

FRANCHISE DISCLOSURE DOCUMENT



LBB Franchising, LLC
A North Carolina limited liability company
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We offer franchises for unique, fast casual restaurants featuring made-to-order gourmet burgers, truffle fries, ice cream floats, sodas, craft beers and other food and beverage items under the “Little Big Burger®” trademarks and restaurant operating system (each a “**Little Big Burger restaurant**” or “**Restaurant**”).

The total investment necessary to begin operation of a Little Big Burger restaurant ranges from \$206,000 to \$607,000. This amount includes \$30,000 that is payable to us. The total investment necessary to begin operation under an Area Development Agreement for three to five Little Big Burger restaurants ranges from \$33,000 to \$55,000. This includes \$30,000 to \$50,000 that must be paid to us.

This disclosure document summarizes certain provisions of your Franchise Agreement and other information in plain English. Read this disclosure document and all accompanying agreements carefully. You must receive this disclosure document at least 14 calendar days before you sign a binding agreement with, or make any payment to us or an affiliate in connection with the proposed franchise sale. **Note, however, that no governmental agency has verified the information contained in this disclosure document.**

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact our Executive Vice President, Franchise and Development, Mark Whittle, at 7621 Little Avenue, Suite 414, Charlotte, NC, 28226, franchising@littlebigburger.com or (704) 366-5122.

The terms of your contract will govern your franchise relationship. Do not rely on the disclosure document alone to understand your contract. Read your entire contract carefully. Show your contract and this disclosure document to an advisor, like a lawyer or an accountant.

Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as “A Consumer’s Guide to Buying a Franchise,” which can help you understand how to use this disclosure document, is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. You can also visit the FTC’s home page at www.ftc.gov for additional information. Call your state agency or visit your public library for other sources of information on franchising.

There may also be laws on franchising in your state. Ask your state agencies about them.

The issuance date of this Franchise Disclosure Document is May 19, 2022.

How to Use This Franchise Disclosure Document

Here are some questions you may be asking about buying a franchise and tips on how to find more information:

QUESTION	WHERE TO FIND INFORMATION
How much can I earn?	Item 19 may give you information about outlet sales, costs, profits or losses. You should also try to obtain this information from others, like current and former franchisees. You can find their names and contact information in Item 20 or Exhibit G.
How much will I need to invest?	Items 5 and 6 list fees you will be paying to the franchisor or at the franchisor's direction. Item 7 lists the initial investment to open. Item 8 describes the suppliers you must use.
Does the franchisor have the financial ability to provide support to my business?	Item 21 or Exhibit D includes financial statements. Review these statements carefully.
Is the franchise system stable, growing, or shrinking?	Item 20 summarizes the recent history of the number of company-owned and franchised outlets.
Will my business be the only Little Big Burger restaurant business in my area?	Item 12 and the "territory" provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.
Does the franchisor have a troubled legal history?	Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.
What's it like to be a Little Big Burger restaurant franchisee?	Item 20 or Exhibit G lists current and former franchisees. You can contact them to ask about their experiences.
What else should I know?	These questions are only a few things you should look for. Review all 23 Items and all Exhibits in this disclosure document to better understand this franchise opportunity. See the table of contents.

What You Need To Know About Franchising *Generally*

Continuing responsibility to pay fees. You may have to pay royalties and other fees even if you are losing money.

Business model can change. The franchise agreement may allow the franchisor to change its manuals and business model without your consent. These changes may require you to make additional investments in your franchise business or may harm your franchise business.

Supplier restrictions. You may have to buy or lease items from the franchisor or a limited group of suppliers the franchisor designates. These items may be more expensive than similar items you could buy on your own.

Operating restrictions. The franchise agreement may prohibit you from operating a similar business during the term of the franchise. There are usually other restrictions. Some examples may include controlling your location, your access to customers, what you sell, how you market, and your hours of operation.

Competition from franchisor. Even if the franchise agreement grants you a territory, the franchisor may have the right to compete with you in your territory.

Renewal. Your franchise agreement may not permit you to renew. Even if it does, you may have to sign a new agreement with different terms and conditions in order to continue to operate your franchise business.

When your franchise ends. The franchise agreement may prohibit you from operating a similar business after your franchise ends even if you still have obligations to your landlord or other creditors.

Some States Require Registration

Your state may have a franchise law, or other law, that requires franchisors to register before offering or selling franchises in the state. Registration does not mean that the state recommends the franchise or has verified the information in this document. To find out if your state has a registration requirement, or to contact your state, use the agency information in Exhibit E.

Your state also may have laws that require special disclosures or amendments be made to your franchise agreement. If so, you should check the State Specific Addenda. See the Table of Contents for the location of the State Specific Addenda.

Special Risks to Consider About *This* Franchise

Certain states require that the following risk(s) be highlighted:

1. **Out-of-State Dispute Resolution.** The franchise and development agreement require you to resolve disputes with us by litigation only in the federal or state court having jurisdiction where our principal offices are located at the time suit is filed, which is currently in North Carolina. Out-of-state litigation may force you to accept a less favorable settlement for disputes. It may also cost more to litigate with us in North Carolina than in your own state.
2. **Spousal Liability.** Your spouse must sign a document that makes your spouse liable for all financial obligations under the franchise agreement even though your spouse has no ownership interest in the franchise. This guarantee will place both your and your spouse's marital and personal assets, perhaps including your house, at risk if your franchise fails.

Certain states may require other risks to be highlighted. Check the "State Specific Addenda" (if any) to see whether your state requires other risks to be highlighted.

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ITEM 1

THE FRANCHISOR AND ANY PARENTS, PREDECESSORS AND AFFILIATES

This disclosure document describes Little Big Burger restaurant franchises. In this disclosure document, “we,” “us,” “our” and “**LBB Franchising**” mean LBB Franchising, LLC, the franchisor, and “you” or “your” means the purchaser of the franchise. If the purchaser of the franchise is a corporation, partnership, or limited liability company, “you” means both the purchaser and the persons who own the business entity.

The Franchisor

LBB Franchising, LLC is a North Carolina limited liability company formed on February 21, 2017. We do business under our corporate name and the name “Little Big Burger.” We do not conduct business under any other name. Our principal place of business is 7621 Little Avenue, Suite 414, Charlotte, NC 28226. Our agents for service of process are listed in Exhibit E. As of December 31, 2021, our affiliates operated 16 Little Big Burger restaurants, which we refer to as “**Affiliate-Owned Restaurants**” and there were no franchised Little Big Burger restaurants. We began offering franchises for Little Big Burger restaurants in February 2017. We have never offered franchises in any other line of business.

The Little Big Burger Restaurant Franchise

Little Big Burger restaurants are unique fast casual restaurants offering and selling cooked-to-order gourmet burgers prepared in an open kitchen and served on brioche buns with local cheeses and featuring, truffle fries, veggie burgers, sodas, ice cream floats, craft beers, and related food and beverage items under the “Little Big Burger®” mark.

We offer qualified persons and entities the right to develop multiple Little Big Burger restaurants within a specified geographic area (“**Development Area**”) according to a mandatory development schedule (“**Development Schedule**”) under the Area Development Agreement (“**Development Agreement**”). Our current form of Development Agreement appears in Exhibit A to this disclosure document. When you sign the Development Agreement, you will pay the development fee (see Item 5) for each Little Big Burger restaurant you agree to develop in the Development Area in one lump sum and you will receive the right and the obligation to develop a specified number of Little Big Burger restaurants by certain deadlines set forth in the Development Schedule. You will negotiate both the number of Little Big Burger restaurants and the Development Schedule with us. There is no minimum number of Little Big Burger restaurants that you are required to develop under the Development Agreement.

We will grant Little Big Burger restaurant franchises under the Development Agreement only to you or to a corporation, limited liability company or other entity of which you or one or more of your owners owns more than 50% of the total authorized ownership interests, as long as you or such owner(s) have the right to control the entity’s management and policies.

When you sign the Development Agreement, you (or your affiliate) will simultaneously sign the form of Franchise Agreement attached to this disclosure document as Exhibit B for your first Little Big Burger restaurant. You (or your affiliate) will sign our then-current form of Franchise Agreement for each additional Little Big Burger restaurant that you develop under the Development Agreement. Our then-current form of Franchise Agreement may differ from the version of Franchise Agreement attached to this disclosure document. You or your affiliates must sign Franchise Agreements for, open, and begin operating each Little Big Burger restaurant on or before the dates listed in the Development Schedule.

Under the Franchise Agreement, you will receive a license to operate a Little Big Burger restaurant at a site approved by us, which we refer to as the “**Franchised Location**.” You also will be licensed to use the “Little Big Burger” trademark and logo, as well as related trade names, service marks, trademarks, logos, emblems, and indicia of origin (the “**Proprietary Marks**”) and certain copyrights and copyrighted materials (the “**Works**”) owned by our parent, LBB Acquisition, LLC, and licensed to us for the operation of Little Big Burger restaurants. We and our affiliates may modify the Proprietary Marks and the Works from time to time.

Little Big Burger restaurants operate according to a distinctive format, appearance, and set specifications and operating procedures (“**System**”). You will be licensed to utilize our System under the Franchise Agreement. Our mandatory and recommended standards, policies and procedures are represented in our confidential and proprietary operations manual (the “**Manual**”), which we will make available to you during the term of your Franchise Agreement. We have the right to change the Manual and the elements of the System at any time without consultation with you.

You will establish your Restaurant in a well-established urban or suburban market. Little Big Burger restaurants require an in-line or end-cap space of between 1,200 and 1,800 square feet in a high traffic, high visibility area including urban commercial districts, suburban malls, strip centers, or mixed-use developments. We will consider on a case-by-case basis a franchisee’s request to convert an existing facility to a Little Big Burger restaurant, as well as sites that may be larger or smaller than our prototype, provided that the site can be transformed to meet the standards and specifications of the System.

You will have the right to sell food and beverage items at retail to the public for carry-out and/or consumption on the premises of your restaurant. In addition, you may engage in delivery, catering and/or wholesaling of food and beverage items if we establish programs for one or more of those activities (“**Off-Premises Programs**”). Off-Premises Programs may be mandatory or optional for franchisees and may include online and telephone ordering features. If we establish a mandatory Off-Premises Program or you choose to participate in a voluntary Off-Premises Program, you must pay any fees and costs associated with participating and comply with all other rules and procedures that we specify for the program. You may have to purchase equipment, which may include a delivery vehicle in order to participate in an Off-Premises Program. We may define designated service areas for Off-Premises Programs.

Our Parent, Affiliates and Predecessors

Our direct parent is LBB Acquisition, LLC, which is a North Carolina limited liability company formed on July 7, 2015 (the “Parent”). Our Parent owns the Proprietary Marks and the System. Our Parent shares our principal business address, does not operate any Little Big Burger restaurants, and has not offered or sold franchises in any line of business.

Our Parent is owned by Amergent Hospitality Group, Inc., a Delaware corporation that was incorporated on February 18, 2020 (“**Amergent**”). Amergent, together with its subsidiaries, owns and operates restaurant brands in the United States. Amergent shares our principal business address, does not operate any Little Big Burger restaurants, and has not offered or sold franchises in any line of business.

Our affiliate, BGR Franchising, LLC (“BGR Franchising”), is a Virginia limited liability company that has offered franchises for BGR Burgers Grilled Right® restaurants (“BGR restaurants”) since 2011. BGR restaurants offer gourmet hamburger sandwiches. As of December 31, 2021, there were seven franchised BGR restaurants and seven affiliate-owned BGR Restaurants. BGR Franchising shares our principal business address.

Our affiliate, PizzaRev Franchising, LLC (“PizzaRev Franchising”), has offered franchises for PizzaRev Restaurants since 2013. PizzaRev restaurants are fast casual restaurants featuring build-your-own artisan pizzas made using fresh ingredients and homemade pizza dough. As of December 31, 2021, there were seven franchised PizzaRev restaurants and two PizzaRev restaurants operated by our affiliates. PizzaRev shares our principal business address.

We do not have any predecessors. We do not have any other affiliates that offer franchises in any line of business or that offer products or services to our franchisees.

Industry-Specific Laws

Certain aspects of any restaurant business are regulated by federal, state and local laws, rules and ordinances in addition to the laws, regulations and ordinances applicable to businesses generally. The U.S. Food and Drug Administration (“**FDA**”), the U.S. Department of Agriculture, as well as state and local departments of health and other agencies have laws and regulations concerning the preparation of food

and sanitary conditions of restaurant facilities. State and local agencies routinely conduct inspections for compliance with these requirements. The FDA and some states and municipalities regulate food labeling, nutrition, and health claims relating to food products. However, we are not aware of any laws applicable to a Little Big Burger restaurant that would not apply to restaurant businesses generally.

You will be required to comply with all federal, state and local laws and regulations that generally apply to restaurants. These include the Americans with Disabilities Act; Affordable Care Act, Fair Labor Standards Act; EEOC; OSHA; Gramm-Leach-Bliley Act; The Patriot Act; Federal Truth in Lending and other laws dealing with credit transactions and collections; Digital Millennium Copyright Act; regulations governing MMS, SMS, emails and telemarketing; the payment of license fees; general restaurant rules and regulations; health, sanitation, menu-labeling, no smoking, discrimination, employment and sexual harassment laws, and any advertising or content-related rules and regulations. You must obtain real estate permits and licenses and operational licenses (including permits to serve alcohol if you plan to serve wine and beer at your Restaurant). It is your responsibility to investigate, satisfy and stay current on all local, state, and federal laws and regulations since they vary from place to place and can change over time. You should consult with your attorney concerning these and other laws and ordinances that may affect your operations.

Market and Competition

Your Restaurant will offer food and beverage items to the general public, and sales may or may not be seasonal, depending on the site's physical and geographical location. Your Restaurant will compete primarily with local fast casual restaurants and other regional, national, and international chains offering burgers and related products. You may also compete with other affiliate-owned and franchised Little Big Burger restaurants. The burger industry and the fast casual restaurant industry are mature and highly competitive. Your competitive advantage in the marketplace will be based on your adherence to our standards and guidelines, as well as your managerial abilities and focus on customer service. The ability of each Little Big Burger restaurant to compete depends on its location, ingress and egress, signage, parking, quality service, employee attitudes, overhead, changing local market and economic conditions, and many other factors both within and outside your control.

ITEM 2 BUSINESS EXPERIENCE

OFFICERS AND DIRECTORS OF OUR PARENT, AMERGENT

Chairman and Chief Executive Officer: Mike Pruitt

Mr. Pruitt has served as Amergent's Chairman of the Board of Directors and Chief Executive Officer since April 2020. Mr. Pruitt served as President and Chief Executive Officer of Chanticleer Holdings, Inc. in Charlotte, North Carolina from June 2005 to March 2020.

Chief Financial Officer: Steve Hoelscher

Mr. Hoelscher has served as Amergent's Chief Financial Officer since January 2021. He also has served as Chief Financial Officer of Mastodon Ventures Inc. in Austin, Texas since June 2000.

President: Frederick L. Glick

Mr. Glick has served as Amergent's President since April 2020. From November 2018 to March 2020, he served as President of Chanticleer Holdings, Inc. in Charlotte, North Carolina. From November 2013 to November 2018, Mr. Glick was Vice President of Brewery Restaurants of Karl Strauss Brewing Company in San Diego, California.

Executive Vice President, Franchise and Development: Mark Whittle

Mr. Whittle has served as Executive Vice President, Franchise and Development of Amergent since November 2021. From June 2013 to October 2021, he served as Chief Development Officer of HOA Restaurant Group in Atlanta, Georgia.

Brand Leader: Adrian Oca

Mr. Oca has served as Amergent's Brand Leader since April 2020. From March 2014 to April 2020, Mr. Oca served as Brand Leader and Regional Vice President of Operations for Chanticleer Holdings, Inc. in Charlotte, North Carolina.

Director of Training: April Miller

Ms. Miller has served as Amergent's Director of Training since April 2020. From September 2013 to March 2020, she served as the Director of Training for Chanticleer Holdings, Inc. in Charlotte, North Carolina.

ITEM 3 LITIGATION

Francis Howard v. Chanticleer Holdings, Inc., Michael D. Pruitt, et al., (S.D. Fla., Case No. 12-81123-CIV). This action was initiated by Mr. Howard, on behalf of himself and similarly-situated shareholders of Chanticleer Holdings, Inc. ("**Chanticleer**"), against Chanticleer, our Chief Executive Officer, Michael Pruitt, and others on or around October 12, 2012, wherein Mr. Howard alleged a violation of securities law in connection with the public offering of registered securities in Chanticleer. After various motions and other filings by both parties in this proceeding, the parties agreed to settle this matter pursuant to the terms of a settlement agreement that was filed with the Court on March 31, 2014. As part of the settlement, the parties agreed that a payment of \$850,000 would be made to the plaintiffs, with all parties to the agreement specifically recognizing and acknowledging that the settlement did not constitute any type of admission of guilt or liability on the part of any party.

Other than this one matter, no litigation is required to be disclosed in this Item.

ITEM 4 BANKRUPTCY

No bankruptcy is required to be disclosed in this Item.

ITEM 5 INITIAL FEES

Initial Franchise Fee

You must pay us an initial franchise fee in the amount of \$30,000 for your Restaurant when you sign the Franchise Agreement. We will reduce the initial franchise fee to \$20,000 if you already operate a Little Big Burger restaurant. Except as noted below, the initial franchise fee is uniform for all franchisees. The initial franchise fee is payable in one lump sum, is fully earned when paid and is not refundable.

If you are developing your Restaurant under a Development Agreement, we will provide a credit against the initial franchise fee in the amount of the development fee that you paid for the Little Big Burger restaurant.

Development Fee

You must pay us a lump sum development fee if you sign the Development Agreement. The development fee is \$30,000 for the first Little Big Burger restaurant and \$10,000 for each additional Little Big Burger restaurant you agree to develop under the Development Agreement. We will credit the development fee for each Little Big Burger restaurant against the initial franchise fee that you will pay for each Little Big Burger restaurant. We will insert this fee in the Development Agreement before signing it. The development fee is non-refundable. There is no minimum number of Little Big Burger restaurants that you are required to develop under the Development Agreement.

Veteran's Discount

We are proud to offer qualified prospects who can also demonstrate that they are honorably-discharged United States veterans a 10% discount off of the development fee and initial franchise fee.

Site Review Fee

We do not charge any fees to conduct one market visit for your first Restaurant. You must reimburse us for our travel expenses if we require or you request additional market visits.

The initial franchise fee, development fee and other fees and expenses we describe in this Item 5 are not refundable. These fees are typically uniform for all new franchisees in the system.

ITEM 6 OTHER FEES

Type of Fee¹	Amount	Date Due	Remarks
Royalty	5% of Net Sales ²	Weekly ³	See Note 2 for the definition of "Net Sales"; see Note 3 for an explanation of our electronic funds transfer process.
Brand Fund Contribution	When the Brand Fund is formed, 1.5% of Net Sales	Weekly	We will form the Brand Fund when a franchised Restaurant opens. We can increase your Brand Fund Contribution to a maximum of 3% of Net Sales) upon notice to you. Please see Item 11 for further details.
Local Store Marketing Expenditures	Currently, at least 2% of quarterly Net Sales	Quarterly expenditure required	You must report your local advertising expenditures to us on a quarterly basis. If you do not make the required expenditures on an annual basis, we may collect the funds from you and contribute the funds to the Brand Fund.

Type of Fee ¹	Amount	Date Due	Remarks
Cooperative Contributions	Anticipated to be a maximum of one-half of your local store marketing requirements	Weekly	We have the right to establish cooperative marketing programs (“ Cooperatives ”) in your region. You can reduce your local store marketing obligation by the amount that that you contribute to a Cooperative. The voting power for our Affiliate-Owned Restaurants will be the same as the voting power of our franchised restaurants in each Cooperative. Please see Item 11 for further details.
Technology Fee	Currently, \$75 per week	Weekly	Payable for access to, and in consideration of our development and delivery of software programs and other technology. These developments may include new software and hardware platforms, intranets, extranets, mobile applications, webpages, menu boards and future technological advances that we introduce to the System. We reserve the right to adjust the Technology Fee and you must pay the adjusted fee within 30 days after we notify you of the rate adjustment.
Collection Costs and Expenses	Amount incurred	Upon demand	You must pay our collection costs and expenses, which include collection agency fees, costs incurred in creating reports demonstrating Net Sales, attorney’s fees, and related expenses we incur in enforcing the terms of the Franchise Agreement.
Convention Registration	Up to \$500 per attendee	As incurred	We reserve the right to require your attendees to pay a registration fee to attend our annual conference.
Customer Complaints	Our reasonable costs and expenses	Upon demand	You must reimburse us for our reasonable costs and expenses incurred in resolving customer complaints at your Restaurant.

Type of Fee ¹	Amount	Date Due	Remarks
Early Termination Damages	Amount of the average weekly Royalty Fees and Brand Fund Contributions that you owed for the 52-week period prior to termination, multiplied by the lesser of 104 weeks or the number of weeks remaining in the term of the Franchise Agreement	Within 30 days following the termination	Payable if you default on your obligations and we terminate the Franchise Agreement prior to the expiration of the initial term of the Franchise Agreement.
Enforcement Expenses	Reasonable cost of our attorneys' fees and expenses	Upon demand	Payable if we obtain injunctive or other relief for the enforcement of any term of the Franchise Agreement.
Indemnification	Will vary under circumstances	As incurred	You must reimburse us if we incur any expense, including attorneys' fees and other costs, or are held liable for claims arising out of the operation of your Restaurant.
Interest	1.5% per month or the maximum rate permitted by applicable law, whichever is less.	With payment of overdue amount	We calculate interest from the date the payment was due until paid in full.
Insufficient Funds Fee	\$100 and any bank fees incurred (or the maximum amount permitted under applicable law, whichever is less)	With payment of overdue amount	Payable if you deliver a check which does not clear your bank account or where we are not able to complete an electronic funds transfer due to insufficient funds.
Management Fee	6% of Net Sales	Weekly	Payable only if we or a third party manage your Restaurant upon your Managing Owner's death or disability, if we have the right to terminate the Franchise Agreement or have placed you in formal default, or if the Franchise Agreement is terminated or expires and we are deciding whether to exercise our option to purchase your Restaurant.
Off-Premises Programs	Currently, \$0	As incurred	If we establish an Off-Premises Program, we may charge you fees and costs associated with participating in the program.

Type of Fee ¹	Amount	Date Due	Remarks
Securities Offering	\$10,000 or such greater amount as is necessary to reimburse us and our outside advisors for our expenses	With submission of offering materials for our review	Payable if you intend to offer securities to investors. This is in addition to the transfer fee described below. You also must reimburse us on an annual basis for our costs associated with providing information for your annual reports.
Quality Assurance Programs	Our out of pocket costs (typically \$1,000 - \$1,500)	As incurred	You must pay costs that we incur to third parties to carry out quality assurance programs at your Restaurant if you don't pay third parties directly for their services.
Relocation Fee	\$7,500	Upon demand	Payable if you make a request and we approve your relocation of your Restaurant premises.
Reimbursement for Examination or Audit	Actual cost of audit, including travel, lodging, wages and reasonable accounting and legal costs; deficiency in Royalties and Brand Fund Contributions, plus interest	Upon demand	Payable only if an examination or audit reveals an understatement of the Net Sales of the Restaurant by you of 2% or more. This is in addition to applicable interest and late fees.
Reimbursement of our Expenses	Amount we pay on your behalf	Upon demand	Payable only if we pay, or become obligated to pay, monies on your behalf by consent or otherwise under the Franchise Agreement including amounts we pay to obtain insurance for your Restaurant on your behalf if you fail to maintain the required insurance policies (plus an administrative costs of 18% of the premium cost).
Renewal Franchise Fee	\$7,500	Upon execution of a renewal franchise agreement	If you choose to and are approved to continue operating the Restaurant for a renewal term you must sign our then current form of renewal franchise agreement.
Supplier Evaluation	Reasonable costs of evaluation, which currently are expected to range between \$1,000 and \$1,500 although costs could be less than or exceed these amounts depending on the product and the supplier	Upon demand	Payable whether or not we approve the supplier. Please see item 8 for additional details.

Type of Fee ¹	Amount	Date Due	Remarks
Taxes	Amount imposed on us	Upon demand	You must reimburse us for any taxes, fees or assessments imposed on us for acting as a franchisor or licensing the Proprietary Marks to you.
Training – Additional Programs	\$500 per representative per day and travel expenses	Upon demand	Payable for additional training programs that we administer during the term of your Franchise Agreement.
Training - LMS Systems Fee	Up to \$300 per month	Monthly	This fee is payable to us and we will pass the fee through to our vendor for your access our learning management system.
Training – Replacement Personnel	\$1,500 per person	Upon demand	If you need to send your replacement Managing Owner, General Manager, Trainers or managerial staff to our training program. Please see Item 11 for a description of these roles and additional details on our training program.
Transfer Fee – Franchise Agreement	\$7,500	Upon demand	Payable if you propose to sell or transfer your business (or a partial ownership interest). We will reduce the transfer fee to \$1,000 for transfers to an entity wholly owned by your owners.
Transfer Fee – Development Agreement	\$7,500 for each Little Big Burger restaurant that remains to be developed	Upon demand	Payable if you propose to sell or transfer your business (or a partial ownership interest). We will reduce the transfer fee to \$1,000 for transfers to an entity wholly owned by your owners.

NOTES TO CHART:

- (1) Unless otherwise noted, all of the fees or charges described in this Item derive from the Franchise Agreement. Unless otherwise noted, all fees are non-refundable, payable to us, and uniformly imposed on all franchisees receiving this offering; however we may, in some instances, waive or reduce some or all of these fees for particular franchisees.
- (2) “**Net Sales**” means the aggregate amount of all revenues generated from the sale of all products and services sold and all other income of every kind related to the Restaurant, whether for cash or credit (and regardless of collection in the case of credit), whether from sales on the Franchised Location, by delivery, from catering, or at wholesale (whether the sales method is permitted or not). You may not reduce Net Sales by the amount of any discounts provided to employees, family members and other businesses that you control.

The following are not included in Net Sales: (1) sales taxes or other taxes collected from customers for transmittal to the appropriate taxing authority (2) proceeds from the sale of gift cards or stored value

cards; and (3) customer refunds made in good faith. We may modify our policies consistent with restaurant industry practices regarding revenue recognition, revenue reporting, and the inclusion in or exclusion of certain revenue from “Net Sales” as circumstances, business practices, and technology change

- (3) You must designate an account at a commercial bank of your choice (“**Account**”) for the payment of amounts due to us and/or our affiliates, including but not limited to weekly Royalty Fees, Brand Fund Contributions, and Technology Fees. You must furnish us and the bank with authorizations as necessary to permit us to make withdrawals from the Account by electronic funds transfer. Every Monday (or at another date specified by us from time to time), we will transfer from the Account an amount equal to the Royalty Fees, Brand Fund Contributions, and Technology Fees due from you based on the Net Sales of the Restaurant for the preceding week, as well as any other fees due to us and/or our affiliates. We will obtain payment by electronic debit to your Account each week.

ITEM 7 ESTIMATED INITIAL INVESTMENT

**TABLE 1
YOUR ESTIMATED INITIAL INVESTMENT
FOR A LITTLE BIG BURGER RESTAURANT UNDER A FRANCHISE AGREEMENT**

Nature of Expenditure	Amount Low Estimate¹	Amount High Estimate¹	Payment Method¹	When Due	Payment To
Initial Franchise Fee ²	\$30,000	\$30,000	Lump sum	At signing of Franchise Agreement	Us
Lease and Security Deposits ³	\$12,000	\$20,000	As incurred	Before opening	Suppliers
Building and Zoning Permits ⁴	\$10,000	\$30,000	As arranged	As arranged	Governmental authorities, engineers, vendors
Leasehold Improvements ⁵	\$75,000	\$250,000	As arranged	As Arranged	Contractor, architect, vendors
Signage ⁶	\$5,000	\$40,000	As arranged	Before Opening	Vendors
Initial Inventory ⁷	\$5,000	\$12,000	As arranged	As Arranged	Approved suppliers
Insurance ⁸	\$1,000	\$5,000	As arranged	As Arranged	Insurance company or broker
Training Expenses ⁹	\$5,000	\$20,000	As incurred	As Incurred	Hotels, airlines, restaurants, staff
Grand Opening Marketing ¹⁰	\$5,000	\$5,000	As arranged	Two weeks prior to opening, four weeks after opening	Vendors

Nature of Expenditure	Amount Low Estimate ¹	Amount High Estimate ¹	Payment Method ¹	When Due	Payment To
Furnishings, Fixtures, Equipment and Supplies ¹¹	\$40,000	\$150,000	As Arranged	As arranged	Approved suppliers
Business Licenses and Professional Fees ¹²	\$500	\$10,000	As required by federal, state, or local authorities	As incurred	Governmental authorities, attorney, accountant and other business advisors
Computer Equipment and Software ¹³	\$5,000	\$15,000	As arranged	As arranged	Approved suppliers
Additional Funds (3 Months) ¹⁴	\$12,500	\$20,000	As arranged	As incurred	Vendors, Staff
Total ¹⁵	\$206,000	\$607,000			

NOTES TO TABLE 1

- (1) Amount and Method of Payment. Costs paid to us are not refundable, except as specifically described below. Whether any costs paid to third parties are refundable will vary based on the practice in the area where your Restaurant is located. We do not provide any direct or indirect financing for the initial franchise fee or other fees and costs paid to us or to third parties. If you meet the credit requirements determined by third party vendors, you may be able to obtain financing. The availability and terms of financing will depend on many factors, including the availability of financing generally, your creditworthiness and collateral, and lending policies of the financial institutions from which you request a loan. We do not determine the terms and conditions of any financing and we do not provide any guarantees for any financing provided to you by third parties.
- (2) Initial Franchise Fee. The manner in which the initial franchise fee is paid is explained in detail in Item 5. If you develop multiple Little Big Burger restaurants under a Development Agreement, Item 5 explains the reduced initial franchise fees you will pay for each Restaurant.
- (3) Leases and Security Deposits. You must secure a retail premises on which to locate your Restaurant. We must approve your location and lease terms before you sign a lease for the Restaurant premises. Little Big Burger restaurants typically require a space of approximately 1,200 to 1,800 square feet. It is extremely difficult to estimate lease acquisition costs because of the wide variation in these costs depending upon location. Lease costs will also vary based upon square footage, cost per square footage, local market commercial lease rates, and required maintenance costs. This estimate covers your cost for the security deposit and the first months' rent. The remainder of the rent expense during the first three months is covered under Additional Funds. The amounts paid are typically not refundable except for a security deposit, which may be refunded.
- (4) Building and Zoning Permits. This estimate includes the costs of obtaining all building and zoning permits.
- (5) Leasehold Improvements. This estimate includes the costs you will incur to design and construct the leasehold improvements including permanent construction items at your Restaurant (such as drywall, flooring, cabinets, countertops, HVAC, plumbing, and electric) and the costs of hiring an approved architect and qualified licensed general contractor and engineer. Your cost for leasehold

improvements to an existing building will vary depending upon the size of your Restaurant, the condition of the premises, and its geographic location. If you are converting an existing business into a Little Big Burger restaurant, your costs may be higher or lower depending on the available assets, fixtures, and conversion costs. Construction costs in some areas of the country may exceed these estimates. Your landlord may provide some or all of these improvements at no additional cost. We estimate that your tenant improvement allowance could range from \$0 to \$80,000. You may also be provided free rent for a period of time by your landlord ranging from zero to four months.

- (6) Signage. This estimate includes the cost of acquiring menu boards, posters and outdoor signage for a Little Big Burger restaurant. The cost of signage will depend on the size and location of your Restaurant, your landlord's particular requirements, local and state ordinances, and zoning requirements. Unless we have designated an approved supplier to service your area, you may purchase signage from any third-party supplier so long as the signage conforms to our standards and specifications.
- (7) Initial Inventory. You are required to purchase an initial inventory of food and beverages, including meat and produce, smallwares, paper goods, and cleaning supplies. Certain of these items must be purchased from approved and designated suppliers.
- (8) Insurance. The estimate covers the cost of your insurance coverage for a one to two month period prior to opening. Your costs will vary from state to state and will depend on your prior loss experience, if any, and/or the prior loss experience of your insurance carrier in the state or locale in which you operate your Restaurant as well as and national or local market conditions.
- (9) Training Expenses. We will provide tuition-free training program for your Managing Owner and your General Manager, as defined in Item 11 (or another Restaurant manager if your Managing Owner serves as the Restaurant's General Manager). You will be responsible for your and your designated attendees' costs of attending the training program, including travel, meal, and lodging expenses.
- (10) Grand Opening Marketing. You must spend a minimum of \$5,000 to develop and implement an opening advertising campaign beginning two weeks prior to opening and ending four weeks after opening as defined in Item 11. This requirement is in addition to your required Brand Fund Contribution and local advertising obligations.
- (11) Furnishings, Fixtures, Equipment, and Supplies. You must purchase or lease start-up equipment meeting our standards and specifications. The estimate above includes the cost to purchase a grill, hood, fire suppression system, fryers, walk-in and reach-in refrigerators, sinks, tables, a camera security system and related equipment, and other items necessary to commence operating your Restaurant. Part or all of these upfront costs can be eliminated if you are able to lease furniture and equipment, subject to third-party lease terms and approval.
- (12) Business Licenses and Professional Fees. The estimate is for the legal, accounting, administrative, design, traffic studies, demographic studies, brokerage, and miscellaneous other professional services that you may incur before you open your Restaurant, including (among other things) to assist you in forming your legal entity and in reviewing the Franchise Agreement. Prior to leasing a space, you should evaluate all applicable federal, state and local laws, including requirements of the liquor control board or other entity regulating the sale, service and consumption of wine, bottled beer and, if applicable, liquor at the Restaurant premises, and determine the feasibility of obtaining all licenses, permits and approvals necessary to operate your Restaurant. Your actual costs may vary, for example, depending on the degree to which you rely upon professional advisors.

We may require our franchisees to offer beer and wine and, at our discretion, other alcoholic beverages, at their Little Big Burger restaurants, if they obtain and maintain the appropriate license and comply with all federal, state, and local laws relating to the distribution and dispensation of

alcoholic beverages. The cost of obtaining liquor licenses and related permits will vary greatly from state to state. If federal, state, and/or local laws prevent you from obtaining the necessary licenses, or if the direct cost of obtaining the necessary licenses to offer and sell beer and wine or alcoholic beverages, as applicable, exceeds \$15,000 (excluding legal fees and insurance expenses associated with obtaining the license), we may grant an exemption to operate the Restaurant without a liquor license. Costs associated with obtaining a license to sell wine and beer or a full liquor licenses, as applicable, include the application, background checks, fingerprinting, stakeholder disclosures, surety bonds, insurance, tax permits, other liquor control board costs, Alcohol Awareness Training, and the cost to obtain the license itself. Costs will vary based on whether you purchase the license from an existing business or from a regulatory agency. In many cases, the licenses are issued based on availability and our approval of the site for your Restaurant is not a guarantee that you will be able to obtain a liquor license for that location.

- (13) Computer Equipment and Software. You must purchase a computer and point of sale ("POS") system meeting our standards and specifications, including hardware, software, two monitors, and two printers. You will incur additional costs if you purchase an additional personal computer, KV Switch, and an all-in-one printer. See Item 11 for additional details.
- (14) Additional Funds – Three Months. The range in the chart reflects the amount of additional working capital you will need during the first three months of operation to pay other expenses including, among other things, payroll and payroll taxes. These estimates are based on the experience of our affiliates in opening and operating Little Big Burger restaurants. These figures are estimates and we cannot guarantee that you will not have additional expenses in starting the business. Your costs will depend on factors such as: the size of your Restaurant; how closely you follow our methods and procedures; your management skill, experience and business acumen; financing costs; local economic conditions; the local market for restaurants; the prevailing wage rate; competition; and the sales level reached during the initial period.
- (15) Your Estimated Initial Investment. This estimate is based upon our affiliate's experience in opening and owning Little Big Burger restaurants. Your costs may vary based on a number of factors including, but not limited to, the geographic area in which you open, local market conditions, the time it takes to build sales of the establishment, and your skills at operating a business. We strongly recommend that you use these categories and estimates as a guide to develop your own business plan and budget and investigate specific costs in your area. You should review this estimate and work with knowledgeable advisors including lawyers, accountants, restaurant advisors, local contractors, engineers, and architects before making any decision to invest in our franchise opportunity.

TABLE NO. 2
YOUR ESTIMATED INITIAL INVESTMENT
DEVELOPMENT AGREEMENT
3-5 LITTLE BIG BURGER RESTAURANTS

Type of Expenditure	Amount Low Estimate ¹	Amount High Estimate ¹	Method of Payment ¹	When Due	To whom payment is to be made
Development Fee ²	\$30,000	\$50,000	Lump sum	Upon signing Development Agreement	Us
Business Plan Preparation / Miscellaneous Expenses ³	\$3,000	\$5,000	As incurred	As incurred	Third parties
Total	\$33,000	\$53,000			

- (1) Amount and Method of Payment. Costs paid to us are not refundable, except as specifically described below. Whether any costs paid to third parties are refundable will vary based on the practice in the Development Area. We do not provide any direct or indirect financing for the Development Fee or other fees and costs paid to us or to third parties. If you meet the credit requirements determined by third party vendors, you may be able to obtain financing. The availability and terms of financing will depend on many factors, including the availability of financing generally, your creditworthiness and collateral, and lending policies of the financial institutions from which you request a loan. We do not determine the terms and conditions of any financing and we do not provide any guarantees for any financing provided to you by third parties.
- (2) Development Fee. You will sign a Development Agreement to reserve a Development Area in which you will develop multiple Little Big Burger restaurants under a Development Schedule. These amounts estimate that you will develop three to five Little Big Burger restaurants in the Development Area. Your estimated initial investment under the Development Agreement will vary depending on the number of Little Big Burger restaurants you develop within the Development Area. No part of this initial investment is refundable, although we will apply your development fee towards the initial franchise fees owed under the Franchise Agreements that the Development Agreement covers.
- (3) Business Plan Preparation/Miscellaneous Expenses. We recommend that you prepare a business plan prior to purchasing this franchise opportunity. Except for the development fee, there is no additional initial investment for training, real property, equipment, fixtures, other fixed assets, construction, remodeling, leasehold improvements, decorating costs, inventory, security deposits, utility deposit, business licenses, other prepaid expenses or other costs required to begin operating under the Development Agreement.

ITEM 8

RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES

System Standards

To protect our reputation and goodwill and to maintain high standards of operation under the System, you must operate your Restaurant in strict conformance with our System standards, including the methods, standards, and specifications we prescribe from time to time in the Manual or otherwise in writing. The System standards may relate to any aspect of the appearance, function, cleanliness, and operation of the Restaurant.

Suppliers

You must purchase your food and beverage items, ingredients, supplies, equipment, furnishings, smallwares, merchandise, promotional items, information technology services, credit card processing services, and other products and services that you purchase for operation of or sale in the Restaurant in accordance with our specifications and quality standards and, if applicable, only from suppliers we have designated or approved (which may include us or our affiliates). As of the issuance date of this disclosure document, neither we nor any of our affiliates is an approved supplier for products or services that are sold to Little Big Burger restaurants. However, we reserve the right to designate ourselves an approved supplier, or as the only approved supplier, for particular products and services in the future.

If we require you to use an approved supplier for a particular item, but you wish to purchase the item from a supplier that we have not approved, you may submit a written request for approval of the supplier, unless it is an item for which we have designated a particular vendor as the source for the particular product or service. We will provide our standards and specifications to you or to the proposed supplier, subject to the supplier's execution of a confidentiality agreement in a form acceptable to us. We have the right to inspect the proposed supplier's facilities and to require delivery of product samples either to us or to an independent laboratory designated by us for testing. You may be required to pay a fee, which will not exceed our reasonable costs incurred in evaluating the supplier, regardless of whether or not we approve

the supplier. You may not purchase, sell, or offer for sale any products or services of the proposed supplier until you receive our written approval of the proposed supplier. We generally will give you written notice of approval or disapproval of the proposed supplier within 30 days after receiving your request and completion of evaluation and testing, if required. You may not sell or offer for sale any products or services of the proposed supplier until you receive our written approval.

We have the right to revoke approval of particular suppliers if we determine that the suppliers or their products or services no longer meet our standards. Upon receipt of written notice of revocation, you must stop buying from the disapproved supplier. In addition, if we revoke our approval of the products because they fail to meet our standards, you may be required not to use your remaining inventory of those products.

Other than certain of our officers' interests in us, neither we nor our officers or directors own an interest in any suppliers of products or services to our franchisees. We may earn money from the suppliers based on your purchases in the form of rebates, commissions, or other payments. In our last fiscal year, we and our affiliates did not receive any rebates or payments from approved suppliers on account of franchisee purchases or leases of required and approved items from those suppliers.

There currently are no purchasing or distribution cooperatives for the System. We and our affiliates negotiate purchase arrangements with suppliers (including price terms) for the benefit of our franchisees and our affiliates for the items and services that you may obtain only from approved suppliers. In doing so, we and our affiliates seek to promote the overall interests of the Little Big Burger restaurant system. We do not provide material benefits to you (for example, renewal or granting additional franchises) based on your purchase of particular products or services or use of particular suppliers.

Lease

If you lease the premises for your Restaurant, you must submit the proposed lease to us for approval before you sign it and you must use our form of Lease Addendum attached as Exhibit F to the Franchise Agreement. See Item 11 under the heading "Site Selection" for additional details.

Furnishings, Fixtures and Equipment

We have identified a specific recommended brand and model for many of the furnishings, fixtures and equipment items required to equip a Little Big Burger restaurant. You must purchase these items only from approved suppliers, which may include us or an affiliate. We may negotiate with vendors for the price, warranties, guarantees, delivery costs, maintenance contracts, etc. We do not represent that we will be able to obtain for you the lowest costs or best terms available. The type and number of pieces of furnishings, fixtures and equipment you require will be based, on the size of your Restaurant.

Point-of-Sale System and Other Computer System Requirements

For each Restaurant, you must purchase, install, and use the point of sale (POS) system, inventory management system, financial reporting system, back office computer, and other computer equipment, communications devices, audio/visual equipment and software systems that we specify as they evolve over time.

Maintenance and Remodeling

You must maintain, repair, refinish, repaint, and replace the Restaurant's kitchen equipment, countertops, tables, chairs, and other furnishings, fixtures, displays, signs, decor, and any other tangible part or property of the Restaurant to ensure that the Restaurant operates in an efficient manner in accordance with our standards and specifications.

We may require you to remodel, re-equip, or otherwise redo the Restaurant premises to conform to our then current standards for a Little Big Burger restaurant, including kitchen equipment, restaurant

furnishings, fixture, and interior and exterior décor signage not more often than every six years. In addition, we will require you to upgrade the restaurant premises to our then-current standards upon or during each renewal of the Franchise Agreement.

Gift Cards

You must participate in programs we establish relating to gift cards, gift certificates, stored value cards, online or mobile coupons or credits, online or mobile ordering systems, and other electronic money programs. Participation includes both issuing program benefits or credits and accepting them for payment by customers, and may require you to purchase additional equipment. We will coordinate the crediting and debiting of funds among Little Big Burger restaurants based on customer purchases and redemption of stored value. You must also participate in any “frequent guest” or customer loyalty programs we prescribe. You may not offer your own gift card, electronic money, or loyalty program for your Restaurant without our prior approval.

Insurance

Before undertaking any activities in connection with your franchise, you must obtain insurance policies meeting our current requirements, at your expense. This insurance must protect you, us, and our affiliates, officers, directors, shareholders and employees against all claims for personal injury, death, or property damage, or any loss, liability or expense arising from the operation of your Restaurant.

All insurance policies must be written by an insurance company with an A.M. Best’s Insurance Reports minimum rating of A-VI or better. All policies must include a waiver of subrogation in favor of LBB Franchising LLC. In addition to the information listed above, you agree to carry such insurance as may be required by your lease, by any lender or equipment lessor you select, or by the laws and regulations for liquor distributors governing your Franchised Location (which may be greater than that minimum requirements listed above). You must add us, and any parties we may designate, to all insurance contracts as additional insureds under your insurance policies, the cost of which to be paid by you. We have the right to increase or otherwise modify the minimum insurance requirements upon 30 days’ prior written notice to you, and you shall comply with any such modification within the time specified in our notice.

Currently we require the following insurance:

1. General liability insurance in the minimum amount of \$1,000,000 per occurrence (including personal and advertising injury and employee benefits liability insurance of \$1,000,000), \$2,000,000 in the aggregate, and \$2,000,000 of products/completed operations liability insurance;
2. \$2,000,000 umbrella policy;
3. Property insurance as required by your landlord, which must include flood and earthquake insurance with a limit of \$1,000,000, utility service interruption insurance with a limit of \$100,000, and ordinance and law insurance in the amount of \$250,000, perishable stock insurance on an actual loss basis, and building, fixture, tenant’s leasehold improvements, personal property and electronic data processing insurance on a replacement cost basis;
4. In the event you wish to use vehicles in connection with your operation of the Restaurant, auto insurance for all vehicles, including owned vehicles, and non-owned vehicles, which will include liability coverage in the minimum amount of \$1,000,000 per year, or the minimum required by state regulations, whichever is greater;
5. Business interruption and extra expense insurance covering actual loss for not less than one year and three months of operations.

6. Not less than \$2,000,000 in dram shop and liquor liability insurance if you sell alcoholic beverages at the Restaurant;
7. Worker's compensation as required under applicable laws and regulations and any other insurance required by your lenders, landlord, and applicable laws and regulations;
8. Any other insurance required by your lenders, landlord, and applicable laws and regulations; and
9. Such additional insurance as we may reasonably require based on the geographic location of your Restaurant or changes in the insurance industry standards.

You must provide us with copies of any insurance claims or insurance cancellations within twenty-four (24) hours of receipt. You have a twenty-four (24) hour window to cure any lapses in insurance coverage. Your insurance policies may not be subject to cancellation, termination, nonrenewal or material modification, except upon at least thirty (30) days' prior written notice from the insurance carrier to us.

All public liability and property damage policies must contain a waiver by the insurance company of subrogation rights against us and our affiliates, successors and assigns. If you fail to maintain the required coverage, we have the right (but no obligation) to obtain insurance on your behalf. If we do so, you must reimburse us for the cost of insurance, plus a reasonable fee for our services.

* * *

We estimate that your required purchases and leases in accordance with our specifications will account for approximately 80% to 90% of all purchases and leases necessary to open your Restaurant and approximately 60% to 80% of your annual costs to operate your Restaurant thereafter.

ITEM 9 FRANCHISEE'S OBLIGATIONS

This table lists your principal obligations under the franchise and other agreements. It will help you find more detailed information about your obligations in these agreements and in other items of this disclosure document.

Obligation	Section in Franchise Agreement (FA) and Development Agreement (DA)	Disclosure Document Item
a. Site selection and acquisition/lease	FA: 3.2 – 3.4 DA: 3.2	5, 7, 8, 11 and 12
b. Pre-opening purchases/ leases	FA: 3.3-3.10 and 11 DA: Not Applicable	5, 7, 8 and 12
c. Site development and other pre-opening requirements	FA: 3 DA: 3	5, 6, 7, 8, 11 and 12
d. Initial and ongoing training	FA: 6 DA: 4.5	6, 7 and 11
e. Opening	FA: 3.11 DA: Not Applicable	11
f. Fees	FA: 4, 6.3, 6.4, 8.5, 8.8, 8.15, 8.19, 8.28, 10.3, 10.5, 12.3, 12.5, 16.4.10, 16.5, 16.6, 16.7, 18.3, 19.5.1 and 20.3 DA: 2	5, 6 and 7
g. Compliance with standards and policies/Operating Manual	FA: 7, 8 and 9 DA: 3	11 and 14

Obligation	Section in Franchise Agreement (FA) and Development Agreement (DA)	Disclosure Document Item
h. Trademarks and proprietary information	FA: 13 DA: Not Applicable	13 and 14
i. Restrictions on products/ services offered	FA: 8.2 - 8.9 DA: Not Applicable	8 and 16
j. Warranty and guest service requirements	FA: 8.15 and 8. 19 DA: Not Applicable	Not Applicable
k. Territorial development and sales quotas	FA: 2.3 DA: 1.2 - 1.4 and 3.1	1 and 12
l. Ongoing product/service purchases	FA: 8.2 – 8.4 DA: Not Applicable	6, 7 and 8
m. Maintenance, appearance and remodeling requirements	FA: 8.13 and 9.4 DA: Not Applicable	11
n. Insurance	FA: 11 DA: Not Applicable	7 and 8
o. Advertising	FA: 10 DA: Not Applicable	6 and 11
p. Indemnification	FA: 21.2 DA: 8.2	Not Applicable
q. Owner's participation/ management/staffing	FA: 6, 8.20-8.21 and 14 DA: 4	11 and 15
r. Records and reports	FA: 12 DA: Not Applicable	6
s. Inspections and audits	FA: 8.14, 8.15 and 12.5 DA: Not Applicable	6 and 11
t. Transfer	FA: 16 DA: 6	17
u. Renewal	FA: 18 DA: Not Applicable	17
v. Post-termination obligations	FA: 20 DA: 7.5	17
w. Non-competition covenants	FA: 15.2 DA: 5.2	17
x. Dispute resolution	FA: 26 DA: 13	17
y. Other – Personal Guarantee	FA: Exhibit C DA: Exhibit C	15

ITEM 10 FINANCING

We do not offer direct or indirect financing to franchisees. We will not guarantee your promissory note, lease, or other obligation.

ITEM 11
FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS AND TRAINING

Except as listed below, LBB Franchising, LLC is not required to provide you with any assistance.

Our Obligations Prior to Opening:

Before your Restaurant opens, we will:

1. Provide site selection criteria. (Franchise Agreement, Section 3.2.1)
2. Review sites you propose for your Restaurant, as described in more detail below. (Franchise Agreement, Section 3.2.3)
3. Review the lease for your Restaurant. (Franchise Agreement, Section 3.4)
4. Provide one set of our prototypical plans for the construction and layout of a Little Big Burger restaurant. (Franchise Agreement, Sections 3.6.1 and 5.1)
5. Review your complete set of preliminary and final drawings and specifications, and notify you of our approval or rejection within 30 days. (Franchise Agreement, Section 3.6.2)
6. Provide the Manual on loan for the term of the Franchise Agreement. (Franchise Agreement, Sections 5.2 and 7) The table of contents for the Manual appears in Exhibit C of this disclosure document. As of the issuance date of this disclosure document, the Manual contains 139 pages.
7. Provide a training program for your Managing Owner and General Manager. See below under "Training." (Franchise Agreement, Sections 5.3 and 6)
8. Provide pre-opening and opening supervision and assistance, as we deem advisable. (Franchise Agreement, Section 5.4)
9. Review and approve in writing your proposed marketing plan and materials for use in connection with the "Grand Opening Marketing" of the Restaurant, as described below under "Marketing." (Franchise Agreement, Section 10.2)

Continuing Obligations

After your Restaurant opens, we will:

1. Administer the Brand Fund and make available to you for purchase any advertising and promotional materials that we may produce independently from the Brand Fund. (Franchise Agreement, Sections 5.6 and 10.3.4)
2. Provide advice and written materials concerning techniques of managing and operating a Little Big Burger restaurant. (Franchise Agreement, Section 5.7)
3. At your request, review any proposed supplier to determine whether the supplier and its products or services meet our standards. (Franchise Agreement, Section 8.5)

Site Selection and Construction

The procedure for constructing and opening a Little Big Burger restaurant is outlined in Section 3 of the Franchise Agreement. You must secure a site and construct your Restaurant at your own expense.

Within 30 days after you sign the Franchise Agreement, you must provide a Site Acceptance Request Form (“**SAR Package**”) to us including a complete site report and other materials and information we request for a suitable site located within the geographic area that you and we designate as your “**Site Selection Area**”. Within 30 days after we receive your detailed SAR Package, we or our designee will conduct an evaluation of the proposed site(s) and accept or reject your proposed sites. At our option, we may conduct an on-site evaluation of the proposed site(s). We do not charge any fees to conduct one market visit if the Restaurant is the first Little Big Burger restaurant developed by you or one of your affiliates, however; if we require, or if you request, any additional market visits, you must reimburse us for our travel expenses associated with such visits. We will not unreasonably withhold our acceptance of a site that meets our site selection criteria. In evaluating your proposed site, we will consider demographic data you provide, as well as other information regarding the characteristics of the site and trade area including visibility, access, the proximity of competing businesses, traffic patterns, and the availability of parking. We also may consider the site’s proximity both to the Site Selection Area’s boundaries and to other existing or potential sites for Little Big Burger restaurants located outside the Site Selection Area. (Franchise Agreement, Section 3.2)

The site that we accept will be designated as the Franchised Location in Exhibit A to the Franchise Agreement. If we reject your proposed site, we will encourage you to submit alternative site(s). You must obtain our acceptance of a site and acquire a possessory or leasehold interest in the site for your Restaurant within 90 days after you sign the Franchise Agreement or we will have the right to terminate the Franchise Agreement. (Franchise Agreement, Sections 3.1, 3.3)

We will provide prototypical plans and specifications for a Little Big Burger restaurant, including requirements for dimensions, design, image, interior layout, décor, fixtures, equipment, signs, security, furnishings, and color scheme. You must have prepared all required construction plans and specifications to suit the shape, dimensions and utility requirements of the Franchised Location and you must ensure that these plans and specifications comply with applicable ordinances, building codes and permit requirements and with lease requirements and restrictions. You will use only registered architects, registered engineers, and professional and licensed contractors. (Franchise Agreement, Section 3.6)

Prior to submission to local authorities, you must submit proposed construction plans, specifications and drawings for the Restaurant (“**Plans**”) to us and you must, upon our request, submit all revised or “as built” Plans during the course of such construction. We will approve or reject the Plans and notify you within 30 days after we receive the Plans. Once we have approved the Plans, no substantial change shall be made to the Plans without our prior approval. You may not begin site preparation or construction prior to receiving written notification from us that we have approved the Plans. You must construct the Restaurant in accordance with Plans approved by us and must comply in all respects with applicable laws, ordinances and local rules and regulations. You must install all furniture, fixtures, equipment and signs in accordance with the plans and specifications that we have approved. You are responsible for obtaining all zoning and health permits at your own expense. (Franchise Agreement, Section 3.6.2)

It typically takes 60-90 days to select and lease the premises for a Little Big Burger restaurant from the signing of the Franchise Agreement and an additional 120 days to construct the Restaurant. The actual time will vary depending on the availability of financing and the time you need to obtain the necessary permits and licenses for the construction and operation of the Restaurant. Neither of these factors is within our control. You must open the Restaurant within 270 days after signing the Franchise Agreement or we will have the right to terminate the Franchise Agreement.

POS System and Computer System Requirements

You must acquire and install in your Restaurant, at your own expense, the point of sale (POS) system, back office computers and other computer equipment, digital menu boards, communications devices, audio/visual equipment, and software systems that we specify in writing from time to time. Our specifications may evolve over time and, in some cases, required items may only be available through us and/or designated suppliers. Little Big Burger restaurants currently use the TOAST POS System and related software.

The POS system collects transaction data used to generate pertinent information, including transaction counts, product mix, and average check. You must transmit data to us at the times we specify and give us independent access to your systems (and provide us with any user names and passwords necessary for that purpose). There are no contractual limitations on our ability to access the information and data contained in your systems. We and our affiliates have the right to retain the information and to use it internally without restriction.

You also must purchase a computer for management use that uses a designated operating system and is capable of running the required software and a printer. The computer must have a high-speed interface that permits you to connect to the Internet and to transmit and receive email and access Internet websites. You must obtain the back-office software that we specify, including inventory management, on-line employee scheduling, payroll processing, accounting, payables, customer marketing, field support, tips management, and other management and accounting software. In addition, you must obtain the software that we specify for reporting financial information to us. The type and number of computers and other hardware, software, and telecommunications equipment may vary depending on the size of your Restaurant.

The estimated POS System and other computer system costs range from \$5,000 to \$15,000 per Restaurant for POS hardware (one to two terminals), POS software, back-of-house computers, and other required accounting, management, and financial reporting software. We recommend, but do not require, that you purchase a maintenance agreement for both hardware and software in order to reduce downtime and costs associated with repairs. We estimate that the cost of a support contract for your systems will be approximately \$250 to \$300 per month for your Restaurant. You must pay all amounts charged by any supplier or licensor of the systems and programs you use, including charges for use, maintenance, support and/or update of these systems or programs. You must promptly update and upgrade your computer hardware and software systems as we require, at your expense. There is no contractual limitation on the cost or frequency of this obligation. Neither we nor our affiliates have any obligation to provide ongoing maintenance, repairs, or upgrades to your POS System or computer system. You will need to discuss these obligations with any supplier that sells you components of your POS system and computer system. (Franchise Agreement, Section 8.23)

You must honor all credit, charge, courtesy or cash cards or other credit devices that we specify. You must comply with the then-current Payment Card Industry Data Security Standards (PCI/DSS), as those standards may be revised by the PCI Security Standards Council, LLC (see www.pcisecuritystandards.org) or successor organization. (Franchise Agreement, Section 8.23)

Training

Management Training Program

We will provide a management training program for the first Restaurant that you develop. Your Managing Owner and General Manager (or another Restaurant manager if your Managing Owner serves as the Restaurant's General Manager) must complete the management training program to our satisfaction. Initial training lasts up to 15 days and may include classroom training, web-based training and programs offered by third parties. Classroom and on-the-job training may be conducted at an Affiliate-Owned Restaurant of our choice.

We do not charge a tuition fee for the management training program for your first Restaurant; however, you must pay all expenses of your trainees. Your expenses will include the cost of travel, lodging, meals, and the wages of your employees. We will certify any supervisory employee of yours who successfully completes the training program to our satisfaction as a **"Trainer."** We will authorize the Restaurant to open only after your General Manager has been certified as a Trainer after successfully completing the training program to our satisfaction. (Franchise Agreement, Section 6.1)

TRAINING PROGRAM

Subject	Hours of Classroom Training	Hours of On-The-Job Training	Location
Introduction: Training Agenda, Training Expectations, Mission Statement, Core Values, Services Provided to Little Big Burger Franchise Owners, Responsibilities of the Little Big Burger Franchise Owner and Staff, Visits From The Corporate Office	2	0	Webinar/Call
Pre-Opening Flow Chart, Setting the Foundation, Site Selection, Site Selection Process, The Lease, Drawings & Permitting, Hiring a Contractor, Construction, Pre-Opening Marketing, Ordering	2	0	Webinar
Review Corporate Handbook; share Job Descriptions	1	0	Portland, OR
Daily Operations Manual: Daily Duties, Customer Experience, Serving the Customers, Alcohol Management, Bussing Procedures, Food Preparation Procedures, Prep Procedures, Inventory Management, Catering, Food Safety and Sanitation, The POS System, Money Handling Procedures, Required Cleaning, Equipment Maintenance, Safety and Security	0	6	Portland, OR
Managing a Little Big Burger Business Manual: Little Big Burger Management Philosophy, Daily Management Routines, Managing Personnel, Managing the Customer Experience, Pricing, Tracking Inventory, Month End Inventory, Cost of Goods Tracking, Waste Tracking, Scheduling, Payroll & Payroll Reconciliation, Loss Prevention Techniques	0	5	Portland, OR
Review Local Store Marketing and 5-Mile Radius	0	1	Portland, OR
Review Payroll/Accounting (Best Practices)	0	1	Portland, OR
Station Training: Prep, Fryer, Grill, Cashier	0	61.5	Portland, OR
Manager Training: Running the Store	0	20.5	Portland, OR
Final Store Exam	0	1	Portland, OR
TOTALS	5	96	

We will schedule the management training program as needed for new franchisees and you must complete the program at least one (1) week before opening your Restaurant. The program is offered only in English. Our training managers, and their years of experience with us and in the franchise, restaurant and sales industries are listed below:

Training Instructor	Years of Training Experience with Us	Years of Training Experience with Other Concepts
Will Graham	8	10
April Miller	8	15
Adrian Oca	8	16

Our training managers may utilize additional personnel to assist them in conducting the training program.

