking approval of our application. We cannot assure our ability to continue as a going concern unless we are able to raise additional capital.

We depend on information technology networks and systems to process, transmit and store electronic information and to communicate among our locations around the world and among ourselves within our company. Additionally, one of our significant responsibilities is to maintain the security and privacy of our confidential and proprietary information and the personal data of our employees. Our information systems, and those of our service and support providers, are vulnerable to an increasing threat of continually evolving cybersecurity risks. Computer viruses, hackers and other external hazards, as well as improper or inadvertent staff behavior could expose confidential company and personal data systems and information to security breaches. Techniques used to obtain unauthorized access or cause system interruption change frequently and may not immediately produce signs of intrusion. As a result, we may be unable to anticipate these incidents or techniques, timely discover them, or implement adequate preventative measures. With respect to our commercial arrangements with service and support providers, we have processes designed to require third-party IT outsourcing, offsite storage and other vendors to agree to maintain certain standards with respect to the storage, protection and transfer of confidential, personal and proprietary information. However, we remain at risk of a data breach due to the intentional or unintentional non-compliance by a vendor's employee or agent, the breakdown of a vendor's data protection processes, or a cyber-attack on a vendor's information systems or our information systems.

Short sellers of our stock may be manipulative and may attempt to drive down the market price of our common stock. Short selling is the practice of selling securities that the seller does not own but rather has, supposedly, borrowed from a third party with the intention of buying identical securities back at a later date to return to the lender. The short seller hopes to profit from a decline in the value of the securities between the sale of the borrowed securities and the purchase of the replacement shares, as the short seller expects to pay less in that purchase than it received in the sale. As it is therefore in the short seller's best interests for the price of the stock to decline, many short sellers (sometimes known as disclosed shorts) publish, or arrange for the publication of, negative opinions regarding the relevant issuer and its business prospects to create negative market momentum and generate profits for themselves after selling a stock short. Although traditionally these disclosed shorts were limited in their ability to access mainstream business media or to otherwise create negative market rumors, the rise of the Internet and technological advancements regarding document creation, videotaping and publication by weblog (blogging) have allowed many disclosed shorts to publicly attack a company's credibility, strategy and veracity by means of so-called research reports that mimic the type of investment analysis performed by large Wall Street firms and independent research analysts. These short attacks have, in the past, led to selling of shares in the market, on occasion in large scale and broad base. Issuers who have limited trading volumes and are susceptible to higher volatility levels than large-cap stocks, can be particularly vulnerable to such short seller attacks. These short seller publications are not regulated by any governmental, self-regulatory organization or other official authority in the U.S., are not subject to certification requirements imposed by the Securities and Exchange Commission and, accordingly, the opinions they express may be based on distortions or omissions of actual facts or, in some cases, fabrications of facts. In light of the limited risks involved in publishing such information, and the enormous profit that can be made from running just one successful short attack, unless the short sellers become subject to significant penalties, it is more likely than not that disclosed short sellers will continue to issue such reports. As of June 29, 2018, NASDAQ reports our stock has a short interest of 1.4 million shares, approximately 16% of our outstanding common stock.

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

None.

ITEM 4. Mine Safety Disclosures

Not applicable

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ITEM 6. Exhibits

- 31.1 Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (Filed herewith electronically)
- 31.2 Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (Filed herewith electronically)
- 32.1 Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350 (Filed herewith electronically)
- 32.2 Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350 (Filed herewith electronically)
- 101.1 Interactive Data File

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SIGNATURES

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

ODYSSEY MARINE EXPLORATION, INC.

Date: November 13, 2018

By: /s/ Jay A. Nudi
Jay A. Nudi, as Chief Financial Officer, Chief
Accounting Officer, and Authorized Officer
(Principal Financial Officer)