We will provide you with training materials for you to use in training your personnel and we will periodically update these materials. You may not disclose, duplicate or engage in any other unauthorized use of any portion of the training materials.

Opening Training

If the Restaurant is the first Little Big Burger restaurant developed by you and your affiliates, we will provide, at no additional charge to you, up to ten (10) days of on-site opening training to you, as deemed necessary and appropriate by us based on your experience and number of other Little Big Burger restaurants that you operate. The number of representatives sent to your Restaurant for on-site training will be determined by us based on your experience and operation of other Little Big Burger restaurants. The representatives' time will be divided between pre-opening and post-opening activities. You must pay for all costs and expenses we incur for the travel, lodging, and meal expenses incurred by our trainer while they provide the opening training. (Franchise Agreement, Section 6.2)

You must have a full staff in place and available for training at least one week before the Restaurant opens. We will authorize you to open the Restaurant only after an adequate number of your employees, as determined by us in our sole discretion, have attended and received certification in the position for which they were hired. (Franchise Agreement, Section 6.3)

Train the Trainer Program

Periodically, you must conduct such training programs for your employees as we may require, including those training programs required for your employees to become certified for the position(s) for which each employee was hired. Your Trainers are responsible for fully training the Restaurant's employees within 30 days of being hired. Your Trainers also will offer the management training program to your replacement Managing Owner, General Manager and additional managerial staff before they assume a managerial role at the Restaurant. We will evaluate all managers trained by you and determine whether to certify them as Trainers. You will be responsible for all costs that you incur in training your employees. If you need to send your replacement Managing Owner or General Manager to our management training program, you must pay a training fee in the amount of \$1,500 per person attending the training program. If we elect to send our representative to the Restaurant to provide training for your staff, you must pay a training fee in the amount of \$500 per representative, per day, and all travel, living and other expenses incurred by our representative.

If you already operate a Little Big Burger restaurant, the training of your Managing Owner and General Manager will be your responsibility. You must confirm to us in writing that you have trained these individuals, except for any persons who have previously completed our certified training program to our satisfaction. The content and administration of your training program must be at least equal to those of our management training program and must be approved in advance by us. We have the right to review your training program periodically to ensure its quality and to verify that your managers are being trained in a timely and satisfactory manner.

If your training program does not meet our training standards, and you do not cure the situation in a timely manner, we may require your Managing Owner and General Manager to attend our training program at your expense (including payment of the \$1,500 per person training fees), until such time as the deficiencies in your program have been corrected to our satisfaction. (Franchise Agreement, Section 6.3)

Additional Training Programs

We may require you or your employees to attend and pass additional training programs at your expense. These additional training programs may include classroom training, web-based training and programs offered by third parties. We may require you to pay reasonable training fees for these programs (plus travel, meals and lodging expenses for our representatives, if we conduct the training at your Restaurant).

We will advise and consult with you periodically in connection with the operation of the Restaurant. We may provide these services through visits by our representatives to the Restaurant or your offices, the distribution of printed, filmed or electronic information, meetings or seminars, telephone communications, e-mail communications or other communications. We will periodically inspect the Restaurant and its operations to assist your operations and ensure compliance with the System. At your request, we may provide special assistance at the Restaurant for which you will be required to pay our per diem training fees and charges that we may establish from time to time. (Franchise Agreement, Section 6.4)

Advertising

Grand Opening Marketing Program

You must advertise and promote the Restaurant for at least two weeks prior to opening through four weeks following the opening of the Restaurant (the “**Grand Opening Marketing Period**”). You will develop a grand opening marketing plan and marketing materials for the Restaurant that we will review and approve, including total expenditures. You must spend at least \$5,000 for grand opening marketing during this period. (Franchise Agreement, Section 10.2)

Brand Fund

We plan to establish a Brand Fund for the enhancement, promotion and protection of the System and the Proprietary Marks. You must contribute a percentage of your Net Sales weekly to the Brand Fund. We have the right to direct all advertising, media placement, marketing and public relations programs and activities financed by the Brand Fund, with final discretion over the strategic direction, creative concepts, materials and endorsements used, and the geographic, market and media placement and allocation. You must participate in all advertising, marketing, promotions, research, and public relations programs instituted by the Brand Fund. As of the date of this disclosure document, the required contribution is 1.5% of weekly Net Sales. We have the right to increase your Brand Fund contribution to a maximum of 3% of Net Sales; however we will not increase this amount by more than 0.5% of Net Sales in any 12 month period and we will allow a comparable reduction in your Local Store Marketing expenditure obligation.

Among the programs, concepts, and expenditures for which we may utilize the Brand Fund monies are: (1) creative development and production of print ads, commercials, radio spots, point of purchase materials, direct mail pieces, door hangers, free standing inserts, brochures, logo wear, labeling, video, audio, and written materials and electronic media, and other advertising and promotional materials; (2) media placement and buying, including all associated expenses and fees; (3) administering regional and multi-regional marketing and advertising programs; (4) market research and customer satisfaction surveys, including the use of secret shoppers; (5) the creative development of, and actual production associated with, premium items, giveaways, promotions, sweepstakes, contests, public relation events, and charitable or nonprofit events; (6) creative development of signage, posters, and individual Little Big Burger restaurant décor items including wall graphics; (7) recognition and awards events and programs including periodic national and regional conventions and meetings; (8) design, establishment, and maintenance of websites, extranets, intranets, search rankings, social media profiles, mobile applications and other digital marketing; (9) retention and payment of personalities engaged as spokespersons, advertising and promotional agencies, endorsement contracts, and other outside advisors including retainer and management fees; (10) sponsorship of sporting, charitable, or similar events; (11) review of locally produced marketing materials; (12) list acquisition and development; (13) development of third party facilities for the development of local advertising; and (14) public relations and community involvement activities and programs.

We may sell certain advertising materials, merchandise and premium items to you that are developed by the Brand Fund and the earnings from such sales will be deposited in the Brand Fund. The Brand Fund also may be used to pay our reasonable salaries and expenses of our and our affiliates' employees who work on advertising, marketing, public relations materials, programs, activities or promotions prepared, planned or undertaken on behalf of the Brand Fund and professional fees and administrative costs and overhead that we or our affiliates incur in activities reasonably related to the

administration and activities of the Brand Fund (including accounting fees, legal fees, and interest on monies borrowed by the Brand Fund). We will not use the Brand Fund for anything whose sole purpose is the marketing of franchises, however, the System website, public relations activities, community involvement activities and other activities supported by the Brand Fund may contain information about franchising opportunities.

We do not have an advertising council composed of franchisees to advise us on advertising policies. However, we may seek the advice of Little Big Burger franchisees by formal or informal means with respect to the creative concepts and media used for programs financed by the Brand Fund. However, we retain final authority on all programs financed by the Brand Fund. We do not currently have an advertising council composed of franchisees.

We will prepare an annual, unaudited statement of Brand Fund collections and expenses within 60 days after our fiscal year end and will provide a copy of the statement to all franchisees upon their request. We retain the final authority on all programs financed by the Brand Fund. We have the right to change or dissolve the Brand Fund at any time. If we disband the Brand Fund, we will spend all monies in the fund for advertising and/or promotional purposes or distribute all unspent monies to contributors in proportion to their respective Brand Fund Contributions during the preceding 12 month period.

The Brand Fund (including any earnings on unspent funds) will be used to maximize general public recognition, acceptance, and patronage of Little Big Burger restaurants. We are not obligated to make Brand Fund expenditures for you which are equivalent or proportional to your contributions, or to ensure that any particular franchisee benefits directly or pro rata from expenditures by the Brand Fund. The Brand Fund is not a trust and we have no fiduciary obligation in collecting payments, maintaining the bank account, bookkeeping, or disbursement of monies from the Brand Fund. We did not collect or expend any monies for the Brand Fund in 2021. (Franchise Agreement, Section 10.3)

Local Store Marketing

You must develop, on an annual basis, a Marketing Plan that we have approved for you, your Restaurant, and your market area. You must comply with all requirements regarding the Marketing Plan, including the use of approved advertising and marketing materials, placement and purchase of advertising and marketing materials and media, search engine optimization activities, and compliance with all promotional recommendations. On a quarterly basis, you must spend for advertising and marketing in your market area (“**Local Store Marketing**”) an amount equal to at least 2% of the Net Sales of your Restaurant. You must begin conducting Local Store Marketing after the expiration of the Grand Opening Marketing Period. Within 30 days after the end of each quarter, you agree to send to us, in the manner we prescribe, an accounting of your Local Store Marketing expenditures during the preceding quarter. If you fail to expend on an annual basis, the required amount, then you must contribute to the Brand Fund any amounts that you should have expended to reach the local advertising requirement within 30 days after the close of our fiscal year. We must approve all Local Store Marketing as described below. (Franchise Agreement, Section 10.4)

Joint Marketing Programs and Cooperatives

We have the right to establish: (1) co-marketing programs in which we and our franchisees join with suppliers or other third parties to cross-promote goods and services; (2) joint marketing efforts in which multiple franchised and affiliate-owned Little Big Burger restaurants contribute to a specific ad or event; and/or (3) local or regional Cooperatives that pool funds of franchised and Affiliate-Owned Restaurants on an ongoing basis to jointly promote the Proprietary Marks and the Little Big Burger restaurants of the members. You must participate in each applicable joint marketing program and comply with the rules of the program. The following provisions apply to Cooperatives:

- We have the right to designate any geographic area or set of common characteristics for purposes of establishing a Cooperative. If a Cooperative is applicable to your Restaurant, you must become a member and begin contributing no later than thirty (30) days after we authorize

the Cooperative to begin operation. You will not have to contribute to more than one Cooperative for the same Restaurant at the same time. We (or our affiliates, as the case may be) will become a member of any Cooperative that is applicable to a Restaurant owned by us or our affiliates. The members of the Cooperative will be responsible for administering the Cooperative.

- Each Cooperative will adopt a cooperative agreement governing the organization and operation of the Cooperative, subject to our approval. If the members of the Cooperative do not sign an agreement within a reasonable time, you agree to sign our recommended form of Cooperative Agreement. We reserve the right to change the form of organization, governing documents, and manner of operation of any Cooperative. No changes in the bylaws or other governing documents of a Cooperative may be made without our prior written consent. The governing documents of a Cooperative will be available for your review.
- Each Cooperative will be organized for the exclusive purpose of developing, administering, and executing advertising programs for the members of the Cooperative. No advertising or promotional plans or materials may be used by a Cooperative or furnished to its members without our prior approval as described below.
- You and each other member of the Cooperative must contribute weekly to the Cooperative up to 50% of your Local Store Marketing expenditure (unless a majority of the Cooperative votes to increase the amount), which amount will result in a corresponding reduction in your Local Store Marketing obligation. The Cooperative will be required to prepare annual financial statements for review by its members.
- We may grant any franchisee an exemption for any length of time from the requirement of membership in a Cooperative, and/or from the obligation to contribute (including a reduction, deferral or waiver of the contribution), upon written request stating reasons that we deem sufficient to support the exemption. Our decision concerning any request for exemption will be final. If we grant an exemption to a franchisee, the franchisee will be required to spend on Local Store Marketing the amount the franchisee otherwise would have been required to contribute to the Cooperative. (Franchise Agreement, Section 10.5)

Approval Requirement

All advertising and promotion by you and by any Cooperative must be in the type of media and format that we approve, must be conducted in a dignified manner, and must conform to our standards and requirements. You or the Cooperative must submit written samples of all proposed advertising and promotional plans and materials for our approval at least 15 days before their intended use, unless the plans and materials were prepared by us or have been approved by us within the last 12 months. (Franchise Agreement, Section 10.6)

Electronic Marketing and Electronic Communications

We will host and maintain an independent webpage for the Restaurant at an Internet address that we specify. We will provide and maintain this webpage using a standard template. Unless we have agreed to it in writing, you may not use, register, maintain, or sponsor any URL, social networking platform, blog, messaging system, email account, user name, text address, mobile application, or other electronic, mobile or Internet presence that uses or displays any of the Proprietary Marks (or any derivative thereof) or that promotes any products or services of the Restaurant. The use of any electronic medium constitutes advertising and promotion subject to our approval as described above. You may not transmit or cause any other party to transmit advertisements or solicitations by broadcast media, telephone, e-mail, text message, instant message, social network, VoIP, streaming media, or other electronic media without first obtaining our written consent as to: (1) the content of the advertisements or solicitations; and (2) the type of media intended to be used. All telephone answering messages, email auto-signatures, and other identifiers of the

Restaurant must be in the form we prescribe. If we approve the use of an electronic medium, our approval will be conditioned on your compliance with any standards and procedures we issue with respect to that type of electronic medium, including the use of any disclaimers, warnings, and other statements that we may prescribe. (Franchise Agreement, Section 10.9)

Pricing and Promotional Activities

To the extent permitted by applicable law, we have the right to establish maximum and/or minimum prices that you must follow for menu items, merchandise, and other products and services sold in the Restaurant. (Franchise Agreement, Section 8.26) You must participate in and comply with the terms of special promotional events and activities that we prescribe for Little Big Burger restaurants generally or in specific geographic areas or for specific types of venues. These events and activities may include value menu, special offer, limited time offer, and other pricing promotions and the featured price(s) may be less than your cost for the promoted item(s). If required by our agreement with a supplier, you may have to purchase a certain amount of products from the supplier in connection with a promotion and you might not be able to use or sell all of the products. You must bear your own costs of participating in these promotional events and activities. You must display promotional signs and materials and otherwise participate in the manner we specify. You are required to obtain our prior written approval before implementing such a program that we have not mandated or provided. You must fully participate in all programs, public relations campaigns, prize contests, special offers, and other programs, national, regional, or local in nature (including the introduction of new products or other marketing programs directed or approved by us) that are prescribed from time to time by us. We may also require you to join and participate in regional, national, or international programs designed to increase business, including multi-area customer, national customer, commercial customer, Internet, event, yellow pages, directory affinity vendor, and co-branding programs (“**Multi-Area Marketing Programs**”). Such programs may require your cooperation (including refraining from certain channels of marketing and distribution), participation (including payment of commissions or referral fees), and adherence to pricing restrictions to the extent permitted by law. All such programs are our proprietary trade secrets. We may designate the coverage area, method and timing of payment, and any outside agencies for any Multi-Area Marketing Programs. (Franchise Agreement, Section 10.7)

ITEM 12 TERRITORY

You will not receive an exclusive territory under the Franchise or the Development Agreement. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control. We will have no obligation to compensate you in connection with any such activities.

Franchise Agreement

Each Franchise Agreement is granted for the Franchised Location, which is a specific location that we accept. You must operate your Restaurant only at the Franchised Location. During the term of the Franchise Agreement, we will not operate, or grant the right to any other party to operate, a Little Big Burger restaurant at any location within the “**Protected Area**” designated in your Franchise Agreement. The size of the Protected Area will vary depending on, among other things, the location in which you wish to operate the Restaurant. Typically, the Protected Area will be set as a radius around the Franchised Location. The perimeters of the Protected Area may be described by specific street boundaries, county lines, state lines, municipal boundaries, railroad tracks, or other similar boundary descriptions. Factors that we will use in order to determine the Protected Area include demographics, population density and number of households in the area, the growth profile of the populations within the area, the competitive environment in that market, and other factors that we will take into account.

We and our affiliates reserve all rights that are not expressly granted to you under the Franchise Agreement. Among other things, we and our affiliates have the sole right to do any or all of the following (notwithstanding proximity to your Protected Area or Restaurant or their actual or threatened impact on sales at your Restaurant): (1) operate or license others to operate at any location, during or after the term

of the Franchise Agreement, any type of restaurant other than Little Big Burger restaurants; (2) operate or license others to operate, during the term of the Franchise Agreement, Little Big Burger restaurants at any location other than in the Protected Area; (3) operate or license others to operate, after the Franchise Agreement terminates or expires, Little Big Burger restaurants at any location, including within the Protected Area or at the Franchised Location; (4) sell anywhere (within or outside the Protected Area) the same or similar products that are authorized for sale at Little Big Burger restaurants under the Proprietary Marks or under other trademarks or trade dress and through any other channel of distribution, whether such channel of distribution is now in existence or is hereafter developed and whether at retail or wholesale including, without limitation, sales through catalogs, e-commerce, mail order, carts or kiosks, ghost or virtual kitchens, mass merchandise, supermarkets, restaurants, institutional customers, club stores and any other outlet or method of distribution, pursuant to any terms and conditions as we may deem appropriate; (5) operate or license others to operate Little Big Burger restaurants at any Nontraditional Location within or outside the Protected Area; (6) develop and own other franchise systems for the same or similar products and services using trade names and trademarks other than the Proprietary Marks; and (7) purchase, be purchased by, merge or combine with, businesses that directly compete with Little Big Burger restaurants.

The term “**Nontraditional Location**” includes, among other things, college campuses, schools, hotels, casinos, airports and other travel related facilities; federal, state, or local government facilities (including military bases); theme and amusement parks; recreational facilities; venues in which foodservice is or may be provided by a master concessionaire or contract foodservice provider; seasonal facilities; theaters; sporting event arenas and centers; and non-foodservice businesses of any sort within which a Little Big Burger restaurant or a branded facility is established and operated (including, for example, gas stations and convenience stores).

You are not permitted to solicit customers and/or advertise outside of your Protected Area without our prior written consent, which we may grant at our sole discretion. We may condition our authorization upon your agreement to offer Little Big Burger restaurant operators in territories encompassed by the circulation base of the proposed advertising opportunity to participate in and share the expense of such solicitation and/or advertising. Notwithstanding the foregoing, you may provide services and sell products to customers located outside of your Protected Area without our prior written consent. You may not advertise the Restaurant or any products or services offered by the Restaurant via the Internet or any other means of e-commerce, except as expressly permitted.

Continuation of your Protected Area does not depend on the achievement of a certain sales volume, market penetration or other contingency. There are no circumstances that would permit us to modify your Protected Area during the initial term of the Franchise Agreement.

Relocation.

You may not relocate the Restaurant without our prior written approval. We will base our review of your request on a variety of factors, including population density, the proximity of other Little Big Burger restaurants and other relevant demographic factors. If we approve a relocation of the Restaurant, you must pay a relocation fee in the amount of \$7,500.

Development Agreement

During the term of the Development Agreement, we and our affiliates will not operate, or license others to operate, any new Little Big Burger restaurants in your Development Area, provided that you are in compliance with the terms of the Development Agreement and any other agreements with us and our affiliates and you are current on all obligations due to us and our affiliates. However, we may operate, and license others to operate, Little Big Burger restaurants in the Development Area that are open and operating or under development when you sign the Development Agreement. We reserve the same rights in your Development Area as we do in your Protected Area as described above.

Rights of First Refusal

We do not grant you any options, rights of first refusal, or similar rights to acquire additional franchises under either the Franchise Agreement or the Development Agreement.

Other Restaurant Concepts

As noted in Item 1, we have several affiliates that offer franchises for other restaurant concepts under different trademarks. BGR Restaurants and Little Big Burger restaurants offer similar menu items. Pizza Rev restaurants currently offer significantly different menus but they do also offer some similar goods and they may offer similar goods or services in the future. You do not receive any rights with respect to the franchises offered by our affiliates. Neither we nor any of our affiliates have established any formal procedures to resolve conflicts that may develop among the affiliates concerning territory, customers, or franchisor support.

ITEM 13 TRADEMARKS

We grant you a non-exclusive license to use the Proprietary Marks during the term of the Franchise Agreement. We may also authorize you to use other current or future Proprietary Marks to operate your Restaurant. By Proprietary Marks, we mean trade names, trademarks, service marks and logos we use to identify Little Big Burger restaurants and the products sold in them. Our affiliate, LBB Acquisition, LLC, is the owner of the Proprietary Marks. LBB Acquisition, LLC has registered the following mark with the United States Patent and Trademark Office (“USPTO”) on the Principal Register:

Mark	Registration Date	Registration Number
LITTLE BIG BURGER	August 6, 2013	4,379,318
	December 17, 2013	4,450,389

LBB Acquisition, LLC intends to file all required affidavits and renewals for the Proprietary Marks listed above.

LBB Acquisition, LLC has granted us the exclusive right to use and permit our franchisees to use the Proprietary Marks under a License Agreement. LBB Acquisition, LLC has the right to terminate the License Agreement if we commit a breach of the License Agreement. In that event, LBB Acquisition, LLC will have the right to assume our obligations under your Franchise Agreement. There are no other agreements that limit our right to license the Proprietary Marks to you under the Franchise Agreement.

There are no currently effective determinations of the USPTO, the Trademark Trial and Appeal Board, the trademark administrator of any state, or any court involving the principal mark, nor any pending infringement, opposition, or cancellation proceedings or material litigation involving the Proprietary Marks. We are not aware of any infringing uses that could materially affect your use of the Proprietary Marks. There are no agreements that limit our rights to use or license the use of the Proprietary Marks and we are not aware of any superior rights that could affect your use of the Proprietary Marks.

You must notify us of any unauthorized use of the Proprietary Marks. You must also notify us of any challenge to the validity of, or the right to use, any of the Proprietary Marks. We have the right to control

any administrative proceeding or litigation that involves the Proprietary Marks. This right includes the right to settle any of those disputes. We may, but are not required to, try to stop other people from using the Proprietary Marks.

We will defend you against any infringement claims that arise from your use of the Proprietary Marks or the Works (as defined in Item 14) at our expense, including the cost of any judgment or settlement, if your use of the Proprietary Marks and the Works complied with the Franchise Agreement, but at your expense if your use of the Proprietary Marks and the Works did not comply with the Franchise Agreement. You must assist us in any action we take to protect the Proprietary Marks. Unless this action results from your inappropriate use of the Proprietary Marks, we will reimburse you for your out-of-pocket costs in assisting us.

You must follow our rules when you use the Proprietary Marks. You may not use any of the Proprietary Marks as part of your corporate name, Internet domain name, or e-mail address, or with modifying words, designs or symbols. You may not use the Proprietary Marks for the sale of an unauthorized product or in any other manner not authorized by the Franchise Agreement.

We can modify the Proprietary Marks and/or substitute different marks for use in identifying Little Big Burger restaurants and the System. You must promptly implement any modification or substitution at your own cost and expense. We will have no obligation or liability to you as a result of the modification or substitution.

ITEM 14

PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION

Patents

No patents are material to the operation of your Restaurant.

Copyrights

We and our affiliates claim copyright protection for certain proprietary materials (the “**Works**”), which include, but are not limited to, the Manual, training materials, advertisements, promotional materials, labels, menus, posters, coupons, gift certificates, signs, websites, store designs, and prototype plans and specifications. Neither we nor our affiliates have registered the copyrights in any of the Works but we are not required to do so. You can use the Works only for the purpose of developing and operating your Restaurant. You must notify us of any unauthorized use of the Works. You must also notify us of any challenge to the validity of, or the right to use, any of the Works. We have the right to control any administrative proceeding or litigation that involves the Works. This right includes the right to settle any of those disputes. We may, but are not required to, try to stop other people from using the Works.

We claim proprietary rights in certain menu items associated with Little Big Burger restaurants including our proprietary recipes. We protect the recipes and manufacturing processes for these items as trade secrets.

There are no currently effective determinations of the United States Copyright Office or any court involving the Works, nor any pending infringement, proceedings or material litigation involving the Works. We are not aware of any infringing uses that could materially affect your use of the Works. There are no agreements that limit our rights to use or license the use of the Works and we are not aware of any superior rights that could affect your use of the Works.

If you prepare any adaptation, translation or work derived from the Works, including, but not limited to, advertisements, promotional materials, labels, posters, or websites, whether or not such adaptation was authorized by us, you agree that such material will be our property and you will assign all your right, title and interest therein to us (or to a third party designated by us). You agree to execute any documents, in recordable form, which we deem necessary to reflect or perfect such ownership. You must submit all such

adaptation, translation or derivative works to us for approval prior to use. We reserve the right to modify or require you to discontinue use of any of the Works and/or to substitute different copyrighted materials. When required by us, you must promptly discontinue use of designated Works or implement any modification or substitution at your own cost and expense. We will have no obligation or liability to you as a result of such modification or substitution.

The Manual and Confidential Information

We will loan you one copy of, or electronic access to, the Manual, which contains information and knowledge that is unique, necessary and material to the System. The Manual contains detailed standards, specifications, instructions, requirements, methods and procedures for management and operation of the Restaurant. The Manual also may relate to the selection, purchase, storage, preparation, packaging, ingredients, recipes, service and sale of all products and beverages sold at the Restaurant; management and employee training; marketing, advertising and sales promotions; maintenance and repair of the Restaurant building, grounds, equipment, graphics, signs, interior and exterior decor items, fixtures and furnishings; employee dress attire and appearance standards; menu concept and graphics; and accounting, bookkeeping, records retention and other business systems, procedures and operations. You must at all times to operate the Restaurant in strict conformity with the Manual; maintain the Manual at the Restaurant; not reproduce the Manual or any part of it; and treat the Manual as confidential and proprietary, and; disclose the contents of the Manual only to your employees who have signed a confidentiality agreement and who have a demonstrated need to know the information contained in the Manual.

At our request, you must require your employees, landlord, contractors, and any other person to whom you wish to disclose any of our confidential information to agree in writing not to disclose that information to others or to use it for their own benefit. We must approve these agreements.

Innovations.

All products, services, concepts, methods, techniques, and/or new information relevant to your operation of your Little Big Burger Restaurant (together, “**Innovations**”), whether or not constituting protectable intellectual property, that you or your employees create, or that are created on your behalf, must be promptly disclosed to us. All such Innovations will be deemed to be our sole and exclusive property and works made-for-hire for us. You and each of your owners agree to: (1) sign the assignment and/or other documents we request in order to implement this in order to evidence our ownership; (2) cause your employees and contractors to sign such assignment documents as we may request for this purpose; and (3) assist us in securing intellectual property rights in such Innovations.

Customer Data

We claim ownership of the customer data you obtain during the operation of your Restaurant. This includes all databases (whether in print or electronic form) including names, addresses, phone numbers, e-mail addresses and customer purchase data. We reserve the right to use or transfer these records as we deem appropriate and to provide the information to our affiliates. Furthermore, we reserve the right to contact customers of the Restaurant, as well as your employees, suppliers and other service providers, for purposes of conducting quality control, market research and for other business reasons as we deem appropriate.

ITEM 15 OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISE BUSINESS

You must designate one of your owners as your Managing Owner who will be the person with whom we communicate and who will have the authority to bind you with respect to all financial, operational and legal matters related to the Restaurant and the Franchise Agreement. The Managing Owner may also serve as your General Manager and/or your Multi-Unit Manager (as defined below). You must designate a replacement within 30 days after your Managing Owner leaves his or her position.

If you or your affiliates own or control more than one Little Big Burger restaurant and your Managing Owner devotes less than full time to supervising the operation of the restaurants, you must designate and retain an individual to serve as your Multi-Unit Manager who will devote full time and best efforts to supervising the operation of your Restaurants. You must obtain our approval before designating anyone to serve as a Multi-Unit Manager. You must designate a replacement within 30 days after your Multi-Unit Manager leaves his or her position. We may reject any proposed Multi-Unit Manager who does not have significant experience in the multi-unit restaurant business.

For each Restaurant, you must designate one General Manager (who may also serve as your Managing Owner) that we have approved who will supervise the day-to-day operation of the Restaurant.

We do not require the Multi-Unit Manager or General Manager to have an equity ownership interest in your company.

Each Managing Owner, Multi-Unit Manager, and General Manager must successfully complete our management training program (see Item 11). We may require that these employees, among others, sign an agreement with you not to compete with Little Big Burger restaurants for a period after their employment with you. We may also require that you have them sign an agreement not to reveal confidential information they obtain in the course of their employment with you. These agreements must be in a form we approve and specifically identify us as a third party beneficiary with the independent right to enforce the agreement. See Items 14 and 17 for further information.

Each of your owners is bound by the confidentiality and non-competition restrictions described in Item 17 and they, and their spouse (if applicable), must sign a guarantee assuming and agreeing to discharge all of your obligations to us unless we waive or modify this requirement.

ITEM 16 RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL

You must offer for sale in each Restaurant all products and services that we designate as required items. You may also offer for sale any optional items and services that we have approved for sale in a Little Big Burger restaurant. You may not offer or sell any products or services not listed without obtaining our prior written consent. You must sell products only in the weights, sizes, forms, and packages that we have approved. You must cease selling or offering for sale any products or services that we disapprove at any time. We may change the types of authorized products and services, and there are no limits on our right to make changes.

You must participate in promotional activities that we require generally for Little Big Burger restaurants in the System. If we require that you conduct any promotional activities, you will bear your own costs of conducting these activities.

ITEM 17 RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION

THE FRANCHISE RELATIONSHIP

This table lists important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this disclosure document.

Provision	Section in Franchise Agreement (FA), or Development Agreement (DA)	Summary
a. Length of the franchise term	FA: 2.2 DA: 7.1	FA: 10 years following the effective date of the Franchise Agreement.

Provision	Section in Franchise Agreement (FA), or Development Agreement (DA)	Summary
		DA: The term expires on the earlier of the opening date or the opening deadline for the last Restaurant you commit to develop in the Development Schedule.
b. Renewal or extension of the term	FA: 18.1 DA: Not Applicable	FA: Provided we are still franchising and have not made a decision to withdraw from the geographic market of the Restaurant, and if you are in good standing, you can renew the franchise for two 5-year terms.
c. Requirements for you to renew or extend	FA: 18.2 & 18.3 DA: Not Applicable	FA: Provide written notice of intent to renew; be in compliance with other agreements with us; demonstrate right to remain in possession of the Franchised Location; agree to renovate the Restaurant; meet our standards for new franchisees; sign renewal franchise agreement, sign general release (subject to state law) and pay \$7,500 renewal franchise fee. The renewal franchise agreement may contain terms that are materially different from your expiring Franchise Agreement, such as different fee requirements, but will not include an initial franchise fee.
d. Termination by you	Not Applicable	Subject to state law, you may not terminate either the Franchise Agreement or Development Agreement.
e. Termination by us without cause	Not Applicable	We may not terminate either the Franchise Agreement or the Development Agreement without cause.
f. Termination by us with cause	FA: 19 DA: 7.2 - 7.4	We may terminate the Franchise Agreement and the Development Agreement only if you or your owners commit any one of several violations. In addition to our right to terminate the Development Agreement, we may (1) temporarily suspend your rights to develop additional Little Big Burger restaurants in any part of the Development Area; (2) reduce the size of the Development Area; or (3) extend the Development Schedule.
g. "Cause" defined - defaults which can be cured	FA: 19.3 DA: 7.4	FA: You have five days from notice to cure non-payment of fees and 30 days to cure other defaults, except for those described in h. below. DA: You have five days to cure non-payment of fees and 30 days to cure other defaults, except for those described in h. below.

Provision	Section in Franchise Agreement (FA), or Development Agreement (DA)	Summary
h. "Cause" defined - noncurable defaults	FA: 19.1 and 19.2 DA: 7.2 and 7.3	FA: Non-curable defaults: insolvency, bankruptcy; failure to complete training; abandonment; loss of possession of the Franchised Location; default on material indebtedness; commission of felony; threat to public safety; unapproved transfers; operating a Competing Business (see q. below); disclosure of trade secrets; filing false reports; repeated defaults even if cured; default of any other agreements between you or your affiliates and us or our affiliates; and others. DA: Non-curable defaults: failure to meet your development obligations; disclosures of trade secrets; operating a Competing Business; unauthorized transfer; material misrepresentation; filing false reports; conviction of felony; termination of any franchise agreement between you or your affiliates and us or our affiliates; and others.
i. Your obligations on termination/ non-renewal	FA: 20 DA: 7.5	FA: Obligations include closing the Restaurant, de-identifying the Franchised Location; paying amounts due and early termination damages (if applicable) and return our proprietary materials (also see o. and r. below). DA: no further right to develop Little Big Burger restaurants.
j. Assignment of contract by us	FA: 16.1 DA: 6.1	There are no restrictions on our right to assign.
k. "Transfer" by you – definition	FA: 16.2 DA: 6.2	Restrictions apply to transfer of any direct or indirect interest in the Agreement, in you (if you are a corporation or other entity), or in substantially all of the assets of your Restaurant.
l. Our approval of transfer by you	FA: 16.2 DA: 6.2	We have the right to approve all transfers.
m. Conditions for our approval of transfer	FA: 16.4 DA: 6.4	FA: Transferee qualified; accrued fees paid; no default exists; sales price reasonable; transferee signs new agreement; training arranged and transfer training fee paid; transferee agrees to upgrade and remodel the Restaurant; you sign release (subject to state law) and pay transfer fee. DA: Transferee qualified; accrued fees paid; no default exists; sales price reasonable; transferee signs new agreement; you sign release and pay transfer fee.
n. Our right of first refusal to acquire your business	FA: 16.3 DA: 6.3	We have the right to match any offer.

Provision	Section in Franchise Agreement (FA), or Development Agreement (DA)	Summary
o. Our option to purchase your business	FA: 20.2 DA: Not Applicable	Upon expiration or termination of the Franchise Agreement, we can take assignment of your lease and purchase the Restaurant assets.
p. Your death or disability	FA: 16.6 DA: 6.6	FA & DA: Executor or personal representative must request our consent to assign your interest to approved party within three months and the interest must be transferred within six months. FA: If the deceased or incapacitated person is the Managing Owner, we have the right to manage operation of the Restaurant until the transfer is completed. If we exercise this right, we can charge a reasonable management fee for our services.
q. Non-competition covenants during the term of the franchise	FA: 15.2 DA: 5.2	Subject to state law, no diverting customers to a Competing Business and no involvement in a "Competing Business" defined as restaurant business: (1) that has burgers as a primary menu item (i.e., sales of burgers comprise at least 20% of sales or that offers any individual menu item that comprises at least 20% of sales at Little Big Burger restaurants; or (2) whose method of operation or trade dress is similar to that employed in the System.
r. Non-competition covenants after the franchise is terminated or expires	FA: 15.2 DA: 5.2	Subject to state law: FA: No involvement with any Competing Business for two years. There is no geographical limitation on this restriction. DA: No involvement with Competing Business for two years within the Development Area, within five miles of the border of the Development Area or within five miles of any other Little Big Burger restaurant.
s. Modification of the agreement	FA: 25 DA: 12	No modification generally without signed agreement, but we may modify the System and the Manual.
t. Integration/merger clause	FA: 25 DA: 12	Only the terms of the Franchise Agreement and Development Agreement are binding (subject to state law). Any representations or promises outside of the disclosure document, Franchise Agreement and Development Agreement may not be enforceable. Nothing in the agreements or in any related agreement is intended to disclaim the representations made in the Franchise Disclosure Document.
u. Dispute resolution by arbitration or mediation	FA: 26.1 DA: Not Applicable	FA: Either party may submit a claim arising out of the Agreement to non-binding mediation; however, the parties will not be required to pursue mediation of any claim as a prerequisite to commencing legal proceedings.

Provision	Section in Franchise Agreement (FA), or Development Agreement (DA)	Summary
v. Choice of forum	FA: 26.3 DA: 13.2	Subject to state law, all claims brought by you must be filed in the jurisdiction where we have our principal place of business, which is currently Charlotte, North Carolina. We may file suit in the federal or state court located in the jurisdiction where our principal offices are located at the time of suit, in the jurisdiction where you reside or do business, where the Restaurant is or was located, or where the claim arose.
w. Choice of law	FA: 26.2 DA: 13.1	Subject to state law, the laws of North Carolina.

ITEM 18 PUBLIC FIGURES

We do not use any public figures to promote our franchises.

ITEM 19 FINANCIAL PERFORMANCE REPRESENTATIONS

The FTC's Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a reasonable basis for the information, and if the information is included in the disclosure document. Financial performance information that differs from that included in Item 19 may be given only if: (1) a franchisor provides the actual records of an existing outlet you are considering buying; or (2) a franchisor supplements the information provided in this Item 19, for example, by providing information about possible performance at a particular location or under particular circumstances.

This financial performance representation sets forth historical Net Sales revenue information for the 15 Affiliate-Owned Restaurants that were open and operating for the entire 2021 calendar year. We have excluded one Affiliate-Owned Restaurant that was not open during the entire 2021 calendar year.

2021 NET SALES OF 15 AFFILIATE-OWNED RESTAURANTS

AVERAGE NET SALES	RANGE OF NET SALES	MEDIAN NET SALES	NO. AND % OF RESTAURANTS THAT MET OR EXCEEDED AVERAGE
\$763,357	\$327,692* - \$1,101,879	\$789,885	8 / 53%

*The Restaurant with the lowest sales figures was closed for more than 12 weeks during 2021 due to pandemic related issues.

NOTES

1. "Net Sales", as defined in Item 6, includes all revenues generated from all business conducted at or from the Little Big Burger restaurant, including amounts received from the sale and delivery of food and beverage items and other merchandise, services, products, and tangible property of any nature whatsoever, whether in cash or for credit, whether delivered on site, at the customer location or via the Internet, and whether collected or uncollected. "Net Sales" does not include the amount of any applicable

sales tax imposed by any federal, state, municipal, or other governmental authority if such taxes are stated separately when the customer is charged and such amounts were paid as and when due to the appropriate taxing authority. Also excluded from Net Sales are the amount of any documented refunds, chargebacks, credits, and allowances given to customers in good faith pursuant to our standard procedures for issuing such refunds.

2. The Affiliate-Owned Restaurants reflected in this financial performance representation offer products and services and operate in a manner that is substantially similar to the Restaurants that you will operate.

3. We have not included operating costs and expenses other than costs of goods sold and labor costs for the Affiliate-Owned Restaurants. Therefore, this financial performance representation does not reflect the other costs and expenses that must be deducted from the Gross Sales figures to obtain your net income or profit. We recommend that you make your own independent investigation of the costs and expenses you will incur in operating a Little Big Burger restaurant to determine whether or not a Restaurant operated by you may be profitable. You should consult with an attorney and other advisors before signing the Franchise Agreement.

4. We compiled the Net Sales of the Affiliate-Owned Restaurants on the basis of generally accepted accounting principles. The information presented is unaudited. All Affiliate-Owned Restaurants use the same accounting methods and system. We have not audited the information presented in this financial performance representation.

Written substantiation for the financial performance representation will be made available to prospective franchisees upon reasonable request.

Some Restaurants have earned this much. Your individual results may differ. There is no assurance that you will earn as much.

Other than the preceding financial performance representation, we do not make any financial performance representations. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to our management by contacting our President, Frederick L. Glick, at 7621 Little Avenue, Suite 414, Charlotte, NC 28226 and 704.366.5122, the Federal Trade Commission, and the appropriate state regulatory agencies.

ITEM 20 OUTLETS AND FRANCHISEE INFORMATION

**Table No. 1
Systemwide Outlet Summary
For Years 2019 to 2021***

Outlet Type	Year	Outlets at the Start of the Year	Outlets at the End of the Year	Net Change
Franchised Outlets	2019	3	0	-3
	2020	0	0	0
	2021	0	0	0
Affiliate-Owned Outlets	2019	16	19	+3
	2020	19	15	-4
	2021	15	16	+1
Total Outlets	2019	19	19	0
	2020	19	15	-4
	2021	15	16	+1

Table No. 2
Transfers of Outlets from Franchisees to New Owners
(Other than the Franchisor)
For Years 2019 to 2021*

State	Year	Number of Transfers
Total	2019	0
	2020	0
	2021	0

Table No. 3
Status of Franchised Outlets
For Years 2019 to 2021*

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations Other Reasons	Outlets at End of the Year
CA	2019	2	0	0	0	0	2	0
	2020	0	0	0	0	0	0	0
	2021	0	0	0	0	0	0	0
TX	2019	1	0	0	0	0	1	0
	2020	0	0	0	0	0	0	0
	2021	0	0	0	0	0	0	0
Total	2019	3	0	0	0	0	3	0
	2020	0	0	0	0	0	0	0
	2021	0	0	0	0	0	0	0

*States not listed had no activity to report.

Table No. 4
Status of Affiliate-Owned Outlets
For Years 2019 to 2021*

State	Year	Outlets at Start of Year	Outlets Opened	Reacquired from Franchisees	Outlets Closed	Outlets Sold to Franchisees	Outlets at End of the Year
NC	2019	3	0	0	0	0	3
	2020	3	0	0	1	0	2
	2021	2	0	0	0	0	2
OR	2019	12	1	0	0	0	13
	2020	13	0	0	1	0	12
	2021	12	1	0	0	0	13
WA	2019	1	2	0	0	0	3
	2020	3	0	0	2	0	1
	2021	1	0	0	0	0	1

State	Year	Outlets at Start of Year	Outlets Opened	Reacquired from Franchisees	Outlets Closed	Outlets Sold to Franchisees	Outlets at End of the Year
Total	2019	16	3	0	0	0	19
	2020	19	0	0	4	0	15
	2021	15	1	0	0	0	16

*States not listed had no activity to report.

Table No. 5
Projected Openings as of December 31, 2021

State	Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlets in the next Fiscal Year	Projected New Affiliate-Owned Outlets in the next Fiscal Year
OR	0	0	1
WA	0	0	1
Total	0	0	2

Exhibit G lists our current franchisees and franchisees who had an outlet terminated, transferred cancelled, not renewed, cease to operate or otherwise voluntarily or involuntarily ceased to do business under a Franchise Agreement during the most recently completed fiscal year, or who have not communicated with us within 10 weeks of the issuance date of this disclosure document. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

We do not have any franchisees during the last three fiscal years who have signed confidentiality clauses.

There are no trademark-specific franchisee organization associated with the franchise system offered in this Franchise Disclosure Document and no independent franchisee organization has asked to be included in this Franchise Disclosure Document.

ITEM 21 FINANCIAL STATEMENTS

Exhibit D contains the consolidated audited financial statements of Amergent for the years ending December 31, 2021, December 31, 2020 and December 31, 2019. Exhibit D also contains unaudited financial statements of Amergent for the period ending March 31, 2022. Amergent absolutely and unconditionally guarantees to assume the duties of obligations of LBB Franchising LLC under the Franchise Agreements identified in this Disclosure Document that LBB Franchising LLC enters into with franchisees, as amended, modified, or extended from time to time. See the Guarantee of Performance signed by Amergent included with its financial statements in Exhibit D. Our fiscal year end is December 31.

ITEM 22 CONTRACTS

Attached as Exhibits to this disclosure document are the following contracts:

Exhibit A	Area Development Agreement
Exhibit B	Franchise Agreement
Exhibit F	State Specific Addenda

ITEM 23
RECEIPTS

Two copies of a receipt form appear at the end of this disclosure document. Please fill out and sign both receipts, return one copy to us and keep the other for your records.

**ADDITIONAL DISCLOSURE DOCUMENT DISCLOSURES
REQUIRED BY THE STATE OF CALIFORNIA**

1. SECTION 31125 OF THE CALIFORNIA CORPORATIONS CODE REQUIRES US TO GIVE YOU A DISCLOSURE DOCUMENT, IN A FORM CONTAINING THE INFORMATION THAT THE COMMISSIONER MAY BY RULE OR ORDER REQUIRE, BEFORE A SOLICITATION OF A PROPOSED MATERIAL MODIFICATION OF AN EXISTING FRANCHISE.

THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE DISCLOSURE DOCUMENT.

SEE THE COVER PAGE OF THE DISCLOSURE DOCUMENT FOR OUR URL ADDRESS. OUR WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION. ANY COMPLAINTS CONCERNING THE CONTENTS OF THIS WEBSITE MAY BE DIRECTED TO THE OF FINANCIAL PROTECTION AND INNOVATION AT WWW.DFPI.CA.GOV.

2. **Item 3, Additional Disclosure**. The following statement is added to Item 3:

Neither we nor any person listed in Item 2 is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 78a *et seq.*, suspending or expelling such parties from membership in such association or exchange.

3. **Item 6, Additional Disclosure**. The following statement is added to Item 6:

The maximum interest rate permitted in California is 10% per annum.

4. **Item 17, Additional Disclosures**. The following statements are added to Item 17:

California Business and Professions Code Sections 20000 through 20043 provide rights to you concerning termination, transfer or non-renewal of the Franchise. If the franchise agreements contain a provision that is inconsistent with the law, the law will control.

The franchise agreements provide for termination upon bankruptcy. These provisions may not be enforceable under federal bankruptcy law (11 U.S.C.A. § 101, *et seq.*).

The franchise agreements contain a covenant not to compete which extends beyond the termination of the franchise. These provisions may not be enforceable under California law.

The franchise agreements provide for the application of the laws of North Carolina. This provision may not be enforceable under California law.

The franchise agreements contain a choice of forum provision. This provision may not be enforceable under California law.

The franchise agreements contain a liquidated damages clause. Under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable.

You must sign a general release when you execute the franchise agreement and if you transfer your franchise or development rights (if applicable) or execute a renewal franchise agreement. These provisions may not be enforceable under California law. California Corporations Code Section 31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code Sections 31000 through 31516). Business and Professions Code Section

21000 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code Sections 20000 through 20043).

**ADDITIONAL DISCLOSURE DOCUMENT DISCLOSURES
REQUIRED BY THE STATE OF NORTH DAKOTA**

Item 17, Additional Disclosures. The North Dakota Securities Commissioner has held the following to be unfair, unjust, or inequitable to North Dakota franchisees (Section 51-19-09, N.D.C.C.):

- A. Restrictive Covenants:** Franchise disclosure documents which disclose the existence of covenants restricting competition contrary to Section 9-08-06, N.D.C.C., without further disclosing that such covenants will be subject to this statute.
- B. Restriction on Forum:** Requiring North Dakota franchisees to consent to the jurisdiction of courts outside of North Dakota.
- C. Liquidated Damages and Termination Penalties:** Requiring North Dakota franchisees to consent to liquidated damages or termination penalties.
- D. Applicable Laws:** Franchise agreements which specify that any claims arising under the North Dakota franchise law will be governed by the laws of a state other than North Dakota.
- E. Waiver of Trial by Jury:** Requiring North Dakota franchisees to consent to the waiver of a trial by jury.
- F. Waiver of Exemplary and Punitive Damages:** Requiring North Dakota franchisees to consent to a waiver of exemplary and punitive damages.
- G. General Release:** Requiring North Dakota franchisees to execute a general release of claims as a condition of renewal or transfer of a franchise.
- H. Limitation of Claims:** Requiring that North Dakota franchisees to consent to a limitation of claims. The statute of limitations under North Dakota law applies.
- I. Enforcement of Agreement:** Requiring that North Dakota franchisees to pay all costs and expenses incurred by the franchisor in enforcing the agreement. The prevailing party in any enforcement action is entitled to recover all costs and expenses including attorney's fees.

Each provision of the Additional Disclosures shall be effective only to the extent that the jurisdictional requirements of the North Dakota Franchise Investment Law, with respect to each such provision, are met independent of the Additional Disclosures. The Additional Disclosures shall have no force or effect if such jurisdictional requirements are not met.

**ADDITIONAL DISCLOSURE DOCUMENT DISCLOSURE
REQUIRED BY THE COMMONWEALTH OF VIRGINIA**

In recognition of the Virginia Retail Franchising Act, the Franchise Disclosure Document for Go Roma Franchising, Inc. for use in the Commonwealth of Virginia shall be amended to include the following:

Termination, Item 17. The following is added to Item 17.h:

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any ground for default or termination stated in the franchise agreement does not constitute "reasonable cause," as that term may be defined in the Virginia Retail Franchising Act or the laws of Virginia, that provision may not be enforceable.

These Additional Disclosures shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Virginia Retail Franchising Act are met independently, without reference to these Additional Disclosures.

EXHIBIT A
DEVELOPMENT AGREEMENT

LITTLE BIG BURGER AREA DEVELOPMENT AGREEMENT

Developer:

Development Area:

**LITTLE BIG BURGER AREA DEVELOPMENT AGREEMENT
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EXHIBITS

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- D - Disclosure Verification Form
- E - Form of Confidentiality and Non-Competition Agreement

LITTLE BIG BURGER AREA DEVELOPMENT AGREEMENT

THIS AREA DEVELOPMENT AGREEMENT is entered into by and between LBB Franchising, LLC, a North Carolina limited liability company (“**we**,” “**us**,” “**our**,” or “**Franchisor**”) and the person(s) or entity identified on Exhibit A to this Agreement (“**you**,” “**your**” or “**Developer**”) as of the Effective Date (which is the date indicated on the signature page of this Agreement).

BACKGROUND

A. We and our affiliates have developed a system relating to the establishment and operation of unique fast casual restaurants featuring made-to-order gourmet burgers, Camden’s catsup, truffle fries, ice cream floats, soda, craft beers and related food and beverage items for dine in and take out under the name “Little Big Burger®” (the “**System**”).

B. The distinguishing characteristics of the System include: unique menus, food offering and proprietary recipes; uniform specifications for food and beverage preparation and presentation; distinctive interior and exterior restaurant design, decor and color schemes; uniform specifications for furniture, fixtures, equipment, and signage; merchandising, marketing, advertising, and inventory management systems; and other standards and procedures for the operation and management of an LBB Restaurant in the manner set forth in the Little Big Burger Franchise Agreement and in the confidential operations manual (“**Manual**”) provided by Franchisor, as modified from time to time; copyrights and copyrighted materials (the “**Works**”), branded products and merchandise, and advertising and promotional programs; all of which we may change, improve, and further develop from time to time.

C. We and our affiliates identify the System and the restaurants operating under it by means of certain trade names, service marks, trademarks, logos, emblems, and indicia of origin, including the mark “Little Big Burger®” and such other trade names, service marks, and trademarks as we may in the future designate for use in connection with the System (the “**Proprietary Marks**”).

D. You desire to be granted the opportunity, and we desire to grant to you the right, to develop a specified number of franchised Little Big Burger restaurants (collectively, the “**Restaurants**” and individually, a “**Restaurant**”) within a specified geographic area.

In recognition of all of the details noted above, the parties have decided to enter into this Agreement, taking into account all of the promises and commitments that they are each making to one another in this Agreement, and they agree as follows:

1 GRANT OF DEVELOPMENT RIGHTS

1.1 Development Rights.

1.1.1 We hereby grant to you (and/or any of your approved Controlled Affiliates as defined below), subject to the terms and conditions set forth in this Agreement, the right to develop Restaurants at specific locations to be designated in separate Little Big Burger Franchise Agreements (each a “**Franchise Agreement**”) pursuant to the schedule set forth in Exhibit A to this Agreement (the “**Development Schedule**”). Each Restaurant developed pursuant to this Agreement shall be located within the area designated on Exhibit A (the “**Development Area**”).

1.1.2 This Agreement is not a Franchise Agreement. It does not give you the right to operate Little Big Burger restaurants or use the System. This Agreement only gives you the opportunity to enter into Franchise Agreements for the operation of Little Big Burger restaurants at locations approved by us in the Development Area. Each Restaurant developed pursuant to this Agreement shall be established and operated in strict accordance with a separate Franchise Agreement. You have no right to use the Proprietary Marks in connection with any business other than a Restaurant operating under a license contained in a Franchise Agreement. We and our affiliates retain all rights not granted by this Agreement.

1.1.3 A “**Controlled Affiliate**” means any corporation, limited liability company or other entity of which you or one or more of your owners owns more than fifty percent (50%) of the total authorized ownership interests, as long as you or such owner(s) have the right to control the entity’s management and policies.

1.2 Limited Exclusivity. During the term of this Agreement, we and our affiliates will not operate, or license others to operate, any new Little Big Burger restaurants in the Development Area, provided that you are in compliance with the terms of this Agreement and any other agreements with us and our affiliates and you are current on all obligations due to us and our affiliates. This Section 1.2 does not prohibit us and our affiliates, from: (1) operating, and licensing others to operate, Little Big Burger restaurants in the Development Area that are open and operating or under development as of the Effective Date; (2) during the term of this Agreement, operating, and licensing others to operate, Little Big Burger restaurants at any location outside the Development Area; (3) after this Agreement terminates or expires, operating, and licensing others to operate, Little Big Burger restaurants at any location. You acknowledge that the development rights granted under this Agreement are non-exclusive and that, except as expressly provided in this Section 1.2, you have no exclusive territorial rights, protected territory or other right to exclude, control or impose conditions on the location or development of Little Big Burger restaurants under the Proprietary Marks, on any sales or distribution of products under the Proprietary Marks, or on our (and our affiliates’) business activities.

1.3 Reservation of Rights. Nothing in this Agreement prohibits us or our affiliates from, among other things:

1.3.1 operating or licensing others to operate at any location, during or after the term of this Agreement, any type of restaurant other than a Little Big Burger restaurant;

1.3.2 selling anywhere (within or outside the Development Area) the same or similar products that are authorized for sale at Little Big Burger restaurants under the Proprietary Marks or under other trademarks or trade dress and through any other channel of distribution, whether such channel of distribution is now in existence or is hereafter developed and whether at retail or wholesale including, without limitation, sales through catalogs, e-commerce, mail order, carts or kiosks, ghost or virtual kitchens, mass merchandise, supermarkets, restaurants, institutional customers, club stores and any other outlet or method of distribution, pursuant to any terms and conditions as we may deem appropriate;

1.3.3 developing and owning other franchise systems for the same or similar products and services using trade names and trademarks other than the Proprietary Marks;

1.3.4 purchasing, being purchased by, merging or combining with, businesses that directly compete with Little Big Burger restaurants; and

1.3.5 Operating or licensing others to operate Little Big Burger restaurants at any Nontraditional Location within or outside the Development Area. The term “**Nontraditional Location**” includes, among other things, college campuses, schools, hotels, casinos, airports and other travel related facilities; federal, state, or local government facilities (including military bases); theme and amusement parks; recreational facilities; venues in which foodservice is or may be provided by a master concessionaire or contract foodservice provider; seasonal facilities; theaters; sporting event arenas and centers; and non-foodservice businesses of any sort within which a Little Big Burger restaurant or a branded facility is established and operated (including, for example, gas stations and convenience stores).

1.3.6 We reserve all rights to use and license the System and the Proprietary Marks other than those expressly granted under this Agreement.

1.4 No Subfranchising Rights. This Agreement does not give you any right to franchise or subfranchise others to operate Little Big Burger restaurants. Only you (and/or your Controlled Affiliates) may develop, open, and operate the Restaurants contemplated by this Agreement and only pursuant to

signed Franchise Agreements. Although you may reference your rights and obligations under this Agreement in discussions with landlords, employees, and others with whom you may deal in connection with the Restaurants, this Agreement does not grant you any rights to use, or authorize others to use, the Proprietary Marks in any manner. Your right to use the Proprietary Marks arises only under the Franchise Agreements. We or our affiliates own all rights to the Proprietary Marks and your use of the Proprietary Marks in any way, other than pursuant to signed Franchise Agreements, is an infringement of our (and our affiliates') rights and a breach of this Agreement.

1.5 Forms of Agreement. You acknowledge that, over time, we have entered, and will continue to enter, into agreements with other franchisees that may contain provisions, conditions and obligations that differ from those contained in this Agreement. The existence of different forms of agreement and the fact that we and our affiliates and other franchisees may have different rights and obligations does not affect the duties of the parties to this Agreement to comply with the terms of this Agreement.

1.6 Best Efforts. You agree that you will at all times faithfully, honestly and diligently perform your obligations under this Agreement, that you will continuously exert your best efforts to the development of the Restaurants, and that you will not engage in any other business or activity that may conflict with your obligations under this Agreement, except the operation of the Restaurants.

2 FEES

2.1 Development Fees. When you sign this Agreement, you must pay us the development fees for each Restaurant that you agree to develop under this Agreement in the amounts identified on Exhibit A (the "**Development Fees**"). The Development Fees are fully earned by us when this Agreement is signed and are non-refundable even if you fail to develop any Restaurants.

2.2 Initial Franchise Fees. The schedule of initial franchise fees that you will pay under the Franchise Agreements for each Restaurant that you develop under this Agreement is set forth on Exhibit A. You and your Controlled Affiliates must pay the initial franchise fee payable under each Franchise Agreement when you or they sign the applicable Franchise Agreement.

3 DEVELOPMENT SCHEDULE

3.1 Development Schedule.

3.1.1 To maintain your rights under this Agreement, you (and/or your Controlled Affiliates) must: (1) obtain our approval of a site and sign a Franchise Agreement for each of the agreed-upon number of Restaurants by the dates specified in the Development Schedule, and (2) have open and operating within the Development Area the agreed-upon number of Restaurants by the dates specified in the Development Schedule. You (or a Controlled Affiliate) will operate each Restaurant under a separate Franchise Agreement with us. The form of Franchise Agreement for your first Franchised Restaurant shall be the form included in the applicable Little Big Burger Restaurant Franchise Disclosure Document as of the Effective Date. The Franchise Agreement that you (or your Controlled Affiliate) will sign for each additional Restaurant will be our then current form of Franchise Agreement except that the initial franchise fee will reflect the fee structure set forth in Exhibit A. To retain your rights under this Agreement, you must operate each Restaurant that you open pursuant to this Agreement continuously throughout this Agreement's term in full compliance with the applicable Franchise Agreement.

3.1.2 Before executing any binding letter of intent, lease, purchase agreement or other document by which you would commit to occupy or acquire a location for any Restaurant that you will develop under this Agreement, you must obtain our acceptance of the site for the Restaurant in accordance with the site selection procedures set forth in Section 3.2, execute and deliver to us copies of our then-current standard form of Franchise Agreement with respect to such Restaurant, pay the initial franchise fee to us in accordance with the terms of such Franchise Agreement and we must countersign such Franchise Agreement.

3.2 Site Selection.

3.2.1 We will provide you with our site selection criteria and, as you may request, a reasonable amount of consultation with respect to the site selection process. Periodically, we may change our site selection criteria, which may include population density and composition, leasing costs, parking, visibility, character of the neighborhood, competition from other burger restaurants in the area, proximity to other businesses (including businesses operated or franchised by us or our affiliates), the nature of other businesses in proximity to the site and other commercial characteristics, and the size, appearance, other physical characteristics and a site plan of the premises. At our option, you must engage our approved supplier of real estate services to assist you in the site selection and/or lease negotiation process. You must provide a site review kit to us for each Restaurant including a complete site report and other materials and information we request for a suitable site located within the Development Area.

3.2.2 Within forty-five (45) days after we receive your detailed site review kit, we or our designee will conduct an evaluation of the proposed site(s) and accept or reject your proposed sites. At our option, we may conduct an on-site evaluation of the proposed site(s). We do not charge any fees to conduct one market visit if the Restaurant is the first Little Big Burger restaurant developed by you or one of your Controlled Affiliates, however; if we require, or if you request, any additional market visits, you must pay a site review fee to us in the amount of Five Hundred Dollars (\$500) and reimburse us for our travel expenses associated with such visits. We will not unreasonably withhold our acceptance of a site that meets our site selection criteria. In determining whether to accept or reject a proposed site, we also may consider the site's proximity both to the Development Area's boundaries and to other existing or potential sites for Little Big Burger restaurants located outside the Development Area. If we do not accept a proposed site in writing in this time period, we will be deemed to have rejected the site.

3.2.3 You agree that our acceptance of a site for a Restaurant and any information communicated to you regarding our site selection criteria for Little Big Burger restaurants does not constitute a warranty or representation of any kind, express or implied, as to the suitability of any site for the Restaurant or for any other purpose. Our acceptance of a site is not a representation or a promise by us that the Restaurant at the site will achieve certain revenues or a certain level of profitability. Similarly, our acceptance of one or more sites and our rejection of other sites is not a representation or a promise that the accepted site will have higher revenues or be more profitable than a site that we rejected.

3.2.4 You agree that your decision to develop and operate a Restaurant at a site that we accept is based solely on your own independent investigation of the suitability of that site for a Restaurant. We assume no liability or responsibility for: (1) evaluation of the soil of the site for hazardous substances; (2) inspection of any structure at the site for asbestos or other toxic or hazardous materials; (3) compliance with the Americans with Disabilities Act ("**ADA**"); or (4) compliance with any other applicable law. It is your sole responsibility to obtain satisfactory evidence and/or assurances that the site and any structures on the site are free from environmental contamination and in compliance with the requirements of the ADA.

4 YOUR ORGANIZATION AND MANAGEMENT

4.1 Your Organization

4.1.1 If you are a legal entity such as a corporation, a limited liability company or a partnership, you make the following representations and warranties: (1) you are duly organized and validly existing under the laws of the state of your formation; (2) you are qualified to do business in the state or states in which the Development Area is located; (3) execution of this Agreement and the development and operation of the Restaurants is permitted by your governing documents; and (4) unless waived in writing by us, your articles of incorporation, articles of organization or written partnership agreement shall at all times provide that your activities are limited exclusively to the development and operation of Little Big Burger restaurants.

4.1.2 If you are an individual, or a partnership comprised solely of individuals, you make the following additional representations and warranties: (1) each individual has executed this Agreement; (2) each individual shall be jointly and severally bound by, and personally liable for the timely and complete performance and a breach of, each and every provision of this Agreement; and (3) notwithstanding any transfer to a business entity, each individual shall continue to be jointly and severally bound by, and personally liable for the timely and complete performance and breach of, each and every provision of this Agreement.

4.2 Ownership Interests and Control Group. If you are a business entity, all interests in you are owned as set forth in attached Exhibit B. You must comply with Section 6 prior to any change in ownership interests and must sign addenda to Exhibit B as changes occur in order to ensure the information contained in Exhibit B is true, accurate and complete at all times. Exhibit B also lists those persons who comprise your “**Control Group**.” The parties acknowledge and agree that it is their intent that the members of the Control Group include the Development Principal and: (1) all holders of a legal or beneficial interest of ten percent (10%) or more (“**10% Owners**”) in your entity; (2) if you are a limited partnership, all 10% Owners of your general partner; and (3) all 10% Owners of a corporation or limited liability company that owns a controlling interest in your entity. In the event of any change in the Control Group or in the ownership interests of any member of the Control Group, you must sign addenda to Exhibit B to reflect the change. If you are a corporation, the Control Group shall at all times own at least fifty-one percent (51%) of your voting securities; if you are a limited liability company, the Control Group shall at all times own at least fifty-one percent (51%) of your membership interests; and if you are any other type of business entity, the Control Group shall at all times have at least a fifty-one percent (51%) interest in your operating profits and losses and hold at least fifty-one percent (51%) of your ownership interests.

4.3 Governing Documents. Upon request by us, you shall promptly deliver to us, as applicable, true and complete copies of the articles or certificate of incorporation, partnership agreement, bylaws, subscription agreements, buy-sell agreements, voting trust agreements and all other documents relating to your ownership, organization, capitalization, management and control and all amendments thereto. When any of these governing documents are modified or changed, you promptly shall provide copies to us. If you are a corporation, you shall maintain stop-transfer instructions against the transfer on the records of any voting securities, and each stock certificate of the corporation shall have conspicuously endorsed upon its face the following statement: “Any assignment or transfer of this stock is subject to the restrictions imposed on assignment by the Little Big Burger Area Development Agreement and Franchise Agreement(s) to which the corporation is a party.” If you are a publicly held corporation, these requirements shall apply only to the stock owned by your Control Group. If you are a limited liability company, each membership or management certificate shall have conspicuously endorsed upon its face the following statement: “Any assignment or transfer of an interest in this limited liability company is subject to the restrictions imposed on assignment by the Little Big Burger Restaurant Area Development Agreement and Franchise Agreement(s) to which the limited liability company is a party.” If you are a partnership, your written partnership agreement shall provide that ownership of an interest in the partnership is held, and that further assignment or transfer thereof, is subject to all restrictions imposed on assignment by this Agreement.

4.4 Guarantee of Performance

4.4.1 All members of the Control Group, your 10% Owners, and each of their spouses, if applicable, shall jointly and severally personally guarantee your payment and performance under this Agreement and personally bind themselves to the terms of this Agreement pursuant to the Guarantee, Indemnification and Acknowledgement (“**Guarantee**”) attached as Exhibit C. Unless you are a publicly-held entity, all of your officers, directors, limited liability company managers and their spouses, if applicable, also shall jointly and severally guarantee your payment and performance under this Agreement and bind themselves to the terms of this Agreement pursuant to the Guarantee. Notwithstanding the foregoing, we reserve the right, in our sole discretion, to waive the requirement that some or all of the previously described individuals sign the Guarantee. We also reserve the right to require any guarantor to provide personal financial statements to us from time to time.

4.4.2 With respect to your owners, you acknowledge that, unless otherwise agreed to in writing by us, it is our intent to have individuals (and not corporations, limited liability companies or other entities) sign the Guarantee. Accordingly, if any owner is not an individual, we shall have the right to require individuals who have only an indirect ownership interest in you to sign the Guarantee. (By way of example, if an owner is a corporation, we have the right to require individuals who have an ownership interest in that corporation to sign the Guarantee.)

4.5 Development Principal. You must designate one of your owners whom we have approved to serve as your Development Principal who will be the person with whom we communicate and whom will have the authority to bind you with respect to all financial, operational and legal matters related to the development of the Restaurants and this Agreement. The Development Principal must be approved by us. The Development Principal shall successfully complete our management training program and any additional training that we require. The Development Principal must devote full time and best efforts to supervising the development and operation of the Restaurants and shall not engage in any other business or activity, directly or indirectly, that requires substantial management responsibility or time commitments or otherwise may conflict with your obligations under this Agreement and the Franchise Agreements for the Restaurants. You must designate a replacement approved by us within thirty (30) days after your Development Principal ceases to qualify as the Development Principal. Your designee to be the Development Principal must satisfy the criteria set forth in this Section 4.5 and be approved by us.

5 COVENANTS

5.1 Confidentiality.

5.1.1 You acknowledge and agree that: (1) we own all right, title and interest in and to the System; (2) the System includes trade secrets and confidential and proprietary information and know-how that gives us a competitive advantage; (3) we have taken all measures appropriate to protect the trade secrets and the confidentiality of the proprietary information and know-how of the System; (4) all material or other information now or hereafter provided or disclosed to you regarding the System is disclosed in confidence; (5) you have no right to disclose any part of the System to anyone who is not your employee; (6) you will disclose to your employees only those parts of the System that an employee needs to know; (7) you will have a system in place to ensure that your employees keep confidential our trade secrets and confidential and proprietary information, and, if requested by us, you shall obtain from those of your employees designated by us an executed confidentiality and non-disclosure agreement in the form prescribed by us; (8) by entering into this Agreement, you do not acquire any ownership interest in the System; and (9) your use or duplication of the System or any part of the System in any other business, or disclosure of any part of the System to others for use or duplication in any other business, would constitute an unfair method of competition, for which we would be entitled to all legal and equitable remedies, including injunctive relief, without posting a bond.

5.1.2 You shall not, during the term of this Agreement or at any time thereafter, communicate or disclose any trade secrets or confidential or proprietary information or know-how of the System to any unauthorized person, or do or perform, directly or indirectly, any other acts injurious or prejudicial to any of the Proprietary Marks or the System. Any and all information, knowledge, know-how and techniques, including all drawings, materials, equipment, specifications, recipes, techniques and other data that we or our affiliates designate as confidential shall be deemed confidential for purposes of this Agreement.

5.2 Restrictions On Competition.

5.2.1 You acknowledge and agree that: (1) pursuant to this Agreement, you will have access to valuable trade secrets, specialized training and other confidential information from us and/or our affiliates regarding the development, operation, product preparation and sale, market and operations research, advertising and marketing plans and strategies, purchasing, sales and marketing methods and techniques owned by us and our affiliates; (2) the know-how regarding the System and the opportunities, associations and experience acquired by you pursuant to this Agreement are of substantial value; (3) in

developing the System, we and our affiliates have made substantial investments of time, effort, and money; (4) we would be unable adequately to protect the System and its trade secrets and confidential and proprietary information against unauthorized use or disclosure and would be unable adequately to encourage a free exchange of ideas and information among operators of Little Big Burger restaurants if franchisees were permitted to engage in the activities described in this Section 5.2 or to hold interests in the businesses described in this Section 5.2; and (5) the restrictions on your right to hold interests in, or perform services for, the businesses described in this Section 5.2 will not unduly limit your activities.

5.2.2 You covenant and agree that, except as we otherwise approve in writing, during the term of this Agreement, and for a continuous period of two (2) years following the expiration, transfer or termination of this Agreement, you will not, either directly or indirectly, for yourself or through, on behalf of, or in conjunction with any person or legal entity:

5.2.2.1 Own, maintain, operate, engage in, grant a franchise to, advise, help, make loans to, lease property to, or have any interest in, either directly or indirectly, any **"Competing Business"**, which is defined as a restaurant business: (1) that has burgers as a primary menu item (i.e., sales of burgers comprise at least twenty percent (20%) of sales) or that offers any individual menu item that comprises at least twenty percent (20%) of sales at Little Big Burger restaurants; or (2) whose method of operation or trade dress is similar to that employed in the System. During the term of this Agreement, there is no geographical limitation on this restriction. Following the expiration, transfer or termination of this Agreement, this restriction shall apply to any Competing Business located within the Development Area, within five (5) miles of the border of the Development Area, or within a five (5) mile radius of any then-existing Little Big Burger restaurant; or

5.2.2.2 Divert or attempt to divert any present or prospective business or customer to any Competing Business by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks and the System.

5.3 Exception for Publicly Traded Stock. The restrictions contained in Section 5.2.2.1 will not apply to ownership by you of less than a five percent (5%) beneficial interest in the equity securities of any publicly-held corporation.

5.4 Owners and Employees. Your owner(s) identified in Exhibit B that sign the Guarantee attached to this Agreement as Exhibit C will agree to be bound personally by the provisions of this Section 5, provided that, as to them, the time period in Section 5.2.2 will run from the expiration, termination, or transfer of this Agreement or from the termination of the individual's relationship with you, whichever occurs first. At our request, you must obtain signed agreements similar in substance to this Section 5 (including agreements applicable upon termination of a person's relationship with you) from your officers, directors, and owners. Each agreement required by this Section 5.4 must be in a form we approve and specifically identify us as a third party beneficiary with the independent right to enforce the agreement. Our current form of Non-disclosure and Non-competition Agreement is attached to this Agreement as Exhibit E.

5.5 Enforcement

5.5.1 We have the right, in our sole discretion, to reduce the scope of any restriction in Section 5.2 by giving you written notice and you agree to comply with any covenant so modified, which shall be fully enforceable notwithstanding the provisions of Section 12.

5.5.2 You agree that the existence of any claims you may have against us, whether or not arising from this Agreement, will not constitute a defense to our enforcement of this Section 5.

5.5.3 You acknowledge that your violation of the terms of this Section 5 would result in irreparable injury to us for which no adequate remedy at law may be available, and you accordingly consent

to the issuance of an injunction prohibiting any conduct by you in violation of the terms of this Section 5. Injunctive relief will be in addition to any other remedies we may have.

5.5.4 If you or any other person bound by this Section 5 fails or refuses to abide by any of the foregoing restrictions on competition, and we obtain enforcement in a judicial proceeding, the obligations under the breached restriction will continue in effect for a period ending two (2) years after the date the person begins to comply with the order enforcing the restriction.

6 TRANSFER

6.1 By Us. We have the right to transfer or assign this Agreement or any part of our rights or obligations under this Agreement to any person or legal entity. You agree that we will have no liability after the effective date of the transfer or assignment for the performance of any obligations under this Agreement. You acknowledge that we can sell our assets; sell securities in a public offering or in a private placement; merge with, acquire, or be acquired by another company; or undertake a refinancing, recapitalization, leveraged buy-out, or other economic or financial restructuring, without restriction and without affecting your obligations under this Agreement.

6.2 By You. You acknowledge that the rights and duties set forth in this Agreement are personal to you and that we have granted these rights in reliance on your business skill, financial capacity, and personal character (or, if you are a business entity, on the business skill, financial capacity, and personal character of your owners and management). Accordingly, neither you nor any immediate or remote successor to any interest in this Agreement, nor any individual, partnership, corporation, or other legal entity which directly or indirectly owns any interest in you, may sell, assign, transfer, convey, pledge, encumber or give away any direct or indirect interest in you or in this Agreement without our prior written consent, which will not be unreasonably withheld. You must notify us in writing of any proposed transfer at least thirty (30) days before the transfer is to take place, and must provide all information and documentation relating to the proposed transfer that we reasonably request. Notwithstanding the foregoing, you may grant a security interest in, or otherwise encumber certain assets of the Restaurants, excluding the Franchise Agreements, in connection with obtaining financing for the development and/or operation of the Restaurants or equipment leasing, if such financing satisfies our requirements, which may include, without limitation, execution of agreements by us, you and your owners and your secured creditor, in a form satisfactory to us, acknowledging such creditor's obligations to be bound by the terms of this Section 6.

6.3 Our Right of First Refusal. We have the right, exercisable within thirty (30) days after receipt of a written request for our approval of a proposed transfer pursuant to this Section 6 (other than a transfer to immediate family members of your owners who meet our operational and financial criteria for new franchisees), to purchase the interest proposed to be transferred. The request for approval of transfer must include a true and complete copy of the term sheet, letter of intent, proposed purchase agreement, assignment document, or any other document necessary to implement the transfer, and not be subject to financing or any other contingencies. Our thirty (30) day period for determining whether or not to exercise our right of first refusal will not begin until the transferor has provided all information and documentation that we require in a form and substance satisfactory to us. We may assign this right of first refusal to a third party in our sole discretion. If we desire to exercise our right of first refusal, we will do so by providing written notice (the **"Purchase Notice"**) to the transferor, as follows:

6.3.1 If the transfer is proposed to be made pursuant to a sale, we may purchase the interest proposed to be transferred on the same financial terms and conditions offered by the third party. Closing on our purchase will occur within sixty (60) days after the date of the transferor's receipt of the Purchase Notice. If the consideration, terms, and/or conditions offered by the third party are such that we may not reasonably be required to furnish the same consideration, terms, and/or conditions, then we may purchase the interest proposed to be sold for the reasonable equivalent in cash. If, within thirty (30) days of the transferor's receipt of the Purchase Notice the parties cannot agree as to the reasonable equivalent in cash consideration, an independent appraiser will be appointed by mutual agreement and the determination of the appraiser will be binding. Any material change in the terms of the offer from a third

party after we have elected not to purchase the interest sought to be transferred will constitute a new offer subject to the same rights of first refusal by us as in the case of the third party's initial offer.

6.3.2 If the transfer is proposed to be made by gift, you and we will jointly designate, at our expense, an independent appraiser to determine the fair market value of the interest proposed to be transferred. We may purchase the interest at the fair market value determined by the appraiser. Closing on the purchase will occur within forty-five (45) days after our notice to the transferor of the appraiser's determination of fair market value.

6.3.3 Our failure to exercise our right of first refusal shall not constitute approval of the proposed transfer nor a waiver of any other provision of this Section 6 with respect to a proposed transfer. If we do not exercise our right of first refusal, you or your owners may complete the sale to such offeror pursuant to and on the exact terms of such offer, subject to our consent to the transfer as provided in Section 6.2, provided that if the sale to such offeror is not completed within sixty (60) days after receipt of our notice of our decision not to exercise our right of first refusal, or if there is a material change in the terms of the offer, you must promptly notify us, and we will have an additional right of first refusal (on the terms of the revised offer, if any, and otherwise as set forth herein) during the thirty (30) day period following your notification of the expiration of the sixty (60) day period or the material change to the terms of the offer.

6.4 Conditions of Our Consent. If we elect not to exercise our right of first refusal under Section 6.3, the proposed transferor may complete the transfer after obtaining our written consent as required under Section 6.2. We may withhold our consent on any reasonable grounds, or may give our consent subject to reasonable conditions, which may include, but are not limited to, the following:

6.4.1 That all of your accrued monetary obligations to us and our affiliates (whether arising under this Agreement or otherwise) and all other outstanding obligations related to the Restaurants (including, but not limited to, bills from suppliers, taxes, judgments and any required governmental reports, returns, affidavits or bonds) have been satisfied or, in our reasonable judgment, adequately provided for. We reserve the right to require that a reasonable sum of money be placed in escrow to ensure that all of these obligations are satisfied;

6.4.2 That you are not then in material default of any provision of this Agreement or any other agreement between you (and/or your Controlled Affiliates) and us (and/or our affiliates), you and your Controlled Affiliates are in good standing as a franchisee with us and our affiliates, are not in default beyond the applicable cure period under any real estate lease, equipment lease or financing instrument relating to any Restaurant and are not in default beyond the applicable cure period with any vendor or supplier to any Restaurant;

6.4.3 That the sales price shall not be so high, in our reasonable judgment, as to jeopardize the ability of the transferee to develop, maintain, operate and promote the Restaurants and meet financial obligations to us, third party suppliers and creditors. Our decision with respect to a proposed transfer shall not create any liability on the part of us: (1) to the transferee, if we approve the transfer and the transferee experiences financial difficulties; or (2) to the transferor or the proposed transferee, if we reject the transfer pursuant to this Section 6 or for other legitimate business purposes. We, without any liability to the transferor or the proposed transferee, have the right, in our sole discretion, to communicate and counsel with the transferor, you, and the proposed transferee regarding any aspect of the proposed transfer;

6.4.4 That the transferor executes a general release, in a form satisfactory to us, of any and all claims against us, our affiliates and their respective past, present, and future officers, directors, shareholders, and employees, in their corporate and individual capacities;

6.4.5 That the transferee (and if the transferee is a corporation, partnership, or limited liability company, such owners of a beneficial interest in the transferee as we may request) enter into a written assignment, in a form satisfactory to us, assuming and agreeing to discharge all of your obligations under this Agreement; or, at our option, enter into our then current form of Development Agreement and, if

the transferor guaranteed your obligations under this Agreement, that the transferee guarantee the performance of all such obligations in writing in a form satisfactory to us;

6.4.6 If the transferee is an existing Little Big Burger developer or franchisee, that the transferee is not in default under its agreements with us, its landlords, lenders and its suppliers and has a good record of customer service and compliance with our operating standards;

6.4.7 That the transferee, whether or not an existing Little Big Burger developer or franchisee, demonstrates to our satisfaction that he or she meets (or, if the transferee is a business entity, that its owners and management team meet) our educational, managerial, and business standards; possesses a good moral character, business reputation, and credit rating; has the aptitude and ability to conduct the business contemplated hereunder (as may be evidenced by prior related business experience or otherwise); has the ability to obtain all required licenses and permits to develop and operate the Restaurants; and has adequate financial resources and capital to fulfill your obligations under this Agreement in a timely manner; and

6.4.8 That the transferor (1) pays a transfer fee in the amount of \$7,500 for each Franchised Restaurant that has not yet been developed in the Development Schedule; and (ii) is solely responsible for any third-party broker fees that are incurred in connection with the contemplated assignment/transaction at issue. If the transaction involves one or more Franchise Agreements in addition to this Agreement, the transferor must also pay the transfer fee specified in each Franchise Agreement in the transaction.

6.5 Transfers to an Entity Wholly Owned by You. If you desire to transfer this Agreement to a corporation or limited liability wholly owned by you and your owners, the requirements of Section 6.2 shall apply to such a transfer; however, you will be required to pay a reduced transfer fee of One Thousand Dollars (\$1,000). Our consent also will be conditioned on the following: (1) the entity must be newly organized; (2) prior to the transfer, we must receive a copy of the documents specified in Section 4.3 and the transferee shall comply with the remaining provisions of Section 6; and (3) you must own all voting securities of the newly formed corporation (or membership interests of the newly formed limited liability company) or, if you are owned by more than one individual, each person shall have the same proportionate ownership interest in the corporation (or the limited liability company) as prior to the transfer.

6.6 Death, Incapacity or Bankruptcy. If you or any owner dies, becomes incapacitated, or enters bankruptcy proceedings, that person's executor, administrator, personal representative, or trustee must apply to us in writing within three (3) months after the event (death, declaration of incapacity, or filing of a bankruptcy petition) for consent to transfer the person's interest. The transfer will be subject to the provisions of this Section 6, as applicable; however, you will not be required to pay a transfer fee. For purposes of this Section, "incapacity" means any physical or mental infirmity that will prevent the person from performing his or her obligations under this Agreement (1) for a period of thirty (30) or more consecutive days, or (2) for sixty (60) or more total days during a calendar year. In the case of transfer by bequest or by intestate succession, if the heirs or beneficiaries are unable to meet the conditions of transfer set forth in Section 6.4, the executor may transfer the decedent's interest to another successor that we have approved, subject to all of the terms and conditions for transfers contained in this Agreement. If an interest is not disposed of under this Section 6.6 within six (6) months after the date of death or appointment of a personal representative or trustee, we can terminate this Agreement under Section 7.3.

6.7 Securities Offering. All materials for a public offering of stock or partnership interests in you or any of your affiliates that are required by federal or state law shall be submitted to us for review as described below before such materials are filed with any government agency. Any materials to be used in any exempt offering shall be submitted to us for such review before their use. You agree that: (1) no offering by you or any of your affiliates may imply (by use of the Proprietary Marks or otherwise) that we are participating in an underwriting, issuance, or offering of your securities or your affiliates; (2) our review of any offering shall be limited solely to the relationship between you and us (and, if applicable, any of your affiliates and us); and (c) we will have the right, but not obligation, to require that the offering materials contain a written statement that we require concerning the limitations stated above. You (and the offeror if

you are not the offering party), your owners, and all other participants in the offering must fully indemnify us, our subsidiaries, affiliates, successor, and assigns, and their respective directors, officers, shareholders, partners, agents, representatives, servants, and employees in connection with the offering. For each proposed offering, you agree to pay us a non-refundable fee of Ten Thousand Dollars (\$10,000) or such greater amount as is necessary to reimburse us for our reasonable costs and expenses (including legal and accounting fees) for reviewing the proposed offering as well as any subsequent or periodic documents needed in connection with your securities offering (e.g., quarterly or annual filings). You agree to give us written notice at least thirty (30) days before the date that any offering or other transaction described in this Section 6.7 commences. Any such offering shall be subject to all of the other provisions of this Section 6; and further, without limiting the foregoing, it is agreed that any such offering shall be subject to our approval as to the structure and voting control of the offeror (and you, if you are not the offeror) after the financing is completed.

6.8 Nonconforming Transfers Void. Any purported assignment or transfer that is not in compliance with this Section 6 will be null and void and will constitute a material breach of this Agreement, for which we may terminate this Agreement without opportunity to cure pursuant to Section 7.2 below. Our consent to a transfer will not constitute a waiver of any claims we may have against the transferor, nor will it be deemed a waiver of our right to demand exact compliance by the transferor, transferee or you with any of the terms of this Agreement.

7 TERM AND TERMINATION

7.1 Term. The term of this Agreement begins on the Effective Date and expires on the earlier of the date that you open the final Restaurant to be developed under this Agreement or the opening deadline for that Restaurant as set forth in the Development Schedule.

7.2 Termination without Notice. You will be deemed to be in default under this Agreement, and all rights granted to you in this Agreement will automatically terminate without notice to you, if you become insolvent or make a general assignment for the benefit of creditors; if a petition in bankruptcy is filed by you or is filed against you and not opposed by you; if you are adjudicated as bankrupt or insolvent; if a bill in equity or other proceeding for the appointment of a receiver or other custodian for your business or assets is filed and consented to by you; if a receiver or other custodian (permanent or temporary) of your assets or property, or any part thereof, is appointed by any court of competent jurisdiction; if proceedings for a composition with creditors under any state or federal law are instituted by or against you; if a final judgment against you remains unsatisfied or of record for thirty (30) days or longer (unless supersedeas bond is filed); or if you are dissolved.

7.3 Termination without Cure Period. If any of the following events of default occurs, we may terminate this Agreement without providing you any opportunity to cure the default, effective immediately upon receipt of written notice by you:

7.3.1 You fail to satisfy your development obligations under the Development Schedule.

7.3.2 Your Development Principal fails to satisfactorily complete our management training program.

7.3.3 You, your owners, your employees or your independent contractors do business with third parties in violation of The Patriot Act and/or the Foreign Corrupt Practices Act.

7.3.4 There is a material breach by you of any covenant or obligation under Section 5.

7.3.5 Any transfer that requires our prior written consent occurs without your having obtained that prior written consent.

7.3.6 We discover that you made a material misrepresentation in or omitted a material fact from the information that you provided to us in connection with our decision to enter into this Agreement.

7.3.7 You knowingly falsify any report required to be furnished to us, make any material misrepresentation in your dealings with us, or fail to disclose any material facts to us.

7.3.8 You, your Development Principal, or any of your 10% Owners are convicted of, or plead no contest to, a felony charge, a crime involving moral turpitude, or any other crime or offense that is reasonably likely, in our sole opinion, to adversely affect us, our affiliates or the System.

7.3.9 You fail to pay when due any amount owed to us or our affiliates, any lender that has provided financing under an arrangement with us, any creditor or supplier of a Restaurant or any taxing authority for federal, state or local taxes (other than amounts subject to a bona fide dispute through appropriate proceedings), and you do not correct such failure within five (5) days after written notice is delivered to you.

7.3.10 You, your Development Principal or any of your 10% Owners: (1) materially misuse or make unauthorized use of the Proprietary Marks or our copyrighted materials; (2) commit any act or take any action that impairs the goodwill of the Proprietary Marks; (3) use our copyrighted materials or other proprietary System know-how at any business owned or operated by you or your 10% Owners other than a Restaurant; or (4) fail to cure any breach or default under this Agreement that materially impairs or can be expected to impair the goodwill associated with the Proprietary Marks.

7.3.11 You, your Controlled Affiliates, your Development Principal, any member of the Control Group, or any 10% Owner: (1) remain in default beyond the applicable cure period under any other agreement with us or our affiliates (provided that, if the default is not by you, we shall provide to you written notice of the default and a fifteen (15) day period to cure the default).

7.3.12 We terminate any Franchise Agreement between us and you (or your Controlled Affiliates) for a Restaurant, regardless of where it is located, in compliance with its terms.

7.4 Termination Following Expiration of Cure Period

7.4.1 Except as otherwise provided above in Sections 7.2 and 7.3 above, if you fail to maintain or observe any of the standards or procedures prescribed by us in this Agreement or otherwise in writing, we may only terminate this Agreement by giving you written notice of termination (in the manner set forth under Section 11 below) stating the nature of the default at least thirty (30) days before the effective date of termination; provided, however, that you may avoid termination by immediately initiating a remedy to cure such default, curing it to our satisfaction, and by promptly providing proof of the cure to us, all within the thirty (30) day period. If any such default is not cured within the specified time (or such longer period as applicable law may require), then this Agreement shall terminate without further notice to you effective immediately upon the expiration of the thirty (30) day period or such longer period as applicable law may require.

7.4.2 Notwithstanding the provisions of the preceding Section 7.4.1, if you default in the payment of any monies owed to us when such monies become due and payable and you fail to pay such monies within five (5) days after receiving written notice of default (or such longer period as applicable law may require), then this Agreement shall terminate without further notice to you effective immediately upon the expiration of the five (5) day period or such longer period as applicable law may require.

7.5 Effect of Expiration or Termination. Upon expiration or termination of this Agreement (regardless of the reason for termination):

7.5.1 Any and all rights granted to you under this Agreement will immediately terminate; however, you will not be relieved of any of your obligations, debts or liabilities under this Agreement, including, without limitation, any debts, obligations or liabilities which have accrued before such termination.

7.5.2 You and your Controlled Affiliates will have no further rights to develop and open Restaurants in the Development Area, except that you (and your Controlled Affiliates) may develop and open any Restaurants for which you (or your Controlled Affiliates) have executed Franchise Agreements prior to the date of expiration or termination of this Agreement and continue to operate Restaurants that are open and operating as of the date this Agreement expires or terminates.

7.5.3 We and our affiliates will have the right to operate, and authorize others to operate, Little Big Burger restaurants the physical premises of which are located within the Development Area and continue to engage, and grant to others the right to engage, in any activities that we (and they) desire within the Development Area without any restrictions whatsoever, subject only to your (and/or your Controlled Affiliates') rights under existing Franchise Agreements.

7.5.4 We will retain the Development Fees payable pursuant to Section 2.1 of this Agreement.

7.6 Other Remedies Upon Default.

7.6.1 In addition to and without limiting our other rights and remedies under this Agreement, upon the occurrence of any of the events that give rise to our right to terminate this Agreement, we may, at our sole option and upon delivery of written notice to you, elect to take any or all of the following actions without terminating this Agreement:

7.6.1.1 temporarily suspend your rights to develop additional Restaurants in any part of the Development Area;

7.6.1.2 temporarily or permanently reduce the size of the Development Area, in which event the restrictions on us and our affiliates under Section 1.3 will not apply in the territory which is no longer part of the Development Area and we and our affiliates may engage, and authorize third parties to engage, in any business activities we or they deem appropriate, whether under the Proprietary Marks or other trademarks, within that territory, including establishing and operating (and granting rights to others to establish and operate) Little Big Burger restaurants the physical premises of which are located in that territory; and/or

7.6.1.3 extend the time of the Development Schedule for any period of time that we determine.

7.6.2 Our exercise of our rights under this Section 7.6 will not be a defense for you to our enforcement of any other provision of this Agreement or waive or release you from any of your other obligations under this Agreement. Our exercise of these rights will not constitute an actual or constructive termination of this Agreement, nor will it be our sole or exclusive remedy for your default. If we exercise any of our rights under this Section 7.6, we may thereafter terminate this Agreement without providing you any additional corrective or cure period, unless the default giving rise to our right to terminate this Agreement has been cured to our reasonable satisfaction.

7.7 No Waiver. Termination of this Agreement by us shall not constitute an election of remedies by us. The exercise of the rights granted under this Section 7 are in addition to, and not in lieu of, any and all other rights and remedies available to us at law, in equity or otherwise, including without limitation, the right to an injunction as set forth in Section 5.5.3, all of which are cumulative.

8 INDEPENDENT CONTRACTOR AND INDEMNIFICATION

8.1 Independent Contractor. This Agreement does not create a fiduciary relationship between you and us. You are an independent contractor, and nothing in this Agreement is intended to make either party an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever. While this Agreement is in effect, you must hold yourself out to the public as an independent contractor developing the Restaurants pursuant to an area development agreement from us. This Agreement does not authorize you to make any contract, agreement, warranty, or representation on our behalf or to incur any debt or other obligation in our name. We will not be deemed liable as a result of any such action, nor will we be liable by reason of your act or omission in the development or operation of the Restaurants, or for any claim or judgment arising therefrom against you or us.

8.2 Indemnification

8.2.1 You and your guarantors will defend, indemnify and hold harmless, us and our parent, affiliates, subsidiaries and their successors and assigns, and each of their respective direct and indirect owners, directors, officers, managers, employees, agents, attorneys, and representatives (collectively, "**Indemnified Parties**") from and against all Losses (as defined below) which any of the Indemnified Parties may suffer, sustain or incur as a result of a claim asserted or inquiry made formally or informally, or a legal action, investigation, or other proceeding brought by a third party and directly or indirectly arising out of your development and operation of the Restaurants, your conduct of business under this Agreement, your breach of this Agreement or your noncompliance or alleged noncompliance with any law, ordinance, rule or regulation including any allegation that we or another Indemnified Party is a joint employer or otherwise responsible for your acts or omissions relating to your employees. We will promptly notify you of any claim that may give rise to a claim of indemnity hereunder, provided, however, that the failure to provide such notice will not release you from your indemnification obligations under this section except to the extent you are actually and materially prejudiced by such failure.

8.2.2 You will have the right, upon written notice delivered to the Indemnified Party within fifteen (15) days thereafter assuming full responsibility for Losses resulting from such claim, to assume and control the defense of such claim, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of the fees and disbursements of such counsel. If (1) the Indemnified Party will have been advised by counsel that there are one or more legal or equitable defenses available to it that are different from or in addition to those available to you and, in the reasonable opinion of the Indemnified Party, your counsel could not adequately represent the interests of the Indemnified Party because such interests could be in conflict with your interests, or (2) you do not assume responsibility for such Losses in a timely manner or you fail to defend a claim with counsel reasonably satisfactory to the Indemnified Party as contemplated above, then the Indemnified Party will have the right to employ counsel of its own choosing, and you will pay the fees and disbursements of such Indemnified Party's counsel as incurred. In connection with any claim, the Indemnified Party or you, whichever is not assuming the defense of such claim, will have the right to participate in such claim and to retain its own counsel at such party's own expense.

8.2.3 You or the Indemnified Party (as the case may be) will keep you or the Indemnified Party (as the case may be) reasonably apprised of, and will respond to any reasonable requests concerning, the status of the defense of any claim and will cooperate in good faith with each other with respect to the defense of any such claim. You will not, without the prior written consent of the Indemnified Party, (1) settle or compromise any claim or consent to the entry of any judgment with respect to any claim which does not include a written release from liability of such claim for the Indemnified Party and its affiliates, direct and indirect owners, directors, managers, employees, agents and representatives, or (2) settle or compromise any claim in any manner that may adversely affect the Indemnified Party other than as a result of money damages or other monetary payments which will be paid by you. No claim that is being defended in good faith by you in accordance with the terms of this section will be settled by the Indemnified Party without your prior written consent. Notwithstanding anything to the contrary herein, if a claim involves the Proprietary Marks, you agree that we will have the exclusive right to assume the defense of such claim, at your expense with counsel selected by us, but reasonably satisfactory to you.

8.2.4 You have no obligation to indemnify or hold harmless an Indemnified Party for any Losses to the extent they are determined in a final, unappealable ruling issued by a court or arbitrator with competent jurisdiction to have been caused solely and directly by the Indemnified Party's gross negligence, willful misconduct, or willful wrongful omissions.

8.2.5 For purposes of this Section 8.2, "**Losses**" include all obligations, liabilities, damages (actual, consequential, or otherwise), and defense costs that any Indemnified Party incurs. Defense costs include accountants', arbitrators', attorneys', and expert witness fees, costs of investigation and proof of facts, court costs, travel and living expenses, and other expenses of litigation and alternative dispute resolution.

8.2.6 Your obligations in this Section 8.2 will continue in full force and effect subsequent to and notwithstanding this Agreement's expiration or termination. An Indemnified Party need not seek recovery from any insurer or other third party, or otherwise mitigate its Losses, in order to maintain and recover fully a claim against you under this Section 8.2. You agree that a failure to pursue a recovery or mitigate a Loss will not reduce or alter the amounts that an Indemnified Party may recover from you under this Section 8.2.

9 APPROVALS AND WAIVERS

9.1 Approvals. Whenever this Agreement requires our prior approval or consent, you must make a timely written request to us, and our approval or consent must be obtained in writing and signed by one of our officers.

9.2 No Warranty. We make no warranties or guarantees upon which you may rely and assume no liability or obligation to you by providing any waiver, approval, consent, or suggestion to you in connection with this Agreement, or by reason of any neglect, delay, or denial of any request therefor.

9.3 No Implied Waiver. No delay or failure by us to exercise any right reserved to us under this Agreement or to insist upon strict compliance by you with any obligation or condition hereunder, and no custom or practice of the parties at variance with the terms hereof, will constitute a waiver of our right to exercise such right or to demand exact compliance by you with any of the terms hereof. Waiver by us of any particular default by you will not affect or impair our rights with respect to any subsequent default of the same, similar, or a different nature. Acceptance by us of any payments due to us hereunder will not be deemed to be a waiver by us of any preceding breach by you.

10 FORCE MAJEURE

If the performance of any obligation by any party under this Agreement is prevented, hindered or delayed by reason of any natural disaster, strike, lock-out or other industrial disturbance, war (declared or undeclared), riot, epidemic, pandemic fire or other catastrophe, act of any government or other third party and any other cause not within the control of the party affected thereby ("**Force Majeure**") that cannot be overcome by reasonable commercial measures, the parties shall be relieved of their respective obligations (to the extent that the parties, having exercised best efforts, are prevented, hindered or delayed in such performance) during the period of such Force Majeure. The party whose performance is affected by an event of Force Majeure shall give prompt written notice of such Force Majeure event to the other party by setting forth the nature thereof and an estimate as to its duration. Your inability to obtain financing (regardless of the reason) shall not constitute Force Majeure.

11 NOTICES

Any and all notices that are required or permitted under this Agreement shall be in writing and shall be personally delivered, mailed in the United States mail, postage prepaid, certified mail, return receipt requested; or mailed via overnight courier, or by other means that affords the sender evidence of delivery, of rejected delivery, or attempted delivery to the respective parties at the addresses shown on the signature

page of this Agreement (unless and until a different address has been designated by written notice to the other party). Any notices sent by personal delivery, next day delivery service or by electronic means shall be deemed given on the next business day after transmittal. Any notices sent by certified mail shall be deemed given on the third business day after the date of mailing. Any change in the foregoing addresses shall be effected by giving fifteen (15) days written notice of such change to the other party. We may provide you with routine information, invoices, updates to the System standards and other System requirements and programs, including any modifications thereto, by regular mail or by e-mail, or by making such information available to you on the Internet, an extranet, or other electronic means.

12 ENTIRE AGREEMENT

The parties acknowledge that each element of this Agreement is essential and material and that, except as otherwise provided in this Agreement, the parties shall deal with each other in good faith. This Agreement and the attachments to this Agreement, constitute the entire, full and complete agreement between the parties concerning your rights, and supersede any and all prior or contemporaneous negotiations, discussions, understandings or agreements. There are no other representations, inducements, promises, agreements, arrangements, or undertakings, oral or written, between the parties relating to the matters covered by this Agreement other than those set forth in this Agreement and in the attachments. No obligations or duties that contradict or are inconsistent with the express terms of this Agreement may be implied into this Agreement. No amendment, change or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed in writing. Notwithstanding the foregoing, nothing in this Agreement is intended to disclaim any representation made in our Franchise Disclosure Document that we provided to you.

13 DISPUTES

13.1 Choice of Law. This Agreement and any claim or controversy arising out of, or relating to, rights and obligations of the parties under this Agreement and any other claim or controversy between the parties shall be governed by and construed in accordance with the laws of the State of North Carolina without regard to conflicts of laws principles. Nothing in this Section 13.1 is intended, or shall be deemed, to make any North Carolina law regulating the offer or sale of franchises or the franchise relationship applicable to this Agreement if such law would not otherwise be applicable.

13.2 Choice of Forum. The parties agree that, to the extent any disputes cannot be resolved directly between them, you must file any suit against us only in the federal or state court having jurisdiction where our principal offices are located at the time suit is filed. We may file suit in the federal or state court located in the jurisdiction where our principal offices are located at the time suit is filed, in the jurisdiction where you reside or do business, where the Development Area is or was located, or where the claim arose. You consent to the personal jurisdiction of those courts over you and to venue in those courts.

13.3 Limitations of Actions. Except for payments owed by one party to the other, and unless prohibited by applicable law, any legal action or proceeding (including the offer and sale of a franchise to you) brought or instituted with respect to any dispute arising from or related to this Agreement or with respect to any breach of the terms of this Agreement must be brought or instituted within a period of two (2) years after the initial occurrence of any act or omission that is the basis of the legal action or proceeding, whenever discovered.

13.4 Reimbursement of Costs and Expenses. If either party brings an action to enforce this Agreement in a judicial proceeding, the party prevailing in that proceeding shall be entitled to reimbursement of costs and expenses, including reasonable accountants', attorneys', attorneys' assistants' and expert witness fees, the cost of investigation and proof of facts, court costs, other litigation expenses, and travel and living expenses, whether incurred prior to, during, in preparation for, or in contemplation of the filing of, the proceeding. If we utilize legal counsel (including in-house counsel employed by us) in connection with any failure by you to comply with this Agreement, you shall reimburse us for any of the above-listed costs and expenses incurred by us. In any judicial proceeding, the amount of these costs and expenses will be determined by the court and not by a jury.

13.5 Rights of Parties are Cumulative. The parties' rights under this Agreement are cumulative, and the exercise or enforcement of any right or remedy under this Agreement will not preclude the exercise or enforcement by a party of any other right or remedy under this Agreement that it is entitled by law or this Agreement to exercise or enforce.

13.6 **WAIVER OF PUNITIVE DAMAGES, CLASS ACTION LAWSUITS AND JURY TRIAL**. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY WAIVES ANY RIGHT TO, OR CLAIM FOR, ANY CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER PARTY. THE PARTIES ALSO AGREE THAT, IN THE EVENT OF A DISPUTE BETWEEN THEM, THE PARTY MAKING A CLAIM WILL BE LIMITED TO RECOVERY OF ACTUAL DAMAGES, IF ANY. IN ADDITION, THE PARTIES IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO BRING, OR BE A CLASS MEMBER IN, ANY CLASS ACTION SUITS AND THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, AND/OR COUNTERCLAIM BROUGHT BY EITHER PARTY.

13.7 Injunctive Relief. You recognize that your failure to comply with the terms of this Agreement, including the failure to comply fully with all post-termination obligations, is likely to cause irreparable harm to us, our affiliates and the System. Therefore, you agree that, in the event of a breach or threatened breach of any of the terms of this Agreement by you, we shall be entitled to injunctive relief (both preliminary and permanent) restraining that breach and/or to specific performance without showing or proving actual damages and without posting any bond or security. Any equitable remedies sought by us shall be in addition to, and not in lieu of, all remedies and rights that we otherwise may have arising under applicable law or by virtue of any breach of this Agreement.

14 SEVERABILITY AND CONSTRUCTION

14.1 Severability. If any provision of this Agreement is determined to be invalid or in conflict with any existing or future law or regulation by a court or agency having valid jurisdiction, the invalidity will not impair the operation of any other provisions which remain otherwise intelligible. The latter will continue to be given full force and effect, and the invalid provisions will be deemed not to be a part of this Agreement.

14.2 Counterparts. This Agreement may be executed in multiple counterparts, each of which when executed and delivered shall be deemed to be an original and all of which together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by electronic transmission (including an electronic signature platform such as DocuSign or the transmission of a scanned PDF document) shall be effective as delivery of a manually executed counterpart of this Agreement.

14.3 Construction. The terms "includes" and "including" in this Agreement means "including (or includes), but not limited to," "including (or includes) without limitation," and similar constructions.

14.4 Gender and Number. All references to gender and number shall be construed to include such other gender and number as the context may require.

14.5 Captions. All captions in this Agreement are intended solely for the convenience of the parties, and none shall be deemed to affect the meaning or construction of any provision of this Agreement.

14.6 Time. Time is of the essence of this Agreement for each provision in which time is a factor. Whenever this Agreement refers to a period of days or months, the first day or month to be counted shall be the day or month of the designated action, event or notice. Days shall be measured by calendar days, except that if the last day of a period is a Saturday, Sunday or national holiday, the period automatically shall be extended to the next day that is not a Saturday, Sunday or national holiday.

14.7 Survival of Obligations. All obligations that expressly or by reasonable implication are to be performed, in whole or in part, after the expiration, termination, or assignment of this Agreement will survive expiration, termination, or assignment.

14.8 No Implied Third Party Beneficiaries. Except as explicitly provided to the contrary herein, nothing in this Agreement is intended or will be deemed to confer any rights or remedies on any person or legal entity other than you, your owner(s), us, and our affiliates.

14.9 References. Each reference in this Agreement to a corporation or partnership also shall be deemed to refer to a limited liability company and any other entity or organization similar thereto if applicable. Each reference to the organizational documents, owners, directors, and officers of a corporation in this Agreement shall be deemed to refer to the functional equivalents of such organizational documents, owners, directors, and officers, as applicable, in the case of a limited liability company or any other entity or organization similar thereto if applicable.

14.10 Lesser Included Obligations. You agree to be bound by any promise or covenant imposing the maximum duty permitted by law which is subsumed within any provision of this Agreement, as though it were separately articulated in and made a part of this Agreement, that may result from (1) striking any portion of a provision that a court or agency may hold to be unreasonable and unenforceable; or (2) reducing the scope of any promise or covenant to the extent required to comply with a court or agency order.

14.11 Best Interests of System. Whenever we exercise a right and/or discretion to take or withhold an action, or to grant or decline to grant you a right to take or withhold an action, except as otherwise expressly provided in this Agreement, we can make our decision or exercise our discretion on the basis of our judgment of what is in our best interests. "Best interests" includes what we believe to be the best interests of the System at the time the decision is made or the right or discretion is exercised, even though (1) there may have been other alternative decisions or actions that could have been taken; (2) our decision or the action taken promotes our own financial interest; or (3) our decision or the action may apply differently to different franchisees and/or to any Little Big Burger restaurants that we or our affiliates operate. In the absence of an applicable statute, we will have no liability to you for any such decision or action. If applicable law implies a covenant of good faith and fair dealing in this Agreement, we and you agree that the covenant will not imply any rights or obligations that are inconsistent with a fair construction of the terms of this Agreement.

15 REPRESENTATIONS AND ACKNOWLEDGMENTS

In addition to the representations contained in the Disclosure Verification Form attached to this Agreement as Exhibit D, you represent, acknowledge and warrant to us (and you agree that these representations, acknowledgments and warranties shall survive termination of this Agreement) that:

15.1 Legal and Business Rights and Risks. This Agreement involves significant legal and business rights and risks. We do not guarantee your success. You have read this Agreement in its entirety, conducted an independent investigation of the business contemplated by this Agreement, have been thoroughly advised with regard to the terms and conditions of this Agreement by legal counsel or other advisors of your choosing, recognize that the nature of the business conducted by Little Big Burger restaurants may change over time, have had ample opportunity to investigate all representations made by or on our behalf, and have had ample opportunity to consult with our current and former franchisees. The prospect for success of the business undertaken by you is speculative and depends to a material extent upon your personal commitment, capability and direct involvement in the day-to-day management of the business.

15.2 No Representation of Your Success. We make no express or implied warranties or representations that you will achieve any degree of success in the development or operation of the Restaurants. Your success in the development and operation of the Restaurants depends ultimately on your efforts and abilities and on other factors, including market and other economic conditions, your financial condition and competition.

15.3 Our Agreements with Third Parties. We have entered, and will continue to enter, into agreements with other franchisees to develop and operate Little Big Burger restaurants. The manner in

which we enforce our rights and the franchisees' obligations under any of those other agreements shall not affect our ability to enforce our rights or your obligations under this Agreement.

15.4 System Modifications. We may change or modify the System, from time to time, and you will be required to make such expenditures as such changes or modifications in the System may require.

15.5 Franchise Application. All information that you provided to us in connection with your franchise application and our grant of the development rights set forth in this Agreement is truthful, complete and accurate.

15.6 Signatories to this Agreement. The persons signing this Agreement on your behalf have full authority to enter into this Agreement and the other agreements contemplated by the parties. Your execution of this Agreement or such other agreements does not and will not conflict or interfere with, directly or indirectly, intentionally or otherwise, with the terms of any other agreement with any other third party to which you or any owner is a party.

15.7 No Representations Other Than Franchise Disclosure Document. You acknowledge that you have conducted your own independent investigation concerning the purchase of a Little Big Burger restaurant franchise and you have not received from us or our affiliates or any of our or their respective directors, officers, employees, agents, advisors or other representatives, or anyone acting on our behalf, any representations other than those contained in our Franchise Disclosure Document as inducements to enter this Agreement.

15.8 No Financial Performance Representations. You have not received from us or our affiliates or anyone acting on their behalf, any representation of your potential sales, expenses, income, profit or loss other than the information included in Item 19 of our Franchise Disclosure Document.

15.9 No Actual or Apparent Authority. Even though this Agreement contains provisions requiring you to develop the Restaurants in compliance with the System, we and our affiliates do not have actual or apparent authority to control the day-to-day conduct and operation of your business or employment decisions.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

LBB FRANCHISING, LLC
a North Carolina limited liability company

DEVELOPER: If a corporation, partnership, or limited liability company, print name of business entity on the line below:

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Notice Address: 7621 Little Avenue, Suite 414
Charlotte, North Carolina 28226

Date: _____

Notice Address: _____

EFFECTIVE DATE: _____

If Developer is one or more individuals:

(Print Name) _____

Date: _____

(Print Name) _____

Date: _____

Notice Address: _____

EXHIBIT A TO LITTLE BIG BURGER RESTAURANT AREA DEVELOPMENT AGREEMENT

DEVELOPMENT INFORMATION

1. **Developer:** _____
2. **Development Area:** _____

3. **Development Schedule:** You agree to sign Franchise Agreements for and to open _____
(__) new Restaurants within the Development Area according to the following Schedule:

SITE ACCEPTED BY FRANCHISOR AND FRANCHISE AGREEMENTS TO BE EXECUTED BY (DATE)	RESTAURANT OPENING DEADLINE	CUMULATIVE MINIMUM NUMBER OF NEW RESTAURANTS TO BE OPEN AND OPERATING NO LATER THAN THE RESTAURANT OPENING DEADLINE (IN PREVIOUS COLUMN)
		1
		2
		3

4. **Development Fees.** For each Restaurant you agree to develop, you must pay the following Development Fees when you sign this Agreement and Initial Franchise Fees when you sign the Franchise Agreement:

RESTAURANT NO.	DEVELOPMENT FEE	INITIAL FRANCHISE FEE
1	\$30,000	\$0
2	\$10,000	\$20,000
3	\$10,000	\$20,000
Total:		

DEVELOPER: _____

By: _____

Print name: _____

Title: _____

Date: _____

EXHIBIT B TO LITTLE BIG BURGER RESTAURANT AREA DEVELOPMENT AGREEMENT

OWNERSHIP INTERESTS

Developer: _____

Form of Ownership. Developer is a _____ incorporated or formed on _____ in the state of _____.

Owners. The following list includes the full name of each person who is an owner of a legal or beneficial interest in Developer, and fully describes the nature of each owner's interest (attach additional pages if necessary).

Name	Home Address	Percentage and Description of Ownership Interest

Development Principal. Developer's Development Principal is: _____

DEVELOPER: _____

By: _____

Print name: _____

Title: _____

Date: _____

EXHIBIT C TO LITTLE BIG BURGER RESTAURANT AREA DEVELOPMENT AGREEMENT

GUARANTEE AND ASSUMPTION OF DEVELOPER'S OBLIGATIONS

In consideration of, and as an inducement to, the execution of the Little Big Burger Restaurant Area Development Agreement dated as of _____ ("**Agreement**") by LBB Franchising, LLC ("**Franchisor**"), entered into with _____ ("**Developer**"), the undersigned ("**Guarantors**"), each of whom is Developer's officer, director, member of Developer's Control Group or a 10% Owner, or the spouse thereof, hereby personally and unconditionally agree as follows:

1. Guarantee To Be Bound By Certain Obligations. Guarantors hereby personally and unconditionally guarantee to Franchisor and its successors and assigns, for the term of the Agreement and thereafter as provided in the Agreement or at law or in equity, that each will be personally bound by the covenants and restrictions contained in Section 5 (Covenants) of the Agreement.

2. Guarantee and Assumption of Developer's Obligations. Guarantors hereby: (1) guarantee to Franchisor and its successors and assigns, for the term of the Agreement and thereafter as provided in the Agreement or at law or in equity, that Developer and any assignee of Developer's interest under the Agreement shall: (a) punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement, and (b) punctually pay all other monies owed to Franchisor and/or its affiliates; (2) agree to be personally bound by each and every provision in the Agreement, including, without limitation, the provisions of Sections 5 (Covenants) and 8.2 (Indemnification); and (3) agree to be personally liable for the breach of each and every provision in the Agreement.

3. General Terms and Conditions. The following general terms and conditions shall apply to this Guarantee:

Each of the undersigned waives: (1) acceptance and notice of acceptance by Franchisor of the foregoing undertakings; (2) notice of demand for payment of any indebtedness or nonperformance of any obligations hereby guaranteed; (3) protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed; (4) any right s/he may have to require that an action be brought against Developer or any other person as a condition of liability; (5) all rights to payments and claims for reimbursement or subrogation which any of the undersigned may have against Developer arising as a result of the execution of and performance under this Guarantee by the undersigned; (6) any law or statute which requires that Franchisor make demand upon, assert claims against or collect from Developer or any others, foreclose any security interest, sell collateral, exhaust any remedies or take any other action against Developer or any others prior to making any demand upon, collecting from or taking any action against the undersigned with respect to this Guarantee; (7) any and all other notices and legal or equitable defenses to which he may be entitled; and (8) any and all right to have any legal action under this Guarantee decided by a jury.

Each of the undersigned consents and agrees that: (1) her/his direct and immediate liability under this Guarantee shall be joint and several; (2) s/he shall render any payment or performance required under the Agreement upon demand if Developer fails or refuses punctually to do so; (3) such liability shall not be contingent or conditioned upon pursuit by Franchisor of any remedies against Developer or any other person; (4) such liability shall not be diminished, relieved or otherwise affected by any amendment of the Agreement, any extension of time, credit or other indulgence which Franchisor may from time to time grant to Developer or to any other person including, without limitation, the acceptance of any partial payment or performance or the compromise or release of any claims, none of which shall in any way modify or amend this Guarantee, which shall be continuing and irrevocable during the term of the Agreement and for so long thereafter as there are monies or obligations owing from Developer to Franchisor or its affiliates under the Agreement; and (5) monies received from any source by Franchisor for application toward payment of the obligations under the Agreement and under this Guarantee may be applied in any manner or order deemed appropriate by Franchisor. In addition, if any of the undersigned ceases to be a member of the Control Group, a 10% Owner, an officer or director of Developer or own any interest in Developer, that person (and his spouse, if the spouse is also a guarantor) agrees that the obligations under this Guarantee shall continue

to remain in force and effect unless Franchisor in its sole discretion, in writing, releases those person(s) from this Guarantee. Notwithstanding the provisions of the previous sentence, unless prohibited by applicable law, the obligations contained in Section 5.2 (Restrictions on Competition) of the Agreement shall remain in force and effect for a period of two (2) years after any such release by Franchisor. A release by Franchisor of any of the undersigned shall not affect the obligations of any other Guarantor.

If Franchisor brings an action to enforce this Guarantee in a judicial proceeding, the prevailing party in such proceeding shall be entitled to reimbursement of its costs and expenses, including, but not limited to, reasonable accountants', attorneys', attorneys' assistants' and expert witness fees, cost of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses, whether incurred prior to, in preparation for or in contemplation of the filing of any such proceeding. In any judicial proceeding, these costs and expenses shall be determined by the court and not by a jury.

If Franchisor utilizes legal counsel (including in-house counsel employed by Franchisor or its affiliates) in connection with any failure by the undersigned to comply with this Guarantee, the undersigned shall reimburse Franchisor for any of the above-listed costs and expenses incurred by it.

If any of the following events occur, a default ("**Default**") under this Guarantee shall exist: (1) failure of timely payment or performance of the obligations under this Guarantee; (2) breach of any agreement or representation contained or referred to in this Guarantee; (3) the dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against, any of the undersigned; and/or (4) the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due any of the undersigned. If a Default occurs, the obligations of the undersigned shall be due immediately and payable without notice. Upon the death of one of the undersigned, the estate shall be bound by this Guarantee for all obligations existing at the time of death. The obligations of the surviving Guarantors shall continue in full force and effect.

This Guarantee shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Franchisor's interests in and rights under this Guarantee are freely assignable, in whole or in part, by Franchisor. Any assignment shall not release the undersigned from this Guarantee.

Section 13 (Disputes) of the Agreement is incorporated by reference into this Guarantee and all capitalized terms that are not defined in this Guarantee shall have the meaning given them in the Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, each of the undersigned has hereunto affixed his or her signature, under seal.

GUARANTORS:

Date: _____

Print Name: _____

Address: _____

Date: _____

Print Name: _____

Address: _____

Date: _____

Print Name: _____

Address: _____

Date: _____

Print Name: _____

Address: _____

EXHIBIT D TO LITTLE BIG BURGER AREA DEVELOPMENT AGREEMENT

DISCLOSURE VERIFICATION FORM

You are preparing to enter into a Little Big Burger Restaurant Area Development Agreement with LBB Franchising, LLC ("Franchisor"). The purpose of this Questionnaire is to confirm that you understand the terms of the Area Development Agreement and that no unauthorized statements or promises have been made to you. Please review each of the following questions and statements carefully and provide honest and complete responses to each.

Franchise Applicant _____

- Yes ___ No ___ 1. Have you received and reviewed the Little Big Burger Franchise Disclosure Document ("FDD") at least 14 calendar days, exclusive of the day you received it, before signing the Area Development Agreement and/or paying any monies to Franchisor?
- Yes ___ No ___ 2. Have you signed and returned to Franchisor the acknowledgment of receipt for each FDD given you?
- Yes ___ No ___ 3. Have you had an opportunity to read the Area Development Agreement and each of its attachments (and the Franchise Agreement if applicable) and each of its attachments thoroughly and understand all of Franchisor's covenants and obligations and your covenants and obligations as a franchisee?
- Yes ___ No ___ 4. Do you understand that the territorial rights you have been granted are subject to limitations and exceptions?
- Yes ___ No ___ 5. Have you had an opportunity to consult with a lawyer, accountant, or other professional advisor prior to signing the Area Development Agreement (and the Franchise Agreement if applicable) or have you had the opportunity for such review and chosen not to engage such professionals?
- Yes ___ No ___ 6. Do you understand the risks of owning a business and specifically the risks of owning a Little Big Burger restaurant franchise, and are you able to bear such risks?
- Yes ___ No ___ 7. Do you acknowledge that the success of your franchise will depend primarily on your own skills, efforts and abilities and those of the persons you employ as well as many factors beyond your or Franchisor's control, including demographics, competition, local laws, lease terms, and other conditions which may be difficult or impossible to anticipate or identify may affect the success of your business?
- Yes ___ No ___ 8. Except for negotiated changes that have been initiated by you, did you receive a complete copy of the Area Development Agreement (and the Franchise Agreement if applicable) at least seven calendar days before the date on which you signed the Area Development Agreement (and the Franchise Agreement if applicable)?
- Yes ___ No ___ 9. Do you understand that all disputes or claims you may have arising out of or relating to the Area Development Agreement (and the Franchise Agreement if applicable) must be brought in the state where Franchisor has its principal place of business, if not resolved informally or by mediation?
- Yes ___ No ___ 10. Do you agree that no employee or other person speaking on Franchisor's behalf

made any statement or promise regarding the costs involved in operating a Little Big Burger restaurant franchise that is not contained in the FDD or that is contrary to or different from, the information contained in the FDD?

Yes ____ No ____ 11. Do you agree that no employee or other person speaking on Franchisor's behalf made any promises, guarantees or assurances to you and provided no information to you relative to earnings, revenues, profits, expenses or projected revenues for a Little Big Burger restaurant franchise other than those contained in Item 19 of Franchisor's Franchise Disclosure Document?

Yes ____ No ____ 12. Do you agree that no employee or other person speaking on Franchisor's behalf made any statement or promise or agreement, other than those matters addressed in your Area Development Agreement (and Franchise Agreement if applicable) concerning the advertising, marketing, media support, marketing penetration, training, support service, or assistance that is contrary to, or different from, the information contained in the FDD?

Yes ____ No ____ 13. Do you understand that the Area Development Agreement and its attachments (and the Franchise Agreement and its attachments, if applicable) contain the entire agreement between Franchisor and you concerning the Little Big Burger restaurant franchise, meaning any prior oral or written statements not set out in the Area Development Agreement (and the Franchise Agreement if applicable) will not be binding?

Yes ____ No ____ 14. Do you understand that Franchisor is relying on your answers to this questionnaire to ensure that the franchise sale was made in compliance of state and federal laws?

If you answered "No" to any question above, please explain your response(s) below:

YOU UNDERSTAND THAT YOUR ANSWERS ARE IMPORTANT TO FRANCHISOR AND THAT FRANCHISOR WILL RELY ON THEM. BY SIGNING THIS QUESTIONNAIRE, YOU ARE REPRESENTING THAT YOU HAVE CONSIDERED EACH QUESTION CAREFULLY AND RESPONDED TRUTHFULLY TO THE ABOVE QUESTIONS.

APPLICANT: _____

By: _____

Print Name: _____

Date: _____

EXHIBIT E TO LITTLE BIG BURGER AREA DEVELOPMENT AGREEMENT

FORM OF NON-DISCLOSURE AND NON-COMPETITION AGREEMENT

(to be signed by Developer and its personnel)

THIS NON-DISCLOSURE AND NON-COMPETITION AGREEMENT (this “**Agreement**”) is made this ____ day of _____, 20____, by and between _____ (“**Developer**”) and _____, who is an owner, manager, supervisor, member, partner, or a person in a managerial position with, Developer (the “**Member**”).

RECITALS:

WHEREAS, LBB Franchising, LLC (“**Franchisor**”) owns a format and system (the “**System**”) relating to the establishment and operation of unique fast casual restaurants featuring made-to-order gourmet burgers, Camden’s catsup, truffle fries, ice cream floats, soda, craft beers and related food and beverage items for dine in and take out under the name “Little Big Burger®” (each, an “**Little Big Burger restaurant**”);

WHEREAS, Franchisor identifies Little Big Burger restaurants by means of certain trade names, service marks, trademarks, logos, emblems, and indicia of origin, including the mark “Little Big Burger” and such other trade names, service marks, and trademarks as Franchisor may hereafter designate for use in connection with the System (the “**Proprietary Marks**”);

WHEREAS, Franchisor and Developer have executed a Little Big Burger Area Development Agreement (“**Development Agreement**”) granting Developer the right to develop franchised Little Big Burger restaurants (the “**Restaurants**”) located within the Development Area described in the Development Agreement under the terms and conditions of the Development Agreement; and

WHEREAS, the Member, by virtue of his or her position with Developer, will gain access to certain of Franchisor’s Confidential Information, as defined herein, and must therefore be bound by the same confidentiality and non-competition agreement that Developer is bound by.

NOW THEREFORE, IN CONSIDERATION of these premises, the conditions stated herein, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

1. Confidential Information. Member shall not, during the term of the Development Agreement or thereafter, communicate, divulge, or use for the benefit of any other person, persons, partnership, entity, association, or corporation any confidential information, knowledge, or know-how concerning the methods of operation of the business franchised thereunder which may be communicated to Member or of which Member may be apprised by virtue of Developer’s operation under the terms of the Development Agreement. Any and all information, knowledge, know-how, and techniques which Franchisor designates as confidential shall be deemed confidential for purposes of this Agreement, except information which Member can demonstrate came to his or her attention before disclosure thereof by Franchisor; or which, at or after the time of disclosure by Franchisor to Developer, had become or later becomes a part of the public domain, through publication or communication by others.

2. Covenants Not to Compete.

(a) Member specifically acknowledges that, pursuant to the Development Agreement, and by virtue of his/her position with Developer, Member will receive valuable specialized training and confidential information, including, without limitation, information regarding the operational, sales, promotional, and marketing methods and techniques of Franchisor and the System.

(b) Member covenants and agrees that during the term of Member's employment with, or ownership interest in Developer, except as otherwise approved in writing by Franchisor, Member shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity:

(1) Own, maintain, operate, engage in, grant a franchise to, advise, help, make loans to, lease property to or have any interest in, either directly or indirectly, any "**Competing Business**", which is defined as a restaurant business: (1) that has burgers as a primary menu item (i.e., sales of burgers comprise at least twenty percent (20%) of sales) or that offers any individual menu item that comprises at least twenty percent (20%) of sales at Little Big Burger restaurants; or (2) whose method of operation or trade dress is similar to that employed in the System.

(2) Divert or attempt to divert any present or prospective business or customer to any Competing Business by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks and the System; or

(c) During the term of Member's employment with or ownership interest in Developer, there is no geographical limitation on the restrictions contained in this Section 2. Member covenants and agrees that during the continuous uninterrupted period of two (2) years from the termination of Member's employment with and/or transfer of Member's ownership interest in Developer, except as otherwise approved in writing by Franchisor, Member shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity, own, maintain, operate, engage in, or have any interest in any Competing Business which is, or is intended to be, located within five (5) miles of the border of the Development Area or within a five (5) mile radius around any then-existing Little Big Burger restaurant operating under the System.

3. Injunctive Relief. Member acknowledges that any failure to comply with the requirements of this Agreement will cause Franchisor irreparable injury, and Member agrees to pay all costs (including without limitation reasonable attorneys' fees, court costs, discovery costs, and all other related expenses) incurred by Franchisor in obtaining specific performance of, or an injunction against violation of, the requirements of this Agreement.

4. Severability. All agreements and covenants contained herein are severable. If any of them, or any part or parts of them, shall be held invalid by any court of competent jurisdiction for any reason, then the Member agrees that the court shall have the authority to reform and modify that provision in order that the restriction shall be the maximum necessary to protect Franchisor's and/or Member's legitimate business needs as permitted by applicable law and public policy. In so doing, the Member agrees that the court shall impose the provision with retroactive effect as close as possible to the provision held to be invalid.

5. Delay. No delay or failure by Franchisor or Developer to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right provided herein, and no waiver of any violation of any terms and provisions of this Agreement shall be construed as a waiver of any succeeding violation of the same or any other provision of this Agreement.

6. Third-Party Beneficiary. Member hereby acknowledges and agrees that Franchisor is an intended third-party beneficiary of this Agreement with the right to enforce it, independently or jointly with Developer.

IN WITNESS WHEREOF, the Developer and the Member attest that each has read and understands the terms of this Agreement, and voluntarily signed this Agreement on the date first written above.

DEVELOPER

MEMBER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT B
FRANCHISE AGREEMENT



LITTLE BIG BURGER FRANCHISE AGREEMENT

Franchisee:

Restaurant Address:

**LITTLE BIG BURGER FRANCHISE AGREEMENT
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LITTLE BIG BURGER FRANCHISE AGREEMENT

THIS AGREEMENT is entered into by and between **LBB Franchising, LLC** a North Carolina limited liability company (“**we**,” “**us**,” “**our**,” or “**Franchisor**”) and the person(s) or entity identified on Exhibit A to this Agreement (“**you**,” “**your**,” or “**Franchisee**”) as of the Effective Date (as defined in Section 1 and as indicated on the signature page of this Agreement).

BACKGROUND

A. We and our affiliates have developed a proprietary system relating to the establishment and operation of Little Big Burger restaurants, which are unique fast casual restaurants featuring made-to-order gourmet burgers, truffle fries, ice cream floats, soda, craft beers and related food and beverage items for dine-in and takeout using the Little Big Burger brand and standards (the “**System**”).

B. The distinguishing characteristics of the System include: unique menus, food offering and proprietary recipes; uniform specifications for food and beverage preparation and presentation; distinctive interior and exterior restaurant design, decor and color schemes; uniform specifications for furniture, fixtures, equipment, and signage; merchandising, marketing, advertising, and inventory management systems; and other standards and procedures for the operation and management of a Little Big Burger restaurant in the manner set forth in this Agreement and in the confidential operations manual (“**Manual**”) provided by Franchisor, as modified from time to time; copyrights and copyrighted materials, branded products and merchandise, and advertising and promotional programs; all of which we may change, improve, and further develop from time to time.

C. We and our affiliates identify the System and the Little Big Burger restaurants operating under it by means of certain trade names, service marks, trademarks, logos, emblems, and indicia of origin, including the mark “*little big burger*®” and such other trade names, service marks, and trademarks as we may in the future designate for use in connection with the System (the “**Proprietary Marks**”).

D. You wish to obtain the right to establish and operate a franchised Little Big Burger restaurant at a location accepted by us.

In recognition of all of the details noted above, the parties have decided to enter into this Agreement, taking into account all of the promises and commitments that they are each making to one another in this Agreement, and they agree as follows:

1 DEFINITIONS

The terms defined in the “Background” section and this Section 1 have the meanings set forth in those Sections. Other capitalized terms used in this Agreement are defined where they appear within the text of the Agreement.

1.1 “**Brand Fund**” means the common pool of funds for the enhancement, advancement and protection of the System, advertising and promotion to which franchised Little Big Burger restaurants contribute and which we administer as provided in Section 10.

1.2 “**Designated Supplier**” means a manufacturer, wholesaler, distributor, dealer, retailer, or other vendor or source that we designate as the source for particular products or services.

1.3 “**Effective Date**” means the date entered in the space so designated on the signature page of this Agreement, which is the date that we counter-sign this Agreement.

1.4 “**Force Majeure**” means any natural disaster, strike, lock-out or other industrial disturbance, act or threat of terrorism, war (declared or undeclared), riot, epidemic, pandemic, fire or other

catastrophe, act of any government or other third party and any other cause not within the control of the party affected thereby.

1.5 **“Franchisee Affiliate”** means any business entity that controls, is controlled by, or is under common control with Franchisee.

1.6 **“General Manager”** means the individual whose role is defined in Section 8.20.

1.7 **“Including”** or **“Includes”** means “including (or includes), but not limited to,” “including (or includes) without limitation,” and similar constructions.

1.8 **“Little Big Burger restaurant”** means a restaurant operated by us, our affiliate, or an authorized franchisee using the System and the Proprietary Marks.

1.9 **“Managing Owner”** means the individual whose role is defined in Section 14.5 and who is identified in Exhibit B.

1.10 **“Manual”** means our confidential operations manual. The term “Manual” also includes all written correspondence from us regarding the System, other publications, materials, drawings, memoranda, videos, and electronic media that we from time to time may provide to you.

1.11 **“Net Sales”** means the aggregate amount of all revenues generated from the sale of all products and services sold and all other income of every kind related to the Restaurant, whether for cash or credit (and regardless of collection in the case of credit), whether from sales on the Franchised Location, by delivery, from catering, or at wholesale (whether the sales method is permitted or not). You may not reduce Net Sales by the amount of any discounts provided to employees, family members and other businesses that you control. Net Sales do not include sales taxes or other taxes collected from customers for transmittal to the appropriate taxing authority, proceeds from the sale of gift cards or stored value cards, and customer refunds made in good faith. We reserve the right to modify our policies consistent with restaurant industry practices regarding revenue recognition, revenue reporting, and the inclusion in or exclusion of certain revenue from “Net Sales” as circumstances, business practices, and technology change.

1.12 **“Franchised Location”** means the location that we have accepted for the Restaurant, as specified in Exhibit A.

1.13 **“Restaurant”** means the franchised Little Big Burger restaurant that you operate at the Franchised Location.

1.14 **“Trainers”** means the individuals defined in Section 6.3.1 and who will be responsible for training the Restaurant’s staff.

2 GRANT AND INITIAL TERM

2.1 Grant. Subject to the terms and conditions of this Agreement, we grant to you the non-exclusive right, and you undertake the obligation, to establish and continuously operate the Restaurant at the Franchised Location and a license to use the Proprietary Marks and the System solely in connection with the Restaurant in compliance with the operating standards set forth in the Manual (the **“Franchise”**). If, at the time of execution of this Agreement, you have not secured the Franchised Location for the Restaurant that we have accepted, you must select a site for the Restaurant in accordance with Section 3.2 of this Agreement.

2.2 Initial Term. Unless terminated sooner as provided in this Agreement, the initial term of this Agreement (the **“Initial Term”**) expires on the ten (10) year anniversary of the Effective Date. Your rights to seek a renewal franchise agreement for an additional term are set forth in Section 18.

2.3 Protected Area. During the term of this Agreement, we will not operate, or grant the right to any other party to operate, an Little Big Burger restaurant in the area designated in Exhibit A as your “**Protected Area**,” except as otherwise provided in Sections 2.3.1 through 2.3.7. We and our affiliates reserve all rights that are not expressly granted to you under this Agreement. Therefore, among other things, we and our affiliates have the sole right to do any or all of the following (notwithstanding proximity to your Protected Area or Restaurant or their actual or threatened impact on sales at your Restaurant):

2.3.1 Operate or license others to operate at any location, during or after the term of this Agreement, any type of restaurant other than Little Big Burger restaurants;

2.3.2 Operate or license others to operate, during the term of this Agreement, Little Big Burger restaurants at any location other than in the Protected Area;

2.3.3 Operate or license others to operate, after this Agreement terminates or expires, Little Big Burger restaurants at any location, including within the Protected Area or at the Franchised Location;

2.3.4 Sell anywhere (within or outside the Protected Area) the same or similar products that are authorized for sale at Little Big Burger restaurants under the Proprietary Marks or under other trademarks or trade dress and through any other channel of distribution, whether such channel of distribution is now in existence or is hereafter developed and whether at retail or wholesale including, without limitation, sales through catalogs, e-commerce, mail order, carts or kiosks, ghost or virtual kitchens, mass merchandise, supermarkets, restaurants, institutional customers, club stores and any other outlet or method of distribution, pursuant to any terms and conditions as we may deem appropriate;

2.3.5 Operate or license others to operate Little Big Burger restaurants at any Nontraditional Location within or outside the Protected Area. The term “**Nontraditional Location**” includes, among other things, college campuses, schools, hotels, casinos, airports and other travel related facilities; federal, state, or local government facilities (including military bases); theme and amusement parks; recreational facilities; venues in which foodservice is or may be provided by a master concessionaire or contract foodservice provider; seasonal facilities; theaters; sporting event arenas and centers; and non-foodservice businesses of any sort within which a Little Big Burger restaurant or a branded facility is established and operated (including, for example, gas stations and convenience stores).

2.3.6 Develop and own other franchise systems for the same or similar products and services using trade names and trademarks other than the Proprietary Marks; and

2.3.7 Purchase, be purchased by, merge or combine with, businesses that directly compete with Little Big Burger restaurants.

2.4 Forms of Agreement. You acknowledge that, over time, we have entered, and will continue to enter, into agreements with other franchisees that may contain provisions, conditions and obligations that differ from those contained in this Agreement. The existence of different forms of agreement and the fact that we and our affiliates and other franchisees may have different rights and obligations does not affect the duties of the parties to this Agreement to comply with the terms of this Agreement.

2.5 Best Efforts. You agree that you will at all times faithfully, honestly and diligently perform your obligations under this Agreement, that you will continuously exert your good faith and best efforts to promote and enhance the business of the Restaurant and that you will not engage in any other business or activity that may conflict with your obligations under this Agreement, except the operation of other Little Big Burger restaurants.

3 DEVELOPMENT OF THE RESTAURANT

3.1 Your Responsibility. You assume all cost, liability, expense, and responsibility for constructing, equipping and operating the Restaurant in accordance with our standards at the Franchised Location. If the Franchised Location has not been designated as of the Effective Date, then you must: (1) follow the site selection procedures set forth in Section 3.2 below; and (2) obtain our acceptance of a site and acquire a possessory or leasehold interest in the site within ninety (90) days after the Effective Date ("**Site Acceptance Deadline**"). You must open the Restaurant within two hundred and seventy (270) days after the Effective Date ("**Opening Deadline**"). Any failure by you to meet the Site Acceptance Deadline (if applicable) or the Opening Deadline shall be a default of this Agreement for which we can terminate this Agreement without providing you an opportunity to cure the default. **TIME IS OF THE ESSENCE.**

3.2 Site Selection

3.2.1 We will provide you with our site selection criteria and, as you may request, a reasonable amount of consultation with respect to the site selection process. Periodically, we may change our site selection criteria, which may include population density and composition, leasing costs, parking, visibility, character of the neighborhood, competition from other burger restaurants in the area, proximity to other businesses (including businesses operated or franchised by us or our affiliates), the nature of other businesses in proximity to the site and other commercial characteristics, and the size, appearance, other physical characteristics and a site plan of the Franchised Location. At our option, you must engage our designated or approved supplier of real estate services to assist you in the site selection and/or lease negotiation process.

3.2.2 Within thirty (30) days after the Effective Date you must provide a Site Acceptance Request Form ("**SAR Package**") to us including a complete site report and other materials and information we request for a suitable site located within the geographic area identified on Exhibit A ("**Site Selection Area**"). You should not make any binding commitments to acquire any interest in any site for the Restaurant until we have accepted that site in writing.

3.2.3 Within thirty (30) days after we receive your detailed SAR Package, we or our designee will conduct an evaluation of the proposed site(s) and accept or reject your proposed sites. At our option, we may conduct an on-site evaluation of the proposed site(s). We do not charge any fees to conduct one (1) market visit if the Restaurant is the first Little Big Burger restaurant developed by you or one of your Franchisee Affiliates, however; if we require, or if you request, any additional market visits, you must reimburse us for our travel expenses associated with such visits. We will not unreasonably withhold our acceptance of a site that meets our site selection criteria. In determining whether to accept or reject a proposed site, we also may consider the site's proximity both to the Site Selection Area's boundaries and to other existing or potential sites for Little Big Burger restaurants located outside the Site Selection Area. If we do not accept a proposed site in writing in this time period, we will be deemed to have rejected the site.

3.2.4 You agree that our acceptance of a site for the Restaurant and any information communicated to you regarding our site selection criteria for Little Big Burger restaurants does not constitute a warranty or representation of any kind, express or implied, as to the suitability of any site for the Restaurant or for any other purpose. Our acceptance of a site is not a representation or a promise by us that the Restaurant at the site will achieve certain revenues or a certain level of profitability. Similarly, our acceptance of one or more sites and our rejection of other sites is not a representation or a promise that the accepted site will have higher revenues or be more profitable than a site that we rejected.

3.2.5 You agree that your decision to develop and operate the Restaurant at a site that we accept is based solely on your own independent investigation of the suitability of that site for a Restaurant. We assume no liability or responsibility for: (1) evaluation of the soil of the site for hazardous substances; (2) inspection of any structure at the site for asbestos or other toxic or hazardous materials; (3) compliance with the Americans with Disabilities Act ("**ADA**"); or (4) compliance with any other applicable law. It is your sole responsibility to obtain satisfactory evidence and/or assurances that the site and any

structures on the site are free from environmental contamination and in compliance with the requirements of the ADA.

3.3 Site Acquisition Period. If you propose to purchase the site for the Restaurant, you must provide us with a copy of the deed or other evidence of ownership within thirty (30) days after we accept the site (the “**Site Acquisition Period**”). If you propose to lease or sublease the site, you must provide us with a copy of the fully-executed lease or sublease for the site (“**Lease**”) within the Site Acquisition Period. After you secure an ownership or leasehold interest in the site, we will insert its address into Exhibit A, and it will be the Franchised Location. You hereby authorize us to deliver to you replacements for Exhibit A identifying the Franchised Location, and upon our delivery to you of a revised Exhibit A, that Exhibit A shall be binding upon us and you as if we and you had signed that Exhibit A.

3.4 Lease Provisions. We have the right to review the terms of the Lease for the Franchised Location before you sign the Lease. The Lease must: (1) in form and substance, be satisfactory to us; (2) include all of the provisions set forth in the form of Addendum to Lease attached to this Agreement as Exhibit E; (3) be for an aggregate term of (at least) ten (10) years in a combination of initial and renewal terms; (4) contain terms and conditions and payments that are commercially reasonable in our opinion; and (5) include any other provisions as we may require from time to time. The Lease shall not contain any covenants or other obligations that would prevent you from performing your obligations under this Agreement. You acknowledge that our review of the Lease is not a guarantee or warranty, express or implied, of the success or profitability of a Little Big Burger restaurant operated at the Franchised Location, or your ability to obtain the necessary licenses and permits to offer and sell beer, wine and other alcoholic beverages at the Franchised Location. Our review will indicate only whether we believe that the terms of the Lease meet our then-acceptable criteria.

3.5 Permitting/Licensing. After acquiring a possessory interest in the Franchised Location, you shall promptly begin the permitting, licensing and approval process to ensure that construction of the Restaurant commences within thirty (30) days after the date the Lease is fully executed or the purchase of the Franchised Location is consummated. If permitting and licensing is anticipated to take longer than thirty (30) days, you shall advise us in writing of the date on which you anticipate obtaining such permits and licenses and the reasons for the extended time period.

3.6 Construction of the Restaurant

3.6.1 You assume all cost, liability and expense for developing, constructing and equipping the Restaurant. We will furnish to you prototypical plans and specifications for a Little Big Burger restaurant, including requirements for dimensions, design, image, interior layout, décor, fixtures, equipment, signs, security, furnishings, and color scheme. It shall be your responsibility to have prepared all required construction plans and specifications to suit the shape, dimensions and utility requirements of the Franchised Location, and you must ensure that these plans and specifications comply with applicable ordinances, building codes and permit requirements and with lease requirements and restrictions. You shall use only registered architects, registered engineers, and professional and licensed contractors (who are reasonably acceptable to us). At our option, you must engage our designated or approved architect.

3.6.2 Prior to submission to local authorities, you shall submit proposed construction plans, specifications and drawings for the Restaurant (“**Plans**”) to us and shall, upon our request, submit all revised or “as built” Plans during the course of such construction. We will approve or refuse to approve the Plans and notify you within thirty (30) days after we receive the Plans. Once we have approved the Plans, no substantial change shall be made to the Plans without our prior approval. If, in the course of construction, any such change in the Plans is contemplated, our approval must first be obtained before proceeding. We shall approve or reject Plan changes within ten (10) business days after receipt. We shall not unreasonably withhold our approval of the Plans or revisions to the Plans.

3.6.3 You are prohibited from beginning site preparation or construction prior to receiving written notification from us that we have approved the Plans, and you, we, and your general contractor have met to review the proposed construction process. You must construct the Restaurant in accordance with

Plans approved by us and must comply in all respects with applicable laws, ordinances and local rules and regulations. The Restaurant may not open if construction has not been performed in substantial compliance with Plans approved by us, and this Agreement may be terminated if such non-compliance is not cured within a commercially reasonable amount of time. Once construction has commenced, it shall continue uninterrupted, except for interruption by reason of events constituting Force Majeure, until completed.

3.7 Acquisition of Necessary Furnishings, Fixtures and Equipment

3.7.1 You agree to use in the development and operation of the Restaurant only the fixtures, furnishings, décor items, supplies, equipment, and signs that we have approved for Little Big Burger restaurants as meeting our specifications and standards for quality, design, appearance, function, and performance. You further agree to place or display at the interior and exterior of the Restaurant only those signs, décor items, emblems, lettering, logos and display materials that we approve in writing from time to time.

3.7.2 You must purchase or lease approved brands, types or models of fixtures, furnishings, equipment, supplies and signs only from suppliers designated or approved by us, which may include us or our affiliates. If you propose to purchase, lease or otherwise use any items which have not been approved by us, you must first notify us in writing and, at your sole expense, submit to us upon our request sufficient specifications, photographs, drawings and/or other information or samples for a determination as to whether those items comply with our specifications and standards. We will, in our sole discretion, approve or reject the items and notify you within thirty (30) days after we receive the request.

3.8 Reports. If requested by us, you must submit to us, on or before the first day of each month (or more frequently if we request), a report with photographs showing progress made in connection with the construction and equipping of the Restaurant.

3.9 Limitation of Liability. Notwithstanding our right to approve the Plans and to inspect the construction work at the Restaurant, we and our designees shall have no liability or obligation with respect to the Franchised Location, the design or construction of the Restaurant or the furnishings, fixtures, equipment and signage to be acquired; our rights being exercised solely for the purpose of ensuring compliance with the terms and conditions of this Agreement.

3.10 Final Inspection and Opening Deadline

3.10.1 You must complete construction of the Restaurant within one hundred and twenty (120) days after the start of construction, unless we agree otherwise. The requirement to complete construction of the Restaurant includes obtaining all required construction and occupancy licenses, permits and approvals, developing the Franchised Location, purchasing all required equipment and supplies, installing all required furnishings, fixtures, equipment and signs, and doing all other things as may be required pursuant to this Agreement or by practical necessity to have the Restaurant ready to open for business.

3.10.2 You shall notify us in writing at least thirty (30) days prior to the date you expect construction and/or renovation to be completed and a certificate of occupancy to be issued ("**Occupancy Notice**") for the Restaurant. After our receipt of the Occupancy Notice, we reserve the right to conduct a final inspection of the Restaurant to determine if you have complied with this Agreement in connection with the development of the Restaurant including the final Plans. We shall not be liable for delays or loss occasioned by our inability to complete our investigation and to make a determination within this thirty (30) day period. If requested by us, you shall submit a copy of the certificate of occupancy to us.

3.10.3 You shall not open the Restaurant for business without our express written authorization, which will not be granted unless you have satisfied the conditions contained in Section 3.11 below. You may not open the Restaurant for at least ten (10) days after the date construction is completed so that your employees may be trained in the management and operation of the Restaurant. You must

open the Restaurant before the Opening Deadline. **Time is of the essence in the construction and opening of the Restaurant, and failure to comply with all deadlines relating thereto constitutes a material breach and default of this Agreement.** Any extensions of time are subject to our approval, which we may withhold at our discretion. You must provide a written report to us in a form specified by us detailing all construction and development costs and expenses for the Restaurant within thirty (30) days after the opening of the Restaurant. You acknowledge and agree that we will share these costs and expenses with other existing and prospective franchisees and developers of Little Big Burger restaurants.

3.11 Opening of the Restaurant. We will not authorize the opening of the Restaurant unless all of the following conditions have been met:

3.11.1 You are not in material default under this Agreement or any other agreements with us; you are not in default beyond the applicable cure period under any real estate lease, equipment lease or financing instrument relating to the Restaurant; you are not in default beyond the applicable cure period with any vendor or supplier to the Restaurant; and for the previous six (6) months, you have not been in material default beyond the applicable cure period under any agreement with us;

3.11.2 We have determined that the Restaurant has been constructed and/or renovated and equipped substantially in accordance with the requirements of this Agreement including the Plans;

3.11.3 You have obtained, provided copies to us, and maintain all required building, utility, sign, health, sanitation, business and other permits and licenses applicable to the Restaurant (including a permit to allow you to serve alcoholic beverages at the Restaurant);

3.11.4 You have purchased or leased and installed all specified and required fixtures, equipment, furnishings and interior and exterior signs for the Restaurant;

3.11.5 You have purchased the required computer and point of sale systems and they are operational;

3.11.6 You have purchased an opening inventory of supplies for the Restaurant of only authorized and approved products and other materials and supplies;

3.11.7 Your Managing Owner and General Manager have completed our management training program and you have hired and trained a staff in accordance with the requirements of Section 6;

3.11.8 You have paid the Initial Franchise Fee (as defined in Section 4.1) and any other amounts then due to us;

3.11.9 You have signed this Agreement and all other agreements including the electronic funds transfer documents described in Section 4.7 as required by us;

3.11.10 You have obtained a certificate of occupancy and any other required health, safety or fire department certificates; and

3.11.11 You have obtained and provided to us copies of certificates for all insurance policies required by Section 11 or such other evidence of insurance coverage and payment of premiums as we reasonably may request.

3.12 Relocation. Once the Franchised Location is secured, you may not operate the Restaurant at any site other than the Franchised Location and may not relocate the Restaurant without our prior written consent, which may be withheld by us in our sole discretion. If we approve a relocation of the Restaurant, you must pay a relocation fee in an amount equal to Seven Thousand Five Hundred (\$7,500) dollars. Our acceptance of a location as the Franchised Location shall not be deemed to be a guarantee or assurance by us that the Restaurant will be profitable or successful.

4 FEES

4.1 Initial Franchise Fee. In consideration of the Franchise rights granted in this Agreement, you must pay us a non-refundable initial franchise fee in the amount set forth in Exhibit A when you sign this Agreement ("**Initial Franchise Fee**").

4.2 Royalty Fee. You must pay us a non-refundable royalty fee for the continued use of the Franchise rights in an amount equal to five percent (5%) of the weekly Net Sales of the Restaurant (the "**Royalty Fee**"). If, due to federal, state or local laws, you are prohibited from receiving a percentage royalty based on alcoholic beverage revenues, you must pay us a royalty fee on all Net Sales except alcoholic beverage revenues in the same dollar amount as would have been paid if you paid the specified royalty fee percentage on all Net Sales.

4.3 Brand Fund Contribution. You must make a non-refundable contribution to the Brand Fund in an amount equal to one and one half percent (1.5%) of the weekly Net Sales of the Restaurant (the "**Brand Fund Contribution**") at the same time and in the same manner as you pay the Royalty Fee. We have the right to increase the amount of the Brand Fund Contribution as described in Section 10.3.

4.4 Technology Fee. You must pay us a non-refundable Technology Fee in the amount of seventy five dollars (\$75) per week ("**Technology Fee**") for access to, and in consideration of our development and delivery of software programs and other technology at the same time and in the same manner as you pay the Royalty Fees. We reserve the right to adjust the Technology Fee from time to time as set forth in the Manual and you must pay the adjusted Technology Fee within thirty (30) days after we notify you of the rate adjustment.

4.5 Other Funds Due. You agree to pay us, within ten (10) days of our written request (which is accompanied by reasonable substantiating material), any monies that we have paid, or that we have become obligated to pay, on your behalf, by consent or otherwise under this Agreement.

4.6 Taxes Imposed on Us. If any taxes, fees or assessments (other than income taxes) are imposed on us by reason of our acting as franchisor or licensing the Proprietary Marks under this Agreement, you must reimburse us for the amount of those taxes, fees or assessments within thirty (30) days after receipt of an invoice from us.

4.7 Sales Reports and Payment Method.

4.7.1 By no later than close of business on Monday day of each week, you must submit a complete and accurate report of Net Sales for the preceding week (Monday through Sunday), and such other weekly data as we may reasonably require. We reserve the right to designate a different reporting period in the Manual.

4.7.2 You must designate an account at a commercial bank of your choice (the "**Account**") for the payment of amounts due to us and/or our affiliates, including weekly Royalty Fees, Brand Fund Contributions and Technology Fees. You must furnish us and the bank with authorizations as necessary to permit us to make withdrawals from the Account by electronic funds transfer. On Monday of each week or at another date specified by us from time to time ("**Due Date**") we will transfer from the Account an amount equal to the Royalty Fee and Brand Fund Contribution due from you based on the Net Sales of the Restaurant for the preceding week as reported to us in your remittance report or determined by us based on the records contained in the point of sale terminals of the Restaurant, the Technology Fee, and any other fees due to us and/or our affiliates. If you have not reported Net Sales to us, we will transfer from the Account an amount calculated in accordance with our estimate of the Net Sales. If, at any time, we determine that you have underreported the Net Sales of the Restaurant, or underpaid the Royalty Fees, Brand Fund Contributions or other amounts due to us under this Agreement or any other agreement, we shall initiate an immediate transfer from the Account in the appropriate amount in accordance with the

foregoing procedure, including interest as provided in this Agreement. Any overpayment will be credited to the Account effective as of the first reporting date after the parties determine that such credit is due.

4.7.3 You agree to maintain sufficient funds in the Account at all times to cover all Royalty Fees, Brand Fund Contributions, Technology Fees, and other fees payable to us or our affiliates. If funds in the Account are insufficient to cover the amounts payable at the time we make our weekly electronic funds transfer, the amount of the shortfall will be deemed overdue. You must notify us at least ninety (90) days before closing or changing the Account against which such debits are to be made. If such Account is closed or ceases to be used, you must immediately provide all documents and information necessary to permit us to debit the amounts due from an alternative account. We may require you to pay any amounts due under this Agreement or otherwise by means other than automatic, electronic debit (e.g., by check or wire transfer) whenever we deem appropriate, and you must comply with our payment instructions. If we supply products to you, we may require pre-payment or COD depending on our then-current policies and your payment record with us.

4.7.4 Notwithstanding the provisions of this Section 4.7, we reserve the right to modify, at our option, the timing and method by which you pay the Royalty Fees, Brand Fund Contributions, Technology Fees and other amounts owed under this Agreement, including and interest charges, which shall be effective upon receipt of written notice from us.

4.8 Interest and Insufficient Funds Charges. If any payment is overdue, you must pay us, in addition to the overdue amount, interest on the overdue amount from the date it was due until paid at the rate of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less. The interest charges are in addition to any other remedies we may have. In addition to the interest charges, you must reimburse us for any bank fees incurred by us and pay us a late fee of One Hundred Dollars (\$100) (or the maximum amount permitted by applicable law, whichever is less) to cover our administrative expenses in responding each time you deliver a check to us which does not clear your bank account, or where we are not able to complete an electronic funds transfer due to insufficient funds in your Account. If you incur three (3) or more insufficient funds charges in any twelve (12) month period, we may terminate this Agreement.

4.9 Application of Payments. We have the right to apply payments from you in any way we choose, to any amounts you owe us.

4.10 No Offset. You shall not withhold or off-set any portion of any payment due to our alleged non-performance under this Agreement or any other agreement by and between you and us or our respective affiliates.

4.11 Partial Payments. No payment by you or acceptance by us of any monies under this Agreement for a lesser amount than due shall be treated as anything other than a partial payment on account. Your payment of a lesser amount than due with an endorsement, statement or accompanying letter to the effect that payment of the lesser amount constitutes full payment shall be given no effect, and we may accept the partial payment without prejudice to any rights or remedies we may have against you. Acceptance of payments by us other than as set forth in this Agreement shall not constitute a waiver of our right to demand payment in accordance with the requirements of this Agreement or a waiver by us of any other remedies or rights available to us pursuant to this Agreement or under applicable law. Notwithstanding any designation by you, we shall have sole discretion to apply any payments by you to any of your past due indebtedness for Royalty Fees, Brand Fund Contributions, Technology Fees, and other fees, purchases from us or our affiliates, interest or any other indebtedness. We have the right to accept payment from any other entity as payment by you. Acceptance of that payment by us will not result in that other entity being substituted for you.

4.12 Collection Costs and Expenses. You must pay to us on demand any and all collection costs and expenses (including costs and commissions due a collection agency, costs incurred in creating or replicating reports demonstrating Net Sales of the Restaurant, reasonable attorneys' fees, court costs, expert witness fees, discovery costs and reasonable attorneys' fees and costs on appeal, together with

interest charges on all of the foregoing) incurred by us in enforcing the terms of this Agreement, including in collecting any monies owed by you to us.

5 DUTIES OF FRANCHISOR

5.1 Plans and Specifications. We will furnish you with our representative plans and specifications for the construction and operation of a Little Big Burger restaurant, including exterior and interior design and layout plans, furnishings, fixtures, equipment and signs.

5.2 Manual. We will loan the Manual to you for the Initial Term of this Agreement.

5.3 Training. We will provide a training program for the persons that we require or permit to attend training under Section 6 of this Agreement.

5.4 Supervision. We will provide pre-opening and opening supervision and assistance as we deem advisable.

5.5 Suppliers. We will name Designated Suppliers as we deem appropriate and review suppliers that you nominate, subject to the limitations in Section 8.4.

5.6 Marketing Materials. In addition to the advertising and promotional materials produced and placed by the Brand Fund of behalf of the System, we will make available to you for purchase certain advertising and promotional materials that you can adapt for the Restaurant.

5.7 Operational Advice. We will provide to you from time to time, as we deem appropriate, advice and written materials concerning techniques of managing and operating a Restaurant.

6 TRAINING

6.1 Pre-Opening Training

6.1.1 If the Restaurant is the first franchised Little Big Burger restaurant that you or your Franchisee Affiliates have developed, then at least one (1) week before opening the Restaurant, your Managing Owner and General Manager (or another Restaurant manager if your Managing Owner serves as the Restaurant's General Manager) must attend and successfully complete the Little Big Burger management training program to our satisfaction. The management training program lasts up to fifteen (15) days depending on the prior restaurant management experience of your trainees and may include classroom training, web-based training and programs offered by third parties. We may increase or reduce the required training based on our assessment of an individual's prior experience. We reserve the right to require you to have your personnel complete the management training program for subsequent franchised Little Big Burger restaurants developed by you and your Franchisee Affiliates.

6.1.2 We will certify any supervisory employee of yours who successfully completes the management training program to our satisfaction as a "**Trainer.**" We will authorize the Restaurant to open only after your General Manager has been certified as a Trainer. We will have the right to require that your Trainers execute and deliver to us a Non-disclosure and Non-competition Agreement in substantially the form attached to this Agreement as Exhibit F.

6.1.3 Should any of your trainees fail to complete the management training program to our satisfaction, the respective person will have a thirty (30) day time frame within which to re-take the program and complete the management training program to our satisfaction. In addition, in the event a designated trainee fails to complete the management training program, you may send replacement personnel (the "**Replacement Personnel**") to the next available management training program. We reserve the right to charge our then-current tuition fee for training Replacement Personnel. We have the right to terminate this Agreement if your Managing Owner and your General Manager (or another

Restaurant manager if your Managing Owner serves as the Restaurant's General Manager) or any Replacement Personnel fail to complete the management training program to our satisfaction within the time period prescribed in this Agreement.

6.2 Opening Training. If the Restaurant is the first franchised Little Big Burger restaurant that you or your Franchisee Affiliates have developed, then we will provide, up to ten (10) days of on-site opening training to you, as deemed necessary and appropriate by us based on your experience and number of other Little Big Burger restaurants that you operate. The number of representatives sent to your Restaurant for on-site training will be determined by us based on your experience and operation of other Little Big Burger restaurants. The representatives' time will be divided between pre-opening and post-opening activities. You shall pay us for all costs and expenses we incur for the travel, lodging, and meal expenses of our representatives that conduct the on-site opening training.

6.3 Train the Trainer Program

6.3.1 You must have a full staff in place and available for training at least one (1) week before the Restaurant opens. We will authorize you to open the Restaurant only after an adequate number of your employees, as determined by us in our sole discretion, have attended and received certification in the position for which they were hired. Periodically, you must conduct such training programs for your employees as we may require, including those training programs required for your employees to become certified for the position(s) for which each employee was hired. Your Trainers are responsible for fully training the Restaurant's employees within thirty (30) days of being hired. You will be responsible for all costs that you incur in training your employees.

6.3.2 Your Trainers also will offer the Little Big Burger management training program to any replacement Managing Owner and General Manager before they assume their role at the Restaurant. We will evaluate all individuals trained by you and determine whether to certify them as Trainers. If you need to send your replacement Managing Owner or General Manager to our management training program, you must pay a training fee in the amount of One Thousand Five Hundred Dollars (\$1,500) per person attending the management training program.

6.3.3 We may periodically visit the Restaurant to ensure that your Trainers and staff continue to meet our standards. We have the right to de-certify any of your personnel (including your General Manager and other managers) who consistently fail to maintain our System standards as set forth in the Manual. Any such employees may not return to their positions at the Restaurant until they have been successfully retrained. If we determine, in our sole discretion, that your Trainers are no longer qualified to train your employees (or if you do not have any Trainers on staff), then you, at our election, must either have the Trainers attend and successfully complete the Little Big Burger management training program and be re-certified as Trainers or designate replacement personnel to complete the management training program to be certified as your Trainers. If we elect to send our representative to the Restaurant to provide training for your staff, you must pay a training fee in the amount of Five Hundred Dollars (\$500) per representative, per day, and all travel, living and other expenses incurred by our representative.

6.3.4 If you or your Franchisee Affiliates already operate a Little Big Burger restaurant, before opening the Restaurant developed under this Agreement: (1) if your Managing Owner and General Manager have not previously completed our management training program to our satisfaction, they each must attend and successfully complete the management training program conducted by your Trainers at one of your existing Little Big Burger restaurants; and (2) your Trainers must fully train the managers and staff of the Restaurant and conduct the on-site opening training program.

6.3.5 The content and administration of your training programs must be at least equal to those of our training programs and must be approved in advance by us. We will provide you with materials and, to the extent we deem it necessary or appropriate, assistance in designing and developing your training programs. We have the right to review your training programs periodically to ensure its quality and to verify that your personnel are being trained in a timely and satisfactory manner. We will notify you of any deficiencies in the training programs. You must promptly cure the deficiencies. If you fail to cure the

deficiencies within a reasonable time, we may require your Managing Owner and General Manager to attend our management training program at your expense (including payment of the One Thousand Five Hundred Dollar (\$~~\$1,500.00~~) per-person training fees), until such time as the deficiencies in your programs have been corrected to our satisfaction.

6.4 Additional Training. After the Restaurant opens for business:

6.4.1 Your employees that we reasonably designate must attend and complete, to our satisfaction, any additional training programs that we reasonably require from time to time. These additional training programs may include classroom training, web-based training and programs offered by third parties. We may require you to pay reasonable training fees for these programs (plus travel, meals and lodging expenses for our representatives, if we conduct the training at your Restaurant).

6.4.2 We periodically, as we deem appropriate, will advise and consult with you in connection with the operation of the Restaurant. We may provide these services through visits by our representatives to the Restaurant or your offices, the distribution of printed, filmed or electronic information, meetings or seminars, telephone communications, e-mail communications or other communications. We will periodically inspect the Restaurant and its operations to assist your operations and ensure compliance with the System. At your request, we may provide special assistance at the Restaurant for which you will be required to pay our per diem training fees and charges that we may establish from time to time.

6.5 Delegation. We have the right to delegate the performance of any portion or all of our obligations and duties under this Agreement to our designees, whether affiliates or agents of ours or independent contractors with whom we have contracted to provide the service.

6.6 Control by Us. Notwithstanding anything to the contrary in this Section 6, you and we recognize and agree that we do not exercise any day-to-day control of the Restaurant, including control of the security at the Restaurant, the hiring and firing of employees, or other forms of day-to-day control.

6.7 Training Methods; Expenses. Except for the classroom and on-the-job training portions our training programs, we have the right to provide training programs in person, by video, via the Internet, or by other means, as we determine. All training that we conduct in person will be held at a location that we designate. You are responsible for all expenses of your trainees, including the costs of transportation, lodging, meals, and wages. You may also be required to purchase training materials and uniforms.

7 MANUAL

7.1 Access to the Manual. We will loan to you during the term of this Agreement one copy of, or provide electronic access to, the Manual, which contains information and knowledge that is unique, necessary and material to the System. The Manual contains detailed standards, specifications, instructions, requirements, methods and procedures for management and operation of the Restaurant. The Manual also may relate to: (1) the selection, purchase, storage, preparation, packaging, ingredients, recipes, service and sale of all products and beverages sold at the Restaurant; (2) management and employee training; (3) marketing, advertising and sales promotions; (4) maintenance and repair of the Restaurant building, grounds, equipment, graphics, signs, interior and exterior decor items, fixtures and furnishings; (5) employee dress attire and appearance standards; menu concept and graphics; and (6) accounting, bookkeeping, records retention and other business systems, procedures and operations. You agree at all times to operate the Restaurant in strict conformity with the Manual; to maintain the Manual at the Restaurant; to not reproduce the Manual or any part of it; and to treat the Manual as confidential and proprietary; and to disclose the contents of the Manual only to your employees who have signed a confidentiality agreement and who have a demonstrated need to know the information contained in the Manual.

7.2 Modifications to the Manual. We may supplement or amend the Manual from time to time by letter, electronic mail, bulletin, videos, software or other communications concerning the System to

reflect changes in the image, specifications and standards relating to developing, equipping, furnishing and operating an Little Big Burger restaurant. We reserve the right to furnish all or part of the Manual to you in electronic form or online (including by intranet or extranet) and to establish terms of use for electronic access to the Manual. You agree to keep your copy of the Manual current and up-to-date with all additions and deletions provided by or on behalf of us. If a dispute relating to the contents of the Manual develops, the master copy maintained by us at our principal offices shall control.

7.3 Electronic Access. At our option, we may post some or all of the Manual on a restricted website to which you will have access. If we do so, you agree to timely monitor and access the website for any updates to the Manual. Prior to accessing our restricted website you and any of your employees must agree to abide by our terms of use, which we may revise from time to time. Any passwords or other digital identifications necessary to access the Manual constitute confidential information owned by us and shall not be shared by employees or with any third party.

8 OPERATION OF THE RESTAURANT

8.1 Compliance with System Standards. In order to protect our reputation and goodwill and to maintain high standards of operation under the System, you must operate the Restaurant in strict conformance with the methods, standards, and specifications we prescribe from time to time in the Manual or otherwise in writing. You acknowledge that the System standards may relate to any aspect of the appearance, function, cleanliness, and operation of the Restaurant. Any material failure to comply with the mandatory System standards or to pass our periodic quality control inspections will constitute a material breach of this Agreement. You acknowledge that we have the right to vary our standards and specifications, in our reasonable judgment, to accommodate the individual circumstances of different franchisees.

8.2 Approved Products and Services. You must offer for sale in the Restaurant all products and services that we designate as required items. You may also offer for sale any optional items and services that we have approved in writing for sale in an Little Big Burger restaurant; however, you may not offer or sell any unapproved products or services without our prior written consent. You must sell products only in the weights, sizes, forms, and packaging that we have approved. You must discontinue selling or offering for sale any products or services which we, in our sole discretion, disapprove in writing at any time. If you would like to use or offer products, services, supplies, materials, and/or equipment that we have not approved, you agree to first submit to us a written request for approval and you shall refrain from offering these items at the Restaurant until you have received our written approval. We have the right to require you to use only certain brands and to prohibit you from using other brands. We may from time to time modify the list of approved brands and you shall not reorder any brand that is no longer approved.

8.3 Alcoholic Beverages and Licensing

8.3.1 We may require you to offer and sell wine and beer and other approved alcoholic beverages at the Restaurant. In that event, you must research all applicable federal, state and local laws, including requirements of the liquor control board or other entity regulating the sale of alcoholic beverages, and determine the feasibility of obtaining all necessary licenses, permits and approvals to sell alcoholic beverages at the Restaurant. You acknowledge and agree that our approval of the Franchised Location is not a guarantee or representation by us that you will be able to obtain these licenses, permits and approvals. You must obtain these licenses, permits, and approvals promptly after receiving our notice of this requirement. If applicable, you must maintain liquor liability and/or dram shop and/or such other insurance required under applicable law in connection with the offer and sale of beer, wine and other approved alcoholic beverages. See Section 11 for Franchisor's current minimum insurance requirements.

8.3.2 You may request an exemption from any requirement to sell beer, wine and other approved alcoholic beverages at the Restaurant if the direct cost to obtain all necessary licenses, permits and approvals to do so exceeds Fifteen Thousand Dollars (\$15,000) (excluding insurance costs and legal fees associated with obtaining the necessary licenses, permits and approvals) or if such licenses, permits and approvals are unavailable due to federal, state, and/or local laws and regulations. If we grant the exemption to you, you agree to continue monitoring the availability of obtaining the necessary licenses,

permits and approvals during the Initial Term of this Agreement and if available for less than Fifteen Thousand Dollars (\$15,000) (excluding insurance costs and legal fees associated with obtaining the necessary licenses, permits and approvals) obtain and maintain the same.

8.4 Sourcing of Products and Services. We have the right to require that all current and future food and beverage items, ingredients, supplies, equipment, furnishings, smallwares, merchandise, promotional items, information technology services, credit card processing services, and other products and services that you purchase for operation of or sale in the Restaurant: (1) meet specifications that we establish from time to time; and/or (2) be purchased only from suppliers that we have expressly approved; and/or (3) be purchased only from a Designated Supplier (which may be us or an affiliate or a buying cooperative that we organize); and/or (4) establish food commissaries and distribution facilities (directly, through our affiliates, and/or our designees), and designate these as Designated Suppliers or approved suppliers. To the extent that we establish specifications, require approval of suppliers, or name Designated Suppliers for particular items, we will provide the requirements to you in writing. If we elect to name ourselves or an affiliate as the Designated Supplier for a particular item, you must purchase all of your requirements of the item from us or the affiliate. You must submit orders in accordance with the terms and procedures we specify from time to time. Any conflicting terms and conditions of sale stated in your purchase order will have no effect. In case of shortages, we will have complete discretion to allocate products among Little Big Burger restaurants (and, at our option, other channels of distribution). If shortages or an event of Force Majeure prevent us from being able to supply your Restaurant with its requirements, you are authorized to purchase supplies from other sources for use at the Restaurant until we are again able to meet the Restaurant's requirements, provided that the alternative supplies meet our specifications and that we have given prior written approval.

8.5 Supplier Review Process. If we require you to use an approved supplier for a particular item, but you wish to purchase the item from an alternate supplier that we have not approved, you may submit a written request for approval of the supplier, unless it is an item for which we have designated a particular supplier. We have no obligation to review or approve a greater number of suppliers for an item than the number we deem reasonable, and any proposed supplier relationship must not jeopardize the availability of any special pricing or other benefits offered by our existing suppliers based on system-wide purchases. We will provide our standards and specifications to you or to the proposed supplier, subject to the supplier's execution of a confidentiality agreement in a form acceptable to us. We have the right to inspect the proposed supplier's facilities and to require delivery of product samples either to us or to an independent laboratory designated by us for testing. Upon completion of our analysis, we will notify you in writing of our approval or disapproval of the proposed supplier. You agree to pay a charge not to exceed our reasonable costs incurred in evaluating the supplier, regardless of whether or not we approve the supplier. You may not purchase, sell, or offer for sale any products or services of the proposed supplier until you receive our prior written approval of the proposed supplier. We have the right to re-inspect the facilities and products of any approved supplier and to revoke approval upon the supplier's failure to meet any of our then-current criteria. If you receive a notice of revocation of approval, you agree to cease purchasing products from the disapproved supplier and, in the case of revocation based on the failure of the supplier's products to meet our standards, you agree to dispose of your remaining inventory of the disapproved supplier's products as we direct.

8.6 Proprietary Items. You acknowledge and agree that the proprietary recipes and other proprietary items ("**Proprietary Items**") that we may specify for sale at the Restaurant are manufactured in accordance with our secret blends, standards, and specifications, and are Proprietary Items of ours and/or our affiliates. To maintain the high standards of quality, taste, and uniformity associated with any Proprietary Items sold under the System, you agree to buy Proprietary Items only from a Designated Supplier, and not to offer or sell any items that are similar to (but not the same as) Proprietary Items at or from the Restaurant. In connection with the handling, storage, transport and delivery of any Proprietary Items that you buy from us, our affiliates or designee(s), you agree that any action (or inaction) by a third party (e.g., an independent carrier) in connection with the handling, storage, transport and delivery of the Proprietary Items shall not be attributable to us, nor constitute negligence on our part.

8.7 Rebates. We may negotiate purchasing arrangements under which suppliers agree to make services, products, equipment, materials and other goods and services available to Little Big Burger Restaurants. Subject to applicable law, we may earn money from the suppliers based on your purchases in the form of rebates, commissions, or other payments. You acknowledge that these payments compensate us for the cost of negotiating and maintaining the purchasing arrangements with the suppliers and that, subject to applicable laws, we have no obligation to remit the funds to you.

8.8 Catering and Other Off-Premises Programs. We have the right (but no obligation) to establish Restaurant delivery, catering, third-party delivery, and/or wholesaling programs (“**Off-Premises Programs**”) either on our own or in conjunction with one or more outside vendors. Off-Premises Programs may be mandatory or optional for franchisees and may include online, mobile application, and telephone ordering systems. If we establish a mandatory Off-Premises Program or you choose to participate in a voluntary program, you agree to pay the fees and costs associated with participating and to comply with all other rules and procedures that we specify for the program in the Manual or otherwise in writing. You acknowledge that you may have to purchase equipment, including a delivery vehicle, in order to participate in an Off-Premises Program. We may define designated service areas for Off-Premises Programs. We can modify or terminate an Off-Premises Program by notice to the participating Restaurants.

8.9 No Other Sales Channels. You may not engage in any grey marketing activities where you take advantage of purchasing arrangements for Little Big Burger restaurants and transfer products to any other restaurant or other business not operating under the System. Unless expressly authorized by us, you may not sell products or services through any channel or facility other than to retail customers for consumption on the Restaurant premises, or for personal carry-out consumption, including any Off-Premises Programs, food trucks, carts, kiosks, or temporary locations. If we approve any one or more activities, we will not be deemed to have given our approval or waived our right to approve or disapprove any other activities that you may later propose. We will consider the factors that we deem appropriate, which may include the period of time you have been operating the Restaurant, your sales volume, whether you have met certain quality standards and other benchmarks, and other standards that we may determine are applicable.

8.10 Use of Franchised Location; Hours of Operation. You must use the Franchised Location solely for the operation of the Restaurant, must keep the Restaurant open and in normal operation for the minimum hours and days specified in the Manual and as permitted by applicable laws, and must refrain from using or permitting the use of the Franchised Location for any other purpose or activity at any time without first obtaining our written consent.

8.11 Furnishings and Equipment. You must acquire and install in the Restaurant at your expense, such fixtures, furnishings, equipment, décor, and signs as we may reasonably direct from time to time. You must not install or permit to be installed on or about the Franchised Location, without our prior written consent, any fixtures, furnishings, equipment, décor, signs, or other items not previously approved by us.

8.12 Menu Boards and Formats. We have the right to prescribe, and subsequently vary, one or more menu boards and formats to be utilized in the Restaurant. The menu boards and formats may include requirements concerning organization, graphics, product descriptions, illustrations and other matters related to the menu. Prescribed menu boards and formats may vary depending on region, market size or other factors deemed relevant by us. If any menu board and format utilized by you ceases to be an authorized menu board and format, you will have a reasonable period of time (not to exceed ninety (90) days) to discontinue use of the old menu board and format and begin using an authorized menu board and format.

8.13 Restaurant Condition. You must constantly maintain the Restaurant premises, Franchised Location, and all furniture, fixtures, equipment, furnishings, floor coverings, interior and exterior signage, the building interior and exterior, interior and exterior lighting, landscaping and parking lot surfaces in first-class condition and repair in accordance with the requirements of the System, including all ongoing necessary remodeling, redecorating, refurbishing and repairs. At your own expense, you must make such

additions, alterations, repairs, and replacements as may be required for that purpose (but no others without our prior written consent). Upon our request, you must provide us with copies of any inspection report conducted by a third party. You may not make any material alterations to the Restaurant premises that affect operations or the image of the System without our prior written approval. You acknowledge and agree that the requirements of this Section 8.13 are both reasonable and necessary to ensure continued public acceptance and patronage of Little Big Burger restaurants, to assist the Restaurant to compete effectively in the marketplace and to avoid deterioration or obsolescence of the operation of the Restaurant.

8.14 Access for Inspections. You must permit us and our agents to enter the Restaurant at any time during normal business hours to conduct inspections, food safety and sanitation audits, and to interview employees and customers. You must cooperate with such inspections and audits by rendering such assistance as our representatives may reasonably request. Upon notice from us or our agents, you must immediately take such steps as may be necessary to correct any deficiencies noted during any such inspection. If you fail to correct any deficiencies within the applicable time frame provided in any inspection or audit report, we may place you in default of this Agreement. Recognizing that your failure to meet our standards required in the System may endanger the reputation and operations of other Little Big Burger restaurants as well as potentially endanger the general public, you and we agree that in the event that operations at the Restaurant fall below our standards for the System, we may, in our sole discretion, in addition to and not in lieu of our right to terminate this Agreement, have the right to require that you discontinue all operations at the Restaurant and close the Restaurant to the public until you are able to establish to our reasonable satisfaction that operations at the Restaurant meet or exceed our standards for the System.

8.15 Quality Assurance Programs. You must comply fully with our quality assurance programs. The programs may include, inspections of the Restaurant, customer satisfaction surveys, mystery shopper reports, brand reputation surveys, employee satisfaction and perception surveys, health and safety reviews, product and ingredient testing, and observation of food preparation areas and processes. You must pay any out-of-pocket costs that we incur to third parties to carry out quality assurance program activities at your Restaurant. At our election, we may require you to pay any such third parties directly. If you fail to achieve the minimum score prescribed in the Manual for a specific quality assurance category, we may require you and/or your employees to complete additional training at the Restaurant or a location that we designate, at your expense.

8.16 Compliance with Laws and Taxes

8.16.1 You must operate the Restaurant in full compliance with all applicable municipal, county, state and federal laws, rules, regulations and ordinances. You have sole responsibility for compliance despite any information or advice that we may provide.

8.16.2 You, on behalf of yourself and your owners, agree to comply with and/or to assist us to the fullest extent possible in our efforts to comply with Anti-Terrorism Laws (as defined below). In connection with such compliance, you, on behalf of yourself and your owners, certify, represent, and warrant that none of your respective property or interests are "blocked" under any of the Anti-Terrorism Laws and that neither you nor any of your owners are in violation of any of the Anti-Terrorism Laws. You also agree not to knowingly hire or do business with (or continue to employ or do business with) any party who is blocked under any of the Anti-Terrorism Laws. The term "**Anti-Terrorism Laws**" means Executive Order 13224 issued by the President of the United States, as supplemented, the USA PATRIOT Act, and all other laws and regulations addressing or in any way relating to terrorist acts and/or acts of war.

8.16.3 You must promptly pay when due all taxes levied or assessed, including unemployment and sales taxes, and all accounts and other indebtedness incurred in the operation of the Restaurant. In the event of any bona fide dispute as to your liability for taxes assessed or other indebtedness, you may contest the validity or the amount of the tax or indebtedness in accordance with procedures of the taxing authority or applicable law, but in no event will you permit a tax sale or seizure by levy or execution or similar writ or warrant, or attachment by a creditor, to occur against the Restaurant.

8.16.4 You must immediately notify us in writing of the commencement of any action, suit, or proceeding and of the issuance of any order, writ, injunction, award, or decree of any court, agency, or other governmental instrumentality that may adversely affect the operation or financial condition of the Restaurant.

8.17 Health and Safety Standards. You must meet and maintain the highest health and safety standards and ratings applicable to the operation of the Restaurant, and furnish to us, within two (2) days after receipt thereof, a copy of each and every health department, or similar agency, health inspection report and fire department inspection report. You must notify us by telephone within twenty-four (24) hours, and confirm in writing within two (2) days, after receiving notice of any investigation or violation concerning any zoning, health, narcotics laws, or fire department laws and regulations.

8.18 Control During Crisis Situation

8.18.1 If an event occurs at the Restaurant that has or reasonably may cause harm or injury to customers, guests or employees (*i.e.*, food spoilage/poisoning, food tampering/sabotage, slip and fall injuries, natural disasters, robberies, shootings, etc.) or may damage the Proprietary Marks, the System or our reputation (collectively “**Crisis Situation**”), you shall: (1) immediately contact appropriate emergency care providers to assist you in curing the harm or injury; and (2) immediately inform us by telephone of the Crisis Situation. You must refrain from making any internal or external announcements (*i.e.*, no communication with the news media) regarding the Crisis Situation (unless otherwise directed by us or public health officials).

8.18.2 To the extent we deem appropriate, in our sole and absolute discretion, we or our designee may control the manner in which the Crisis Situation is handled by the parties, including conducting all communication with the news media, providing care for injured persons and/or temporarily closing the Restaurant. The parties acknowledge that, in directing the management of any Crisis Situation, we or our designee may engage the services of attorneys, experts, doctors, testing laboratories, public relations firms and those other professionals as we deem appropriate. You and your employees shall cooperate fully with us or our designee in our efforts and activities in this regard and shall be bound by all further Crisis Situation procedures developed by us from time to time hereafter. The indemnification under Section 21.2 shall include all losses and expenses that may result from the exercise by us or our designee of the management rights granted in this Section 8.18.

8.19 Customer Complaints. You must immediately resolve any customer complaints regarding the quality of food or beverages, service and/or cleanliness of the Restaurant, or any similar complaints. When any customer complaints cannot be immediately resolved, you must use reasonable efforts to resolve the customer complaints as soon as practical and shall, whenever feasible, give the customer the benefit of the doubt. If we, in our sole discretion, determine that our intervention is necessary or desirable to protect the System or the goodwill associated with the System, or if we, in our sole discretion, believe that you have failed adequately to address or resolve any customer complaints, we may, without your consent, resolve any complaints and charge you an amount sufficient to cover our reasonable costs and expenses in resolving the customer complaints, which amount you must pay to us immediately on demand.

8.20 General Manager. You must designate an individual whom we have approved to serve as your Restaurant’s General Manager. The General Manager shall meet all of the following qualifications:

8.20.1 The General Manager must complete our management training program and any additional training programs that we require to our satisfaction. We must have approved the General Manager and not have later withdrawn that approval.

8.20.2 The General Manager must have full control over and devote his or her best efforts to supervising the day-to-day operation of the Restaurant. The General Manager shall not, without our prior written approval, engage in any other business or activity, directly or indirectly, that requires substantial management responsibility or time commitments or otherwise may conflict with your obligations under this Agreement. You agree to provide us with an executed copy of any arrangement, agreement or contract,

and all amendments thereto, between you and your General Manager related to the operation of the Restaurant.

8.20.3 If the General Manager no longer qualifies as such, you must designate another qualified person to act as the General Manager within thirty (30) days after the date the prior General Manager ceases to be qualified. Your designee to be the General Manager must satisfy the criteria set forth in this Section 8.20 and be approved by us.

8.21 Staffing

8.21.1 You agree to maintain a competent, conscientious, trained staff in numbers sufficient to promptly service customers, including specified positions and minimum staffing levels that we may establish from time to time in the Manual. The positions and/or functions for which you will be required to maintain staff for your Restaurant include the General Manager, managers, shift leaders, and crew members, all of whom must be trained in compliance with Section 6 above.

8.21.2 You have sole responsibility for all employment decisions and functions of the Restaurant, including those related to hiring, firing, training, wage and hour requirements, recordkeeping, supervision, and discipline of employees, despite any information or advice we may provide. You must maintain a competent, conscientious, trained staff with enough workers to operate the Restaurant in conformance with our standards. You must take such steps as are necessary to ensure that your employees preserve good customer relations; render competent, prompt, courteous, and knowledgeable service; and meet such minimum standards as we may establish from time to time in the Manual.

8.21.3 You must comply with all state and local laws and regulations regarding the staffing and on-premises management of personnel including any required licenses. You agree to take such steps as are necessary to ensure that your employees preserve good customer relations and comply with such dress code and cleanliness and sanitation standards as we may prescribe in the Manual, or as may be required under applicable law.

8.21.4 You and your staff must, at all times, cooperate with us and with our representatives. To promote a consistent image, you agree that you and your employees will comply with such dress code or standards as we may require, which may include use of branded (or other "uniform") apparel, and otherwise identify themselves with the Proprietary Marks at all times in the manner we specify (whether in the Manual or otherwise in writing) while working for or at the Restaurant.

8.22 Numbers and Listings. You must obtain a new telephone number and telephone and on-line directory listings at your expense under the Proprietary Mark or trade name that we designate or approve (e.g. Little Big Burger) and not under your corporate, partnership, or individual name, to be used exclusively in connection with your operation of the Restaurant. Upon the expiration, transfer or termination of this Agreement for any reason, you shall terminate your use of such numbers and listings and assign the numbers and listings to us or our designee, and, at our option, will execute the Conditional Assignment and Power of Attorney – Telephone and On-Line Numbers and Listings attached as Exhibit D to this Agreement. You must ensure that the telephone at the Restaurant is answered in the manner we specify in the Manual.

8.23 Technology

8.23.1 You must acquire and install in the Restaurant, at your own expense, the point of sale (POS) system, back office computer, and other computer equipment, digital menu boards, communications devices, audio/visual equipment and software systems that we specify in writing from time to time. You must: (1) maintain an electronic connection between your systems and our systems and provide us with all user IDs and passwords necessary for us to independently access files and other information stored on your systems; (2) use the systems in accordance with all policies and operational procedures we issue from time to time; (3) transmit data to us at the times we specify; (4) maintain your systems in good working order at all times; (5) promptly install upgrades, additions, changes, modifications,

substitutions and/or replacements of hardware, software, data connectivity, electrical power, and other computer-related facilities as we direct; (6) ensure that your employees are adequately trained in the use of such systems and our related policies and procedures; and (7) implement at all times appropriate physical and electronic security as is necessary to secure your computer system and to comply any standards and policies that we may issue (without obligation to do so) in this regard. You must not install any software to your systems that we have not authorized, including anti-virus software and firewalls. You must bear all costs of installation, operation, maintenance and upgrade of your systems. We reserve the right to require you to engage us or a hardware maintenance and/or help desk support provider approved by us to maintain your computer and point of sale systems.

8.23.2 We have the right, but not the obligation, to develop or have developed for us, or to designate, software programs that you must use in connection with your computer and POS systems. You must install all such software, including any updates, supplements, modifications, or enhancements that we require. We and our suppliers may charge a reasonable software license fee for any software that you are required to use. Each party to this Agreement acknowledges and agrees that changes to technology are dynamic and not predictable within the term of this Agreement. In order to provide for inevitable but unpredictable changes to technological needs and opportunities, you agree that we will have the right to establish, in writing, reasonable new standards for the implementation of technology in the System; and you agree to comply with those reasonable new standards that we establish as if we periodically revised this Section 8.23 for that purpose.

8.24 Credit Cards and/or Debit Cards. You must participate in any electronic or mobile payment systems and honor all credit, charge, courtesy or cash cards or other credit devices that we specify in the Manual. You must comply with the then-current Payment Card Industry Data Security Standards (PCI/DSS) as those standards may be revised by the PCI Security Standards Council, LLC or successor organization. Among other things, you agree to implement the security requirements that the PCI Security Standards Council (or its successor) requires of a merchant that accepts payment by credit and/or debit cards. You must timely demonstrate compliance on reasonable request, which may include having an independent third party conduct a PCI/DSS audit.

8.25 Electronic Money Programs and Loyalty Programs. You must participate in programs relating to gift cards, gift certificates, stored value cards, online or mobile coupons or credits, online or mobile ordering systems, and other electronic money programs as we may prescribe from time to time. Participation includes both issuing program benefits or credits and accepting them for payment by customers, and may require you to purchase additional equipment. We will coordinate the crediting and debiting of funds among Restaurants based on customer purchases and redemption of stored value. You must also participate in any "frequent guest" or customer loyalty programs that we prescribe from time to time. You may not offer your own gift card, electronic money, or loyalty program for the Restaurant without our prior approval.

8.26 Pricing Activities. You agree that we may set reasonable restrictions on the maximum and minimum prices you may charge for the products and services (subject to applicable law) offered and sold at the Restaurant under this Agreement. With respect to the sale of all such products and services, you will have sole discretion as to the prices to be charged to customers; provided, however, that we will have the right to set maximum or minimum prices on such items (subject to applicable law), to promote inter-brand competition. If we impose a maximum price on a particular item, then (subject to applicable law) you may charge any price for that item, up to and including the maximum price we have set. If we impose a minimum price on a particular item, then you may charge any price for that item (subject to applicable law), down to and including the minimum price that we have set.

8.27 Compliance with Lease. If you occupy the Franchised Location under a lease, you must comply with all terms of the lease or sublease for the Franchised Location and all other agreements affecting the operation of the Restaurant. You must undertake best efforts to maintain a good working relationship with your landlord and must refrain from any activity which may jeopardize your right to remain in possession of, or to renew the lease for, the Franchised Location.

8.28 Franchisee Advisory Council. We reserve the right to create a franchisee advisory council ("FAC"). You will be required to participate in any communication programs developed by the FAC. You must participate, at your sole cost, in the FAC if you or one of your owners or employees is elected or appointed as a committee member. You may be required to pay a fee for, or contribute to, the FAC in an amount determined by the FAC.

9 MODIFICATIONS TO THE SYSTEM

9.1 Ownership of the System. You acknowledge that we own all rights, title and interest in and to the System. You will not acquire any proprietary interest in the System. Your right to use the System is a license, derived solely under this Agreement. Any unauthorized use of the System by you will constitute a material breach of this Agreement.

9.2 System Changes. We, in our sole discretion, shall be entitled from time to time to change or modify the System, including modifications to the Manual, the menu and menu formats, service offerings, the required equipment, the signage, the building and premises of Little Big Burger restaurants (including the trade dress, décor and color schemes), the presentation of the Proprietary Marks, the adoption of new administrative forms and methods of reporting and of payment of any monies owed to us (including electronic means of reporting and payment) and the adoption and use of new or modified Proprietary Marks or Proprietary Materials (as defined in Section 13.3). You must accept and use or display in the Restaurant any such changes or modifications in the System as if they were a part of the System at the time this Agreement was executed, and you will make such expenditures as the changes or modifications in the System may reasonably require.

9.3 Menu Items. Within thirty (30) days after receipt of written notice from us, you must begin selling any newly authorized menu items and cease selling any menu items that are no longer authorized. All food, beverage and merchandise items authorized for sale at the Restaurant shall be offered for sale under the specific name designated by us. We, in our sole discretion, may restrict sales of menu items to certain time periods during the day. If you have a suggestion for a new menu item or for a change to an authorized menu item or you desire to participate in a test market program, you must provide us written notice prior to implementation. You may not add or modify any menu item or participate in a test market program without first having obtained our prior written approval. You must purchase any additional equipment and smallwares as we deem reasonably necessary in connection with new menu items. If we require you to begin offering a new menu item which requires the purchase of additional equipment, we will provide you with a reasonable period of time, as determined in our sole discretion, for the financing, purchase and installation of any such equipment before you must offer such new menu items for sale at the Restaurant.

9.4 Major Renovation of Restaurant. You must make extensive structural changes, major remodeling and renovations, and substantial modifications to existing equipment and improvements to modernize and conform the Restaurant to the image of the System for new Little Big Burger restaurants at our request (but not more often than once every six (6) years). Within thirty (30) days after receipt of our written notice regarding the required remodel, you must prepare and complete drawings and plans for the required remodel. These drawings and plans must be submitted to, and their use approved by, us prior to the commencement of work. You must complete the required remodel within ninety (90) days after receipt of our written notice.

9.5 Innovations. All products, menu items, services, concepts, methods, techniques, and/or new information relevant to your operation of the Restaurant (together, "Innovations"), whether or not constituting protectable intellectual property, that you or your employees create, or that are created on your behalf, must be promptly disclosed to us in writing. All such Innovations will be deemed to be our sole and exclusive property and works made-for-hire for us. You and each of your owners agree to: (1) sign the assignment and/or other documents we request in order to implement this clause in order to evidence our ownership; (2) cause your employees and contractors to sign such assignment documents as we may request for this purpose; and (3) assist us in securing intellectual property rights in such Innovations.

9.6 Variances. We have the right, in our sole discretion, to waive, defer or permit variations from the standards of the System or any applicable agreement for any franchisee or prospective franchisee based on the peculiarities of a particular site, existing building configuration or circumstance, density of population, business potential, trade area population or any other condition or circumstance. We have the right, in our sole discretion, to deny any such request we believe would not be in the best interests of the System.

10 MARKETING

10.1 Marketing Programs. You acknowledge the value of and the need to develop, enhance, and promote the System and the Proprietary Marks. You also acknowledge the importance of the standardization of marketing programs to the furtherance of the goodwill and public image of the System and the Proprietary Marks. This Section 10 describes our marketing, public relations and advertising programs, our right to modify these programs, and the manner in which the marketing and advertising funds are used from time to time.

10.2 Grand Opening Marketing. You must spend at least Five Thousand Dollars (\$5,000) to advertise and promote the Restaurant for at least two (2) weeks prior to opening through four (4) weeks following the opening of the Restaurant ("**Grand Opening Marketing Period**"). You must develop a marketing plan for Grand Opening Marketing Period ("**Grand Opening Marketing Plan**") and marketing materials for the Restaurant ("**Grand Opening Marketing Materials**"). We must review and approve in writing the Grand Opening Marketing Plan and the Grand Opening Marketing Materials for the Restaurant, including total expenditures. during the Grand Opening Marketing Period. You may spend more than the required amount. If you fail to spend the required amount during the Grand Opening Marketing Period, you must spend the balance for Local Store Marketing as defined in Section 10.4. At our request, you must submit appropriate documentation to verify full compliance with your expenditure obligation under the Grand Opening Marketing Plan.

10.3 Brand Fund

10.3.1 We have the right to establish the Brand Fund for the enhancement, promotion and protection of the System and the Proprietary Marks, and for the development of advertising, marketing, and public relations programs and materials as we deem appropriate. We have the right to direct all advertising, media placement, marketing and public relations programs and activities financed by the Brand Fund, with final discretion over the strategic direction, creative concepts, materials and endorsements used and the geographic, market and media placement and allocation. You agree to participate in all advertising, marketing, promotions, research and public relations programs instituted by the Brand Fund.

10.3.2 You must contribute one and one half percent (1.5%) of the Net Sales of the Restaurant to the Brand Fund once it has been established. We may increase your Brand Fund Contribution to a maximum of three percent (3%) of Net Sales, however, we shall not increase this amount by more than one half of one percent (0.5%) in any twelve (12) month period. If the Brand Fund is increased, we will allow a reduction in an equal percentage for your Local Store Marketing expenditure obligation. The Brand Fund Contribution will be payable at the same time and in the same manner as your payment of the Royalty Fee. From time to time, we or our suppliers may deposit into the Brand Fund any rebates or similar allowances paid to us by our suppliers although we have no obligation to do so. Little Big Burger restaurants operated by us and our affiliates will contribute to the Brand Fund on the same basis as comparable franchisees.

10.3.3 Among the programs, concepts, and expenditures for which we may utilize the Brand Fund monies are: (1) creative development and production of print ads, commercials, radio spots, point of purchase materials, direct mail pieces, door hangers, free standing inserts, brochures, logo wear, labeling, video, audio, and written materials and electronic media, and other advertising and promotional materials; (2) media placement and buying, including all associated expenses and fees; (3) administering regional and multi-regional marketing and advertising programs; (4) market research and customer satisfaction surveys, including the use of secret shoppers; (5) the creative development of, and actual production associated with, premium items, giveaways, promotions, sweepstakes, contests, public relation

events, and charitable or nonprofit events; (6) creative development of signage, posters, and individual Little Big Burger restaurant décor items including wall graphics; (7) recognition and awards events and programs including periodic national and regional conventions and meetings; (8) design, establishment, and maintenance of websites, extranets, intranets, search rankings, social media profiles, mobile application and other digital marketing; (9) retention and payment of personalities engaged as spokespersons, advertising and promotional agencies, endorsement contracts, and other outside advisors including retainer and management fees; (10) sponsorship of sporting, charitable, or similar events; (11) review of locally produced marketing materials; (12) list acquisition and development; (13) development of third party facilities for the development of local advertising; and (14) public relations and community involvement activities and programs.

10.3.4 We may sell certain advertising materials, merchandise and premium items to you that are developed by the Brand Fund, and the earnings from such sales will be deposited in the Brand Fund. The Brand Fund also may be used to pay the reasonable salaries and expenses of our and our affiliates' employees who work on advertising, marketing, public relations materials, programs, activities or promotions prepared, planned or undertaken on behalf of the Brand Fund and professional fees and administrative costs and overhead that we or our affiliates incur in activities reasonably related to the administration and activities of the Brand Fund (including accounting fees, legal fees, and interest on monies borrowed by the Brand Fund). We will not use the Brand Fund for anything whose sole purpose is the marketing of franchises, however, the System website, public relations activities, community involvement activities and other activities supported by the Brand Fund may contain information about franchising opportunities. We may seek the advice of Little Big Burger franchisees by formal or informal means with respect to the creative concepts and media used for programs financed by the Brand Fund.

10.3.5 You acknowledge that the Brand Fund and any earnings thereon will be used to maximize general public recognition, acceptance, and patronage of Little Big Burger restaurants, and that we are not obligated, in administering the Brand Fund, to make expenditures for you which are equivalent or proportional to your contribution, or to ensure that any particular franchisee benefits directly or pro rata from expenditures by the Brand Fund. Your failure to derive any such benefit will not serve as a basis for a reduction or elimination of your obligation to contribute to the Brand Fund. The failure (whether with or without our permission) of any other franchisee to make the appropriate amount of contributions to the Brand Fund will not release you from or reduce your obligation.

10.3.6 Nothing in this Agreement will be construed to create a trust or fiduciary relationship of any kind or nature whatsoever among the parties as it relates to the Brand Fund or our actions with respect thereto, including collection of payments, maintenance of the bank account, bookkeeping, and disbursement of monies from the Brand Fund. Except as expressly provided in this Section 10, we assume no direct or indirect liability or obligation to you with respect to maintenance, direction, or administration of the Brand Fund. The Brand Fund may spend in any fiscal year more or less than the total Brand Fund Contributions in that year, borrow from us or others (paying reasonable interest) to cover deficits, or invest any surplus for future use. We will prepare an annual, unaudited statement of Brand Fund collections and expenses within sixty (60) days after our fiscal year end and will provide a copy of the statement to all franchisees upon their request. We retain the final authority on all programs financed by the Brand Fund. We have the right to change or dissolve the Brand Fund at any time. If we disband the Brand Fund, we will spend all monies in the fund for advertising and/or promotional purposes or distribute all unspent monies to contributors in proportion to their respective Brand Fund Contributions during the preceding twelve (12) month period.

10.4 Local Store Marketing

10.4.1 You must develop, on an annual basis, a Marketing Plan (which may be included with your Business Plan) that we have approved for you, your Restaurant, and your Protected Area. You must comply with all requirements regarding the Marketing Plan, including the use of approved advertising and marketing materials, placement and purchase of advertising and marketing materials and media, search engine optimization activities, and compliance with all promotional recommendations. You must spend for advertising and marketing in your market area ("**Local Store Marketing**") an amount equal to at

least two percent (2%) of the quarterly Net Sales of the Restaurant. You must begin conducting Local Store Marketing after the expiration of the Grand Opening Marketing Period. Within thirty (30) days after the end of each quarter, you agree to send to us, in the manner we prescribe, an accounting of your Local Store Marketing expenditures during the preceding quarter. If you fail to expend on an annual basis, the required amount, then you must contribute to the Brand Fund any amounts that you should have expended to reach the local advertising requirement within thirty (30) days after the close of our fiscal year.

10.4.2 Local Store Marketing expenditures include the following pre-approved expenditures: (1) amounts spent by you for advertising media, such as digital, print, radio, television and outdoor, banners, posters, direct mail, grassroots premiums, event invites, and, if not provided by us at our cost, the cost of producing approved materials necessary to participate in these media; (2) coupons and special (or promotional) offers pre-approved by us; and (3) local marketing and public relations agency fees. Local Store Marketing expenditures do not include amounts spent for items, in our reasonable judgment, deemed inappropriate for meeting the minimum advertising requirement, including permanent on-premises signage, menu boards, menus, occasion signage, directory listings, personnel salaries or administrative costs, transportation vehicles (even though such vehicles may display the Proprietary Marks), product costs associated with redemption of coupons and promotional offers and employee incentive programs. All Local Store Marketing must be approved by us pursuant to Section 10.6 below.

10.5 Joint Marketing Programs and Cooperatives. We have the right at any time and from time to time to establish, and thereafter modify (1) co-marketing programs in which we and our franchisees join with suppliers or other third parties to cross-promote goods and services; (2) joint marketing efforts in which multiple Little Big Burger restaurants can contribute to a specific advertising campaign or event; and/or (3) local or regional marketing co-operatives (“**Cooperatives**”) that pool funds of Little Big Burger restaurants on an ongoing basis to jointly promote the Proprietary Marks and the Little Big Burger restaurants of the Cooperative members. You must participate in each applicable joint marketing program and comply with the rules of the program. The following provisions apply to Cooperatives:

10.5.1 We have the right to designate any geographic area or set of common characteristics for purposes of establishing a Cooperative. If a Cooperative is applicable to your Restaurant at the time the Restaurant opens for business, you must join the Cooperative. If a Cooperative applicable to the Restaurant is established during the Initial Term, you must become a member and begin contributing no later than thirty (30) days after we authorize the Cooperative to begin operation. You will not have to contribute to more than one Cooperative for the same Restaurant at the same time. We (or our affiliates, as the case may be) will become a member of any Cooperative that is applicable to a Little Big Burger restaurant owned by us or our affiliates.

10.5.2 Each Cooperative will be organized for the exclusive purpose of developing, administering and executing advertising programs for the members of the Cooperative. Each Cooperative will adopt a Cooperative agreement governing the organization and operation of the Cooperative, subject to our approval. If the members of the Cooperative do not sign an agreement within a reasonable time, you agree to sign our recommended form of Cooperative Agreement. We reserve the right to change the form of organization, governing documents, and manner of operation of any Cooperative, and you and the other members agree to implement any such change promptly after notice from us. No changes in the bylaws or other governing documents of a Cooperative may be made without our prior written consent. No advertising or promotional plans or materials may be used by a Cooperative or furnished to its members without our prior approval pursuant to Section 10.6 below. We and our designated agents will have the right to examine and copy, at our expense, on reasonable notice and during normal business hours, the books, records, and accounts of any Cooperative. We will also have the right, at any time, to have an independent audit made of the books of any Cooperative.

10.5.3 You and each other member of the Cooperative must contribute weekly to the Cooperative up to fifty percent (50%) of your Local Marketing requirement (unless a majority of the Cooperative votes to increase that amount), which amount will result in a corresponding reduction in your Local Marketing requirement. The Cooperative will be required to prepare annual financial statements for review by its members.

10.5.4 We may grant to any franchisee an exemption for any length of time from the requirement of membership in a Cooperative and/or from the obligation to contribute (including a reduction, deferral, or waiver of the contribution), upon written request of the franchisee stating reasons which we deem sufficient to support the exemption. Our decision concerning any request for exemption will be final. If an exemption is granted to a franchisee, the franchisee will be required to spend on Local Store Marketing the amount the franchisee otherwise would have been required to contribute to the Cooperative.

10.6 Approval Requirement. All advertising and promotion by you and by any Cooperative must be in the type of media and format that we approve, must be conducted in a dignified manner, and must conform to our standards and requirements. You or the Cooperative must submit written samples of all proposed advertising and promotional plans and materials to us for our approval at least fifteen (15) days before their intended use, unless the plans and materials were prepared by us or have been approved by us within the last twelve (12) months. Proposed advertising plans or materials will be deemed to have been rejected if we have not approved them within fifteen (15) days after receipt. We reserve the right to require you to discontinue the use of any advertising or marketing material that we previously approved upon notice.

10.7 Special Promotions

10.7.1 You must participate, at your expense, in product promotions, product launches and price point promotions that we establish from time to time, provided such promotions do not violate applicable law. You acknowledge that these activities may include value menu, special offer, limited time offer and other pricing promotions and that the featured price(s) may be less than your cost for the promotional item(s). You are required to obtain our prior written approval before implementing such a program that we have not mandated or provided. You must fully participate in all programs, public relations campaigns, prize contests, special offers, and other programs, national, regional, or local in nature (including the introduction of new products or other marketing programs directed or approved by us) that are prescribed from time to time by us. You must conspicuously display for customers the promotional signs and materials and otherwise participate in the manner we specify. You shall be responsible for the costs of such participation, which may include a commitment by you to purchase specified quantities of inventory and supplies to support these programs. To the extent permitted by law, you will comply with any price restrictions that we promulgate from time to time.

10.7.2 We may also require you to join and participate in regional, national, or international programs designed to increase business, including multi-area customer, national customer, commercial customer, Internet, event, yellow pages, directory affinity vendor, and co-branding programs ("**Multi-Area Marketing Programs**"). Such programs may require your cooperation (including refraining from certain channels of marketing and distribution), participation (including payment of commissions or referral fees), and adherence to pricing restrictions to the extent permitted by law. All such programs are our proprietary trade secrets. We may designate the coverage area, method and timing of payment, and any outside agencies for any Multi-Area Marketing Programs.

10.8 Territorial Advertising Restriction. You are not permitted to solicit customers and/or advertise outside of your Protected Area without our prior written consent, which we may grant at our sole discretion. We may condition our authorization upon your agreement to offer Little Big Burger restaurant operators in territories encompassed by the circulation base of the proposed advertising the opportunity to participate in, and share the expense of, such solicitation and/or advertising. Notwithstanding the foregoing, you may provide services and sell products to customers located outside your Protected Area, provided you did not solicit such customers by advertising outside of your Protected Area without our prior written consent. You may not advertise the Restaurant or any products or services offered by the Restaurant via the Internet or any other means of e-commerce, except as permitted in Section 10.9 below.

10.9 Electronic Marketing and Electronic Communications. We will host and maintain an independent webpage for the Restaurant at an Internet address that we specify. We will provide and maintain this webpage using a standard template. Unless we have agreed to it in writing, you may not use, register, maintain, or sponsor any URL, social networking platform, blog, messaging system, email account, user name, text address, mobile application, or other electronic, mobile or internet presence that uses or

displays any of the Proprietary Marks (or any derivative thereof) or that promotes any products or services of the Restaurant. You acknowledge that the use of any electronic medium constitutes advertising and promotion subject to our approval under Section 10.6. You agree not to transmit, or cause any other party to transmit, advertisements or solicitations by broadcast media, telephone, e-mail, text message, instant message, social network, VOIP, streaming media, or other electronic media that currently exists or may exist in the future without first obtaining our written consent as to: (1) the content of the advertisements or solicitations; and (2) the type of media intended to be used. All telephone answering messages, email auto-signatures, and other identifiers of the Restaurant must be in the form we prescribe. If we approve the use of an electronic medium, our approval will be conditioned on your compliance with any standards and procedures we issue with respect to that type of electronic medium, including the use of any disclaimers, warnings, and other statements that we may prescribe.

10.9.1 You shall comply with our standards for the System, as set forth in the Manual or otherwise, with regard to our authorization to use, and the use of, blogs, common social networks (including Facebook, Instagram and Pinterest), professional networks (including LinkedIn), live blogging tools (including Twitter), virtual worlds, file, audio and video sharing sites and other similar social networking media or tools that in any way reference the Proprietary Marks or involve the System or the Restaurant.

11 INSURANCE

11.1 Procurement of Insurance. You shall be responsible for all loss or damage arising from or related to your development and operation of the Restaurant, and for all demands or claims with respect to any loss, liability, personal injury, death, property damage, or expense whatsoever occurring upon the premises of, or in connection with the development or operation of, the Restaurant. You must maintain in full force and effect throughout the term of this Agreement that insurance which you determine is necessary or appropriate for liabilities caused by or occurring in connection with the development or operation of the Restaurant which shall include, at a minimum, insurance policies of the kinds, and in the amounts, required by Section 11.2 and the Manual.

11.2 Minimum Insurance Requirements. You must obtain insurance policies that include, at a minimum, the following types and levels of coverage:

11.2.1 General liability insurance in the minimum amount of One Million Dollars (\$1,000,000) per occurrence (including personal and advertising injury and employee benefits liability insurance of One Million Dollars (\$1,000,000)), Two Million Dollars (\$2,000,000) in the aggregate, and Two Million Dollars (\$2,000,000) of products/completed operations liability insurance;

11.2.2 Two Million Dollar (\$2,000,000) umbrella policy;

11.2.3 Property insurance (in the amounts required by your landlord if you lease the Franchised Location), which must include flood and earthquake insurance with a limit of One Million Dollars (\$1,000,000), utility service interruption insurance with a limit of Two Hundred Thousand Dollars (\$250,000), and ordinance and law insurance in the amount of Two Hundred Thousand Dollars (\$250,000), perishable stock insurance on an actual loss basis, and building, fixture, tenant's leasehold improvements, personal property and electronic data processing insurance on a replacement cost basis;

11.2.4 In the event you use vehicles in connection with your operation of the Restaurant, auto insurance for all vehicles, including owned vehicles, and non-owned vehicles, which will include liability coverage in the minimum amount of One Million Dollars (\$1,000,000) per year, or the minimum required by state regulations, whichever is greater;

11.2.5 Business income interruption and extra expense insurance covering actual loss for not less than one (1) year and three (3) months of operations;

11.2.6 Not less than Two Million Dollars (\$2,000,000) in dram shop and liquor liability insurance if you sell alcoholic beverages at the Restaurant;

11.2.7 Worker's compensation as required under applicable laws and regulations;

11.2.8 Any other insurance required by your lenders, landlord, and applicable laws and regulations; and

11.2.9 Such additional insurance as we may reasonably require based on the geographic location of the Restaurant or changes in the insurance industry standards.

11.3 Insurance Rating, Approval, and Certification. The policy, or policies, must be written by insurance companies with a rating of A-VI or better as reported in the most recent edition of A.M. Best's Insurance Reports; must name us and our designated affiliates as additional insureds as specified by us; and must not have deductibles, exclusions or co-insurance requirements that are unacceptable to us. All public liability and property damage policies must contain a waiver by the insurance company of subrogation rights against us and our affiliates, successors and assigns. You must provide us with evidence of all required insurance coverage and payment of premiums before beginning construction of the Restaurant. At least thirty (30) days before each insurance policy expires, you must furnish a copy of the renewal or replacement insurance policy and evidence of payment of the premium. Your obligation to obtain insurance coverage is not limited in any way by the insurance that we maintain.

11.4 Claims Cancellation. You must provide us with copies of any insurance claims or insurance cancellations within twenty-four (24) hours of receipt. You have a twenty-four (24) hour opportunity to cure any lapses in insurance coverage. Your insurance policies may not be subject to cancellation, termination, nonrenewal or material modification, except upon at least thirty (30) days' prior written notice from the insurance carrier to us.

11.5 Our Rights. We have the right to increase the amounts of coverage required and require different or additional kinds of insurance with thirty (30) days' prior written notice, including excess liability insurance, to reflect inflation, new risks, changes in the law or standards of liability, higher damage awards or other relevant changes in circumstances. If you fail to maintain the insurance required by this Agreement, we have the right (but no obligation) to obtain insurance on your behalf. If we do so, you agree to reimburse us for the cost of insurance, plus administrative costs of eighteen percent (18%) of the premium cost in connection with Franchisor's obtaining the insurance.

12 ACCOUNTING AND RECORDS

12.1 Books and Records. You must prepare, and must preserve for at least five (5) years from the dates of their preparation, complete and accurate books, records, and accounts, in accordance with generally accepted accounting principles, which may include a prescribed chart of accounts and/or use of a designated accounting program or platform. You must record all sales, sales tax, and any other charges collected on behalf of third parties in accordance with the procedures prescribed in the Manual on the point of sale system that we specify.

12.2 Reports. You must submit to us, at your expense, in the form we prescribe:

12.2.1 Weekly sales reports signed by you and in the form we specify;

12.2.2 Monthly financial statements in the format specified by us in the Manual, including a standard chart of accounts, as amended from time to time within fifteen (15) days after the close of the month;

12.2.3 Annual financial reports and operating statements in the form we specify, prepared by a certified public accountant or state licensed public accountant, within ninety (90) days after the close of each of your fiscal years;

12.2.4 State and local sales tax returns or reports and federal, state and local income tax returns for each year in which the Restaurant is in operation within thirty (30) days after their timely completion; and

12.2.5 Such other reports as Franchisor may from time to time require, in the form and at the time Franchisor prescribes.

12.3 Extranet. We have the right (but no obligation) to establish a secure website for our Little Big Burger restaurant franchisees and to require you to use the extranet for reporting, training, or other purposes as we direct from time to time. We may charge a reasonable user fee to support the costs of establishing and maintaining the extranet.

12.4 Consolidated Reports. If you own and operate more than one (1) Little Big Burger restaurant, either directly or through an affiliate or subsidiary of yours (the “**Applicable Restaurants**”), then you must provide us with a consolidated financial statement, including a consolidated profit and loss statement, on or before the fifteenth (15th) day of each month that (1) is prepared and signed by you in accordance with our Chart of Accounts, and (ii) encompasses and details the cumulative performance and operations of all such Applicable Restaurants over the preceding calendar month.

12.5 Right to Examine or Audit. We and our designated agents will have the right to examine and copy, at our expense, on reasonable notice and during normal business hours, your books, records, accounts, and sales tax returns. We will also have the right, at any time, to have an independent audit made of your books. If an inspection or audit reveals that any payment to us has been understated, you must immediately pay to us the amount owed, together with applicable interest and late fees as provided in Section 4. If an inspection or audit reveals an understatement of the Net Sales of the Restaurant of two percent (2%) or more, you must, in addition to the payment of all monies owed with interest, reimburse us for all costs connected with the inspection or audit (including expenses for travel, lodging and wages, and reasonable accounting and legal costs). If our examination reveals an understatement of the Net Sales of the Restaurant for any period by two percent (2%) or more three (3) or more times during any thirty-six (36) month period, or by more than five percent (5%) on any one occasion, then in addition to your obligations to pay the amounts owed as referenced above, we may immediately terminate this Agreement. The foregoing remedies are in addition to any other remedies we may have.

12.6 Data and Privacy

12.6.1 We may periodically specify in the Manual or otherwise in writing the information that you will collect and maintain on your computer and point of sale systems and you will provide to us such reports as we may reasonably request from the data so collected and maintained. You agree that all data that you collect from customers in connection with the Restaurant including names, addresses, email addresses, phone numbers, birth dates, transaction data, demographic data, behavioral data, customer service history, correspondence and other data (“**Customer Data**”) and all other data that you create and/or collect in connection with the System, or in connection with your operation of your Restaurant (including transaction data but excluding credit card data) is and will be owned exclusively by us. Copies and/or originals of such data must be provided to us upon our request. We hereby license use of such data back to you, at no additional cost, solely for the term of this Agreement and solely for your use in connection with the business franchised under this Agreement. You agree not to publish, disseminate, implement, revise, or rescind a data privacy policy without our prior written consent with respect to such policy.

12.6.2 In connection with any use of data in the Restaurant, you agree to comply with all applicable laws pertaining to the privacy of customer, employee, and transactional information (“**Privacy Laws**”). You also agree to comply with our standards and policies pertaining to Privacy Laws. If there is a conflict between our standards and policies pertaining to Privacy Laws and actual applicable law, you will:

(1) comply with the requirements of applicable law; (3) immediately give us written notice of said conflict; and (3) promptly and fully cooperate with us and our counsel in determining the most effective way, if any, to meet our standards and policies pertaining to Privacy Laws within the bounds of applicable law.

12.7 Public Filings. If you are or become a publicly-held entity in accordance with other provisions of this Agreement, you must send to us copies of all reports (including responses to comment letters) or schedules that you may file with the U.S. Securities and Exchange Commission (certified by your chief executive officer to be true, correct, complete and accurate) and copies of any press releases you may issue within three (3) days of the filing of those reports or schedules or the issuance of those releases. If you request information from us to compile your reports, you must reimburse us for our costs and expenses in preparing such reports.

13 PROPRIETARY MARKS AND MATERIALS

13.1 Our Representations. We represent to you that we and our affiliates own (or have an appropriate license to) all right, title, and interest in and to the Proprietary Marks, and that we have taken (and will take) all steps reasonably necessary to preserve and protect the ownership and validity in, and of, the Proprietary Marks.

13.2 Identification of the Restaurant. You must operate, advertise, and promote the Restaurant only under the Proprietary Marks. In conjunction with any use of the Proprietary Marks, including on all client contracts, checks and negotiable instruments, invoices, letterhead, email signature blocks and other electronic media, stationery, order forms, and business cards you must identify yourself to the public as an independent franchisee operating under the authority of this Agreement. You also must post a notice of your status as a franchisee at a conspicuous location at the Restaurant.

13.3 Proprietary Materials. You acknowledge and agree that we and/or our affiliates are the owners of certain copyrighted and proprietary materials ("**Proprietary Materials**") and that the copyrights in these materials are valuable property. We authorize you to use the Proprietary Materials on the condition that you comply with all of the terms and conditions of this Agreement. You acknowledge and agree that we may create, acquire or obtain licenses for certain additional copyrights in various works of authorship used in connection with the operation of an Little Big Burger restaurant, including all categories of works eligible for protection under the United States copyright law, all of which will be deemed to be part of the Proprietary Materials. The Proprietary Materials include the Manual, advertisements, promotional materials, labels, menus, posters, coupons, gift certificates, gift cards, signs, World Wide Web and other Internet sites, and restaurant designs, plans and specifications. The Proprietary Materials may incorporate all or part of the Proprietary Marks or other trade dress used as part of the System. You acknowledge that this Agreement does not confer any interest in the Proprietary Materials on you, other than the right to use the Proprietary Materials in the operation of the Restaurant in compliance with the terms of this Agreement. If you prepare any adaptation, translation or work derived from the Proprietary Materials, including advertisements, promotional materials, labels, menus, posters, or websites, whether or not such adaptation was authorized by us, you agree that such material will be our property and you hereby assign all your right, title and interest therein to us (or to a third party designated by us). You agree to execute any documents, in recordable form, which we deem necessary to reflect or perfect such ownership. You must submit all such adaptation, translation or derivative works to us for approval prior to use.

13.3.1 Limitations on Use. Your right to use the Proprietary Marks and the Proprietary Materials is limited to the uses we authorize under this Agreement and any unauthorized use will constitute an infringement of our rights. Therefore, you agree to:

13.3.2 Use only the Proprietary Marks and the Proprietary Materials that we designate and use them only in the manner we authorize;

13.3.3 Use the Proprietary Marks and Proprietary Materials only for the operation of the Restaurant and only at the Franchised Location or in advertising for the Restaurant;

13.3.4 Operate and advertise the Restaurant only under the name “Little Big Burger” and use all Proprietary Marks without prefix or suffix;

13.3.5 Refrain from using the Proprietary Marks as part of your corporate or legal name;

13.3.6 Ensure that all advertising and promotional materials, packaging, signs, decorations, websites, and other items that we may specify, bear the Proprietary Marks in the form, color, size, and location we prescribe;

13.3.7 Not use the Proprietary Marks to incur any obligation or indebtedness on behalf of us or our affiliates;

13.3.8 Not use the Proprietary Marks on any human resources materials including policies, forms, paychecks, and manuals;

13.3.9 Comply with our instructions in filing and maintaining any requisite trade name or fictitious name registrations, and execute any documents we deem necessary to obtain protection for the Proprietary Marks and the Proprietary Materials or to maintain their continued validity and enforceability;

13.3.10 Not directly or indirectly contest the validity of, or take any other action which tends to jeopardize our or our affiliates' rights to the ownership of or right to use and to license others to use the Proprietary Marks or the Proprietary Materials; and

13.3.11 Ensure that the Proprietary Marks and the Proprietary Materials bear the “®”, “™”, “SM” or © notice, respectively, as we may prescribe from time to time.

13.4 Acknowledgments. You acknowledge that:

13.4.1 The Proprietary Marks and the Proprietary Materials are valid and serve to identify the System and those who are authorized to operate under the System;

13.4.2 Your use of the Proprietary Marks and Proprietary Materials pursuant to this Agreement does not give you any ownership interest or other interest in the Proprietary Marks or the Proprietary Materials;

13.4.3 Any and all goodwill arising from your use of the Proprietary Marks and the Proprietary Materials will inure exclusively to our benefit and to the benefit of our affiliates, and upon expiration or termination of this Agreement, no monetary amount will be assigned as attributable to any goodwill associated with your use of the System, the Proprietary Marks, or the Proprietary Materials; and

13.4.4 The license granted under this Agreement to use the Proprietary Marks and the Proprietary Materials is nonexclusive.

13.5 Changes to the Proprietary Marks and the Proprietary Materials. We reserve the right to modify or require you to discontinue use of any of the Proprietary Marks or the Proprietary Materials and/or to substitute different service marks, trademarks or copyrighted material for use in identifying the System and the restaurants operating under the System. When required by us, you must promptly discontinue use of designated Proprietary Marks or Proprietary Materials and implement any modification or substitution at your own cost and expense. We will have no obligation or liability to you as a result of such modification or substitution.

13.6 Third Party Challenges. You must promptly notify us of any unauthorized use or reproduction of the Proprietary Marks or the Proprietary Materials, any challenge to the validity of the Proprietary Marks or the Proprietary Materials, the ownership by us and our affiliates of the Proprietary Marks and the Proprietary Materials, our right to use and to license others to use the Proprietary Marks and

the Proprietary Materials, or your right to use the Proprietary Marks or Proprietary Materials. You acknowledge that we and our affiliates have the right to direct and control any administrative proceeding or litigation involving the Proprietary Marks or Proprietary Materials, including any settlement thereof. We and our affiliates have the right, but not the obligation, to take action against uses by others that may constitute infringement of the Proprietary Marks or Proprietary Materials. We will defend you against any third-party claim that your use of the Proprietary Marks or the Proprietary Materials infringes the rights of the third party. We will bear the cost of defense (including the cost of any judgment or settlement) if you have used the Proprietary Marks and the Proprietary Materials in accordance with the terms of this Agreement, but otherwise you must bear the cost of the defense (including the cost of any judgment or settlement). You must execute any and all documents and do such acts as we deem necessary to carry out the defense or prosecution of any litigation involving the Proprietary Marks or the Proprietary Materials, including becoming a nominal party to any legal action.

14 YOUR ORGANIZATION AND MANAGEMENT

14.1 Your Organization

14.1.1 If you are a legal entity such as a corporation, a limited liability company or a partnership, you make the following representations and warranties: (1) you are duly organized and validly existing under the laws of the state of your formation; (2) you are qualified to do business in the state or states in which the Restaurant is located; (3) execution of this Agreement and the development and operation of the Restaurant is permitted by your governing documents; and (4) unless waived in writing by us, your Articles of Incorporation, Articles of Organization or written partnership agreement shall at all times provide that your activities are limited exclusively to the development and operation of Little Big Burger restaurants.

14.1.2 If you are an individual, or a partnership comprised solely of individuals, you make the following additional representations and warranties: (1) each individual has executed this Agreement; (2) each individual shall be jointly and severally bound by, and personally liable for the timely and complete performance and a breach of, each and every provision of this Agreement; and (3) notwithstanding any transfer to a business entity, each individual shall continue to be jointly and severally bound by, and personally liable for the timely and complete performance and breach of, each and every provision of this Agreement.

14.2 Ownership Interests and Control Group. If you are a business entity, all interests in you are owned as set forth in attached Exhibit B. You must comply with Section 16 prior to any change in ownership interests and must sign addenda to Exhibit B as changes occur in order to ensure the information contained in Exhibit B is true, accurate and complete at all times. Exhibit B also lists those persons who comprise your **"Control Group."** The parties acknowledge and agree that it is their intent that the members of the Control Group include the Managing Owner and: (1) all holders of a legal or beneficial interest of ten percent (10%) or more ("**10% Owners**") in your entity; (2) if you are a limited partnership, all 10% Owners of your general partner; and (3) all 10% Owners of a corporation or limited liability company that owns a controlling interest in your entity. In the event of any change in the Control Group or in the ownership interests of any member of the Control Group, you must sign addenda to Exhibit B to reflect the change. If you are a corporation, the Control Group shall at all times own at least fifty-one percent (51%) of your voting securities; if you are a limited liability company, the Control Group shall at all times own at least fifty-one percent (51%) of your membership interests; and if you are any other type of business entity, the Control Group shall at all times have at least a fifty-one percent (51%) interest in the operating profits and losses and hold at least fifty-one percent (51%) of your ownership interests.

14.3 Governing Documents. Upon request by us, you shall promptly deliver to us, as applicable, true and complete copies of the articles or certificate of incorporation, partnership agreement, bylaws, subscription agreements, buy-sell agreements, voting trust agreements and all other documents relating to your ownership, organization, capitalization, management and control and all amendments thereto. When any of these governing documents are modified or changed, you promptly shall provide copies to us. If you are a corporation, you shall maintain stop-transfer instructions against the transfer on the records of any

voting securities, and each stock certificate of the corporation shall have conspicuously endorsed upon its face the following statement: "Any assignment or transfer of this stock is subject to the restrictions imposed on assignment by the Little Big Burger Franchise Agreement(s) to which the corporation is a party." If you are a publicly held corporation, these requirements shall apply only to the stock owned by your Control Group. If you are a limited liability company, each membership or management certificate shall have conspicuously endorsed upon its face the following statement: "Any assignment or transfer of an interest in this limited liability company is subject to the restrictions imposed on assignment by the Little Big Burger Franchise Agreement(s) to which the limited liability company is a party." If you are a partnership, your written partnership agreement shall provide that ownership of an interest in the partnership is held, and that further assignment or transfer thereof, is subject to all restrictions imposed on assignment by this Agreement.

14.4 Guarantee of Performance

14.4.1 Each of your owners, and each of their spouses, if applicable, shall jointly and severally personally guarantee your payment and performance under this Agreement and personally bind themselves to the terms of this Agreement pursuant to the Guarantee, Indemnification and Acknowledgement ("**Guarantee**") attached as Exhibit C. Unless you are a publicly-held entity, all of your officers, directors, limited liability company managers and their spouses, if applicable, also shall jointly and severally guarantee your payment and performance under this Agreement and bind themselves to the terms of this Agreement pursuant to the attached Guarantee. Notwithstanding the foregoing, we reserve the right, in our sole discretion, to waive the requirement that some or all of the previously described individuals sign the attached Guarantee. We also reserve the right to require any guarantor to provide personal financial statements to us from time to time.

14.4.2 With respect to your owners, you acknowledge that, unless otherwise agreed to in writing by us, it is our intent to have individuals (and not corporations, limited liability companies or other entities) sign the Guarantee. Accordingly, if any owner is not an individual, we shall have the right to require individuals who have only an indirect ownership interest in you to sign the Guarantee. (By way of example, if an owner is a corporation, we have the right to require individuals who have an ownership interest in that corporation to sign the Guarantee.)

14.5 Managing Owner. You must designate one of your 10% Owners as your Managing Owner who will be the person with whom we communicate and whom will have the authority to bind you with respect to all financial, operational and legal matters related to the Restaurant and this Agreement. The Managing Owner may also serve as your General Manager and/or Multi-Unit Manager (as defined in Section 14.6 below). You must designate a replacement approved by us within thirty (30) days after your Managing Owner ceases to qualify as the Managing Owner.

14.6 Multi-Unit Manager. If you or the Franchisee Affiliates own or control more than one (1) franchised Little Big Burger restaurant and your Managing Owner requests our consent to devote less than full time to supervising the operation of the Little Big Burger restaurants, you must designate and retain an individual to serve as the Multi-Unit Manager. The Multi-Unit Manager shall meet all of the following qualifications:

14.6.1 The Multi-Unit Manager shall devote full time and best efforts to supervising the operation of the Restaurant and the other franchised Little Big Burger restaurants that you and your Franchisee Affiliates operate and shall not engage in any other business or activity, directly or indirectly, that requires substantial management responsibility or time commitments or otherwise may conflict with your obligations under this Agreement. You agree to provide us with an executed copy of any arrangement, agreement or contract, and all amendments thereto, between you and your Multi-Unit Manager related to the operation of the franchised Little Big Burger restaurants.

14.6.2 The Multi-Unit Manager shall successfully complete our management training program and any additional training that we require. We must have approved the Multi-Unit Manager and not have later withdrawn that approval.

14.6.3 If the Multi-Unit Manager no longer qualifies as such, you shall designate another qualified person to act as Multi-Unit Manager within thirty (30) days after the date the prior Multi-Unit Manager ceases to be qualified. Your designee to become the Multi-Unit Manager must satisfy the criteria set forth in this Section 14.6 and be approved by us.

15 COVENANTS

15.1 Confidentiality

15.1.1 You acknowledge and agree that: (1) we own all right, title and interest in and to the System; (2) the System includes trade secrets and confidential and proprietary information and know-how that gives us a competitive advantage; (3) we have taken all measures appropriate to protect the trade secrets and the confidentiality of the proprietary information and know-how of the System; (4) all material or other information now or hereafter provided or disclosed to you regarding the System is disclosed in confidence; (5) you have no right to disclose any part of the System to anyone who is not your employee; (6) you will disclose to your employees only those parts of the System that an employee needs to know; (7) you will have a system in place to ensure that your employees keep confidential our trade secrets and confidential and proprietary information, and, if requested by us, you shall obtain from those of your employees designated by us an executed confidentiality and non-disclosure agreement in the form prescribed by us; (8) by entering into this Agreement, you do not acquire any ownership interest in the System; and (9) your use or duplication of the System or any part of the System in any other business, or disclosure of any part of the System to others for use or duplication in any other business, would constitute an unfair method of competition, for which we would be entitled to all legal and equitable remedies, including injunctive relief, without posting a bond.

15.1.2 You shall not, during the term of this Agreement or at any time thereafter, communicate or disclose any trade secrets or confidential or proprietary information or know-how of the System to any unauthorized person, or do or perform, directly or indirectly, any other acts injurious or prejudicial to any of the Proprietary Marks or the System. Any and all information, knowledge, know-how and techniques, including all drawings, materials, equipment, specifications, recipes, techniques and other data that we or our affiliates designate as confidential shall be deemed confidential for purposes of this Agreement.

15.2 Restrictions On Competition

15.2.1 You acknowledge and agree that: (1) pursuant to this Agreement, you will have access to valuable trade secrets, specialized training and other confidential information from us and/or our affiliates regarding the development, operation, product preparation and sale, market and operations research, advertising and marketing plans and strategies, purchasing, sales and marketing methods and techniques owned by us and our affiliates; (2) the know-how regarding the System and the opportunities, associations and experience acquired by you pursuant to this Agreement are of substantial value; (3) in developing the System, we and our affiliates have made substantial investments of time, effort, and money; (4) we would be unable adequately to protect the System and its trade secrets and confidential and proprietary information against unauthorized use or disclosure and would be unable adequately to encourage a free exchange of ideas and information among operators of Little Big Burger restaurants if franchisees were permitted to engage in the activities described in this Section 15.2 or to hold interests in the businesses described in this Section 15.2; and (5) the restrictions on your right to hold interests in, or perform services for, the businesses described in this Section 15.2 will not unduly limit your activities.

15.2.2 You covenant and agree that, except as we otherwise approve in writing, during the Initial Term of this Agreement, and for a continuous period of two (2) years following the expiration, transfer or termination of this Agreement, you will not, either directly or indirectly, for yourself or through, on behalf of, or in conjunction with any person or legal entity:

15.2.2.1 Own, maintain, operate, engage in, grant a franchise to, advise, help, make loans to, lease property to, or have any interest in, either directly or indirectly, any “**Competing**

Business", which is defined as a restaurant business: (1) that has burgers as a primary menu item (i.e., sales of burgers comprise at least twenty percent (20%) of sales) or that offers any individual menu item that comprises at least twenty percent (20%) of sales at Little Big Burger restaurants; or (2) whose method of operation or trade dress is similar to that employed in the System. During the Initial Term of this Agreement, there is no geographical limitation on this restriction. Following the expiration, transfer or termination of this Agreement, this restriction shall apply to any Competing Business located within a five (5) mile radius of the Restaurant and any Competing Business located within a five (5) mile radius of any then-existing Little Big Burger restaurant; or

15.2.2.2 Divert or attempt to divert any present or prospective business or customer to any Competing Business by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks and the System.

15.2.3 You acknowledge that the Franchised Location will itself acquire goodwill associated with the System and that it would be difficult for us to ascertain that you have no interest in the operation by a third party of a Competing Business at that location that would, if operated by you, violate the restrictions of this Section 15.2. Accordingly, you further covenant and agree that, during the term of this Agreement and for a period of two (2) years following the transfer, expiration or earlier termination of this Agreement, you shall not, either directly or indirectly, for yourself, or through, on behalf of, or in conjunction with any person, firm, partnership, corporation, or other entity, sell, assign, lease or transfer the Franchised Location to any person, firm, partnership, corporation, or other entity which you know, or have reason to know, intends to operate a Competing Business at the Franchised Location that would violate Section 15.2.2.1 if operated by you. You, by the terms of any conveyance selling, assigning, leasing or transferring your interest in the Franchised Location, shall include such restrictive covenants as are necessary to ensure that a Competing Business that would violate Section 15.2.2.1 if operated by you is not operated at the Franchised Location for this two (2) year period, and you shall take all steps necessary to ensure that these restrictive covenants become a matter of public record.

15.3 Exception for Publicly Traded Stock. The restrictions contained in Section 15.2.2.1 will not apply to ownership by you of less than a five percent (5%) beneficial interest in the equity securities of any publicly-held corporation.

15.4 Owners and Employees. Your guarantors that sign the Guarantee attached to this Agreement as Exhibit C will agree to be bound personally by the provisions of Section 15, provided that, as to them, the time period in Section 15.2.2 will run from the expiration, termination, or transfer of this Agreement or from the termination of the individual's relationship with you, whichever occurs first. At our request, you must obtain signed agreements similar in substance to this Section 15 (including agreements applicable upon termination of a person's relationship with you) from any: (1) General Manager; and (2) your officers, directors, and owners. Each agreement required by this Section 15.4 must be in a form we approve and specifically identify us as a third party beneficiary with the independent right to enforce the agreement.

15.5 Enforcement

15.5.1 We have the right, in our sole discretion, to reduce the scope of any restriction in Section 15.2 by giving you written notice and you agree to comply with any covenant so modified, which shall be fully enforceable notwithstanding the provisions of Section 25.

15.5.2 You agree that the existence of any claims you may have against us, whether or not arising from this Agreement, will not constitute a defense to our enforcement of this Section 15.

15.5.3 You acknowledge that your violation of the terms of this Section 15 would result in irreparable injury to us for which no adequate remedy at law may be available, and you accordingly consent to the issuance of an injunction prohibiting any conduct by you in violation of the terms of this Section 15. Injunctive relief will be in addition to any other remedies we may have.

15.5.4 If you or any other person bound by this Section 15 fails or refuses to abide by any of the foregoing restrictions on competition, and we obtain enforcement in a judicial proceeding, the obligations under the breached restriction will continue in effect for a period ending two (2) years after the date the person begins to comply with the order enforcing the restriction.

16 TRANSFER

16.1 By Us. We have the right to transfer or assign this Agreement or any part of our rights or obligations under this Agreement to any person or legal entity. You agree that we will have no liability after the effective date of the transfer or assignment for the performance of any obligations under this Agreement. You acknowledge that we can sell our assets; sell securities in a public offering or in a private placement; merge with, acquire, or be acquired by another company; or undertake a refinancing, recapitalization, leveraged buy-out, or other economic or financial restructuring, without restriction and without affecting your obligations under this Agreement.

16.2 By You. You acknowledge that the rights and duties set forth in this Agreement are personal to you and that we have granted these rights in reliance on your business skill, financial capacity, and personal character (or, if you are a business entity, on the business skill, financial capacity, and personal character of your owners and management). Accordingly, neither you nor any immediate or remote successor to any interest in this Agreement, nor any individual, partnership, corporation, or other legal entity which directly or indirectly owns any interest in you, may sell, assign, transfer, convey, pledge, encumber or give away any direct or indirect interest in this Agreement, in you, or in substantially all of the assets of the Restaurant, without our prior written consent, which will not be unreasonably withheld. You must notify us in writing of any proposed transfer at least thirty (30) days before the transfer is to take place, and must provide all information and documentation relating to the proposed transfer that we reasonably request. Notwithstanding the foregoing, you may grant a security interest in, or otherwise encumber certain assets of the Restaurant, excluding the Franchise Agreement, in connection with obtaining financing for the development and/or operation of the Restaurant or equipment leasing, if such financing satisfies our requirements, which may include execution of agreements by us, you and your owners and your secured creditor, in a form satisfactory to us, acknowledging such creditor's obligations to be bound by the terms of this Section 16.

16.3 Our Right of First Refusal. We have the right, exercisable within thirty (30) days after receipt of a written request for our approval of a proposed transfer pursuant to this Section 16 (other than a transfer to immediate family members of your owners who meet our operational and financial criteria for new franchisees), to purchase the interest proposed to be transferred. The request for approval of transfer must include a true and complete copy of the term sheet, letter of intent, proposed purchase agreement, assignment document, or any other document necessary to implement the transfer, and not be subject to financing or any other contingencies. Our thirty (30) day period for determining whether or not to exercise our right of first refusal will not begin until the transferor has provided all information and documentation that we require in a form and substance satisfactory to us. We may assign this right of first refusal to a third party in our sole discretion. If we desire to exercise our right of first refusal, we will do so by providing written notice (the **"Purchase Notice"**) to the transferor, as follows:

16.3.1 If the transfer is proposed to be made pursuant to a sale, we may purchase the interest proposed to be transferred on the same financial terms and conditions offered by the third party. Closing on our purchase will occur within sixty (60) days after the date of the transferor's receipt of the Purchase Notice. If the consideration, terms, and/or conditions offered by the third party are such that we may not reasonably be required to furnish the same consideration, terms, and/or conditions, then we may purchase the interest proposed to be sold for the reasonable equivalent in cash. If, within thirty (30) days of the transferor's receipt of the Purchase Notice the parties cannot agree as to the reasonable equivalent in cash consideration, an independent appraiser will be appointed by mutual agreement and the determination of the appraiser will be binding. Any material change in the terms of the offer from a third party after we have elected not to purchase the interest sought to be transferred will constitute a new offer subject to the same rights of first refusal by us as in the case of the third party's initial offer.

16.3.2 If the transfer is proposed to be made by gift, you and we will jointly designate, at our expense, an independent appraiser to determine the fair market value of the interest proposed to be transferred. We may purchase the interest at the fair market value determined by the appraiser. Closing on the purchase will occur within forty-five (45) days after our notice to the transferor of the appraiser's determination of fair market value.

16.3.3 Our failure to exercise our right of first refusal shall not constitute approval of the proposed transfer nor a waiver of any other provision of this Section 16 with respect to a proposed transfer. If we do not exercise our right of first refusal, you or your owners may complete the sale to such offeror pursuant to and on the exact terms of such offer, subject to our consent to the transfer as provided in Section 16.2, provided that if the sale to such offeror is not completed within sixty (60) days after receipt of our notice of our decision not to exercise our right of first refusal, or if there is a material change in the terms of the offer, you must promptly notify us, and we will have an additional right of first refusal (on the terms of the revised offer, if any, and otherwise as set forth herein) during the thirty (30) day period following your notification of the expiration of the sixty (60) day period or the material change to the terms of the offer.

16.4 Conditions of Our Consent. If we elect not to exercise our right of first refusal under Section 16.3, the proposed transferor may complete the transfer after obtaining our written consent as required under Section 16.2. We may withhold our consent on any reasonable grounds, or may give our consent subject to reasonable conditions, which may include the following:

16.4.1 That all of your accrued monetary obligations to us and our affiliates (whether arising under this Agreement or otherwise) and all other outstanding obligations related to the Restaurant (including bills from suppliers, taxes, judgments and any required governmental reports, returns, affidavits or bonds) have been satisfied or, in our reasonable judgment, adequately provided for. We reserve the right to require that a reasonable sum of money be placed in escrow to ensure that all of these obligations are satisfied;

16.4.2 That you and your Franchisee Affiliates are: (1) not then in material default of any provision of this Agreement or any other agreement with us or our affiliates; (2) in good standing as a franchisee with us and our affiliates; (3) not in default beyond the applicable cure period under any real estate lease, equipment lease or financing instrument relating to the Restaurant or any other franchised Little Big Burger restaurant; and (4) not in default beyond the applicable cure period with any vendor or supplier to the Restaurant;

16.4.3 That the sales price shall not be so high, in our reasonable judgment, as to jeopardize the ability of the transferee to develop, maintain, operate and promote the Restaurant and meet financial obligations to us, third party suppliers and creditors. Our decision with respect to a proposed transfer shall not create any liability on the part of us: (1) to the transferee, if we approve the transfer and the transferee experiences financial difficulties; or (2) to the transferor or the proposed transferee, if we reject the transfer pursuant to this Section 16 or for other legitimate business purposes. We, without any liability to the transferor or the proposed transferee, have the right, in our sole discretion, to communicate and counsel with the transferor, you, and the proposed transferee regarding any aspect of the proposed transfer;

16.4.4 That the transferor executes a general release, in a form satisfactory to us, of any and all claims against us, our affiliates and their respective past, present, and future officers, directors, shareholders, and employees, in their corporate and individual capacities;

16.4.5 That the transferee (and if the transferee is a corporation, partnership, or limited liability company, such owners of a beneficial interest in the transferee as we may request) enter into a written assignment, in a form satisfactory to us, assuming and agreeing to discharge all of your obligations under this Agreement; or, at our option, enter into our then current form of Franchise Agreement; and, if the transferor guaranteed your obligations under this Agreement, that the transferee guarantee the performance of all such obligations in writing in a form satisfactory to us;

16.4.6 If the transferee is an existing Little Big Burger developer or franchisee, that the transferee is not in default under its agreements with us, its landlords, lenders and its suppliers and has a good record of customer service and compliance with our operating standards;

16.4.7 That the transferee, whether or not an existing Little Big Burger developer or franchisee, demonstrates to our satisfaction that he or she meets (or, if the transferee is a business entity, that its owners and management team meet) our educational, managerial, and business standards; possesses a good moral character, business reputation, and credit rating; has the aptitude and ability to conduct the business contemplated hereunder (as may be evidenced by prior related business experience or otherwise); has the ability to obtain a possessory interest in the Franchised Location; has the ability to obtain all required licenses and permits to operate the Restaurant; and has adequate financial resources and capital to fulfill your obligations under this Agreement in a timely manner;

16.4.8 That you have corrected any existing deficiencies of the Restaurant of which we have notified you, and/or the proposed transferee agrees to upgrade, remodel, and refurbish the Restaurant in accordance with our then current requirements and specifications for Little Big Burger restaurants within the time period we specify following the effective date of the transfer (we will advise the proposed transferee before the effective date of the transfer of the specific actions that are required and the time period within which such actions must be taken);

16.4.9 That the transferee (if an entity, the Managing Owner) and any employees of the transferee who have not previously completed a training program approved by us complete any training programs then in effect for new franchisees; and

16.4.10 That the transferor (1) pays a transfer fee in the amount of Seven Thousand Five Hundred Dollars (\$7,500) and (2) is solely responsible for any third-party broker fees that are incurred in connection with the contemplated assignment/transaction at issue;

16.4.10.1 If the transaction involves one or more Little Big Burger restaurants other than the Restaurant franchised under this Agreement, the transferor must also pay the transfer fee specified in the franchise agreement for each other Little Big Burger restaurant in the transaction.

16.5 Transfers to an Entity Wholly Owned by You. If you desire to transfer this Agreement to a corporation or limited liability company wholly owned by your owners, where the ownership and management of the Restaurant will not change, the requirements of Section 16.2 shall apply to such a transfer; however, you will be required to pay a reduced transfer fee of One Thousand Dollars (\$1,000). Our consent also will be conditioned on the following: (1) the entity must be newly organized; (2) prior to the transfer, we must receive a copy of the documents specified in Section 16.2 and the transferee shall comply with the remaining provisions of Section 16; and (3) you must own all voting securities of the newly formed corporation (or membership interests of the newly formed limited liability company) or, if you are owned by more than one individual, each person shall have the same proportionate ownership interest in the corporation (or the limited liability company) as prior to the transfer.

16.6 Death, Incapacity or Bankruptcy. If you or any owner dies, becomes incapacitated, or enters bankruptcy proceedings, that person's executor, administrator, personal representative, or trustee must apply to us in writing within three (3) months after the event (death, declaration of incapacity, or filing of a bankruptcy petition) for consent to transfer the person's interest. The transfer will be subject to the provisions of this Section 16, as applicable; however, you will not be required to pay a transfer fee. In addition, if the deceased or incapacitated person is the Managing Owner, we will have the right (but no obligation) to take over operation of the Restaurant upon giving notice to the executor, administrator, personal representative, or trustee and to manage the Restaurant until the transfer is completed. If we exercise this right, we can charge a weekly management fee for our services equal to six percent (6%) of the weekly Gross Sales of the Restaurant plus any travel and living expenses incurred by our personnel in managing the Restaurant. For purposes of this Section 16.6, "incapacity" means any physical or mental infirmity that will prevent the person from performing his or her obligations under this Agreement (1) for a period of thirty (30) or more consecutive days, or (2) for sixty (60) or more total days during a calendar year.

In the case of transfer by bequest or by intestate succession, if the heirs or beneficiaries are unable to meet the conditions of transfer set forth in Section 16.4, the executor may transfer the decedent's interest to another successor that we have approved, subject to all of the terms and conditions for transfers contained in this Agreement. If an interest is not disposed of under this Section 16.6 within six (6) months after the date of death or appointment of a personal representative or trustee, we can terminate this Agreement under Section 19.2.

16.7 Securities Offering. All materials for a public offering of stock or partnership interests in you or any of your affiliates that are required by federal or state law shall be submitted to us for review as described below before such materials are filed with any government agency. Any materials to be used in any exempt offering shall be submitted to us for such review before their use. You agree that: (1) no offering by you or any of your affiliates may imply (by use of the Proprietary Marks or otherwise) that we are participating in an underwriting, issuance, or offering of your securities or your affiliates; (2) our review of any offering shall be limited solely to the relationship between you and us (and, if applicable, any of your affiliates and us); and (c) we will have the right, but not obligation, to require that the offering materials contain a written statement that we require concerning the limitations stated above. You (and the offeror if you are not the offering party), your owners, and all other participants in the offering must fully indemnify us, our subsidiaries, affiliates, successor, and assigns, and their respective directors, officers, shareholders, partners, agents, representatives, servants, and employees in connection with the offering. For each proposed offering, you agree to pay us a non-refundable fee of Ten Thousand Dollars (\$10,000) or such greater amount as is necessary to reimburse us for our reasonable costs and expenses (including legal and accounting fees) for reviewing the proposed offering as well as any subsequent or periodic documents needed in connection with your securities offering (e.g., quarterly or annual filings). You agree to give us written notice at least thirty (30) days before the date that any offering or other transaction described in this Section 16.7 commences. Any such offering shall be subject to all of the other provisions of this Section 16; and further, without limiting the foregoing, it is agreed that any such offering shall be subject to our approval as to the structure and voting control of the offeror (and you, if you are not the offeror) after the financing is completed.

16.8 Nonconforming Transfers Void. Any purported assignment or transfer that is not in compliance with this Section 16 will be null and void and will constitute a material breach of this Agreement, for which we may terminate this Agreement without opportunity to cure pursuant to Section 19.2 below. Our consent to a transfer will not constitute a waiver of any claims we may have against the transferor, nor will it be deemed a waiver of our right to demand exact compliance by the transferor, transferee or you with any of the terms of this Agreement.

17 GENERAL RELEASE

17.1 You (on behalf of yourself and, if you are an individual, on behalf of your heirs, representatives, successors and assigns, and if you are an entity, on behalf your parent, subsidiaries and affiliates and their respective past and present members, officers, directors, shareholders, agents and employees, in their corporate and individual capacities) (collectively, "**Franchisee Releasors**") freely and without any influence forever release and covenant not to sue us, our parent, subsidiaries and affiliates and their respective past and present officers, directors, shareholders, agents and employees, in their corporate and individual capacities (collectively "**Franchisor Releasees**"), with respect to any and all claims, demands, liabilities and causes of action of whatever kind or nature, whether known or unknown, vested or contingent, suspected or unsuspected (collectively, "**Claims**"), which any Franchisee Releasor now owns or holds or may at any time have owned or held, including claims arising under federal, state and local laws, rules and ordinances and Claims arising out of, or relating to this Agreement and all other agreements between any Franchisee Releasor and any Franchisor Releasee, the sale of any franchise to any Franchisee Releasor, the development and operation of the Restaurant and the development and operation of all other restaurants operated by any Franchisee Releasor that are franchised by any Franchisor Releasee. For the purpose of implementing a general release and discharge as described in this Section 17, you expressly acknowledge that this agreement is intended to include in its effect a release of all Claims described in this Section 17, including those which the parties do not know or suspect to exist in their favor at the time of execution hereof, and that this agreement contemplates that any such Claims will be

permanently extinguished. You expressly agree that fair consideration has been given by us for this General Release and you fully understand that this is a negotiated, complete and final release of all Claims. This General Release does not release any Claims arising from representations made in our Franchise Disclosure Document and its exhibits or otherwise impair or affect any Claims arising after the date of this Agreement.

17.2 You expressly waive and relinquish all rights and benefits that you either may now have or may in the future have under and by virtue of California Civil Code Section 1542. You do so understanding the significance and consequence of such a specific waiver. (Section 1542 provides that “[a] general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”)

18 RENEWAL

18.1 Renewal Franchise Agreements. When this Agreement expires, you will have an option to remain a franchisee at the Franchised Location for two (2) renewal terms of five (5) years each (each a “**Renewal Term**”) if we are still offering franchises in the area where the Restaurant is located and if you are in substantial compliance with the terms of this Agreement. The qualifications and conditions for the first Renewal Term are described below. The qualifications and conditions for the second Renewal Term will be described in the form of renewal franchise agreement signed upon the expiration of this Agreement.

18.2 Conditions for a Renewal Term. In order to be eligible for a Renewal Term, you must meet the following conditions:

18.2.1 You must give us written notice of your election to remain a franchisee at the Franchised Location for the first Renewal Term at least six (6) months and no more than nine (9) months before the end of the Initial Term;

18.2.2 You must not be in default under this Agreement or any other agreements with us and/or our affiliates; you must not be in default beyond the applicable cure period under any real estate lease, equipment lease or financing instrument relating to the Restaurant; you must not be in default beyond the applicable cure period with any vendor or supplier to the Restaurant; and, for the twelve (12) months before the date of your renewal notice and the twelve (12) months before the expiration of the Initial Term, you must not have been in default beyond the applicable cure period under this Agreement or any other agreements with us and/or our affiliates.

18.2.3 You must make the capital expenditures required to renovate and modernize the Restaurant to conform to the interior and exterior designs, décor, color schemes, furnishings and equipment and presentation of the Proprietary Marks consistent with the image of the System for new Little Big Burger restaurants at the time you provide the renewal notice, including such structural changes, remodeling, redecoration and modifications to existing improvements as may be necessary to do so.

18.2.4 As determined by us in our sole discretion, you have operated the Restaurant and you and your Franchisee Affiliates have operated all of your other franchised Little Big Burger restaurants in accordance with the applicable franchise agreements and with the System (as set forth in the Manual or otherwise and as revised from time to time by us);

18.2.5 You must present satisfactory evidence to us that you have the right to remain in possession of the Franchised Location, or other premises acceptable to us, for the Renewal Term and all monetary obligations owed to your landlord, if any, must be current;

18.2.6 You must be operating the Restaurant in full compliance with all federal, state and local laws and regulations and you must demonstrate that you are able to maintain all licenses and permits necessary to continue to operate the Restaurant for the Renewal Term; and

18.2.7 You must comply with our qualification and training requirements for new Little Big Burger restaurant franchisees.

18.3 Renewal Franchise Agreement. If you are eligible and you elect to remain a franchisee for the first Renewal Term, you and your owners must: (1) sign our then-current form of renewal franchise agreement (modified as necessary to reflect the fact that it is a renewal franchise agreement), which will supersede this Agreement in all respects and which may provide for higher fees, fees not included in this Agreement, and other terms and conditions materially different from the terms of this Agreement; (2) sign a general release, in a form we prescribe, of any and all claims against us, our affiliates, and their respective past and present officers, directors, shareholders, and employees, in their corporate and individual capacities; and (3) pay us a renewal franchise fee in an amount equal to Seven Thousand Five Hundred Dollars (\$7,500) ("**Renewal Franchise Fee**"). Your failure to sign the renewal franchise agreement and general release and return these documents to us with the Renewal Franchise Fee prior to the expiration of the Initial Term will be deemed an election by you not to exercise your right to remain a franchisee for the Renewal Term and will result in the expiration of this Agreement and the franchise granted by this Agreement at the end of the Initial Term.

19 DEFAULT AND TERMINATION

19.1 Termination without Notice. You will be deemed to be in default under this Agreement, and all rights granted to you in this Agreement will automatically terminate without notice to you, if you become insolvent or make a general assignment for the benefit of creditors; if a petition in bankruptcy is filed by you or is filed against you and not opposed by you and is not extinguished within sixty (60) days; if you are adjudicated as bankrupt or insolvent; if a bill in equity or other proceeding for the appointment of a receiver or other custodian for your business or assets is filed and consented to by you; if a receiver or other custodian (permanent or temporary) of your assets or property, or any part thereof, is appointed by any court of competent jurisdiction; if proceedings for a composition with creditors under any state or federal law are instituted by or against you; if a final judgment against you remains unsatisfied or of record for thirty (30) days or longer (unless supersedeas bond is filed); if you are dissolved; if execution is levied against your business or property; if suit to foreclose any lien or mortgage against the Franchised Location or equipment of the Restaurant is instituted against you and not dismissed within thirty (30) days; or if the real or personal property of the Restaurant is sold after levy thereupon by any sheriff, marshal, or constable.

19.2 Termination without Cure Period. If any of the following events of default occurs, we may terminate this Agreement without providing you any opportunity to cure the default, effective immediately upon receipt of written notice by you:

19.2.1 You, your owners, your employees or your independent contractors do business with third parties in violation of any Anti-Terrorism Law.

19.2.2 There is a material breach by you of any covenant or obligation under Section 15.

19.2.3 Any transfer that requires our prior written consent occurs without your having obtained that prior written consent;

19.2.4 You fail to dispose of an interest under Section 16.6 within six (6) months after the date of death or appointment of a personal representative or trustee.

19.2.5 You fail to maintain any required licenses, permits, or certifications to open or operate the Restaurant, or fail to comply with any federal, state, or local law regulation, or you operate the Restaurant in an unsafe manner, and you do not cure or commence to cure this failure within five (5) days after you receive notice.

19.2.6 We discover that you made a material misrepresentation in or omitted a material fact from the information that you provided to us in connection with our decision to enter into this Agreement.

19.2.7 You knowingly falsify any report required to be furnished to us or make any material misrepresentation in your dealings with us or fail to disclose any material facts to us.

19.2.8 You, your Managing Owner, or any of your 10% Owners are convicted of, or plead no contest to, a felony charge, a crime involving moral turpitude, or any other crime or offense that is reasonably likely, in our sole opinion, to adversely affect us, our affiliates or the System.

19.2.9 You, your Managing Owner or any of your 10% Owners (1) materially misuse or make unauthorized use of the Proprietary Marks or the Proprietary Materials, (2) commit any act or take any action that impairs the goodwill of the Proprietary Marks, (3) use the Proprietary Materials or other proprietary System know-how at any business owned or operated by you or your 10% Owners other than an Little Big Burger restaurant; or (4) fail to cure any breach or default under this Agreement that materially impairs or can be expected to impair the goodwill associated with the Proprietary Marks.

19.2.10 You understate the Net Sales of the Restaurant for any period by two percent (2%) or more three (3) or more times during any eighteen (18) month period, or by more than five percent (5%) on any one occasion.

19.2.11 You fail to maintain the insurance we require or you fail to repay us for the insurance that we have paid on your behalf and you do not correct the failure within ten (10) days after we deliver written notice of that failure to you.

19.2.12 You fail to pay us (or our affiliates) any amounts due and do not correct the failure within five (5) days after we deliver written notice of that failure to you, or immediately if payment has not been made within thirty (30) days of its due date.

19.2.13 You cease to operate the Restaurant for seven (7) or more consecutive days, unless the closing is due to fire, flood, earthquake or other similar causes beyond your control or is approved in writing in advance by us.

19.2.14 You conceal revenue, taking for your own use employee taxes, FICA, insurance or benefits or any of our property.

19.2.15 You, your Franchisee Affiliates, your Managing Owner, any member of the Control Group, or any 10% Owner: (1) remain in default beyond the applicable cure period under any other agreement with us or our affiliates (provided that, if the default is not by you, we shall provide to you written notice of the default and a fifteen (15) day period to cure the default); (2) remain in default beyond the applicable cure period under any real estate lease, equipment lease, financing instrument or supplier contract relating to the Restaurant; (3) fail to pay when due any taxes or assessments relating to the Restaurant or its employees, unless you are actively prosecuting or defending the claim or suit in a court of competent jurisdiction or by appropriate government administrative procedure or by arbitration or mediation conducted by a recognized alternative dispute resolution organization.

19.2.16 You have received three (3) or more notices of default of this Agreement within a twelve (12) month period.

19.2.17 You repeatedly fail to comply with one or more requirements of this Agreement, regardless of whether you have previously cured the default.

19.3 Termination With Opportunity to Cure. Except as otherwise provided above in Sections 19.1 and 19.2 above, if you fail to maintain or observe any of the standards or procedures prescribed by us in this Agreement, the Manual, or otherwise in writing, we may only terminate this Agreement by giving you written notice of termination (in the manner set forth under Section 24 below) stating the nature of the default at least thirty (30) days before the effective date of termination; provided, however, that you may avoid termination by immediately initiating a remedy to cure such default, curing it to our satisfaction, and

by promptly providing proof of the cure to us, all within the thirty (30) day period. If any such default is not cured within the specified time (or such longer period as applicable law may require), then this Agreement shall terminate without further notice to you effective immediately upon the expiration of the thirty (30) day period or such longer period as applicable law may require. The following is a non-exclusive list of illustrative events of default for which you may have an opportunity to cure the default to avoid termination:

19.3.1 You fail to meet the Site Acceptance Deadline or the Opening Deadline.

19.3.2 You lose possession of the Franchised Location through your own fault or your failure to extend the lease for the Franchised Location through the Initial Term or you relocate the Restaurant without our prior written approval.

19.3.3 Your Managing Owner or General Manager fail to satisfactorily complete the management training program or you fail or refuse to have your employees attend the training programs described in Section 6.

19.3.4 You fail to comply with any other provision of this Agreement, the Manual, or any System standard.

19.4 Emergency Closing. If we in good faith believe that you are using products or utilizing procedures at the Restaurant that are unsafe to customers and/or employees, then we have the right, without prior notice, to immediately close your Restaurant until such time as the unsafe products or procedures are no longer served or used. You will have twenty-four (24) hours after the closing of the Restaurant to prepare a written plan detailing the procedures that you will put in place to ensure that the unsafe practice has been fully remedied and will not recur. If you and we cannot agree on a plan, or if you intentionally fail to follow the plan agreed upon, then we will have the right to terminate this Agreement by written notice, with no further opportunity for you to cure the default.

19.5 Management Rights.

19.5.1 We will have the right (directly or through a third party) (but not the obligation) to take over the management of the Restaurant under the following circumstances: (1) if we have the right to terminate this Agreement or we have placed you in formal default of this Agreement; (2) if your Managing Owner dies or becomes disabled; or (3) if this Agreement expires or is terminated and we are deciding whether to exercise our option to purchase the Restaurant under Section 20.2 below. Exercise of our management rights will not affect any right we have to terminate this Agreement. If we (or a third party) take over the management and operation of the Restaurant as provided in this Section 19.5, you agree to pay us (in addition to the Royalty Fee, Brand Fund Contribution, Technology Fee, and other amounts due under this Agreement) a management fee in the amount of ten percent (10%) of the weekly Net Sales of the Restaurant plus any travel and living expenses incurred by our personnel in managing the Restaurant for our services.

19.5.2 If we (or a third party) exercise the above right to assume the management and operation of the Restaurant, you acknowledge and agree that we (and any such third party) will have a duty to use only reasonable commercial efforts and, provided we (or the third party) are not grossly negligent and do not commit an act of willful misconduct, we (or the third party) will not be liable to you or your owners for any debts, losses, or obligations the Restaurant incurs, or to any of your creditors for any supplies, products, or other assets or services the Restaurant purchases, while we (or the third party) manage the Restaurant.

19.6 Statutory Limitations. If any valid, applicable law or regulation of a competent governmental authority with jurisdiction over this Agreement requires a notice or cure period prior to termination longer than set forth in this Section 19, this Agreement will be deemed amended to conform to the minimum notice or cure period required by the applicable law or regulation.

20 OBLIGATIONS UPON TERMINATION OR EXPIRATION

20.1 Obligations. Except as provided in Section 20.2 below, upon termination or expiration of this Agreement:

20.1.1 You must immediately cease operating the Restaurant;

20.1.2 You must promptly pay all sums owing to us and our affiliates. In the event of termination for your default, the sums will include all damages, costs, and expenses incurred by us as a result of the default, including reasonable attorneys' fees. You must permit our access to, and examination of, your books and records as provided in Section 12 to determine any amounts due;

20.1.3 You must promptly deliver to us the Manual and all other records, correspondence, and instructions in your possession or control, in any medium, that contain confidential information, trade secrets, or know-how relating to the System or the operation of a Restaurant, all of which are acknowledged to be our property;

20.1.4 You must immediately cease to use the confidential methods, procedures, and techniques associated with the System, the "Little Big Burger" name and mark, all other Proprietary Marks, the Proprietary Materials, and all other distinctive forms, slogans, signs, symbols, websites, social media accounts, domain names, e-mail addresses, telephone numbers, other electronic identifiers, and devices associated with the Restaurant or the System; withdraw all advertising matter (including electronic marketing and social media); remove the Proprietary Marks from the Franchised Location and from clothing, signs, letterhead, materials, motor vehicles and other items owned or used by you in the operation of the Restaurant. Upon our request, you must cooperate with us in causing all applicable telephone companies and other service providers to reassign such numbers, addresses, social media accounts, and domain names to us or our nominee. You must not thereafter, directly or indirectly, represent yourself to the public or hold yourself out as a present or former franchisee of ours.

20.1.5 You must promptly make such alterations and modifications to the Restaurant and as may be necessary to clearly distinguish to the public the Restaurant from its former appearance as a Little Big Burger restaurant and also make those specific additional changes as we may request for that purpose. If you fail to promptly make these alterations and modifications, we will have the right (at your expense, to be paid upon your receipt of an invoice from us) to do so without being guilty of trespass or other tort.

20.1.6 You must take such action as may be necessary to cancel any assumed name registration or equivalent registration, and any e-mail address, social media account, or domain name registration, obtained by you which contains "Little Big Burger" or any other Proprietary Marks, and furnish evidence satisfactory to us of compliance with this obligation within five (5) days after the termination or expiration of this Agreement. You hereby appoint us your attorney-in-fact to carry out the requirements of this Section 20.1.6, if you fail to do so within such five (5) day period.

20.1.7 You may not use any reproduction, counterfeit, copy, or colorable imitation of the Proprietary Marks or the Proprietary Materials in connection with any other business which, in our sole discretion, is likely to cause confusion, mistake, or deception or to dilute our and our affiliates' rights in and to the Proprietary Marks and the Proprietary Materials. You must not use any designation of origin or description or representation which, in our sole discretion, falsely suggests or represents an association or connection with us.

20.1.8 You must make a final transfer of all data related to the Restaurant to us and you may not retain or use any such data.

20.1.9 You, your guarantors and all persons and entities subject to the covenants contained in Section 15 must continue to abide by those covenants and refrain from, directly or indirectly, taking any action that violates those covenants.

20.1.10 You must furnish to us, within thirty (30) days after the effective date of termination or expiration, evidence (certified to be true, complete, accurate and correct by your Managing Owner) satisfactory to us of your compliance with this Section 20.

20.2 Our Rights to Acquire the Franchised Location and the Restaurant Assets. Upon expiration or termination of this Agreement, at our option you must:

20.2.1 Assign to us your interest in the lease or sublease for the Franchised Location (or provide us with a commercially reasonable lease in the event you own the Franchised Location); or, if you own the Franchised Location, lease the Franchised Location to us pursuant to the terms of our standard lease, for a term of five (5) years with two successive five (5) year renewal options at fair market rental during the term of the lease. If we elect not to exercise our option to acquire the lease or sublease for the Franchised Location, you must make such modifications or alterations to the Restaurant as may be necessary to comply with Section 20.1.5.

20.2.2 Sell to us such of the furnishings, equipment, signs, and fixtures of the Restaurant as we may designate, at fair market value, and such of the inventory and supplies of the Restaurant as we may designate, at fair market wholesale value. If the parties cannot agree on the price of any such items within a reasonable time, an independent appraiser will be appointed by us at our expense, and the appraiser's determination will be binding on both parties. If we exercise our option to purchase any items, we will have the right to set off all amounts due from you against any payment for such items.

20.2.3 We may exercise either or both of our options under Sections 20.2.1 and 20.2.2: (1) anytime during the six (6) month period before the expiration of the Initial Term, in the case of expiration of this Agreement; and (2) at any time between the date of delivery of written notice of termination and ninety (90) days after the effective date of termination, in the case of termination of this Agreement. If we deem such action desirable in order to preserve the value of such options, we may issue to you, and you must comply with, written instructions to refrain from, delay, or reverse any of the actions required of you under Section 20.1.

20.3 Early Termination Damages

20.3.1 If you default on your obligations and we terminate this Agreement prior to the expiration of the Initial Term of this Agreement, it is hereby agreed by the parties that the amount of damages which we would incur for any such termination of this Agreement would be difficult, if not impossible, to accurately ascertain. Accordingly, within thirty (30) days following such termination, you and your owners shall pay to us an amount equal to the average weekly Royalty Fees and Brand Fund Contributions, that you owed for the fifty-two (52) week period prior to termination (or, if the Restaurant was open for less than fifty-two (52) weeks, the average weekly Royalty Fees and Brand Fund Contributions owed by you for the number of weeks that the Restaurant was in operation) multiplied by the lesser of one hundred and four (104) weeks or the number of weeks (including any partial week) remaining in the Initial Term of this Agreement. These early termination damages shall constitute liquidated damages and are not to be construed as a penalty and shall be the joint and several liability of you and your owners.

20.3.2 The parties acknowledge and agree that: (1) the early termination damages are a reasonable estimation of the damages that would be incurred by us resulting from or arising out of the premature termination of this Agreement; and (2) your payment of such early termination damages is intended to fully compensate us only for any and all damages related to or arising out of the premature termination of this Agreement by us, and shall not constitute an election of remedies, waiver of any default under this Agreement, nor waiver of our claim for other damages and/or equitable relief arising out of your breach of this Agreement. The imposition of early termination damages shall be at our option. We are not required to impose early termination damages and may, in addition or in lieu thereof, pursue other remedies

available to us under the terms and conditions of this Agreement, in equity or at law in the event of your default under this Agreement, including actual damages incurred by us, if such can be ascertained. All such remedies shall be cumulative and non-exclusive.

20.4 Our Costs and Expenses. You agree to pay us all damages, costs, and expenses (including reasonable attorneys' fees) we incur in obtaining injunctive, declaratory, or other relief to enforce this Section 20.

21 INDEPENDENT CONTRACTOR AND INDEMNIFICATION

21.1 Independent Contractor. This Agreement does not create a fiduciary relationship between you and us. You are an independent contractor, and nothing in this Agreement is intended to make either party an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever. While this Agreement is in effect, you must hold yourself out to the public as an independent contractor operating the Restaurant pursuant to a franchise agreement from us. This Agreement does not authorize you to make any contract, agreement, warranty, or representation on our behalf or to incur any debt or other obligation in our name. We will not be deemed liable as a result of any such action, nor will we be liable by reason of your act or omission in the operation of the Restaurant, or for any claim or judgment arising therefrom against you or us.

21.2 Indemnification

21.2.1 You and your 10% Owners will defend, indemnify and hold harmless, us and our parent, affiliates, subsidiaries and their successors and assigns, and each of their respective direct and indirect owners, directors, officers, managers, employees, agents, attorneys, and representatives (collectively, "**Indemnified Parties**") from and against all Losses (as defined below) which any of the Indemnified Parties may suffer, sustain or incur as a result of a claim asserted or inquiry made formally or informally, or a legal action, investigation, or other proceeding brought by a third party and directly or indirectly arising out of your development and operation of the Restaurant, your conduct of business under this Agreement, your breach of this Agreement or your noncompliance or alleged noncompliance with any law, ordinance, rule or regulation including any allegation that we or another Indemnified Party is a joint employer or otherwise responsible for your acts or omissions relating to your employees. We will promptly notify you of any claim that may give rise to a claim of indemnity hereunder, provided, however, that the failure to provide such notice will not release you from your indemnification obligations under this section except to the extent you are actually and materially prejudiced by such failure.

21.2.2 You will have the right, upon written notice delivered to the Indemnified Party within fifteen (15) days thereafter assuming full responsibility for Losses resulting from such claim, to assume and control the defense of such claim, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of the fees and disbursements of such counsel. If (1) the Indemnified Party will have been advised by counsel that there are one or more legal or equitable defenses available to it that are different from or in addition to those available to you and, in the reasonable opinion of the Indemnified Party, your counsel could not adequately represent the interests of the Indemnified Party because such interests could be in conflict with your interests, or (2) you do not assume responsibility for such Losses in a timely manner or you fail to defend a claim with counsel reasonably satisfactory to the Indemnified Party as contemplated above, then the Indemnified Party will have the right to employ counsel of its own choosing, and you will pay the fees and disbursements of such Indemnified Party's counsel as incurred. In connection with any claim, the Indemnified Party or you, whichever is not assuming the defense of such claim, will have the right to participate in such claim and to retain its own counsel at such party's own expense.

21.2.3 You or the Indemnified Party (as the case may be) will keep you or the Indemnified Party (as the case may be) reasonably apprised of, and will respond to any reasonable requests concerning, the status of the defense of any claim and will cooperate in good faith with each other with respect to the defense of any such claim. You will not, without the prior written consent of the Indemnified Party, (1) settle or compromise any claim or consent to the entry of any judgment with respect to any claim

which does not include a written release from liability of such claim for the Indemnified Party and its affiliates, direct and indirect owners, directors, managers, employees, agents and representatives, or (2) settle or compromise any claim in any manner that may adversely affect the Indemnified Party other than as a result of money damages or other monetary payments which will be paid by you. No claim that is being defended in good faith by you in accordance with the terms of this section will be settled by the Indemnified Party without your prior written consent. Notwithstanding anything to the contrary herein, if a claim involves the Proprietary Marks, you agree that we will have the exclusive right to assume the defense of such claim, at your expense with counsel selected by us, but reasonably satisfactory to you.

21.2.4 You have no obligation to indemnify or hold harmless an Indemnified Party for any Losses to the extent they are determined in a final, unappealable ruling issued by a court or arbitrator with competent jurisdiction to have been caused solely and directly by the Indemnified Party's gross negligence, willful misconduct, or willful wrongful omissions.

21.2.5 For purposes of this Section 21.2, "**Losses**" include all obligations, liabilities, damages (actual, consequential, or otherwise), and defense costs that any Indemnified Party incurs. Defense costs include accountants', arbitrators', attorneys', and expert witness fees, costs of investigation and proof of facts, court costs, travel and living expenses, and other expenses of litigation and alternative dispute resolution.

21.2.6 Your obligations in this Section 21.2 will continue in full force and effect subsequent to and notwithstanding this Agreement's expiration or termination. An Indemnified Party need not seek recovery from any insurer or other third party, or otherwise mitigate its Losses, in order to maintain and recover fully a claim against you under this Section 21.2. You agree that a failure to pursue a recovery or mitigate a Loss will not reduce or alter the amounts that an Indemnified Party may recover from you under this Section 21.2.

22 APPROVALS AND WAIVERS

22.1 Approvals. Whenever this Agreement requires our prior approval or consent, you must make a timely written request to us, and our approval or consent must be obtained in writing and signed by one of our officers.

22.2 No Warranty. We make no warranties or guarantees upon which you may rely and assume no liability or obligation to you by providing any waiver, approval, consent, or suggestion to you in connection with this Agreement, or by reason of any neglect, delay, or denial of any request therefor.

22.3 No Implied Waiver. No delay or failure by us to exercise any right reserved to us under this Agreement or to insist upon strict compliance by you with any obligation or condition hereunder, and no custom or practice of the parties at variance with the terms hereof, will constitute a waiver of our right to exercise such right or to demand exact compliance by you with any of the terms hereof. Waiver by us of any particular default by you will not affect or impair our rights with respect to any subsequent default of the same, similar, or a different nature. Acceptance by us of any payments due to us hereunder will not be deemed to be a waiver by us of any preceding breach by you.

23 FORCE MAJEURE

If the performance of any obligation by any party under this Agreement is prevented, hindered or delayed by reason of Force Majeure that cannot be overcome by reasonable commercial measures, the parties shall be relieved of their respective obligations (to the extent that the parties, having exercised best efforts, are prevented, hindered or delayed in such performance) during the period of such Force Majeure. The party whose performance is affected by an event of Force Majeure shall give prompt written notice of such Force Majeure event to the other party by setting forth the nature thereof and an estimate as to its duration. Your inability to obtain financing (regardless of the reason) shall not constitute Force Majeure.

24 NOTICES

Any and all notices that are required or permitted under this Agreement shall be in writing and shall be personally delivered, mailed in the United States mail, postage prepaid, certified mail, return receipt requested; or mailed via overnight courier, or by other means that affords the sender evidence of delivery, of rejected delivery, or attempted delivery to the respective parties at the addresses shown on the signature page of this Agreement (unless and until a different address has been designated by written notice to the other party). Any notices sent by personal delivery, next day delivery service or by electronic means shall be deemed given on the next business day after transmittal. Any notices sent by certified mail shall be deemed given on the third business day after the date of mailing. Any change in the foregoing addresses shall be effected by giving fifteen (15) days written notice of such change to the other party. We may provide you with routine information, invoices, updates to the Manual, System standards and other System requirements and programs, including any modifications thereto, by regular mail or by e-mail, or by making such information available to you on the Internet, an extranet, or other electronic means.

25 ENTIRE AGREEMENT

The parties acknowledge that each element of this Agreement is essential and material and that, except as otherwise provided in this Agreement, the parties shall deal with each other in good faith. This Agreement, the Manual, and the attachments to this Agreement (which are incorporated into this Agreement by this reference as though fully set forth herein), constitute the entire, full and complete agreement between the parties concerning your rights, and supersede any and all prior or contemporaneous negotiations, discussions, understandings or agreements. There are no other representations, inducements, promises, agreements, arrangements, or undertakings, oral or written, between the parties relating to the matters covered by this Agreement other than those set forth in this Agreement and in the attachments. No obligations or duties that contradict or are inconsistent with the express terms of this Agreement may be implied into this Agreement. Subject to our rights to modify the Manual, the System standards and the System, and our right to modify Exhibit A to reflect the Franchised Location pursuant to Section 3.3 or as expressly set forth in this Agreement, no amendment, change or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed in writing. Notwithstanding the foregoing, nothing in this Agreement is intended to disclaim any representation made in our Franchise Disclosure Document that we provided to you.

26 DISPUTES

26.1 Non-Binding Mediation. The parties agree that either party may submit any claim, controversy, or dispute arising out of this Agreement to non-binding mediation, provided the parties shall not be required to pursue mediation of any claim, controversy, or dispute as a prerequisite to filing a lawsuit or commencing other legal proceedings, and the pendency of a mediation shall not cause any legal proceedings to be stayed pending the outcome of the mediation. Any such non-binding mediation shall be conducted in the city or county in which our principal offices are located at the time the claim is submitted to mediation through either an individual mediator or a mediation services organization, provided the mediator shall be experienced in the mediation of franchise disputes and agreed upon by the parties.

26.2 Choice of Law. This Agreement and any claim or controversy arising out of, or relating to, rights and obligations of the parties under this Agreement and any other claim or controversy between the parties shall be governed by and construed in accordance with the laws of the State of North Carolina without regard to conflicts of laws principles. Nothing in this Section 26.1 is intended, or shall be deemed, to make any North Carolina law regulating the offer or sale of franchises or the franchise relationship applicable to this Agreement if such law would not otherwise be applicable.

26.3 Choice of Forum. The parties agree that, to the extent any disputes cannot be resolved directly between them, you must file any suit against us only in the federal or state court having jurisdiction where our principal offices are located at the time suit is filed. We may file suit in the federal or state court located in the jurisdiction where our principal offices are located at the time suit is filed, in the jurisdiction

where you reside or do business, where the Restaurant is or was located, or where the claim arose. You consent to the personal jurisdiction of those courts over you and to venue in those courts.

26.4 Limitations of Actions. Except for payments owed by one party to the other, and unless prohibited by applicable law, any legal action or proceeding (including the offer and sale of a franchise to you) brought or instituted with respect to any dispute arising from or related to this Agreement or with respect to any breach of the terms of this Agreement must be brought or instituted within a period of two (2) years after the initial occurrence of any act or omission that is the basis of the legal action or proceeding, whenever discovered.

26.5 Reimbursement of Costs and Expenses. If either party brings an action to enforce this Agreement in a judicial proceeding, the party prevailing in that proceeding shall be entitled to reimbursement of costs and expenses, including reasonable accountants', attorneys', attorneys' assistants' and expert witness fees, the cost of investigation and proof of facts, court costs, other litigation expenses, and travel and living expenses, whether incurred prior to, during, in preparation for, or in contemplation of the filing of, the proceeding. If we utilize legal counsel (including in-house counsel employed by us) in connection with any failure by you to comply with this Agreement, you shall reimburse us for any of the above-listed costs and expenses incurred by us. In any judicial proceeding, the amount of these costs and expenses will be determined by the court and not by a jury.

26.6 Rights of Parties are Cumulative. The parties' rights under this Agreement are cumulative, and the exercise or enforcement of any right or remedy under this Agreement will not preclude the exercise or enforcement by a party of any other right or remedy under this Agreement that it is entitled to by law or this Agreement to exercise or enforce.

26.7 WAIVER OF PUNITIVE DAMAGES, CLASS ACTION LAWSUITS AND JURY TRIAL.

26.7.1 **TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY WAIVES ANY RIGHT TO, OR CLAIM FOR, ANY CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER PARTY. THE PARTIES ALSO AGREE THAT, IN THE EVENT OF A DISPUTE BETWEEN THEM, THE PARTY MAKING A CLAIM WILL BE LIMITED TO THE RECOVERY OF ACTUAL DAMAGES, IF ANY.**

26.7.2 **THE PARTIES IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO BRING, OR BE A CLASS MEMBER IN, ANY CLASS ACTION SUITS.**

26.7.3 **THE PARTIES IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, AND/OR COUNTERCLAIM BROUGHT BY EITHER PARTY.**

26.8 Injunctive Relief. You recognize that your failure to comply with the terms of this Agreement, including the failure to comply fully with all post-termination obligations, is likely to cause irreparable harm to us, our affiliates and the System. Therefore, you agree that, in the event of a breach or threatened breach of any of the terms of this Agreement by you, we shall be entitled to injunctive relief (both preliminary and permanent) restraining that breach and/or to specific performance without showing or proving actual damages and without posting any bond or security. Any equitable remedies sought by us shall be in addition to, and not in lieu of, all remedies and rights that we otherwise may have arising under applicable law or by virtue of any breach of this Agreement.

27 **SEVERABILITY AND CONSTRUCTION**

27.1 Severability. If any provision of this Agreement is determined to be invalid or in conflict with any existing or future law or regulation by a court or agency having valid jurisdiction, the invalidity will not

impair the operation of any other provisions which remain otherwise enforceable. The latter will continue to be given full force and effect, and the invalid provisions will be deemed not to be a part of this Agreement.

27.2 Counterparts. This Agreement may be executed in multiple counterparts, each of which when executed and delivered shall be deemed to be an original and all of which together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by electronic transmission (including an electronic signature platform such as DocuSign or the transmission of a scanned PDF document) shall be effective as delivery of a manually executed counterpart of this Agreement.

27.3 Gender and Number. All references to gender and number shall be construed to include such other gender and number as the context may require.

27.4 Captions. All captions in this Agreement are intended solely for the convenience of the parties, and none shall be deemed to affect the meaning or construction of any provision of this Agreement.

27.5 Time. Time is of the essence of this Agreement for each provision in which time is a factor. Whenever this Agreement refers to a period of days or months, the first day or month to be counted shall be the day or month of the designated action, event or notice. Days shall be measured by calendar days.

27.6 Survival of Obligations. All obligations that expressly or by reasonable implication are to be performed, in whole or in part, after the expiration, termination, or assignment of this Agreement will survive expiration, termination, or assignment.

27.7 No Implied Third Party Beneficiaries. Except as explicitly provided to the contrary herein, nothing in this Agreement is intended or will be deemed to confer any rights or remedies on any person or legal entity other than you, your owner(s), us, and our affiliates.

27.8 References. Each reference in this Agreement to an entity shall be deemed to refer to a corporation, limited liability company, partnership and any other entity or organization similar thereto if applicable. Each reference to the organizational documents, owners, directors, and officers of a corporation in this Agreement shall be deemed to refer to the functional equivalents of such organizational documents, owners, directors, and officers, as applicable, in the case of any other entity or organization similar thereto if applicable.

27.9 Lesser Included Obligations. You agree to be bound by any promise or covenant imposing the maximum duty permitted by law which is subsumed within any provision of this Agreement, as though it were separately articulated in and made a part of this Agreement, that may result from (1) striking any portion of a provision that a court or agency may hold to be unreasonable and unenforceable; or (2) reducing the scope of any promise or covenant to the extent required to comply with a court or agency order.

27.10 Best Interests of System. Whenever we exercise a right and/or discretion to take or withhold an action, or to grant or decline to grant you a right to take or withhold an action, except as otherwise expressly provided in this Agreement, we can make our decision or exercise our discretion on the basis of our judgment of what is in our best interests. "Best interests" includes what we believe to be the best interests of the System at the time the decision is made or the right or discretion is exercised, even though (1) there may have been other alternative decisions or actions that could have been taken; (2) our decision or the action taken promotes our own financial interest; or (3) our decision or the action may apply differently to different franchisees and/or to any Little Big Burger restaurants that we or our affiliates operate. In the absence of an applicable statute, we will have no liability to you for any such decision or action. If applicable law implies a covenant of good faith and fair dealing in this Agreement, we and you agree that the covenant will not imply any rights or obligations that are inconsistent with a fair construction of the terms of this Agreement.

28 REPRESENTATIONS AND ACKNOWLEDGMENTS

In addition to the representations contained in the Disclosure Verification Form attached to this Agreement as Exhibit E, you represent, acknowledge and warrant to us (and you agree that these representations, acknowledgments and warranties shall survive termination of this Agreement) that:

28.1 Legal and Business Rights and Risks. This Agreement involves significant legal and business rights and risks. We do not guarantee your success. You have read this Agreement in its entirety, conducted an independent investigation of the business contemplated by this Agreement, have been thoroughly advised with regard to the terms and conditions of this Agreement by legal counsel or other advisors of your choosing, recognize that the nature of the business conducted by Little Big Burger restaurants may change over time, have had ample opportunity to investigate all representations made by or on our behalf, and have had ample opportunity to consult with our current and former franchisees. The prospect for success of the business undertaken by you is speculative and depends to a material extent upon your personal commitment, capability and direct involvement in the day-to-day management of the business.

28.2 No Representation of Your Success. We make no express or implied warranties or representations that you will achieve any degree of success in the development or operation of the Restaurant. Your success in the development and operation of the Restaurant depends ultimately on your efforts and abilities and on other factors, including market and other economic conditions, your financial condition and competition.

28.3 Our Agreements with Third Parties. We have entered, and will continue to enter, into agreements with other franchisees to operate Little Big Burger restaurants. The manner in which we enforce our rights and the franchisees' obligations under any of those other agreements shall not affect our ability to enforce our rights or your obligations under this Agreement.

28.4 System Modifications. We may change or modify the System, from time to time, including the Manual, and you will be required to make such expenditures as such changes or modifications in the System may require.

28.5 Franchise Application. All information that you provided to us in connection with your franchise application and our grant of this Franchise is truthful, complete and accurate.

28.6 Signatories to this Agreement. The persons signing this Agreement on your behalf have full authority to enter into this Agreement and the other agreements contemplated by the parties. Your execution of this Agreement or such other agreements does not and will not conflict or interfere with, directly or indirectly, intentionally or otherwise, with the terms of any other agreement with any other third party to which you or any of your owners is a party.

28.7 No Representations Other Than Franchise Disclosure Document. You acknowledge that you have conducted your own independent investigation concerning the purchase of an Little Big Burger restaurant franchise and you have not received from us or our affiliates or any of our or their respective directors, officers, employees, agents, advisors or other representatives, or anyone acting on our behalf, any representations other than those contained in our Franchise Disclosure Document as inducements to enter this Agreement.

28.8 No Financial Performance Representations. You have not received from us or our affiliates or anyone acting on their behalf, any representation of your potential sales, expenses, income, profit or loss other than the information, if any, included in Item 19 of our Franchise Disclosure Document.

28.9 No Actual or Apparent Authority. Even though this Agreement contains provisions requiring you to operate the Restaurant in compliance with the System: (1) we and our affiliates do not have actual or apparent authority to control the day-to-day conduct and operation of your business or

employment decisions; and (2) the parties do not intend for us or our affiliates to incur any liability in connection with or arising from any aspect of the System or your use of the System, whether or not in accordance with the requirements of the Manual, except with respect to any liability arising from our gross negligence or willful misconduct.

[Signature Page Follows.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

FRANCHISOR:

LBB Franchising, LLC

a North Carolina limited liability company

By: _____

Print Name: _____

Title: _____

EFFECTIVE DATE: _____

Notice Address: 7621 Little Avenue, Suite 414
Charlotte, North Carolina 28226

FRANCHISEE:

a _____

By: _____

Print Name: _____

Title: _____

Date: _____

Notice Address: _____

EXHIBIT A TO LITTLE BIG BURGER RESTAURANT FRANCHISE AGREEMENT

FRANCHISE INFORMATION

Franchisee: _____

Franchised Location: _____

If the Franchised Location has not been accepted by us as of the Effective Date, the **Site Selection Area** shall be identified as: _____

Protected Area: _____

Initial Franchise Fee: *Check one: if no choice is selected, the Initial Franchise Fee is \$30,000*

☐	\$30,000 - First Restaurant
☐	\$20,000 - Second or additional Restaurant

FRANCHISEE: _____

By: _____

Print name: _____

Title: _____

Date: _____

EXHIBIT B TO LITTLE BIG BURGER RESTAURANT FRANCHISE AGREEMENT

OWNERSHIP INTERESTS

Franchisee: _____

Form of Ownership. Franchisee is a _____ incorporated or formed on _____ in the state of _____.

Owners. The following list includes the full name of each person who is an owner of a legal or beneficial interest in Franchisee, and fully describes the nature of each owner's interest (attach additional pages if necessary).

Name	Home Address	Percentage and Description of Ownership Interest

Control Group. Franchisee's Control Group shall be comprised of the following persons: _____

Managing Owner. Franchisee's Managing Owner is: _____

FRANCHISEE: _____

By: _____

Print name: _____

Title: _____

Date: _____

EXHIBIT C TO LITTLE BIG BURGER RESTAURANT FRANCHISE AGREEMENT

GUARANTEE AND ASSUMPTION OF FRANCHISEE'S OBLIGATIONS

In consideration of, and as an inducement to, the execution of the Little Big Burger Restaurant Franchise Agreement dated as of _____ ("**Agreement**") by LBB Franchising, LLC ("**Franchisor**"), entered into with _____ ("**Franchisee**"), the undersigned ("**Guarantors**"), each of whom is Franchisee's officer, director, member of Franchisee's Control Group or a 10% Owner, or the spouse thereof, hereby personally and unconditionally agree as follows:

1. Guarantee To Be Bound By Certain Obligations. Guarantors hereby personally and unconditionally guarantee to Franchisor and its successors and assigns, for the term of the Agreement and thereafter as provided in the Agreement or at law or in equity, that each will be personally bound by the covenants and restrictions contained in Section 15 (Covenants) of the Agreement.

2. Guarantee and Assumption of Franchisee's Obligations. Guarantors hereby: (1) guarantee to Franchisor and its successors and assigns, for the term of the Agreement and thereafter as provided in the Agreement or at law or in equity, that Franchisee and any assignee of Franchisee's interest under the Agreement shall: (a) punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement, and (b) punctually pay all other monies owed to Franchisor and/or its affiliates; (2) agree to be personally bound by each and every provision in the Agreement, including, without limitation, the provisions of Sections 15 (Covenants) and 21.2 (Indemnification); and (3) agree to be personally liable for the breach of each and every provision in the Agreement.

3. General Terms and Conditions. The following general terms and conditions shall apply to this Guarantee:

Each of the undersigned waives: (1) acceptance and notice of acceptance by Franchisor of the foregoing undertakings; (2) notice of demand for payment of any indebtedness or nonperformance of any obligations hereby guaranteed; (3) protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed; (4) any right s/he may have to require that an action be brought against Franchisee or any other person as a condition of liability; (5) all rights to payments and claims for reimbursement or subrogation which any of the undersigned may have against Franchisee arising as a result of the execution of and performance under this Guarantee by the undersigned; (6) any law or statute which requires that Franchisor make demand upon, assert claims against or collect from Franchisee or any others, foreclose any security interest, sell collateral, exhaust any remedies or take any other action against Franchisee or any others prior to making any demand upon, collecting from or taking any action against the undersigned with respect to this Guarantee; (7) any and all other notices and legal or equitable defenses to which he may be entitled; and (8) any and all right to have any legal action under this Guarantee decided by a jury.

Each of the undersigned consents and agrees that: (1) her/his direct and immediate liability under this Guarantee shall be joint and several; (2) s/he shall render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so; (3) such liability shall not be contingent or conditioned upon pursuit by Franchisor of any remedies against Franchisee or any other person; (4) such liability shall not be diminished, relieved or otherwise affected by any amendment of the Agreement, any extension of time, credit or other indulgence which Franchisor may from time to time grant to Franchisee or to any other person including, without limitation, the acceptance of any partial payment or performance or the compromise or release of any claims, none of which shall in any way modify or amend this Guarantee, which shall be continuing and irrevocable during the term of the Agreement and for so long thereafter as there are monies or obligations owing from Franchisee to Franchisor or its affiliates under the Agreement; and (5) monies received from any source by Franchisor for application toward payment of the obligations under the Agreement and under this Guarantee may be applied in any manner or order deemed appropriate by Franchisor. In addition, if any of the undersigned ceases to be a member of the Control Group, a 10% Owner, an officer or director of Franchisee or own any interest in Franchisee or the Restaurant, that person (and his spouse, if the spouse is also a guarantor) agrees that the obligations under

this Guarantee shall continue to remain in force and effect unless Franchisor in its sole discretion, in writing, releases those person(s) from this Guarantee. Notwithstanding the provisions of the previous sentence, unless prohibited by applicable law, the obligations contained in Section 15.2 (Restrictions on Competition) of the Agreement shall remain in force and effect for a period of two (2) years after any such release by Franchisor. A release by Franchisor of any of the undersigned shall not affect the obligations of any other Guarantor.

If Franchisor brings an action to enforce this Guarantee in a judicial proceeding, the prevailing party in such proceeding shall be entitled to reimbursement of its costs and expenses, including, but not limited to, reasonable accountants', attorneys', attorneys' assistants' and expert witness fees, cost of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses, whether incurred prior to, in preparation for or in contemplation of the filing of any such proceeding. In any judicial proceeding, these costs and expenses shall be determined by the court and not by a jury.

If Franchisor utilizes legal counsel (including in-house counsel employed by Franchisor or its affiliates) in connection with any failure by the undersigned to comply with this Guarantee, the undersigned shall reimburse Franchisor for any of the above-listed costs and expenses incurred by it.

If any of the following events occur, a default ("**Default**") under this Guarantee shall exist: (1) failure of timely payment or performance of the obligations under this Guarantee; (2) breach of any agreement or representation contained or referred to in this Guarantee; (3) the dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against, any of the undersigned; and/or (4) the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due any of the undersigned. If a Default occurs, the obligations of the undersigned shall be due immediately and payable without notice. Upon the death of one of the undersigned, the estate shall be bound by this Guarantee for all obligations existing at the time of death. The obligations of the surviving Guarantors shall continue in full force and effect.

This Guarantee shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Franchisor's interests in and rights under this Guarantee are freely assignable, in whole or in part, by Franchisor. Any assignment shall not release the undersigned from this Guarantee.

Section 26 (Disputes) of the Agreement is incorporated by reference into this Guarantee and all capitalized terms that are not defined in this Guarantee shall have the meaning given them in the Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, each of the undersigned has hereunto affixed his or her signature, under seal.

GUARANTORS:

Date: _____

Print Name: _____

Address: _____

Date: _____

Print Name: _____

Address: _____

Date: _____

Print Name: _____

Address: _____

Date: _____

Print Name: _____

Address: _____

EXHIBIT D TO LITTLE BIG BURGER FRANCHISE AGREEMENT

CONDITIONAL ASSIGNMENT AND POWER OF ATTORNEY TELEPHONE AND ON-LINE NUMBERS AND LISTINGS

This Conditional Assignment and Power of Attorney ("**Assignment**") is made by and between LBB Franchising, LLC ("**Franchisor**") and _____ ("**Franchisee**") and shall be effective as of the Effective Date on the signature page of this Assignment.

FOR VALUE RECEIVED, and pursuant to Franchisee's obligations under the Little Big Burger Franchise Agreement dated _____, 20__ by and between Franchisor and Franchisee (the "**Franchise Agreement**"), Franchisee hereby assigns to Franchisor all of Franchisee's right, title and interest in and to those certain telephone numbers and regular, classified or other telephone and on-line directory listings (collectively, the "**Numbers and Listings**") used from time to time in connection with Franchisee's operations under the Franchise Agreement.

1. *Assignment.*

- (a) Upon termination or expiration of the Franchise Agreement (without renewal or extension), Franchisor will have the right (and Franchisor is hereby empowered) to implement this Assignment, and, in such event, Franchisee will have no further right, title or interest in the Numbers and Listings but will remain liable to the telephone company and/or the listing agencies with which Franchisee has placed directory listings (all such entities are collectively referred to herein as the "**Company**") for all past due fees owing to the Company on or before the effective date of this Assignment.
- (b) Franchisee acknowledges and agrees that as between Franchisor and Franchisee, upon termination or expiration of the Franchise Agreement (without renewal or extension), Franchisor will have the sole right to and interest in the Numbers and Listings.

2. *Power of Attorney.*

- (a) Franchisee appoints Franchisor as Franchisee's true and lawful attorney in fact to direct the Company to assign same to Franchisor (or to the party Franchisor designates) and execute such documents and take such actions as may be necessary to effectuate the assignment. Upon such event, Franchisee will immediately notify the Company to assign the Numbers and Listings to Franchisor (or Franchisor's designee). If Franchisee fails to promptly direct the Company to assign the Telephone Numbers and Listings to Franchisor (or Franchisor's designee), Franchisor may direct the Company to effectuate the assignment contemplated hereunder to Franchisor (or Franchisor's designee).
- (b) The parties agree that the Company may accept Franchisor's written direction, the Franchise Agreement or this Assignment as conclusive proof of Franchisor's exclusive rights in and to the Numbers and Listings upon such termination or expiration (without renewal or extension) and that such assignment will be made automatically and immediately effective upon the Company's receipt of such notice from Franchisor or Franchisee.
- (c) The parties further agree that if the Company requires that the parties execute the Company's assignment forms or other documentation at the time of termination or expiration (without renewal or extension) of the Franchise Agreement, Franchisor's execution of such forms or documentation on behalf of Franchisee will be sufficient to document that Franchisee has given its consent and agreement to the assignment.
- (d) The parties agree that at any time after the date hereof, they will perform such acts and execute and deliver such documents as may be necessary to assist in or accomplish the assignment described herein upon termination or expiration (without renewal or extension) of the Franchise Agreement.

This Assignment will inure to the benefit of Franchisor and will be binding upon Franchisee and its successors and assigns.

IN WITNESS WHEREOF, the parties to this Assignment have executed and delivered this Assignment effective as of the Effective Date referenced below.

FRANCHISOR:

LBB Franchising, LLC

a North Carolina limited liability company

By: _____

Print Name: _____

Title: _____

EFFECTIVE DATE: _____

FRANCHISEE:

a _____

By: _____

Print Name: _____

Title: _____

Date: _____

EXHIBIT E TO LITTLE BIG BURGER FRANCHISE AGREEMENT

DISCLOSURE VERIFICATION FORM

You are preparing to enter into a Little Big Burger Franchise Agreement with LBB Franchising, LLC ("Franchisor"). The purpose of this Questionnaire is to confirm that you understand the terms of the Franchise Agreement and that no unauthorized statements or promises have been made to you. Please review each of the following questions and statements carefully and provide honest and complete responses to each.

Franchise Applicant _____

- Yes ___ No ___ 1. Have you received and reviewed the Little Big Burger Franchise Disclosure Document ("FDD") at least 14 calendar days, exclusive of the day you received it, before signing the Franchise Agreement and/or paying any monies to Franchisor?
- Yes ___ No ___ 2. Have you signed and returned to Franchisor the acknowledgment of receipt for each FDD given you?
- Yes ___ No ___ 3. Have you had an opportunity to read the Franchise Agreement and each of its attachments (and the Area Development Agreement if applicable) and each of its attachments thoroughly and understand all of Franchisor's covenants and obligations and your covenants and obligations as a franchisee?
- Yes ___ No ___ 4. Do you understand that your Managing Owner and General Manager must successfully complete and pass Franchisor's management training program to Franchisor's satisfaction before Franchisor will allow you to open an Little Big Burger restaurant?
- Yes ___ No ___ 5. Do you understand that the territorial rights you have been granted are subject to limitations and exceptions?
- Yes ___ No ___ 6. Have you had an opportunity to consult with a lawyer, accountant, or other professional advisor prior to signing the Franchise Agreement (and the Area Development Agreement if applicable) or have you had the opportunity for such review and chosen not to engage such professionals?
- Yes ___ No ___ 7. Do you understand the risks of owning a business and specifically the risks of owning a Little Big Burger restaurant franchise, and are you able to bear such risks?
- Yes ___ No ___ 8. Do you acknowledge that the success of your franchise will depend primarily on your own skills, efforts and abilities and those of the persons you employ as well as many factors beyond your or Franchisor's control, including demographics, competition, local laws, lease terms, and other conditions which may be difficult or impossible to anticipate or identify may affect the success of your business?
- Yes ___ No ___ 9. Except for negotiated changes that have been initiated by you, did you receive a complete copy of the Franchise Agreement (and the Area Development Agreement if applicable) at least seven calendar days before the date on which you signed the Franchise Agreement (and the Area Development Agreement if applicable)?
- Yes ___ No ___ 10. Do you understand that all disputes or claims you may have arising out of or relating to the Franchise Agreement (and the Area Development Agreement if

applicable) must be brought in the state where Franchisor has its principal place of business, if not resolved informally or by mediation?

Yes ____ No ____

11. Do you agree that no employee or other person speaking on Franchisor's behalf made any statement or promise regarding the costs involved in operating a Little Big Burger restaurant franchise that is not contained in the FDD or that is contrary to or different from, the information contained in the FDD?

Yes ____ No ____

12. Do you agree that no employee or other person speaking on Franchisor's behalf made any promises, guarantees or assurances to you and provided no information to you relative to earnings, revenues, profits, expenses or projected revenues for a Little Big Burger restaurant franchise other than those contained in Item 19 of Franchisor's Franchise Disclosure Document?

Yes ____ No ____

13. Do you agree that no employee or other person speaking on Franchisor's behalf made any statement or promise or agreement, other than those matters addressed in your Franchise Agreement (and Area Development Agreement if applicable) concerning the advertising, marketing, media support, marketing penetration, training, support service, or assistance that is contrary to, or different from, the information contained in the FDD?

Yes ____ No ____

14. Do you understand that the Franchise Agreement and its attachments (and the Area Development Agreement and its attachments, if applicable) contain the entire agreement between Franchisor and you concerning the Little Big Burger restaurant franchise, meaning any prior oral or written statements not set out in the Franchise Agreement (and the Area Development Agreement if applicable) will not be binding?

Yes ____ No ____

15. Do you understand that Franchisor is relying on your answers to this questionnaire to ensure that the franchise sale was made in compliance of state and federal laws?

If you answered "No" to any question above, please explain your response(s) below:

YOU UNDERSTAND THAT YOUR ANSWERS ARE IMPORTANT TO FRANCHISOR AND THAT FRANCHISOR WILL RELY ON THEM. BY SIGNING THIS QUESTIONNAIRE, YOU ARE REPRESENTING THAT YOU HAVE CONSIDERED EACH QUESTION CAREFULLY AND RESPONDED TRUTHFULLY TO THE ABOVE QUESTIONS.

FRANCHISE APPLICANT: _____

By: _____

Print Name: _____

Date: _____

EXHIBIT F TO LITTLE BIG BURGER RESTAURANT FRANCHISE AGREEMENT

FORM OF ADDENDUM TO LEASE

THIS ADDENDUM is executed as of this ____ day of _____, _____, by and between _____ (“**Franchisee**”) and _____ (“**Landlord**”), as an addendum to the lease, as modified, amended, supplemented, renewed and/or extended from time to time as contemplated herein, (“**Lease**”) for the premises located at _____, State of _____ (“**Premises**”) dated as of _____, ____.

Franchisee has entered into a Little Big Burger Franchise Agreement (“Franchise Agreement”) with LBB Franchising, LLC (“Franchisor”) for the development and operation of a Little Big Burger restaurant at the Premises, and as a requirement thereof, the lease for the Premises must contain the provisions contained in this Addendum.

Landlord and Franchisee agree that the terms contained herein shall supersede any terms to the contrary set forth in the Lease.

NOW THEREFORE, in consideration of mutual covenants set forth herein, the execution and delivery of the Lease, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Franchisee hereby agree as follows:

1. Landlord shall deliver to Franchisor a copy of any notice of default or termination of the Lease at the same time such notice is delivered to Franchisee.
2. Franchisee hereby assigns to Franchisor, with Landlord’s irrevocable and unconditional consent, all of Franchisee’s rights, title and interests to and under the Lease upon any termination or non-renewal of the Franchise Agreement, but no such assignment shall be effective unless: (a) the Franchise Agreement is terminated or expires without renewal; (b) Franchisor has exercised its option to acquire the Premises under the Franchise Agreement; and (c) Franchisor notifies the Franchisee and Landlord in writing that Franchisor assumes Franchisee’s obligations under the Lease.
3. Franchisor shall have the right, but not the obligation, upon giving written notice of its election to Franchisee and Landlord, to cure any breach of the Lease and, if so stated in the notice, to also succeed to Franchisee’s rights, title and interests thereunder.
4. The Lease may not be modified, amended, supplemented, renewed, extended or assigned by Franchisee without Franchisor’s prior written consent.
5. Franchisee and Landlord acknowledge and agree that Franchisor shall have no liability or obligation whatsoever under the Lease unless and until Franchisor assumes the Lease in writing pursuant to Section 2 or Section 3, above.
6. If Franchisor assumes the Lease, as provided above, Franchisor may, without Landlord’s prior consent, further assign the Lease to a franchisee of Franchisor to operate the Little Big Burger restaurant at the Premises provided that the following criteria are met: (a) Franchisor has an established franchising program for Little Big Burger restaurants; and (b) the proposed franchisee has met all of Franchisor’s applicable program criteria and requirements and has executed Franchisor’s standard franchise agreement. Landlord agrees to execute such further documentation to confirm its consent to the assignment permitted under this Addendum as Franchisor may reasonably request. Upon such assignment to a franchisee of Franchisor, Franchisor shall be released from any further liability under the terms and conditions of the Lease.

7. Landlord and Franchisee hereby acknowledge that Franchisee has agreed under the Franchise Agreement that Franchisor and its employees or agents shall have the right to enter the Premises for certain purposes. Landlord hereby agrees not to interfere with or prevent such entry by Franchisor, its employees or agents. Landlord and Franchisee hereby further acknowledge that in the event the Franchise Agreement expires (without renewal) or is terminated, Franchisee is obligated to take certain steps under the Franchise Agreement to de-identify the Premises as an Little Big Burger restaurant. Landlord agrees to permit Franchisor, its employees or agent, to enter the Premises and remove signs (both interior and exterior), décor and materials displaying any marks, designs or logos owned by Franchisor, provided Franchisor shall bear the expense of repairing any damage to the Premises as a result thereof.
8. Landlord and Franchisee agree that if Landlord is an affiliate or an owner of Franchisee and Landlord proposes to sell the Premises, prior to the sale of the Premises, the Lease upon the request of Franchisor shall be amended to reflect a rental rate and other terms that are the reasonable and customary rental rates and terms prevailing in the community where the Little Big Burger restaurant is located.
9. Franchisor, along with its successors and assigns, is an intended third party beneficiary of the provisions of this Addendum.
10. Copies of any and all notices required or permitted hereby or by the Lease shall also be sent to Franchisor at 7621 Little Avenue, Suite 414 Charlotte, North Carolina 28226 (Attn: EVP, Franchising and Development) or such other address as Franchisor shall specify by written notice to Landlord.
11. Under the Franchise Agreement, any lease for the location of an Little Big Burger restaurant is subject to Franchisor's approval with regards to the terms and conditions that affect Franchisor, and Franchisor expressly disclaims any other connotations either expressed or implied as to the other terms and conditions set forth in the Lease that are negotiated between Landlord and Franchisee. Accordingly, the Lease is contingent upon such approval, and Franchisor shall provide written notice to Landlord and Franchisee to evidence such approval, as applicable.

[Signature page follows.]

WITNESS the execution hereof under seal.

LANDLORD: _____

By: _____

Print Name: _____

Title: _____

Date: _____

FRANCHISEE: _____

By: _____

Print Name: _____

Title: _____

Date: _____

Subscribed and sworn to before me this ____ day
of _____, ____.

Notary Public

My Commission expires: _____

Subscribed and sworn to before me this ____
day of _____, ____.

Notary Public

My Commission expires: _____

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EXHIBIT D
FINANCIAL STATEMENTS

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

FORM 10-K

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

For the fiscal year ended December 31, 2021

☐ **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: 000-56160

AMERGENT HOSPITALITY GROUP, INC.

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

84-4842958
(IRS Employer
Identification Number)

7529 Red Oak Lane
Charlotte, NC
(Address of Principal Executive Offices)

28226
(Zip Code)

(704) 366-5122
(Registrant's Telephone Number, Including Area Code)

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

Securities registered under Section 12(g) of the Act: **Common Stock**

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
N/A	N/A	N/A

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

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

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

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

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

Large accelerated filer ☐
Non-accelerated filer ☒

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 has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☐

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date. There were a total of 15,706,736 shares of Common Stock outstanding as of April 13, 2022.

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CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS AND INFORMATION

This Annual Report on Form 10-K (the “Report”) contains forward-looking statements. These forward-looking statements are identified by terms and phrases such as “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “predict,” “project,” “should,” and “will” and similar expressions and include references to assumptions and relate to our future prospects, developments and business strategies. There are a number of important factors that could cause the actual results to differ materially from those expressed in any forward-looking statement made by us. These factors include, but are not limited to:

- the accuracy of our estimates regarding expenses, capital requirements and need for additional financing;
- our ability to operate our business and generate profits. We have not been profitable to date;
- decline in global financial markets and economic downturn resulting from the coronavirus COVID-19 global pandemic;
- impact of business interruptions resulting from the coronavirus COVID-19 global pandemic;
- our ability to remediate weaknesses we identified in our disclosure controls and procedures and our internal control over financial reporting in a timely enough manner to eliminate the risks posed by such material weaknesses in future periods;
- general risk factors affecting the restaurant industry, including current economic climate, costs of labor and food prices;
- intensive competition in our industry and competition with national, regional chains and independent restaurant operators;
- our ability, and our dependence on the ability of our franchisees, to execute on business plans effectively;
- actions of our franchise partners or operating partners which could harm our business;
- failure to protect our intellectual property rights, including the brand image of our restaurants;
- changes in customer preferences and perceptions;
- increases in costs, including food, rent, labor and energy prices;
- constraints could affect our ability to maintain competitive cost structure, including, but not limited to labor constraints;
- work stoppages at our restaurants or supplier facilities or other interruptions of production;
- the risks associated with leasing space subject to long-term non-cancelable leases;
- we may not attain our target development goals and aggressive development could cannibalize existing sales;
- negative publicity about the ingredients we use, or the potential occurrence of food-borne illnesses or other problems at our restaurants;
- breaches of security of confidential consumer information related to our electronic processing of credit and debit card transactions;
- we may be unable to reach agreements with various taxing authorities on payment plans to pay off back taxes;
- difficulties as acquired restaurants are integrated into our operations and failure to realize anticipated synergies;
- our debt financing agreements expose us to interest rate risks, contain obligations that may limit the flexibility of our operations, and may limit our ability to raise additional capital; and
- sales of common stock or derivative securities by us in private placements or public offerings as well as the conversion of existing convertible debt securities could result in substantial dilution to our existing stockholders.

We undertake no obligation to update or revise the forward-looking statements included in this Report, whether as a result of new information, future events or otherwise, after the date of this Report. Our actual results, performance or achievements could differ materially from the results expressed in, or implied by, these forward-looking statements. Factors that could cause or contribute to such differences are discussed in the section entitled “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included herein.

Unless otherwise noted, references in this Report to the “Registrant,” “Company,” “Amergent,” “Spin-Off Entity,” “we,” “our” or “us” means Amergent Hospitality Group, Inc., a Delaware corporation, and our subsidiaries.

PART I

ITEM 1. BUSINESS

BACKGROUND- MERGER AND SPIN-OFF

Amergent Hospitality Group Inc. was incorporated on February 18, 2020 as a wholly-owned subsidiary of Chanticleer Holdings Inc., a Delaware corporation (“Chanticleer”), for the purpose of conducting the business of Chanticleer and its subsidiaries after completion of the spin-off of all the shares of Amergent to the shareholders of Chanticleer.

In connection with and prior to its merger (“Merger”) with Sonnet BioTherapeutics Holdings Inc., a New Jersey Corporation (“Sonnet”), Chanticleer contributed and transferred to Amergent, a newly formed, wholly-owned subsidiary of Chanticleer, all of Chanticleer’s business, operations, assets and liabilities, pursuant to the Contribution Agreement between Chanticleer and Amergent dated March 31, 2020.

All of Chanticleer’s then current restaurant business operations were contributed to Amergent and the stockholders of record received the same pro-rata ownership in Amergent as in Chanticleer.

As a result of the Spin-Off, Amergent emerged as successor to the business, operations, assets and liabilities of pre-merger Chanticleer. Additionally, Amergent’s shareholder base and their holdings (on a pro-rata basis) are identical to that of pre-merger Chanticleer.

GOING CONCERN QUALIFICATION

Our financial statements as of and for the years ended December 31, 2021 and 2020 were prepared under the assumption that we will continue as a going concern for the next 12 months from the date of issuance of these financial statements. As of December 31, 2021, our cash balance was \$2.3 million, of which \$1.7 million was restricted cash, our working capital deficiency was \$12.5 million and we had significant near-term commitments and contractual obligations. These conditions raise substantial doubt about the Company’s ability to continue as a going concern. The Company believes that its current level of cash and cash equivalents are not sufficient to fund its operations for the next 12 months.

To alleviate these conditions, management is evaluating various funding alternatives and may seek to raise additional funds through the issuance of equity, mezzanine or debt securities, through arrangements with strategic partners or through obtaining credit from financial institutions. As we seek additional sources of financing, there can be no assurance that such financing will be available to us on favorable terms or at all. Our ability to obtain additional financing in the debt and equity capital markets is subject to several factors, including market and economic conditions, our performance and investor sentiment with respect to us and our industry.

BUSINESS

Amergent is in the business of owning, operating and franchising fast casual dining concepts.

We operate and franchise a system-wide total of 42 fast casual restaurants of which 29 are company-owned (an additional location opened January 4, 2022) and included in our consolidated and combined financial statements, and 13 are owned and operated by franchisees under franchise agreements.

American Burger Company (“ABC”) is a fast-casual dining chain consisting of 2 locations in North Carolina and New York, known for its diverse menu featuring fresh salads, customized burgers, milk shakes, sandwiches, and beer and wine.

BGR: The Burger Joint (“BGR”) was acquired in March 2015 and currently consists of 7 company-owned locations in the United States and 7 franchisee-operated locations in the United States. The former locations in the Middle East are closed.

Little Big Burger (“LBB”) was acquired in September 2015 and currently consists of 16 company-owned locations in the Portland, Oregon, Seattle, Washington, and Charlotte, North Carolina areas. One location was temporarily closed at December 31, 2021 due to lack of available employees. The newest location at the University of Oregon was leased in August 2021 and became operational in December 2021. Of the company-owned restaurants, 8 of those locations are operated under partnership agreements with investors we have determined we are the primary beneficiary as we control the management and operations of the stores and the partner supplies the capital to open the store in exchange for a non-controlling interest.

We acquired Pie Squared Holdings LLC (“PIE” or “Pie Squared Holdings”) on August 30, 2021. Pie Squared Holdings, directly and through its four wholly-owned subsidiaries, owns, operates and franchises pizza restaurants operating under the tradename PizzaRev. The PizzaRev stores consist of 3 company-owned locations, one of which opened on January 4, 2022, and nine franchised locations. Three of these franchised locations were not open at the time of purchase and are not included in our total store count. One additional franchise location is planned to open in 2022.

The Jantzen Beach, Oregon location was a former Hooters of America location and is only open for online gaming sales, drinks and a limited food menu.

Through the use of partnerships, the Company partners with private investors who contribute all or substantially all of the capital required to open a restaurant in return for an ownership interest in the LLC and an economic interest in the net income of the restaurant location. The Company manages the operations of the restaurant in return for a management fee and an economic interest in the net income of the restaurant location. While terms may vary by LLC, the investor generally contributes between \$0.3 million and \$0.4 million per location and is entitled to 80% of the net income of the LLC until such time as the investor recoups the initial investment and the investor return on net income changes from 80% to 50%. The Company contributes the intellectual property and management related to operating a Little Big Burger, manages the construction, opening and ongoing operations of the store in return for a 5% management fee and 20% of net income until such time as the investor recoups the initial investment and the Company return on net income changes from 20% to 50%.

Additionally, we utilize franchise agreements to allow third parties to franchise a restaurant and, thus, are able to utilize the intellectual property, trademark, and trade dress in return for a franchise fee. The franchise agreement provides the franchisee with a designated territory or marketing area for an initial term of 10 years, with four successive five-year renewals. An upfront fee of \$40,000 is required along with a \$5,000 renewal fee and continuing fees based on a percent of revenues. We recognize the upfront fee allocated to each restaurant as revenue on a straight-line basis over the restaurant’s license term, which generally begins upon the signing of the contract for area development agreements and upon the signing of a store lease for franchise agreements. The payments for these upfront fees are generally received upon contract execution. Continuing fees, which are based upon a percentage of franchisee revenues (typically 5.5%) and are not subject to any constraints, are recognized on the accrual basis as those sales occur. The payments for these continuing fees are generally made on a weekly basis.

Franchises must be operated in strict compliance with our operations manual, which prescribes staffing requirements, minimum months, days and hours of operation, techniques and processes for service, length and method of training personnel, working capital and inventory requirements, accounting system and other operational standards. We provide up to five days of on-site training at no charge to franchisee. Additional on-site training may be requested by franchisee and will be provided at a daily rate of \$500. We have the right to approve the property lease for each new franchise. We maintain image control and may direct a franchise to remodel. We provide specifications for equipment, safety and security, subject to additional location regulations. Franchisees must utilize designated, approved suppliers or obtain pre-approval of any new supplier. Franchisees have certain prescribed marketing requirements and we may require franchisee to contribute a percentage of net sales to a regional brand development fund. Further, we may require certain of franchisee’s personnel to attend an annual conference or all franchisee’s personnel to attend refresher training, at franchisee’s sole expense.

Franchisees have sole control over the day-to-day operations of the franchise. The franchisee is responsible for the hiring and termination of its personnel and compliance with applicable laws. The franchisee must sell wine and beer at the store and may opt to sell other alcoholic beverages. The franchisee is responsible for obtaining all required business licenses, including liquor licenses and to carry required insurance.

Any improvements or new concepts developed by a franchisee (such as improvements to proprietary recipes, equipment, merchandise or software) belong to us. Our franchise agreement contains confidentiality and non-disclosure covenants and a franchisee must require its personnel to execute confidentiality and non-disclosure agreements.

We hold a minority investment in corporate owned Hooters. However, we do not currently intend to open additional Hooters restaurants.

Restaurant Geographic Locations

We currently operate ABC, BGR, LBB and PIE restaurants in the United States. ABC is in North Carolina and New York. BGR operates company restaurants in the mid-Atlantic region of the United States, as well as franchise locations across the US. LBB operates in Oregon, Washington and North Carolina. PIE operates company restaurants in California, as well as franchise locations in California. We also operate gaming machines in Portland, Oregon under license from the Oregon Lottery Commission.

Competition

The restaurant industry is extremely competitive. We compete with other restaurants on the taste, quality and price of our food offerings. Additionally, we compete with other restaurants on service, ambience, location and overall customer experience. We believe that we compete primarily with local and regional sports bars and national casual dining and quick casual establishments, and to a lesser extent with quick service restaurants in general. Many of our competitors are well-established national, regional or local chains and many have greater financial and marketing resources than we do. We also compete with other restaurant and retail establishments for site locations and restaurant employees.

Information Systems and Security

Our information is processed, transmitted, and stored in a secure environment using enterprise grade technologies in order to protect both our data and the physical computing assets. While we believe that our internal policies, systems and procedures for cybersecurity are thorough, the risk of a cybersecurity event cannot be eliminated.

Proprietary Rights

We have trademarks and tradenames associated with American Burger, BGR, Little Big Burger and PizzaRev. We believe that the trademarks, service marks and other proprietary rights that we use in our restaurants have significant value and are important to our brand-building efforts and the marketing of our restaurant concepts. Although we believe that we have sufficient rights to all of our trademarks and service marks, we may face claims of infringement that could interfere with our ability to market our restaurants and promote our brand. Any such litigation may be costly and divert resources from our business. Moreover, if we are unable to successfully defend against such claims, we may be prevented from using our trademarks or service marks in the future and may be liable for damages.

Government Regulation

We are subject to various federal, state and local laws, rules and regulations that affect our business. Since March 2020, the COVID-19 pandemic has resulted in frequently revised state and local government regulations affecting our business, which have significantly impacted our restaurant operations and continue to do so. Regulations relating to opening and closing of restaurant dining rooms or outdoor patios, business hours, sanitation practices, to-go alcohol sales, guest spacing within dining rooms and other social distancing practices, and employment and safety-related laws involving contact tracing, exclusions and paid sick leave have materially affected the way we operate our business and serve our guests and have adversely impacted our cost structure and resulting profitability of our restaurants.

Environmental regulation

We are subject to a variety of federal, state and local environmental laws and regulations. Such laws and regulations have not had a significant impact on our capital expenditures, earnings or competitive position.

Local regulation

Our locations are subject to licensing and regulation by a number of government authorities, which may include health, sanitation, safety, fire, building and other agencies in the countries, states or municipalities in which the restaurants are located. Opening sites in new areas could be delayed by license and approval processes or by more requirements of local government bodies with respect to zoning, land use and environmental factors. Our agreements with our franchisees require them to comply with all applicable federal, state and local laws and regulations.

Each restaurant requires appropriate licenses from regulatory authorities allowing it to sell liquor, beer and wine, and each restaurant requires food service licenses from local health authorities. Our licenses to sell alcoholic beverages may be suspended or revoked at any time for cause, including violation by us or our employees of any law or regulation pertaining to alcoholic beverage control. We are subject to various regulations by foreign governments related to the sale of food and alcoholic beverages and to health, sanitation and fire and safety standards. Compliance with these laws and regulations may lead to increased costs and operational complexity and may increase our exposure to governmental investigations or litigation.

Franchise Regulations

We must comply with regulations adopted by the Federal Trade Commission (the “FTC”) and with several state and foreign laws that regulate the offer and sale of franchises. The FTC’s Trade Regulation Rule on Franchising (“FTC Rule”) and certain state and foreign laws require that we furnish prospective franchisees with a franchise disclosure document containing information prescribed by the FTC Rule and applicable state and foreign laws and regulations. We register the disclosure document in domestic and foreign jurisdictions that require registration for the sale of franchises. Our domestic franchise disclosure document complies with FTC Rule and various state disclosure requirements, and our international disclosure documents comply with applicable requirements.

We also must comply with state and foreign laws that regulate some substantive aspects of the franchisor-franchisee relationship. These laws may limit a franchisor’s ability to: terminate or not renew a franchise without good cause; interfere with the right of free association among franchisees; disapprove the transfer of a franchise; discriminate among franchisees regarding charges, royalties and other fees; and place new stores near existing franchises. Bills intended to regulate certain aspects of franchise relationships have been introduced into the United States Congress on several occasions during the last decade, but none have been enacted.

Employment Regulations

We are subject to state and federal employment laws that govern our relationship with our employees, such as minimum wage requirements, overtime and working conditions and citizenship requirements. Many of our employees are paid at rates which are influenced by changes in the federal and state wage regulations. Accordingly, changes in the wage regulations could increase our labor costs. The work conditions at our facilities are regulated by the Occupational Safety and Health Administration and are subject to periodic inspections by this agency. In addition, the enactment of recent legislation and resulting new government regulation relating to healthcare benefits may result in additional cost increases and other effects in the future.

Gaming Regulations

We are also subject to regulations in Oregon where we operate gaming machines. Gaming operations are generally highly regulated and conducted under the permission and oversight of the state or local gaming commission, lottery or other government agencies.

Other Regulations

Our facilities must comply with the applicable requirements of the Americans with Disabilities Act of 1990 (“ADA”) and related state statutes. The ADA prohibits discrimination on the basis of disability with respect to public accommodations and employment. Under the ADA and related state laws, when constructing new restaurants or undertaking significant remodeling of existing restaurants, we must make them readily accessible to disabled persons. We must also make reasonable accommodations for the employment of disabled persons.

We are subject to a variety of consumer protection and similar laws and regulations at the federal, state and local level. Failure to comply with these laws and regulations could subject us to financial and other penalties.

Seasonality

The sales of our restaurants may peak at various times throughout the year due to certain promotional events, weather and holiday related events. For example, our domestic fast casual restaurants tend to peak in the Spring, Summer and Fall months when the weather is milder. Severe weather including hurricanes, tornados, thunderstorms, snow and ice storms, prolonged extreme temperatures and similar conditions may impact restaurant sales volumes in some of the markets where we operate. Quarterly results also may be affected by the timing of the opening of new stores and the closing of existing stores. For these reasons, results for any quarter are not necessarily indicative of the results that may be achieved for the full fiscal year.

Employees

As of December 31, 2021, we had 348 employees in the United States. We employ additional people on a part-time basis as needed.

Working Capital Practices

Historically, we have financed our operations through public and private sales of common stock, issuance of preferred and common stock, convertible debt instruments, term loans and credit lines from financial institutions, and cash generated from operations. On March 27, 2020, Congress passed The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), which included the Paycheck Protection Program (“PPP”) for small businesses. On April 27, 2020, Amergent received a PPP loan in the amount of \$2.1 million. On February 25, 2021, the Company received a second PPP loan of \$2.0 million. These PPP loans may be forgiven if certain criteria are met.

The Employee Retention Credit (“ERC”) under the CARES Act is a refundable tax credit which encourages businesses to keep employees on the payroll during the COVID-19 pandemic. The Company recognized credits of \$2.5 million under the ERC program for the year ended December 31, 2021. The program ended on January 1, 2022.

The American Rescue Plan Act established the Restaurant Revitalization Fund (“RRF”) to provide funding to help restaurants and other eligible businesses keep their doors open during the COVID-19 pandemic. Pie Squared Holdings received a grant under the RRF, and \$2.0 million of unused funds received under the RRF at the closing of the acquisition were placed into escrow for the benefit of the Company. The Company recognized \$0.5 million in RRF grant income during the year ended December 31, 2021.

Available Information

We maintain a website at the following address: www.amergenthg.com. The information on our website is not incorporated by reference in this report. We make available on or through our website certain reports and amendments to those reports that we file with or furnish to the Securities and Exchange Commission (“SEC”) in accordance with the Securities Exchange Act of 1934, as amended (“Exchange Act”). These include our Annual Reports on Form 10-K, our Quarterly Reports on Form 10-Q and our Current Reports on Form 8-K. We make this information available on our website free of charge as soon as reasonably practicable after we electronically file the information with, or furnish it to, the SEC. In addition, we routinely post on the “Investors” page of our website news releases, announcements and other statements about our business and results of operations, some of which may contain information that may be deemed material to investors. Therefore, we encourage investors to monitor the “Investors” page of our website and review the information we post on that page. The SEC maintains a website that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC at the following address: <http://www.sec.gov>.

ITEM 1A. RISK FACTORS

The following are some of the risks and uncertainties that could cause our actual results to differ materially from those presented in our forward-looking statements. The risks and uncertainties described below are not the only ones we face but do represent those risks and uncertainties that we believe are material to us. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also harm our business. All forward-looking statements in this document are based on information available to us as of the date hereof, and we assume no obligations to update any such forward-looking statements.

Summary of Material Risk Factors

- We have a history of operating losses. Our estimates regarding the sufficiency of our cash resources and capital requirements and needs for additional financing raises substantial doubt about our ability to continue as a going concern.
- We require additional financing to support our working capital and execute our operating plans for fiscal 2022, which may not be available or may be costly and dilutive.
- The impact of the COVID-19 pandemic could continue to harm our business and results of operations.
- Disruption within our supply chain could have an adverse effect on our business, financial condition and results of operations.
- We are in arrears on rent due on several of our leases as a result of the COVID-19 pandemic. We have pending litigation related to 7 sites of which 4 have permanently closed. The outcome of this litigation could result in the permanent closure of additional restaurant locations as well as the possibility of the Company being required to pay interest and damages, modify certain leases on unfavorable terms and could result in material impairments to the Company's assets.
- Various subsidiaries are delinquent in payment of an aggregate of approximately \$2.0 million of payroll taxes and failure to remit these payments promptly or through settlements could have a material adverse effect on our business, financial condition and results of operations.
- We may have to repay the \$10.0 million of grant proceeds received from the Restaurant Revitalization Fund.
- We may not be entitled to forgiveness for the Paycheck Protection Program Loans.
- We have identified a material weakness in our internal control and procedures and internal control over financial reporting.

RISKS RELATED TO DELINQUENT PAYROLL TAXES

Various subsidiaries of the Company are delinquent in payment of payroll taxes to taxing authorities prior to the current year when previous management was in place, and a failure to remit these payments promptly or through settlements could have a material adverse effect on our business, financial condition and results of operations.

As of December 31, 2021 and 2020, approximately \$2.0 million and \$3.0 million, respectively, of employee and employer taxes (including estimated penalties and interest) has been accrued but not remitted in years prior to 2019 to certain taxing authorities by certain subsidiaries of the Company for cash compensation paid. As a result, these subsidiaries of the Company are liable for such payroll taxes. These various subsidiaries of the Company have received warnings and demands from the taxing authorities and management is prioritizing and working with the taxing authorities to make these payments in order to avoid further penalties and interest. Failure to remit these payments promptly could result in increased penalty fees and have a material adverse effect on our business, financial condition and results of operations. Interest and penalties on the remaining liability are accruing at approximately \$10,000 per month.

RISKS RELATED TO PAYCHECK PROTECTION PROGRAM LOANS

We may not be entitled to forgiveness of our recently received Paycheck Protection Program Loans, and our application for the Paycheck Protection Program Loans could in the future be determined to have been impermissible.

On March 27, 2020, Congress passed The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), which included the Paycheck Protection Program (“PPP”) for small businesses. On April 27, 2020, Amergent received a PPP loan of \$2.1 million. Due to the Spin-Off and Merger, Amergent was not publicly traded at the time of the loan application or funding. The note bears interest at 1% per year, matures in April 2022, and requires monthly interest and principal payments of approximately \$0.1 million beginning in November 2020 and through maturity. The currently issued guidelines of the program allow for the loan proceeds to be forgiven if certain requirements are met. Any loan proceeds not forgiven will be repaid in full. The Company had applied for loan forgiveness in the full amount of the loan, but the request was initially denied. The Company discussed the forgiveness request with the government agency that granted the loan and in March 2022, the U.S. Small Business Administration (“SBA”) reversed its initial decision and will once again review the Company’s application for loan forgiveness. No assurance can be given as to the amount, if any, of forgiveness. The application for forgiveness allowed the Company to defer the timing of repayment until the forgiveness assessment is completed.

On February 25, 2021, the Company received a second loan of \$2.0 million under the PPP. Amergent is not listed on a national securities exchange. The note bears interest at 1% per year, matures on February 25, 2026, and requires monthly principal and interest payments of approximately \$45,000 beginning June 25, 2022 through maturity.

We will be required to repay any portion of the outstanding principal that is not forgiven, along with accrued interest, and we cannot provide any assurance that we will be eligible for loan forgiveness, that we will apply for forgiveness, or that any amount of the PPP loans will ultimately be forgiven by the U.S. SBA. In order to apply for the PPP loans, we were required to certify, among other things, that the current economic uncertainty made the PPP loans request necessary to support our ongoing operations. We made this certification in good faith after analyzing, among other things, the maintenance of our workforce, our need for additional funding to continue operations, and our ability to access alternative forms of capital in the current market environment to offset the effects of the COVID-19 pandemic. Following this analysis, we believe that we satisfied all eligibility criteria for the PPP loans, and that our receipt of the PPP loans is consistent with the broad objectives of the CARES Act. The certification described above is subject to interpretation. On April 23, 2020, the U.S. SBA issued guidance stating that it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith. The lack of clarity regarding loan eligibility under the Paycheck Protection Program has resulted in significant media coverage and controversy with respect to public companies applying for and receiving loans. If, despite our good-faith belief that given our circumstances we satisfied all eligible requirements for the PPP loans, we are later determined to have not been in compliance with these requirements or it is otherwise determined that we were ineligible to receive the PPP loans, we may be required to repay the PPP loans in their entirety and/or be subject to additional penalties. Should we be audited or reviewed by federal or state regulatory authorities as a result of filing an application for forgiveness of the PPP loans or otherwise, such audit or review could result in the diversion of management’s time and attention and the incurrence of additional costs. Any of these events could have a material adverse effect on our business, results of operations and financial condition.

RISKS RELATED TO RESTAURANT REVITALIZATION FUND

We may have to repay the \$10.0 million of grant proceeds received from the Restaurant Revitalization Fund.

If it is determined that Pie Squared Holdings obtained the grant improperly or the disbursement of such grant monies were not for “eligible uses” then we would be responsible for the ramifications of such actions, including repayment of the approximately \$10.0 million of grant monies, among other items. An assessment of the sellers’ indemnification agreement signed under the acquisition agreement would also need to be considered.

The American Rescue Plan Act established the Restaurant Revitalization Fund (“RRF”) to provide funding to help restaurants and other eligible businesses keep their doors open. This program provides restaurants with funding equal to their pandemic-related revenue loss up to \$10.0 million per business and no more than \$5.0 million per physical location. Recipients are not required to repay the funding as long as funds are used for eligible uses no later than March 11, 2023.

In 2021, and prior to the acquisition, Pie Squared Holdings received a grant under the U.S. Small Business Administration's ("SBA") RRF for approximately \$10.0 million. The proceeds received were mainly used to repay existing debt and to also pay operating expenses. The unused funds received under the RRF at closing of \$2.0 million were placed into escrow for the benefit of the Company for working capital to be used solely in the operations of the acquired business. The Company will periodically submit to the escrow agent the planned uses of these funds, and the sellers have the right to review the planned uses to determine whether, in the sellers' opinion, the planned uses meet the criteria of "eligible uses" under the RRF. If determined to not meet such criteria, then the escrow agent will not distribute that portion of the request.

As the Company acquired all the outstanding membership interests in Pie Squared Holdings, the Company assumed all the rights and obligations of Pie Squared Holdings that arose from transactions of Pie Squared Holdings prior to the sale event, both stated rights and obligations as well as those that are contingent. As noted above, Pie Squared Holdings applied for and received an approximately \$10.0 million grant from the U.S. SBA under the RRF and used approximately \$8.0 million to repay existing debt of Pie Squared Holdings and to fund some of its operating expenses. Under the RRF there is a requirement that the grant monies be for "eligible uses." The Company, through the structure of the acquisition, is now responsible that the grant proceeds were, in fact, properly obtained and disbursed for "eligible uses." If it is determined that Pie Squared Holdings obtained the grant improperly or the disbursement of such grant monies were not "eligible uses" then the Company would be responsible for the ramifications of such actions, including repayment of the approximately \$10.0 million of grant monies, among other items. Management completed its analysis of this contingency and concluded that, at this time, a liability does not need to be recorded for this contingency. In connection with the acquisition, the Company obtained an indemnification from the sellers which is inclusive of any matters related to the RRF. As such, an assessment of the sellers' indemnification agreement signed under the acquisition agreement was also considered in the Company's analysis.

RISKS RELATED TO IMPACT OF THE COVID-19 PANDEMIC

Defaults and closures under restaurant leases that resulted from the COVID-19 pandemic could result in material impairments to the Company's assets.

If an existing or future restaurant is not profitable, and we decide to close it, we may nonetheless be committed to perform our obligations under the applicable lease including, among other things, paying the base rent for the balance of the lease term. In addition, as each of our leases expires, we may fail to negotiate renewals, either on commercially acceptable terms or at all, which could cause us to pay increased occupancy costs or to close restaurants in desirable locations. These potential increased occupancy costs and closed restaurants could have a material adverse effect on our business, financial condition and results of operations.

During 2021 the Company was in arrears on rent due on several of its leases as a result of the COVID-19 pandemic. As a result, the Company has pending litigation related to 7 sites of which 4 have permanently closed. The outcome of this litigation could result in the permanent closure of additional restaurant locations as well as the possibility of the Company being required to pay interest and damages, modify certain leases on unfavorable terms and could result in material impairments to the Company's assets.

We are not contractually obligated to guarantee leasing arrangements between franchisees and their landlords.

The COVID-19 pandemic has materially disrupted and may continue to disrupt our business, operations, financial condition and results of operations.

Federal, state and local government responses to the COVID-19 pandemic have disrupted our industry and have had a material adverse effect on our business. During fiscal 2020 and 2021, state and local governments imposed a variety of restrictions on people and businesses, and public health authorities offered regular guidance on health and safety, which have caused and may continue to cause consumers to avoid or limit gatherings in public places or social interactions.

As of the date of this report, all of our restaurants are able to open their dining rooms and few capacity restrictions or other COVID-19 restrictions remain in place; however, it is possible that future increases in cases or further localized or widespread outbreaks of COVID-19 could require us to again reduce our capacity or suspend our in-restaurant dining operations. The COVID-19 pandemic and these responses have affected and may continue to adversely affect our guest traffic, sales and operating costs, and we cannot predict whether an increase in cases or localized or widespread outbreaks will occur and whether future government responses thereto may impact us. In addition, future increases in cases or further localized or widespread outbreaks of COVID-19 pandemic could negatively impact our suppliers, and we could face shortages of food items or other supplies at our restaurants, and our operations and sales could be adversely impacted by such supply interruptions.

RISKS RELATED TO MATERIAL WEAKNESS IN OUR INTERNAL CONTROL AND PROCEDURES AND INTERNAL CONTROL OVER FINANCIAL REPORTING

We have identified a material weakness in our internal control and procedures and internal control over financial reporting. If not remediated, our failure to establish and maintain effective disclosure controls and procedures and internal control over financial reporting could result in material misstatements in our financial statements and a failure to meet our reporting and financial obligations, each of which could have a material adverse effect on our financial condition and the trading price of our common stock.

Maintaining effective internal control over financial reporting and effective disclosure controls and procedures are necessary for us to produce reliable financial statements. We have re-evaluated our internal control over financial reporting and our disclosure controls and procedures and concluded that they were not effective as of December 31, 2021 and we concluded there was a material weakness in the design of our internal control over financial reporting.

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

The material weakness that we identified related to our financial close process including maintaining a sufficient complement of personnel commensurate with our accounting and financial reporting requirements as well as development and extension of controls over the recording of closing journal entries, accounting for business combinations, contingencies and proper cut-off of accounts payable and accrued expenses at period end.

We initiated several steps to evaluate and implement measures designed to improve our internal control over financial reporting in order to remediate the control deficiencies noted above, including recruitment of an accounting consultant and seeking outside advice from other third-party consultants to assist in improving the Company's internal control, simplify its reporting processes and reduced the risk of undetected errors. In June 2020, the Company hired an accounting consultant that has appropriate expertise in accounting and reporting under U.S. GAAP and SEC regulations and has allowed the Company to be better aligned with segregation of duties. With the hiring of this consultant, the Company will be instituting monthly and quarterly meetings to identify significant, infrequent and unusual transactions as well as ensure timely reporting. Additionally, in September 2020 the Company engaged a third-party accounting and advisory firm to assist with, among other areas, the analysis of complex, infrequent and unusual transactions as well as provide valuation services to the Company.

The Company is committed to remediating its material weaknesses as promptly as possible. Implementation of the Company's remediation plans has commenced and is being overseen by the Audit Committee. However, there can be no assurance as to when these material weaknesses will be remediated or that additional material weaknesses will not arise in the future. Even effective internal control can provide only reasonable assurance with respect to the preparation and fair presentation of financial statements. Any failure to remediate the material weaknesses, or the development of new material weaknesses in our internal control over financial reporting, could result in material misstatements in our financial statements, which in turn could have a material adverse effect on our financial condition and the trading price of our common stock and we could fail to meet our financial reporting obligations.

RISKS RELATED TO CLIMATE CHANGE

Water scarcity and poor quality could negatively impact our costs and capacity.

Water is a limited resource in many parts of the world, facing unprecedented challenges from overexploitation, increasing demand for food and other consumer and industrial products whose manufacturing processes require water, increasing pollution and emerging awareness of potential contaminants, poor management, lack of physical or financial access to water, sociopolitical tensions due to lack of public infrastructure in certain areas of the world and the effects of climate change. As the demand for water continues to increase around the world, and as water becomes scarcer and the quality of available water deteriorates, we may incur higher costs, which could adversely affect our profitability.

Increased demand for food products and decreased agricultural productivity may negatively affect our business.

Decreased agricultural productivity in certain regions of the world as a result of changing weather patterns; increased agricultural regulations; and other factors have in the past, and may in the future, limit the availability and/or increase the cost of such agricultural commodities and could impact the food security of communities around the world.

Adverse weather conditions could reduce the demand for our products.

The sales of our products are influenced to some extent by weather conditions in the markets in which we operate. Unusually cold or rainy weather during the summer months may have a temporary effect on the demand for our products and contribute to lower sales, which could have an adverse effect on our results of operations for such periods.

Any adverse weather conditions, seasonal fluctuations, natural disasters and effects of climate change may adversely affect our results of operations.

The occurrence of natural disasters, such as fires, hurricanes or freezing weather may unfavorably affect our operations and financial performance. Any of the foregoing events may result in physical damage, temporary or permanent closure, lack of an adequate work force, or temporary or long-term disruption in the supply of food, beverages, electric, water, sewer and waste disposal services necessary for our restaurants to operate.

In addition, there has been increasing focus by the United States and overseas governmental authorities and investors on other environmental matters, such as climate change, which may increase the frequency and severity of weather-related events and conditions, such as drought and forest fires. This increased focus on climate change and efforts to reduce greenhouse gas emissions, waste, and water consumption may lead to new initiatives directed at regulating a yet to be specified array of environmental matters. Legislative, regulatory or other efforts to combat climate change or other environmental concerns could result in future increases in the cost of raw materials, taxes, transportation and utilities, which could affect our results of operations and necessitate future investments in facilities and equipment.

RISKS RELATED TO OUR OPERATING LOSSES

We have not been profitable to date and operating losses could continue.

We have incurred operating losses and generated negative cash flows since our inception and have financed our operations principally through equity investments and borrowings. Future profitability is difficult to predict with certainty. Failure to achieve profitability could materially and adversely affect the value of our Company and our ability to effect additional financings. The success of the business depends on our ability to increase revenues to offset expenses. If our revenues fall short of projections or we are unable to reduce operating expenses, our business, financial condition and operating results will be materially adversely affected.

Our consolidated and combined financial statements have been prepared assuming a going concern.

Our consolidated and combined financial statements as of and for the fiscal years ended December 31, 2021 and 2020 were prepared under the assumption that we will continue as a going concern for the next 12 months from the date of issuance of these consolidated and combined financial statements. Our independent registered public accounting firm has issued a report related to our annual consolidated and combined financial statements that includes an explanatory paragraph referring to our losses from operations and expressing substantial doubt in our ability to continue as a going concern without additional capital becoming available. Our ability to continue as a going concern is dependent upon our ability to obtain additional financing, re-negotiate or extend existing indebtedness, obtain further operating efficiencies, reduce expenditures and ultimately, create profitable operations. We may not be able to refinance or extend our debt or obtain additional capital on reasonable terms. Our consolidated and combined financial statements do not include adjustments that would result from the outcome of this uncertainty.

We may not be able to extend or repay our indebtedness owed to our secured lenders, which would have a material adverse effect on our financial condition and ability to continue as a going concern.

If we are unable to service or repay these obligations at maturity and we are otherwise unable to extend the maturity dates or refinance these obligations, we would be in default. We cannot provide any assurances that we will be able to raise the necessary amount of capital to service these obligations. Upon a default, our secured lenders would have the right to exercise their rights and remedies to collect, which would include foreclosing on our assets. Accordingly, a default would have a material adverse effect on our business, and we would likely be forced to seek bankruptcy protection.

We require additional financing to support our working capital and execute our operating plans for 2022, which may not be available or may be costly and dilutive.

We require additional financing to support our working capital needs and fund our operating plans for fiscal 2022. To alleviate these conditions, management is currently evaluating various funding alternatives and may seek to raise additional funds through the issuance of equity, mezzanine or debt securities, through arrangements with strategic partners or through obtaining credit from financial institutions. As we seek additional sources of financing, there can be no assurance that such financing would be available to us on favorable terms or at all. Our ability to obtain additional financing in the debt and equity capital markets is subject to several factors, including market and economic conditions, our performance and investor.

RISKS RELATED TO OUR DEBT FINANCING ARRANGEMENTS AND SIGNIFICANT SHAREHOLDERS

We have debt financing arrangements that could have a material adverse effect on our financial health and our ability to obtain financing in the future and may impair our ability to react quickly to changes in our business.

Our exposure to debt financing could limit our ability to satisfy our obligations, limit our ability to operate our business and impair our competitive position. For example, it could:

- increase our vulnerability to adverse economic and industry conditions, including interest rate fluctuations, because a portion of our borrowings are at variable rates of interest;
- require us to dedicate significant future cash flows to the repayment of debt, reducing the availability of cash to fund working capital, capital expenditures or other general corporate purposes;
- limit our flexibility in planning for, or reacting to, changes in our business and industry; and
- limit our ability to obtain additional debt or equity financing due to applicable financial and restrictive covenants contained in our debt agreements.

We may also incur additional indebtedness in the future, which could materially increase the impact of these risks on our financial condition and results of operations. Failure to successfully recapitalize the business could have a material adverse effect on our business, financial condition and results of operations.

Our 10% Secured Convertible Debenture in favor of Oz Rey, LLC (“Oz Rey”) contains financial and other covenants that, if breached, could trigger default.

Pursuant to our 10% Secured Convertible Debenture (“10% Debenture”) dated April 1, 2020 in favor of Oz Rey, we are required to:

- maintain a positive EBITDA;
- timely file all reports required by Section 12(g) or Section 15(d) of the Exchange Act;
- maintain positive net earnings;
- maintain a minimum market capitalization (based upon the number of shares of common stock outstanding and a 30-day VWAP) of at least \$5,500,000; and
- use commercially reasonable efforts to list the common stock on a Nasdaq Stock Market exchange.

In March 2022, Oz Rey, LLC agreed to subordinate payment of its 10% Debenture to newly issued 8% Senior Unsecured Convertible Debentures (“8% Debentures”). The Company may issue up to \$3.0 million of 8% Debentures. As of the date hereof, the Company issued \$1.3 million in 8% Debentures.

Any breach that is not waived by Oz Rey could trigger default of the 10% Debenture and our 8% Debentures.

RISKS RELATED TO OUR BUSINESS MODEL

We do not have full operational control over the franchisee-operated restaurants.

We are and will be dependent on our franchisees to maintain quality, service and cleanliness standards, and their failure to do so could materially affect our brands and harm our future growth. Our franchisees have flexibility in their operations, including the ability to set prices for our products in their restaurants, hire employees and select certain service providers. In addition, it is possible that some franchisees may not operate their restaurants in accordance with our quality, service and cleanliness, health or product standards. Although we intend to take corrective measures if franchisees fail to maintain high quality service and cleanliness standards, we may not be able to identify and rectify problems with sufficient speed and, as a result, our image and operating results may be negatively affected.

Any prior acquisitions, as well as future acquisitions, may have unanticipated consequences that could harm our business and our financial condition.

Any acquisition that we pursue, whether successfully completed or not, involves risks, including:

- material adverse effects on our operating results, particularly in the fiscal quarters immediately following the acquisition as the acquired restaurants are integrated into our operations;
- risks associated with entering into markets or conducting operations where we have no or limited prior experience;
- problems retaining key personnel;
- potential impairment of tangible and intangible assets and goodwill acquired in the acquisition;
- potential unknown liabilities;
- difficulties of integration and failure to realize anticipated synergies; and
- disruption of our ongoing business, including diversion of management's attention from other business concerns.

Future acquisitions of restaurants or other businesses, which may be accomplished through a cash purchase transaction, the issuance of our equity securities or a combination of both, could result in potentially dilutive issuances of our equity securities, the incurrence of debt and contingent liabilities and impairment charges related to goodwill and other intangible assets, any of which could harm our business and financial condition.

We are subject to the risks associated with leasing space subject to long-term non-cancelable leases.

We lease all the real property and we expect the new restaurants we open in the future will also be leased. We are obligated under non-cancelable leases for our restaurants and our corporate headquarters. Our restaurant leases generally require us to pay a proportionate share of real estate taxes, insurance, common area maintenance charges and other operating costs. Some restaurant leases provide for contingent rental payments based on sales thresholds, although we generally do not expect to pay significant contingent rent on these properties based on the thresholds in those leases. Additional sites that we lease are likely to be subject to similar long-term non-cancelable leases.

If an existing or future restaurant is not profitable, and we decide to close it, we may nonetheless be committed to perform our obligations under the applicable lease including, among other things, paying the base rent for the balance of the lease term. In addition, as each of our leases expires, we may fail to negotiate renewals, either on commercially acceptable terms or at all, which could cause us to pay increased occupancy costs or to close restaurants in desirable locations. These potential increased occupancy costs and closed restaurants could have a material adverse effect on our business, financial condition and results of operations.

As of December 31, 2021, there were seven restaurants that the Company had abandoned and maintained its operating lease liabilities as the Company had not negotiated the termination of the underlying leases with its landlord. Such liabilities amount to approximately \$3.1 million at December 31, 2021 and are reflected as operating lease liabilities on the consolidated and combined balance sheet included in this report.

We are not contractually obligated to guarantee leasing arrangements between franchisees and their landlords.

We may not attain our target development goals and aggressive development could cannibalize existing sales.

Our growth strategy depends in large part on our ability to open new stores (either directly or through franchisees or joint venture partners). The successful development of new units will depend in large part on our ability and the ability of our franchisees to open new restaurants and to operate these restaurants on a profitable basis. We cannot guarantee that we, or our franchisees or joint venture partners, will be able to achieve our expansion goals or that new restaurants will be operated profitably. Further, there is no assurance that any new restaurant will produce operating results like those of our existing restaurants. Other risks that could impact our ability to increase our ability to open new stores include prevailing economic conditions and our, or our franchisees' and joint venture partners', ability to obtain suitable restaurant locations, obtain required permits and approvals in a timely manner and hire and train qualified personnel.

Our franchisees and joint venture partners also frequently depend upon financing from banks and other financial institutions in order to construct and open new restaurants. If it becomes more difficult or expensive for them to obtain financing to develop new restaurants, our planned growth could slow, and our future revenue and cash flows could be adversely impacted.

In addition, the new restaurants could impact the sales of our existing restaurants nearby. It is not our intention to open new restaurants that materially cannibalize the sales of our existing restaurants. However, as with most growing retail and restaurant operations, there can be no assurance that sales cannibalization will not occur or become more significant in the future as we increase our presence in existing markets over time.

RISKS RELATED TO SPIN-OFF TRANSACTION

Our potential indemnification obligations pursuant to the Indemnification Agreement could materially adversely affect us.

Under the Indemnification Agreement, which will expire on March 25, 2026, we have an obligation to indemnify Sonnet for liabilities associated with our business and the assets and liabilities distributed to us or our subsidiaries in connection with the Spin-Off. We have obtained a Tail Policy with policy limits in the amount of \$3.0 million to cover such liabilities; however, if we have to indemnify Chanticleer for unanticipated liabilities in excess of this amount, the cost of such indemnification obligations may have a material and adverse effect on our financial performance.

GENERAL RISKS RELATED TO OUR BUSINESS

We may not be able to adequately protect our intellectual property, which could harm the value of our brand and have a material adverse effect on our business, financial condition and results of operations.

Our intellectual property is material to the conduct of our business. Our ability to implement our business plan successfully depends in part on our ability to further build brand recognition using our trademarks, tradenames and other proprietary intellectual property, including our name and logos and the unique ambience of our restaurants. While it is our policy to protect and defend vigorously our rights to our intellectual property, we cannot predict whether steps taken by us to protect our intellectual property rights will be adequate to prevent misappropriation of these rights or the use by others of restaurant features based upon, or otherwise similar to, our restaurant concept. It may be difficult for us to prevent others from copying elements of our concept and any litigation to enforce our rights will likely be costly and may not be successful. Although we believe that we have sufficient rights to all our trademarks and service marks, we may face claims of infringement that could interfere with our ability to market our restaurants and promote our brand. Any such litigation may be costly and could divert resources from our business. Moreover, if we are unable to successfully defend against such claims, we may be prevented from using our trademarks or service marks in the future and may be liable for damages, which in turn could have a material adverse effect on our business, financial condition and results of operations.

In addition, we license certain of our proprietary intellectual property, including our name and logos, to third parties. For example, we grant our franchisees and licensees a right to use certain of our trademarks in connection with their operation of the applicable restaurant. If a franchisee or other licensee fails to maintain the quality of the restaurant operations associated with the licensed trademarks, our rights to, and the value of, our trademarks could potentially be harmed. Negative publicity relating to the franchisee or licensee could also be incorrectly associated with us, which could harm our business. Failure to maintain, control and protect our trademarks and other proprietary intellectual property would likely have a material adverse effect on our business, financial condition and results of operations and on our ability to enter into new franchise agreements.

Litigation and unfavorable publicity could negatively affect our results of operations as well as our future business.

We are subject to potential for litigation and other customer complaints concerning our food safety, service and/or other operational factors. Guests may file formal litigation complaints that we are required to defend, whether we believe them to be true or not. Substantial, complex or extended litigation could have an adverse effect on our results of operations if we incur substantial defense costs and our management is distracted. Employees may also, from time to time, bring lawsuits against us regarding injury, discrimination, wage and hour, and other employment issues. Additionally, potential disputes could subject us to litigation alleging non-compliance with franchise, development, support service, or other agreements. Additionally, we are subject to the risk of litigation by our stockholders as a result of factors including, but not limited to, performance of our stock price.

In certain states we are subject to “dram shop” statutes, which generally allow a person injured by an intoxicated person the right to recover damages from an establishment that wrongfully served alcoholic beverages to the intoxicated person. Some dram shop litigation against restaurant companies has resulted in significant judgments, including punitive damages. We carry liquor liability coverage as part of our existing comprehensive general liability insurance, but we cannot provide assurance that this insurance will be adequate in the event we are found liable in a dram shop case.

In recent years there has been an increase in the use of social media platforms and similar devices that allow individuals’ access to a broad audience of consumers and other interested persons. The availability of information on social media platforms is virtually immediate in its impact. A variety of risks are associated with the use of social media, including the improper disclosure of proprietary information, negative comments about our Company, exposure of personally identifiable information, fraud or outdated information. The inappropriate use of social media platforms by our guests, employees or other individuals could increase our costs, lead to litigation, or result in negative publicity that could damage our reputation, and create an adverse change in the business climate that impairs goodwill. If we are unable to quickly and effectively respond, we may suffer declines in guest traffic, which could materially affect our financial condition and results of operations.

Food safety and foodborne illness concerns could have an adverse effect on our business.

We cannot guarantee that our internal control and training will be fully effective in preventing all food safety issues at our restaurants, including any occurrences of foodborne illnesses such as salmonella, E. coli and hepatitis A. In addition, there is no guarantee that our franchise restaurants will maintain the high levels of internal control and training we require at our company-operated restaurants.

Furthermore, we and our franchisees rely on third-party vendors, making it difficult to monitor food safety compliance and increasing the risk that foodborne illness would affect multiple locations rather than a single restaurant. Some foodborne illness incidents could be caused by third-party vendors and transporters outside of our control. New illnesses resistant to our current precautions may develop in the future, or diseases with long incubation periods could arise, that could give rise to claims or allegations on a retroactive basis. One or more instances of foodborne illness in any of our restaurants or markets or related to food products we sell could negatively affect our restaurant revenue nationwide if highly publicized on national media outlets or through social media.

This risk exists even if it were later determined that the illness was wrongly attributed to us or one of our restaurants. Several other restaurant chains have experienced incidents related to foodborne illnesses that have had a material adverse effect on their operations. The occurrence of a similar incident at one or more of our restaurants, or negative publicity or public speculation about an incident, could have a material adverse effect on our business, financial condition and results of operations.

There are risks inherent in expansion of operations, including our ability to generate profits from new restaurants, find suitable sites and develop and construct locations in a timely and cost-effective way.

We cannot project with certainty the number of new restaurants we and our franchisees will open. Our failure to effectively develop locations in new territories would adversely affect our ability to execute our business plan by, among other things, reducing our revenues and profits and preventing us from realizing our strategy. Furthermore, we cannot assure you that our new restaurants will generate revenues or profit margins consistent with those currently operated by us.

The number of openings and the performance of new locations will depend on various factors, including:

- the availability of suitable sites for new locations;
- our ability to negotiate acceptable lease or purchase terms for new locations, obtain adequate financing, on favorable terms, requirement to construct, build-out and operate new locations and meet construction schedules, and hire and train and retain qualified restaurant managers and personnel;
- the management of construction and development costs of new restaurants at affordable levels;
- the establishment of brand awareness in new markets; and
- our ability to manage expansion.

Additionally, competition for suitable restaurant sites in target markets is intense. Restaurants we open in new markets may take longer to reach expected sales and profit levels on a consistent basis and may have higher construction, occupancy or operating costs than restaurants we open in existing markets, thereby affecting our overall profitability.

New markets may have competitive conditions, consumer tastes and discretionary spending patterns that are more difficult to predict or satisfy than our existing markets. We may need to make greater investments than we originally planned in advertising and promotional activity in new markets to build brand awareness. We may find it more difficult in new markets to hire, motivate and keep qualified employees who share our vision, passion and culture. We may also incur higher costs from entering new markets if, for example, we assign regional managers to manage comparatively fewer restaurants than in more developed markets.

We may not be able to successfully develop critical market presence for our brand in new geographical markets, as we may be unable to find and secure attractive locations, build name recognition or attract new customers. Inability to fully implement or failure to successfully execute our plans to enter new markets could have a material adverse effect on our business, financial condition and results of operations.

Not all of these factors are within our control or the control of our partners, and there can be no assurance that we will be able to accelerate our growth or that we will be able to manage the anticipated expansion of our operations effectively.

We operate in the highly competitive restaurant industry. If we are not able to compete effectively, it will have a material adverse effect on our business, financial condition and results of operations.

We face significant competition from restaurants in the fast-casual dining and traditional fast food segments of the restaurant industry. These segments are highly competitive with respect to, among other things, taste, price, food quality and presentation, service, location and the ambience and condition of each restaurant. Our competition includes a variety of locally owned restaurants and national and regional chains offering dine-in, carry-out, delivery and catering services. Many of our competitors have existed longer and have a more established market presence with substantially greater financial, marketing, personnel and other resources than we do. Among our competitors are a number of multi-unit, multi-market, fast casual restaurant concepts, some of which are expanding nationally. As we expand, we will face competition from these restaurant concepts as well as new competitors that strive to compete with our market segments. These competitors may have, among other things, lower operating costs, better locations, better facilities, better management, more effective marketing and more efficient operations. Additionally, we face the risk that new or existing competitors will copy our business model, menu options, presentation or ambience, among other things.

Any inability to successfully compete with the restaurants in our markets and other restaurant segments will place downward pressure on our customer traffic and may prevent us from increasing or sustaining our revenue and profitability. Consumer tastes, nutritional and dietary trends, traffic patterns and the type, number and location of competing restaurants often affect the restaurant business, and our competitors may react more efficiently and effectively to those conditions. Several of our competitors compete by offering menu items that are specifically identified as low in carbohydrates, gluten-free or healthier for consumers. In addition, many of our traditional fast food restaurant competitors offer lower-priced menu options or meal packages or have loyalty programs. Our sales could decline due to changes in popular tastes, “fad” food regimens, such as low carbohydrate diets, and media attention on new restaurants. If we are unable to continue to compete effectively, our traffic, sales and restaurant contribution could decline which would have a material adverse effect on our business, financial condition and results of operations.

Our business could be adversely affected by declines in discretionary spending and may be affected by changes in consumer preferences.

Our success depends, in part, upon the popularity of our food products. Shifts in consumer preferences away from our restaurants or cuisine could harm our business. Also, our success depends to a significant extent on discretionary consumer spending, which is influenced by general economic conditions and the availability of discretionary income. Accordingly, we may experience declines in sales during economic downturns or during periods of uncertainty. A continuing decline in the amount of discretionary spending could have a material adverse effect on our sales, results of operations, and business and financial condition.

Increases in costs, including food, labor and energy prices, will adversely affect our results of operations.

Our profitability is dependent on our ability to anticipate and react to changes in our operating costs, including food, labor, occupancy (including utilities and energy), insurance and supply costs. Various factors beyond our control, including climatic changes and government regulations, may affect food costs. Specifically, our dependence on frequent, timely deliveries of fresh meat and produce subject us to the risks of possible shortages or interruptions in supply caused by adverse weather or other conditions which could adversely affect the availability and cost of any such items. In the past, we have been able to recover some of our higher operating costs through increased menu prices. There have been, and there may be in the future, delays in implementing such menu price increases, and competitive pressures may limit our ability to recover such cost increases in their entirety.

Our ability to maintain consistent price and quality throughout our restaurants depends in part upon our ability to acquire specified food products and supplies in sufficient quantities from third-party vendors, suppliers and distributors at a reasonable cost. We do not control the businesses of our vendors, suppliers and distributors, and our efforts to specify and monitor the standards under which they perform may not be successful. If any of our vendors or other suppliers are unable to fulfill their obligations to our standards, or if we are unable to find replacement providers in the event of a supply or service disruption, we could encounter supply shortages and incur higher costs to secure adequate supplies, which would have a material adverse effect on our business, financial condition and results of operations.

Furthermore, if our current vendors or other suppliers are unable to support our expansion into new markets, or if we are unable to find vendors to meet our supply specifications or service needs as we expand, we could likewise encounter supply shortages and incur higher costs to secure adequate supplies, which could have a material adverse effect on our business, financial condition and results of operations.

Changes in employment laws and minimum wage standards may adversely affect our business.

Labor is a primary component in the cost of operating our restaurants. If we face labor shortages or increased labor costs because of increased competition for employees, higher employee turnover rates, increases in the federal, state or local minimum wage or other employee benefits costs (including costs associated with health insurance coverage), our operating expenses could increase, and our growth could be negatively impacted.

In addition, our success depends in part upon our ability to attract, motivate and retain enough well-qualified restaurant operators and management personnel, as well as a sufficient number of other qualified employees, including customer service and kitchen staff, to keep pace with our expansion schedule. In addition, restaurants have traditionally experienced relatively high employee turnover rates. Although we have not yet experienced significant problems in recruiting or retaining employees, our ability to recruit and retain such individuals may delay the planned openings of new restaurants or result in higher employee turnover in existing restaurants, which could have a material adverse effect on our business, financial condition and results of operations.

Various federal and state employment laws govern the relationship with our employees and impact operating costs. These laws include employee classification as exempt or non-exempt for overtime and other purposes, minimum wage requirements, unemployment tax rates, workers' compensation rates, immigration status and other wage and benefit requirements. Significant additional government-imposed increases in the following areas could have a material adverse effect on our business, financial condition and results of operations:

- Minimum wages;
- Mandatory health benefits;
- Vacation accruals;
- Paid leaves of absence, including paid sick leave; and
- Tax reporting.

We could also become subject to fines, penalties and other costs related to claims that we did not fully comply with all recordkeeping obligations of federal and state immigration compliance laws. These factors could have a material adverse effect on our business, financial condition and results of operations.

We are subject to risks arising under federal and state labor laws.

We are subject to risks under federal and state labor laws, including disputes concerning whether and when a union can be organized, and once unionized, collective bargaining rights, various issues arising from union contracts, and matters relating to a labor strike. Labor laws are complex and differ vastly from state to state.

Our business and the growth of our Company are dependent on the skills and expertise of management and key personnel.

During the upcoming stages of our Company's anticipated growth, we are entirely dependent upon the management skills and expertise of our management and key personnel. We do not have employment agreements with many of our executive officers. The loss of services of our executive officers could dramatically affect our business prospects. Certain of our employees are particularly valuable to us because:

- they have specialized knowledge about our company and operations;
- they have specialized skills that are important to our operations; or
- they would be particularly difficult to replace.

If the services of any key management personnel ceased to be available to us, our growth prospects or future operating results may be adversely impacted.

Our food service business, gaming revenues and the restaurant industry are subject to extensive government regulation.

We are subject to extensive and varied country, federal, state and local government regulation, including regulations relating to public health, gambling, safety and zoning codes. We operate each of our locations in accordance with standards and procedures designed to comply with applicable codes and regulations. However, if we could not obtain or retain food or other licenses, it would adversely affect our operations. Although we have not experienced, and do not anticipate experiencing any significant difficulties, delays or failures in obtaining required licenses, permits or approvals, any such problem could delay or prevent the opening of, or adversely impact the viability of, a particular location or group of restaurants.

Changing conditions in the global economy and financial markets may materially adversely affect our business, results of operations and ability to raise capital.

Our business and results of operations may be materially affected by conditions in the financial markets and the economy generally. The demand for our products could be adversely affected in an economic downturn and our revenues may decline under such circumstances. In addition, we may find it difficult, or we may not be able, to access the credit or equity markets, or we may experience higher funding costs in the event of adverse market conditions. Future instability in these markets could limit our ability to access the capital we require to fund and grow our business.

Changes to accounting rules or regulations may adversely affect the reporting of our results of operations.

Changes to existing accounting rules or regulations may impact the reporting of our future results of operations or cause the perception that we are more highly leveraged. Other new accounting rules or regulations and varying interpretations of existing accounting rules or regulations have occurred and may occur in the future. For instance, new accounting rules require lessees to capitalize operating leases in their financial statements, which require us to record significant right of use assets and lease obligations on our balance sheet. This and other future changes to accounting rules or regulations could have a material adverse effect on the reporting of our business, financial condition and results of operations. In addition, many existing accounting standards require management to make subjective assumptions, such as those required for stock compensation, tax matters, franchise accounting, acquisitions, litigation, and asset impairment calculations. Changes in accounting standards or changes in underlying assumptions, estimates and judgments by our management could significantly change our reported or expected financial performance.

We may incur costs resulting from breaches of security of confidential consumer information related to our electronic processing of credit and debit card transactions.

Most of our restaurant sales are by credit or debit cards. Other restaurants and retailers have experienced security breaches in which credit and debit card information has been stolen. We may in the future become subject to claims for purportedly fraudulent transactions arising out of the actual or alleged theft of credit or debit card information, and we may also be subject to lawsuits or other proceedings relating to these types of incidents. In addition, most states have enacted legislation requiring notification of security breaches involving personal information, including credit and debit card information. Any such claim or proceeding could cause us to incur significant unplanned expenses, which could have a material adverse effect on our business, financial condition and results of operations. Further, adverse publicity resulting from these allegations may have a material adverse effect on our business and results of operations.

We rely heavily on information technology, and any material failure, weakness, interruption or breach of security could prevent us from effectively operating our business.

We rely heavily on information systems, including point-of-sale processing in our restaurants, for management of our supply chain, payment of obligations, collection of cash, credit and debit card transactions and other processes and procedures. Our ability to efficiently and effectively manage our business depends significantly on the reliability and capacity of these systems. Our operations depend upon our ability to protect our computer equipment and systems against damage from physical theft, fire, power loss, telecommunications failure or other catastrophic events, as well as from internal and external security breaches, viruses and other disruptive problems. The failure of these systems to operate effectively, maintenance problems, upgrading or transitioning to new platforms, or a breach in security of these systems could result in delays in customer service and reduce efficiency in our operations. Remediation of such problems could result in significant, unplanned capital investments.

Negative publicity could reduce sales at some or all our restaurants.

We may, from time to time, be faced with negative publicity relating to food quality and integrity, the safety, sanitation and welfare of our restaurant facilities, customer complaints, labor issues, or litigation alleging illness or injury, health inspection scores, integrity of our or our suppliers' food processing and other policies, practices and procedures, employee relationships and welfare or other matters at one or more of our restaurants. Negative publicity may adversely affect us, regardless of whether the allegations are valid or whether we are held to be responsible. The risk of negative publicity is particularly great with respect to our franchised restaurants because we are limited in the manner in which we can regulate them, especially on a real-time basis and negative publicity from our franchised restaurants may also significantly impact company-operated restaurants. A similar risk exists with respect to food service businesses unrelated to us, if customers mistakenly associate such unrelated businesses with our operations. Employee claims against us based on, among other things, wage and hour violations, discrimination, harassment or wrongful termination may also create not only legal and financial liability but negative publicity that could adversely affect us and divert our financial and management resources that would otherwise be used to benefit the future performance of our operations. These types of employee claims could also be asserted against us, on a co-employer theory, by employees of our franchisees. A significant increase in the number of these claims or an increase in the number of successful claims could materially adversely affect our business, financial condition, results of operations and cash flows.

The interests of our franchisees may conflict with ours or yours in the future and we could face liability from our franchisees or related to our relationship with our franchisees.

Franchisees, as independent business operators, may from time to time disagree with us and our strategies regarding the business or our interpretation of our respective rights and obligations under the franchise agreement and the terms and conditions of the franchisee/franchisor relationship or have interests adverse to ours. This may lead to disputes with our franchisees and we expect such disputes to occur from time to time in the future as we continue to offer franchises. Such disputes may result in legal action against us. To the extent we have such disputes, the attention, time and financial resources of our management and our franchisees will be diverted from our restaurants, which could have a material adverse effect on our business, financial condition, results of operations and cash flows even if we have a successful outcome in the dispute.

In addition, various state and federal laws govern our relationship with our franchisees and our potential sale of a franchise. A franchisee and/or a government agency may bring legal action against us based on the franchisee/franchisor relationship that could result in the award of damages to franchisees and/or the imposition of fines or other penalties against us.

GENERAL RISKS RELATED TO OUR COMMON STOCK

Trading volume in our common stock is limited, which could increase price volatility for, and reduced liquidity of, our common stock.

Trading volume in our common stock is limited and an active trading market for our shares of common stock may never develop or be maintained. The absence of an active trading market could increase price volatility and reduces the liquidity of our common stock and as a result, the sale of a significant number of shares of common stock at any particular time could be difficult to achieve at the market prices prevailing immediately before such shares are offered.

Future financings could adversely affect common stock ownership interest and rights in comparison with those of other security holders.

Our board of directors has the power to issue additional shares of common or preferred stock up to the amounts authorized in our certificate of incorporation without stockholder approval, subject to restrictive covenants contained in our existing financing agreements. If additional funds are raised through the issuance of equity or convertible debt securities, the percentage ownership of our existing stockholders will be reduced, and these newly issued securities may have rights, preferences or privileges senior to those of existing stockholders. If we issue any additional common stock or securities convertible into common stock, such issuance will reduce the proportionate ownership and voting power of each other stockholder. In addition, such stock issuances might result in a reduction of the book value of our common stock. Any increase of the number of authorized shares of common stock or preferred stock would require board and shareholder approval and subsequent amendment to our certificate of incorporation.

If and when a larger trading market for our common stock develops, the market price of our common stock is likely to be highly volatile and subject to wide fluctuations, and you may be unable to resell your shares at or above the price at which you acquired them.

The market price of our common stock is likely to be highly volatile and could be subject to wide fluctuations in response to a number of factors that are beyond our control, including, but not limited to:

- quarterly variations in our revenues and operating expenses;
- developments in the financial markets and worldwide or regional economies;
- announcements of innovations or new products, solutions or services by us or our competitors;
- announcements by the government relating to regulations that govern our industry;
- significant sales of our common stock or other securities in the open market;
- variations in interest rates;
- changes in the market valuations of other comparable companies; and
- changes in accounting principles.

In the past, stockholders have often instituted securities class action litigation after periods of volatility in the market price of a company's securities. If a stockholder were to file any such class action suit against us, we would incur substantial legal fees and our management's attention and resources would be diverted from operating our business to respond to the litigation, which could harm our business.

Recent and future sales of securities by us in equity or debt financings could result in substantial dilution to our existing stockholders and have a material adverse effect on our earnings.

Recent and future sales of common stock or derivative securities by us in private placements or public offerings could result in substantial dilution to our existing stockholders. In addition, our business strategy may include expansion through internal growth by acquiring complementary businesses. In order to do so, or to finance the cost of our other activities, we may issue additional equity securities that could dilute our stockholders' stock ownership. We may also assume additional debt and incur impairment losses related to goodwill and other tangible assets if we acquire another company and this could negatively impact our earnings and results of operations.

Were our common stock to be considered penny stock, and therefore subject to the penny stock rules, U.S. broker-dealers may be discouraged from effecting transactions in shares of our common stock.

The U.S. Securities and Exchange Commission (the "SEC") has adopted a number of rules to regulate "penny stock" that may restrict transactions involving shares of our common stock. Such rules include Rules 3a51-1, 15g-1, 15g-2, 15g-3, 15g-4, 15g-5, 15g-6, 15g-7, and 15g-9 under the Securities and Exchange Act of 1934, as amended. These rules may have the effect of reducing the liquidity of penny stocks. "Penny stocks" generally are equity securities with a price of less than \$5.00 per share (other than securities registered on certain national securities exchanges or quoted on the Nasdaq Stock Market if current price and volume information with respect to transactions in such securities is provided by the exchange or system). Our securities have in the past constituted "penny stock" within the meaning of the rule. Were our common stock to again be considered "penny stock" and therefore become subject to the penny stock rules, the additional sales practice and disclosure requirements imposed upon U.S. broker-dealers may discourage such broker-dealers from effecting transactions in shares of our common stock, which could severely limit the market liquidity of such shares and impede their sale in the secondary market.

A U.S. broker-dealer selling a penny stock to anyone other than an established customer or "accredited investor" (generally, an individual with net worth in excess of \$1.0 million or an annual income exceeding \$0.2 million, or \$0.3 million together with his or her spouse) must make a special suitability determination for the purchaser and must receive the purchaser's written consent to the transaction prior to sale, unless the broker-dealer or the transaction is otherwise exempt. In addition, the penny stock regulations require the U.S. broker-dealer to deliver, prior to any transaction involving a penny stock, a disclosure schedule prepared in accordance with SEC standards relating to the penny stock market, unless the broker-dealer or the transaction is otherwise exempt. A U.S. broker-dealer is also required to disclose commissions payable to the U.S. broker-dealer and the registered representative and current quotations for the securities. Finally, a U.S. broker-dealer is required to submit monthly statements disclosing recent price information with respect to the penny stock held in a customer's account and information with respect to the limited market in penny stocks.

Stockholders should be aware that, according to the SEC, the market for penny stocks has suffered in recent years from patterns of fraud and abuse. Such patterns include (i) control of the market for the security by one or a few broker-dealers that are often related to the promoter or issuer; (ii) manipulation of prices through prearranged matching of purchases and sales and false and misleading press releases; (iii) "boiler room" practices involving high-pressure sales tactics and unrealistic price projections by inexperienced sales persons; (iv) excessive and undisclosed bid-ask differentials and markups by selling broker-dealers; and (v) the wholesale dumping of the same securities by promoters and broker-dealers after prices have been manipulated to a desired level, resulting in investor losses. Our management is aware of the abuses that have occurred historically in the penny stock market. Although we do not expect to be in a position to dictate the behavior of the market or of broker-dealers who participate in the market, management will strive within the confines of practical limitations to prevent the described patterns from being established with respect to our securities in the event our common stock were to again be considered a penny stock and therefore become subject to penny stock rules.

We do not expect to pay dividends for the foreseeable future, and any return on investment may be limited to potential future appreciation on the value of our common stock.

We currently intend to retain any future earnings to support the development and expansion of our business and do not anticipate paying cash dividends in the foreseeable future. We do not pay dividends on our Series 2 Preferred. If dividends are declared on common stock, dividends are payable on our outstanding 10% debenture and all of our outstanding warrants to the same extent that the holders would have participated in the dividend if the holders held the number of shares of common stock acquirable upon complete conversion of the debenture and/ or exercise of the warrants (as applicable) without regard to any limitations on exercise thereof, immediately before the date of which a record is taken for such dividend. Our payment of any future dividends will be at the discretion of our board of directors after taking into account various factors, including without limitation, our financial condition, operating results, cash needs, growth plans and the terms of any credit agreements that we may be a party to at the time. To the extent we do not pay dividends, our stock may be less valuable because a return on investment will only occur if and to the extent our stock price appreciates, which may never occur. In addition, investors must rely on sales of their common stock after price appreciation as the only way to realize their investment, and if the price of our stock does not appreciate, then there will be no return on investment. Investors seeking cash dividends should not purchase our common stock.

The rights of the holders of common stock may be impaired by outstanding class of Series 2 Preferred and potential issuance of other class(es) of preferred stock in the future.

Our certificate of incorporation gives our board of directors the right to create new series of preferred stock. As a result, the board of directors may, without stockholder approval, issue preferred stock with voting, dividend, conversion, liquidation or other rights which could adversely affect the voting power and equity interest of the holders of common stock. Preferred stock, which could be issued with the right to more than one vote per share, could be utilized as a method of discouraging, delaying or preventing a change of control. The possible impact on takeover attempts could adversely affect the price of our common stock. Although we have no present intention to issue any additional shares of preferred stock or to create any new series of preferred stock, we may issue such shares in the future.

Anti-takeover provisions may limit the ability of another party to acquire us, which could cause our stock price to decline.

We are a Delaware corporation. Delaware law contains provisions that could discourage, delay or prevent a third party from acquiring us, even if doing so may be beneficial to our stockholders, which could cause our stock price to decline. In addition, these provisions could limit the price investors would be willing to pay in the future for shares of our common stock.

Non-U.S. investors may have difficulty effecting service of process against us or enforcing judgments against us in courts of non-U.S. jurisdictions.

We are a company incorporated under the laws of the State of Delaware. All of our directors and officers reside in the United States. It may not be possible for non-U.S. investors to effect service of process within their own jurisdictions upon our company and our directors and officers. In addition, it may not be possible for non-U.S. investors to collect from our company, its directors and officers, judgments obtained in courts in such non-U.S. jurisdictions predicated on non-U.S. legislation.

If securities or industry analysts do not publish or cease publishing research or reports about us, our business or our market, or if they change their recommendations regarding our stock adversely, our stock price and trading volume could decline.

The trading market for our common stock will be influenced by the research and reports that industry or securities analysts may publish about us, our business, our market or our competitors. If any of the analysts who may cover us change their recommendation regarding our stock adversely, or provide more favorable relative recommendations about our competitors, our stock price would likely decline. If any analyst who may cover us were to cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline.

ITEM 1B. UNRESOLVED STAFF COMMENTS

Not applicable.

ITEM 2. PROPERTIES

Through our subsidiaries, we lease the land and buildings for 29 operating restaurant locations in the U.S. The terms for our leases vary from two to twenty years and have options to extend. We lease some of our restaurant facilities under “triple net” leases that require us to pay minimum rent, real estate taxes, maintenance costs and insurance premiums and, in some instances, percentage rent based on sales in excess of specified amounts. Our corporate employees work from home.

Our facilities are suitable and adequate for our business as it is presently conducted.

ITEM 3. LEGAL PROCEEDINGS

Various subsidiaries of Amergent are delinquent in payment of payroll taxes to taxing authorities. As of December 31, 2021 and 2020, approximately \$2.0 million and \$3.0 million, respectively, of employee and employer taxes (including estimated penalties and interest) was accrued but not remitted in years prior to 2019 to certain taxing authorities by certain of these subsidiaries for cash compensation paid. As a result, these subsidiaries are liable for such payroll taxes. These subsidiaries have received warnings and demands from the taxing authorities and management is prioritizing and working with the taxing authorities to make these payments in order to avoid further penalties and interest. Failure to remit these payments promptly could result in increased penalty fees.

During 2021 and 2020 the Company was in arrears on rent due on several of its leases as a result of the COVID-19 pandemic. As a result, the Company has pending litigation related to 7 sites of which 4 have permanently closed. The outcome of this litigation could result in the permanent closure of additional restaurant locations as well as the possibility of the Company being required to pay interest and damages, modify certain leases on unfavorable terms and could result in material impairments to the Company’s assets.

Amergent is not aware of changes to claims previously reported or other claims that it deems as claims outside the ordinary course of business or otherwise, at this time, material.

From time to time, Amergent may be involved in legal proceedings and claims that arise in the ordinary course of business, and may generally be covered by insurance or otherwise determined to be immaterial to the Company’s financial condition, results of operations or cash flows.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

ITEM 5. MARKET FOR COMMON EQUITY AND RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

As of December 31, 2021, we had 15,706,736 shares of our common stock issued and outstanding, respectively, and approximately 230 shareholders of record and approximately 2,500 shareholders. Amergent's common stock is quoted on the OTCQB market of the OTC Markets Group, Inc. under the symbol "AMGH."

We currently have no expectation to pay cash dividends to holders of our common stock in the foreseeable future.

UNREGISTERED SALES OF EQUITY SECURITIES

None.

EQUITY COMPENSATION PLANS

Pursuant to the SEC's Regulation S-K Compliance and Disclosure Interpretation 106.01, the information required by this Item pursuant to Item 201(d) of Regulation S-K relating to securities authorized for issuance under the Corporation's equity compensation plans is located in Item 12 of Part III of this Annual Report and is incorporated herein by reference.

ITEM 6. [RESERVED]

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

You should read the following discussion of our results of operations and financial condition together with our audited consolidated financial statements as of and for the year ended December 31, 2021 and 2020 including the notes thereto, included in this Report. The discussion below contains forward-looking statements and involves numerous risks and uncertainties, including, but not limited to, those described in Item 1A. "Risk Factors". Actual results may differ materially from those contained in any forward-looking statements. Forward-looking statements speak only as of the date they are made. We undertake no obligation to update or revise such statements to reflect new circumstances or unanticipated events as they occur, and you are urged to review and consider disclosures that we make in this and other reports that discuss factors germane to our business.

Overview

We operate and franchise a system-wide total of 42 fast casual restaurants, of which 29 are company-owned (an additional location opened January 4, 2022) and included in our consolidated and combined financial statements and 13 are owned and operated by franchisees under franchise agreements.

Our business strategy includes expansion through internal growth by acquiring complementary businesses.

American Burger Company (“ABC”) is a fast-casual dining chain consisting of 2 company-owned locations in North Carolina and New York, known for its diverse menu featuring fresh salads, customized burgers, milk shakes, sandwiches, and beer and wine.

BGR: The Burger Joint (“BGR”) was acquired in March 2015 and consists of 7 company-owned locations and 7 franchisee-operated locations in the United States. The former locations in the Middle East are closed.

Little Big Burger (“LBB”) was acquired in September 2015 and currently consists of 16 company-owned locations in the Portland, Oregon, Seattle, Washington, and Charlotte, North Carolina areas. One location was temporarily closed at December 31, 2021 due to lack of available employees. The newest location at the University of Oregon was leased in August 2021 and became operational in December 2021. Of the company-owned restaurants, 8 of those locations are operated under partnership agreements with investors where we control the management and operations of the stores and the partner supplies the capital to open the store in exchange for a non-controlling interest.

Pie Squared Holdings (“PIE”) was acquired on August 30, 2021. PIE, directly and through its 4 wholly-owned subsidiaries, owns, operates and franchises pizza restaurants operating under the tradename PizzaRev. The PizzaRev stores consist of 3 company-owned locations, one of which opened on January 4, 2022, and nine franchised locations. Three of these franchised locations were not open at the time of purchase and are not included in our total store count. One additional franchise location is planned to open in 2022.

The Jantzen Beach, Oregon gaming location was a former Hooters of America location and is only open for online gaming sales, drinks and a limited food menu.

Hooters of America redeemed a portion of the Company’s ownership interest in the entity and paid \$0.3 million to the Company in October 2021. After the redemption, the Company’s effective economic interest in Hooters of America was less than 1%. We do not intend to open any new Hooters franchises in the near future.

Recent Developments

Recent Business Trends

Throughout 2021 we faced varying degrees of COVID-19 pandemic related pressures. In spite of this, our sales have continued to increase from the second through the fourth quarters of 2021 when compared to the corresponding quarters in 2020. Our revenue in the fourth quarters of 2021 and 2020 was \$4.8 million and \$4.5 million, respectively, and our revenue for fiscal years 2021 and 2020 was \$20.7 million and \$18.8 million, respectively. This represents a fourth quarter increase in revenue of 6.7% and an annual increase in revenue of 10.6%.

Looking forward to 2022, we anticipate continued inflationary pressures on our restaurant cost of sales and restaurant operating expenses. We also face a tight and competitive labor market throughout all locations. Our management team has and will continue to innovatively approach these challenges.

Future Plans

In August 2021, we acquired Pie Squared Holdings, which came with three company-owned stores and nine franchised stores. These stores operate under the tradename PizzaRev. We anticipate acquiring additional existing restaurant concepts during 2022.

COVID-19 Pandemic Update

In early March 2020, the COVID-19 pandemic was declared to be a National Public Health Emergency, and the Centers for Disease Control and Prevention, as well as state and local legislative bodies and health departments, began issuing orders related to social distancing requirements, reduced restaurant seating capacity and other restrictions which resulted in a significant reduction in traffic at our restaurants. As of mid-March 2020, the ordinances tightened, and dine-in capacity was eliminated or severely restricted. By April 2020, at the request of most state and local legislative bodies, we closed all of our dining rooms and began to operate in a take-out and delivery only capacity. In early May 2020, states began allowing the re-opening of dining rooms in a limited capacity and by the end of June 2020, we had re-opened dining rooms in approximately 95% of our restaurants, while adhering to social distancing restrictions, which limited the number of guests we could serve in our restaurants at one time. During November 2020, rising case rates resulted in certain jurisdictions implementing restrictions that again reduced dining room capacity or mandated the re-closure of dining rooms. As a result, we began fiscal 2021 with significant limitations on our operations, which over the course of the fiscal year varied widely from time to time, state to state and city to city; however, nonetheless negatively impacted our sales. Once COVID-19 vaccines were approved and moved into wider distribution in the United States in early to mid-2021, public health conditions improved and almost all of the COVID-19 restrictions on businesses eased.

While cases continue to decline, and staffing continues to improve, overall consumer and business activity remains muted in certain markets as consumer behaviors have changed due to the COVID-19 pandemic and some businesses have yet to bring employees back into their offices. Our restaurant operations have been and could again in the future be disrupted by team member staffing issues because of illness, exclusion, fear of contracting COVID-19 or caring for family members due to COVID-19, legal requirements for employee vaccinations or COVID testing, lack of labor supply, competitive labor pressures, or for other reasons. Furthermore, inflation has been and is elevated across our business, including food costs, due in part to the supply chain impacts of the pandemic. We remain in regular contact with our major suppliers and while, to date, we have not experienced significant disruptions in our supply chain due to the COVID-19 pandemic, we could see significant future disruptions should the impacts of the pandemic continue. Currently, national, state and local jurisdictions have removed their capacity restrictions on businesses and, therefore, our restaurants are serving customers in our dining rooms without social distancing requirements. However, it is possible additional outbreaks could lead to restrictive measures that could impact our guest demand and dining room capacity.

PPP Loan

On March 27, 2020, Congress passed The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), which included the Paycheck Protection Program (“PPP”) for small businesses. On April 27, 2020, Amergent received a PPP loan of \$2.1 million. Due to the Spin-Off and Merger, Amergent was not publicly traded at the time of the loan application or funding. The note bears interest at 1% per year, matures in April 2022, and requires monthly interest and principal payments of approximately \$0.1 million beginning in November 2020 and through maturity. The currently issued guidelines of the program allow for the loan proceeds to be forgiven if certain requirements are met. Any loan proceeds not forgiven will be repaid in full. The Company had applied for loan forgiveness in the full amount of the loan, but the request was initially denied. The Company discussed the forgiveness request with the government agency that granted the loan and in March 2022, the U.S. SBA reversed its initial decision and will once again review the Company’s application for loan forgiveness. No assurance can be given as to the amount, if any, of forgiveness. The application for forgiveness allowed the Company to defer the timing of repayment until the forgiveness assessment is completed.

On February 25, 2021, the Company received a second PPP loan in the amount of \$2.0 million. The note bears interest at 1% per year, matures on February 25, 2026, and requires monthly principal and interest payments of approximately \$45,000 beginning June 25, 2022 through maturity. The loan may be forgiven if certain criteria are met. No assurance can be given as to the amount, if any, of forgiveness. The Company will apply for complete forgiveness of this loan in 2022.

Employee Retention Credit

The Employee Retention Credit (“ERC”) under the CARES Act is a refundable tax credit which encourages businesses to keep employees on the payroll during the COVID-19 pandemic. Eligible employers can qualify for up to \$7,000 of credit for each employee based on qualified wages paid after December 31, 2020 and before January 1, 2022. Qualified wages are any wages paid to an employee (for employers that averaged fewer than 100 full-time employees in 2019) or the wages paid to an employee for the time that the employee is providing and not providing services (for employers that averaged more than 500 full-time employees in 2019) due to an economic hardship, specifically, either (1) a full or partial suspension of operations by order of a governmental authority due to COVID-19, or (2) a significant decline in gross receipts. The Company recognized \$2.5 million of ERC as a contra-expense in the consolidated and combined statement of operations for the year ended December 31, 2021. The program ended on January 1, 2022.

Acquisition

On August 30, 2021, the Company purchased all of the outstanding membership interests in Pie Squared Holdings LLC (“Pie Squared Holdings”) pursuant to a Unit Purchase Agreement (“Purchase Agreement”). Pie Squared Holdings, directly and through its four wholly-owned subsidiaries, owns, operates and franchises pizza restaurants operating under the tradename PizzaRev. The PizzaRev stores consist of three company owned stores and six franchised locations. The purchase price is an 8% secured, convertible promissory note (“Note”) with a face value of \$1.0 million and a fair value of \$1.2 million at the acquisition date. Transaction costs of \$0.2 million were incurred in connection with the acquisition and charged to general and administrative expenses in the consolidated and combined statement of operations for the year ended December 31, 2021.

Restaurant Revitalization Fund

The American Rescue Plan Act established the Restaurant Revitalization Fund (“RRF”) to provide funding to help restaurants and other eligible businesses keep their doors open. This program will provide restaurants with funding equal to their pandemic-related revenue loss up to \$10.0 million per business and no more than \$5.0 million per physical location. Prior to the acquisition, Pie Squared Holdings had obtained \$10.0 million of funding under the RRF, of which \$2.0 million was unspent as of the acquisition date. The Company used \$0.5 million of this amount and recorded it as a contra-expense in the consolidated and combined statement of operations for the year ended December 31, 2021.

RESULTS OF OPERATIONS FOR THE YEAR ENDED DECEMBER 31, 2021 COMPARED TO THE YEAR ENDED DECEMBER 31, 2020

Our results of operations are summarized below:

(in thousands)	Twelve Months Ended				
	December 31, 2021		December 31, 2020		% Change
	Amount	% of Revenue*	Amount	% of Revenue*	
Revenue:					
Restaurant sales, net	\$ 19,797	95.9%	\$ 18,131	96.6%	9.2%
Gaming income, net	403	1.9%	292	1.6%	38.0%
Franchise income	452	2.2%	341	1.8%	32.6%
Total revenue	20,652		18,764		
Expenses:					
Restaurant cost of sales	6,172	31.2%	5,750	31.7%	7.3%
Restaurant operating expenses	13,262	67.0%	13,195	72.8%	0.5%
Restaurant pre-opening and closing expenses	8	—%	288	1.6%	(97.2)%
General and administrative expenses	5,210	25.2%	4,692	25.0%	11.0%
Asset impairment charges	1,456	7.1%	1,578	8.4%	(7.7)%
Depreciation and amortization	1,047	5.1%	1,525	8.1%	(31.3)%
Employee retention credit and other grant income	(3,009)	(14.6)%	—	—%	100.0%
Total expenses	24,146		27,028		
Operating loss	(3,494)		(8,264)		
Other income (expense):					
Interest expense	(656)	(3.2)%	(684)	(3.6)%	(4.1)%
Change in fair value of derivative liabilities	119	0.6%	616	3.3%	(80.7)%
Change in fair value of investment	(244)	(1.2)%	(1,232)	(6.6)%	(80.2)%
Change in fair value of convertible promissory note	95	0.5%	—	—%	100.0%
Debt extinguishment expense	—	—%	(11,808)	(62.9)%	(100.0)%
Gain on sale of subsidiary	58	0.6%	—	—%	100.0%
Gain on extinguished lease liabilities	412	2.0%	506	2.7%	(18.6)%
Other income	310	1.5%	282	1.5%	9.9%
Total other income (expense)	94		(12,320)		
Loss before income taxes	(3,400)		(20,584)		
Income tax expense	(118)	(0.6)%	(7)	—%	1,585.7%
Consolidated and combined net loss	\$ (3,518)		\$ (20,591)		

* Restaurant cost of sales, operating expenses and pre-opening and closing expenses percentages are based on restaurant sales, net. Other percentages are based on total revenue.

Revenue

Total revenue increased to \$20.7 million for the year ended December 31, 2021 from \$18.8 million for the year ended December 31, 2020.

(in thousands)	Year Ended December 31, 2021	
	Amount	% of Revenue
Restaurant sales, net	\$ 19,797	95.9%
Gaming income, net	403	1.9%
Franchise income	452	2.1%
Total revenue	\$ 20,652	100.0%

(in thousands)	Year Ended December 31, 2020	
	Amount	% of Revenue
Restaurant sales, net	\$ 18,131	96.6%
Gaming income, net	292	1.6%
Franchise income	341	1.8%
Total revenue	\$ 18,764	100.0%

- Revenue from restaurant sales increased 9.2% to \$19.8 million for the year ended December 31, 2021, compared to \$18.1 million for the year ended December 31, 2020. The primary reasons for the increase were due to increased occupancy and declining hesitancy from the public to dine in public locations as a result of the rebound from the COVID-19 pandemic.
- Gaming income increased 38.0% to \$0.4 million for the year ended December 31, 2021, compared to \$0.3 million for the year ended December 31, 2020. The primary reason for this increase was due to the effect of the COVID-19 pandemic recovery.
- Franchise income increased 32.6% to \$0.5 million for the year ended December 31, 2021, compared to \$0.3 million during the year ended December 31, 2020. The primary reason for this increase was due to our franchise stores recovering from the effects of the COVID-19 pandemic beginning during the second quarter of 2021 and continuing through year end based on declining hesitancy from the public to dine in public locations.

Restaurant cost of sales

Restaurant cost of sales increased to \$6.2 million for the year ended December 31, 2021 from \$5.8 million for the year ended December 31, 2020. The restaurant cost of sales as a percentage of restaurant sales decreased to 31.2% for the year ended December 31, 2021 from 31.7% for the year ended December 31, 2020. The overall increase in cost of sales was due to the 9.2% increase in restaurant revenue to \$19.8 million for the year ended December 31, 2021 compared to \$18.1 million for the year ended December 31, 2020.

Restaurant operating expenses

Restaurant operating expenses increased to \$13.3 million for the year ended December 31, 2021 from \$13.2 million for the year ended December 31, 2020. The restaurant operating expenses as a percentage of restaurant operating expenses decreased to 67.0% for the year ended December 31, 2021 from 72.8% for the year ended December 31, 2020 and was driven by the overall increase in restaurant revenue and the corresponding adjustment of labor at the store level and tighter controls of store level operating expenses.

Restaurant pre-opening and closing expenses

There was \$8,000 in restaurant pre-opening and closing expenses for the year ended December 31, 2021 compared to \$0.3 million for the year ended December 31, 2020. The decrease is primarily due to limited restaurant openings and closings in the year ended December 31, 2021. During the year ended December 31, 2021, we had three PizzaRev stores and the LBB University of Oregon that opened but did not incur any pre-opening expenses.

General and administrative expense ("G&A")

G&A expenses increased to \$5.2 million for the year ended December 31, 2021, from \$4.7 million for the year ended December 31, 2020. During the year ended December 31, 2021, audit, legal and other professional services increased by \$0.3 million due to transaction costs of \$0.2 million incurred in connection with the acquisition of Pie Squared Holdings, as well as \$0.1 million of costs incurred due to negotiating lease terminations, extensions and relief from COVID-19 closures and the related accounting fees. There was also an increase of \$0.2 million in advertising, insurance and other expenses and an increase of \$0.1 million in salary and benefits after these amounts had been reduced in 2020 due to less need during the COVID-19 pandemic. These increases were offset by a \$0.1 million decrease in shareholder services and fees incurred in connection with the spin-off from Chanticleer in 2020. Significant components of G&A expenses are summarized as follows:

(in thousands)	Year Ended December 31,	
	2021	2020
Audit, legal and other professional services	\$ 2,314	\$ 2,013
Salary and benefits	2,129	1,998
Advertising, insurance and other	672	494
Shareholder services and fees	31	169
Travel and entertainment	64	18
Total G&A Expenses	<u>\$ 5,210</u>	<u>\$ 4,692</u>

Asset impairment charges

Asset impairment charges decreased to \$1.5 million for the year ended December 31, 2021, compared to \$1.6 million in the year ended December 31, 2020. During the year ended December 31, 2021, we recorded an impairment on trademark/tradenames of approximately \$0.3 million, property and equipment of approximately \$0.4 million and right-of-use asset of approximately \$0.7 million primarily due to ongoing cash flow implications resulting from the ongoing COVID-19 pandemic.

During the year ended December 31, 2020, we recorded an impairment on trademark/tradenames of approximately \$0.3 million, property and equipment of approximately \$0.8 million and right-of-use asset of approximately \$0.5 million primarily due to the lower level of cash flow at the store level along with the permanent closures related to the impact of COVID-19 on operations.

Depreciation and amortization

Depreciation and amortization expense was \$1.0 million for the year ended December 31, 2021, compared to \$1.5 million for the year ended December 31, 2020. We have curtailed opening new stores and making acquisitions of property and equipment in the past several years due to our financial condition. Recent impairments of property and equipment and intangible assets have also caused a decrease in the gross value of the underlying assets, thereby resulting in a decrease in depreciation and amortization expense.

Other income (expense)

Interest expense for the year ended December 31, 2021 of \$0.7 million was comparable to the comparative period in 2020 of \$0.7 million. This is consistent with the low interest rate on new borrowings in 2021.

During the year ended December 31, 2021, the change in fair value of derivative liabilities was a gain of \$0.1 million related to the True-Up Payment derivative. Derivative liabilities are marked to market on a quarterly basis and fluctuations in value are reflective of the fair market value at the point in time at which the instruments are measured. During the year ended December 31, 2020, the change in fair value of derivative liabilities and warrants was a gain of \$0.6 million. The income in the year ended December 31, 2020 was primarily due to a decrease in our stock price, thus driving a decrease in the value of the derivative instruments. The True-Up Payment was settled in July 2021 with a payment of \$66,136.

In connection with the Merger, the Company obtained warrants to purchase 186,101 shares of Sonnet at \$0.001 per share. The warrants were exercised in 2020 and common stock is now held. The share price of Sonnet has decreased since the Merger and a loss on investment of \$0.2 million was recognized for the year ended December 31, 2021. Additionally, shares of Sonnet were sold in 2021 and we received proceeds of \$0.1 million. We recognized a loss on investment of \$1.2 million during the year ended December 31, 2020. This common stock will continue to be recorded at fair value until the securities are sold. At December 31, 2021, we held 122,064 shares with a fair value of approximately \$50,000.

During the year ended December 31, 2021, we issued an 8% secured, convertible promissory note as consideration for the acquisition of Pie Squared Holdings. We have elected to measure the convertible promissory note at fair value, with changes in fair value recognized in operations. We recognized a gain on fair value of \$0.1 million during the year ended December 31, 2021. There were no similar transactions during the year ended December 31, 2020.

On April 1, 2020, we exchanged the then existing 8% non-convertible notes for 10% convertible notes. Warrants to purchase common stock were also issued in connection with the issuance of the new notes. We recorded an \$11.8 million loss on the extinguishment of the 8% notes based on the difference in the carrying value of the old notes and the fair value of the new notes and warrants issued.

On October 8, 2021, we sold West End Wings LTD, our Hooters restaurant located in Nottingham, England, to Hard Four Consultancy Limited (UK) for the final purchase price of £0.4 million (approximately \$0.6 million). We recognized a gain on sale of subsidiary of \$0.1 million during the year ended December 31, 2021. There were no similar transactions during the year ended December 31, 2020.

During the year ended December 31, 2021, we recognized a gain on extinguished lease liabilities of \$0.4 million, compared to \$0.5 million for the year ended December 31, 2020, due to the derecognition of operating lease liabilities resulting from our negotiation of the cancellation of our obligations under certain lease agreements. The cancellations resulted from the COVID-19 pandemic.

STATEMENT OF CASH FLOWS FOR THE YEAR ENDED DECEMBER 31, 2021 COMPARED TO THE YEAR ENDED DECEMBER 31, 2020

(in thousands)	Year Ended December 31,	
	2021	2020
Net cash used in operating activities	\$ (4,474)	\$ (5,617)
Net cash used in investing activities	2,978	(64)
Net cash provided by financing activities	1,902	7,108
Effect of foreign currency exchange rates	(16)	—
	<u>\$ 390</u>	<u>\$ 1,427</u>

Cash used in operating activities was approximately \$4.5 million for the year ended December 31, 2021. This use of cash was primarily driven by the net loss incurred of \$3.5 million offset by non-cash charges to operations of \$3.2 million. The non-cash charges in 2021 consist primarily of asset impairment charges of \$1.5 million, depreciation and amortization of property and equipment, intangible assets and right-of-use assets totaling \$2.0 million and amortization of debt discount of \$0.2 million, offset by gain on extinguished lease liabilities of \$0.4 million and gain on sale of subsidiary of \$0.1 million. The balance of the change in cash flows from operating activities was related to net movements in asset and liability accounts.

Cash used in operating activities was approximately \$5.6 million for the year ended December 31, 2020. This use of cash was primarily driven by the net loss incurred of \$20.6 million offset by non-cash charges to operations of \$16.2 million. The non-cash charges in 2020 consist primarily of loss on debt extinguishment of \$11.8 million, loss on investments of \$1.2 million, asset impairment charges of \$1.6 million and depreciation and amortization of property and equipment, intangible assets and right-of-use assets totaling \$2.6 million, offset by gain in fair value of derivative liabilities of \$0.6 million and gain on extinguished lease liabilities of \$0.5 million. The balance of the change in cash flows from operating activities was related to net movements in asset and liability accounts.

Cash provided by investing activities during the year ended December 31, 2021 was primarily related to \$2.0 million cash and restricted cash acquired in connection with the acquisition of Pie Squared Holdings, \$0.6 million net proceeds from the sale of the UK subsidiary and \$0.5 million proceeds from the sale of investments. Cash used in investing activities during the year ended December 31, 2020 was \$0.1 million for the purchase of property and equipment.

Cash provided by financing activities for the year ended December 31, 2021 was approximately \$1.9 million compared to cash provided by financing activities of approximately \$7.1 million for the year ended December 31, 2020. Cash provided by financing activities during 2021 was primarily related to proceeds of \$2.0 million from a PPP loan. The primary drivers of the cash provided by financing activities during the year ended December 31, 2020 were proceeds from the bridge preferred equity investment, the exercise of warrants, and the \$5.4 million of Merger Consideration received.

LIQUIDITY, CAPITAL RESOURCES AND GOING CONCERN

Liquidity, Capital Resources and Going Concern

As of December 31, 2021, our cash balance was \$2.3 million, of which \$1.7 million was restricted cash, our working capital deficiency was \$12.5 million and we had significant near-term commitments and contractual obligations. The level of additional cash needed to fund operations and our ability to conduct business for the next 12 months will be influenced primarily by the following factors:

- our ability to access the capital and debt markets to satisfy current obligations and operate the business;
- our ability to qualify for and access financial stimulus programs available through federal and state government programs;
- our ability to refinance or otherwise extend maturities of current debt obligations;
- our ability to manage our operating expenses and maintain gross margins;
- popularity of and demand for our fast-casual dining concepts; and
- general economic conditions and changes in consumer discretionary income.

We have typically funded our operating costs, acquisition activities, working capital requirements and capital expenditures with proceeds from the issuances of our common stock and other financing arrangements, including convertible debt, lines of credit, notes payable, capital leases, and other forms of external financing.

On March 10, 2020, the World Health Organization characterized the novel COVID-19 virus as a global pandemic. The COVID-19 outbreak in the United States has resulted in a significant impact throughout the hospitality industry. The Company has been impacted due to restrictions placed on them by state and local governments that caused temporary restaurant closures or significantly reduced the Company's ability to operate, temporarily restricting the Company's restaurants to take-out only. It is difficult to estimate the length or severity of this outbreak; however, the Company has made operational changes, as needed, to reduce the impact. However, there can be no certainty regarding the length and severity of the outbreak and such its ultimate financial impact on the restaurant operations.

As Amergent executes its business plan over the next 12 months, it intends to carefully monitor the impact of its working capital needs and cash balances relative to the availability of cost-effective debt and equity financing. In the event that capital is not available, Amergent may then have to scale back or freeze its operations plans, sell assets on less than favorable terms, reduce expenses, and/or curtail future acquisition plans to manage its liquidity and capital resources.

The Company's current operating losses, combined with its working capital deficit and uncertainties regarding the impact of COVID-19, raise substantial doubt about our ability to continue as a going concern.

In addition, our business is subject to additional risks and uncertainties, including, but not limited to, those described in Item 1A. "Risk Factors".

The consolidated and combined financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts and classification of liabilities that might be necessary should the Company be unable to continue as a going concern.

CRITICAL ACCOUNTING POLICIES

Our reported results of operations and financial position are dependent upon the application of certain accounting policies and estimates that require subjective or complex judgments. Such estimates are inherently uncertain and changes in such estimates could have a significant impact on reported results and balances for the periods presented as well as future periods. The following is a description of what we consider to be our most critical accounting policies.

Leases

We determine if a contract contains a lease at inception. Our material operating leases consist of restaurant locations and office space. Our leases generally have remaining terms of 1-20 years and most include options to extend the leases for additional 5-year periods. Generally, the lease term is the minimum of the noncancelable period of the lease or the lease term inclusive of reasonably certain renewal periods up to a term of 20 years. If the estimate of our reasonably certain lease term was changed, our depreciation and rent expense could differ materially.

Operating lease assets and liabilities are recognized at the lease commencement date. Operating lease liabilities represent the present value of lease payments not yet paid. Operating lease assets represent our right to use an underlying asset and are based upon the operating lease liabilities adjusted for prepayments or accrued lease payments, initial direct costs, lease incentives, and impairment of operating lease assets. To determine the present value of lease payments not yet paid, we estimate incremental borrowing rates corresponding to the reasonably certain lease term. As we have no committed credit facilities, secured or otherwise, we estimate this rate based on prevailing financial market conditions, comparable company and credit analysis, and management judgment. If the estimate of our incremental borrowing rate was changed, our operating lease assets and liabilities could differ materially.

Estimated Lease Termination and Other Closing Costs

Once we have determined that a restaurant location is to be closed, we estimate the expected proceeds to be received from such disposal and impair the carrying value of the net assets of such locations to this estimate and report these net assets as assets held for sale. Our estimate of disposal proceeds is dependent upon multiple assumptions including our ability to identify a buyer as well as the general market for commercial real estate at the expected time of disposal. Actual results could significantly differ from these estimates, which could result in a significant impact to reported operations in future periods. Assets that have been impaired to their estimated disposal proceeds are maintained at the lower of this new carrying value or the most recently developed estimate of eventual proceeds.

Intangible Assets

Trademark/Tradenames

Certain of the Company's trademark/tradenames have been classified as indefinite-lived intangible assets and are not amortized, but instead are reviewed for impairment at least annually or more frequently if indicators of impairment exist. Definite lived intangible assets are assessed for impairment using methods discussed below in the *long-lived assets* section. The Company's indefinite-lived intangible assets are tested for impairment at least annually by estimating their fair value and comparing it to the asset's carrying value. The Company estimates the fair value of indefinite-lived tradenames using the relief-from-royalty method, which requires assumptions related to projected sales from its annual long-range plan; assumed royalty rates that could be payable if the Company did not own the trademarks; and a discount rate.

Long-Lived Assets

Long-lived assets, such as property and equipment, operating lease assets, and purchased intangible assets subject to depreciation and amortization, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Some of the events or changes in circumstances that would trigger an impairment test include, but are not limited to:

- significant under-performance relative to expected and/or historical results (negative comparable sales growth or operating cash flows for two consecutive years);
- significant negative industry or economic trends;
- knowledge of transactions involving the sale of similar property at amounts below the Company's carrying value; or
- the Company's expectation to dispose of long-lived assets before the end of their estimated useful lives, even though the assets do not meet the criteria to be classified as "Held for Sale."

If circumstances require a long-lived asset or asset group be tested for possible impairment, the Company first compares undiscounted cash flows expected to be generated by that asset or asset group to its carrying value. If the carrying value of the long-lived asset or asset group is not recoverable on an undiscounted cash flow basis, an impairment is recognized to the extent that the carrying value exceeds its fair value. Fair value is determined through various valuation techniques, including discounted cash flow models, quoted market values and third-party independent appraisals, as considered necessary.

Due to the continued impact of this pandemic on the Company's business, management performed an impairment analysis of its long-lived assets at each quarter end in 2021 and 2020, including December 31, 2021 and 2020, and determined that the carrying value of the Company's trademark/tradenames intangible asset, property and equipment and operating lease assets were impaired for an aggregate amount of \$1.5 million and \$1.6 million for the years ended December 31, 2021 and 2020, respectively. The determination was based on the best judgment of management for the future of the assets and on information known at the time of the assessment.

Goodwill

Goodwill is not subject to amortization but is tested at least annually or when impairment indicators are present. When evaluating goodwill for impairment, the Company may first perform a qualitative assessment to determine whether it is more likely than not that a reporting unit is impaired. If the Company does not perform a qualitative assessment, or determines that it is not more likely than not that the fair value of the reporting unit exceeds its carrying amount, a quantitative assessment is performed to calculate the estimated fair value of the reporting unit. If the carrying amount of the reporting unit exceeds the estimated fair value, an impairment charge is recorded to reduce the carrying value to the estimated fair value. The Company's decision to perform a qualitative impairment assessment is influenced by a number of factors, including the significance of the excess of the reporting unit's estimated fair value over carrying value at the last quantitative assessment date, the amount of time in between quantitative fair value assessments, and the price of our common stock. Impairment is measured as the excess of carrying value of the goodwill to its estimated fair value. Due to the ongoing impact of the COVID-19 pandemic on the Company's business, management performed an impairment analysis of goodwill as of each quarter end in 2021 and 2020, including December 31, 2021 and 2020. No goodwill impairment was required in 2021 and 2020.

Derivative Liabilities

Accounting for the derivative liabilities relating to the Company's true-up payment, warrants and debt conversion feature requires Amergent's management to exercise judgment and make estimates and assumptions regarding fair value. Each derivative liability was initially recorded at fair value upon the date of issuance and is subsequently remeasured to fair value at each reporting date, with changes recognized in the consolidated and combined statement of operations until the liability expires or qualifies for equity classification. See Note 12 to the consolidated and combined financial statements for a discussion of these liabilities. In July 2021, the true-up payment was made and there was no derivative liability as of December 31, 2021.

Business Combination Accounting

Accounting for assets acquired, liabilities assumed and consideration transferred in a business combination requires Amergent's management to exercise judgment and make estimates and assumptions regarding fair value. The Company acquired Pie Squared Holdings during the year ended December 31, 2021, resulting in the Company recording the assets acquired and liabilities assumed at fair value on the acquisition date, as well as fair valuing the convertible promissory note issued as consideration for the business combination. The Company elected the fair value option to account for the convertible promissory note. The convertible promissory note was initially recorded at fair value at the acquisition date and will be subsequently remeasured to fair value at each reporting date, with changes recognized in the consolidated and combined statement of operations until the liability is repaid or converted into common stock.

In addition, the Company assumed all the rights and obligations of Pie Squared Holdings that arose from transactions of Pie Squared Holdings prior to the business combination, both stated rights and obligations as well as those that are contingent. Pie Squared Holdings applied for and received an approximately \$10.0 million grant from the U.S. SBA under the RRF and used approximately \$8.0 million to repay existing debt of Pie Squared Holdings and to fund some of its operating expenses. Under the RRF there is a requirement that the grant monies be for "eligible uses." The Company, through the structure of the acquisition, is now responsible that the grant proceeds were, in fact, properly obtained and disbursed for "eligible uses." If it is determined that Pie Squared Holdings obtained the grant improperly or the disbursement of such grant monies were not "eligible uses," then the Company would be responsible for the ramifications of such actions, including repayment of the approximately \$10.0 million of grant monies, among other items. Management completed its analysis of this contingency and concluded that, at this time, a liability does not need to be recorded for this contingency. In connection with the acquisition, the Company obtained an indemnification from the sellers which is inclusive of any matters related to the RRF.

Modification of Debt

When we change the terms of existing notes payable, we evaluate the amendments under ASC 470-50, *Debt Modification and Extinguishment* to determine whether the change should be treated as a modification or as a debt extinguishment. This evaluation includes analyzing whether there are significant and consequential changes to the economic substance of the note. If the change is deemed insignificant then the change is considered a debt modification, whereas if the change is substantial the change is reflected as a debt extinguishment.

Recently Issued Accounting Pronouncements

A description of recently issued accounting pronouncements that may potentially impact our financial position and results of operations is disclosed in Note 2 to the consolidated and combined financial statements included elsewhere in this Form 10-K.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

As a smaller reporting company, Amergent is not required to provide the information required by this Item 7A.

ITEM 8. FINANCIAL STATEMENTS

Amergent Hospitality Group, Inc. and Subsidiaries
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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders
Amergent Hospitality Group, Inc. and Subsidiaries
Charlotte, North Carolina

Opinion on the Financial Statements

We have audited the accompanying consolidated and combined balance sheets of Amergent Hospitality Group, Inc. and Subsidiaries (the “Company”) as of December 31, 2021 and 2020, the related consolidated and combined statements of operations, comprehensive loss, stockholders’ deficit, and cash flows for the years then ended, and the related notes (collectively referred to as the “financial statements”). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2021 and 2020, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

Substantial Doubt about the Company’s Ability to Continue as a Going Concern

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company incurred \$3.5 million in losses for the year ended December 31, 2021, that included \$1.5 million in asset impairments, and the Company has a working capital deficit of approximately \$12.5 million as of December 31, 2021. These conditions raise substantial doubt about the Company’s ability to continue as a going concern. Management’s evaluations of the events and conditions and management’s plans regarding those matters are also described in Note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

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

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

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

Critical Audit Matters

The critical audit matters communicated below are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing a separate opinion on the critical audit matters or on the accounts or disclosures to which they relate.

Impairment of Long-Lived Assets and Operating Lease Assets

Critical Audit Matter Description –

The Company periodically evaluates the carrying amount of long-lived assets when events and circumstances warrant such a review to ascertain if any assets have been impaired. As a result of the continued impact of the COVID-19 pandemic on the Company, management performed an impairment analysis at the store-level, which represents the lowest level for which identifiable cash flows are independent of the cash flows of other assets. The carrying amount of long-lived assets and operating lease assets, is considered impaired when the carrying value of the asset group exceeds the expected future cash flows from the asset group. As of December 31, 2021, long-lived assets aggregated to \$4.0 million and operating lease assets aggregated to \$8.0 million. During fiscal year 2021, the Company recorded impairment charges of \$747,000 and \$708,000 to long-lived assets and operating lease assets, respectively.

Inherent in the impairment analysis of long-lived assets and operating lease assets are certain significant judgments and estimates related to forecasted cash flows and revenues. As disclosed by management, changes in these assumptions can significantly impact the valuation of long-lived assets and operating lease assets, and the impairment charge that is recorded.

How the Critical Audit Matter Was Addressed in the Audit –

Our audit procedures related to the forecasted cash flows and revenues used in the long-lived asset and operating lease asset impairment analyses included the following:

- Obtaining an understanding of the relevant controls related to management’s evaluation of long-lived asset impairment analyses.
- Evaluating the reasonableness of management’s cash flow forecasts by comparing the forecasts to historical performance, considering actual financial performance and management expectations for future performance.
- Performing procedures including reviewing the sensitivity over the assumptions used in the impairment analysis to assess their impact on the determination of fair value.

Impairment Assessment of Goodwill and Indefinite-Lived Intangible Assets

Critical Audit Matter Description –

As described in Note 7 to the combined and consolidated financial statements, the Company had a goodwill balance of \$7.8 million, and an indefinite lived tradename balance of \$2.3 million at December 31, 2021.

- Goodwill and indefinite-lived intangible assets are tested for impairment at least annually at the reporting unit level or more frequently when events occur, or circumstances change. The evaluation requires a comparison of the estimated fair value of the asset to the carrying value of the asset. If the carrying value of the asset exceeds its fair value, an impairment charge is recorded.

The Company utilized a third-party consultant to perform an impairment test on both goodwill and indefinite-lived intangible assets. As the Company has a single reporting unit, management utilized a market capitalization approach in determining the fair value of the entity as part of the impairment assessment of goodwill. The Company utilized a relief from royalty method to estimate the fair value of indefinite-lived tradenames. As disclosed by management, changes in key assumptions in the relief from royalty approach could have a significant impact on the estimate of future cash flows and therefore, on the amount of any impairment charge. The determination of an impairment indicator on goodwill and indefinite-lived intangible assets requires management judgments and involves significant assumptions.

How the Critical Matter Was Addressed in the Audit –

The primary audit procedures we performed to address this critical audit matter included:

- Obtaining an understanding of the relevant controls related to management’s evaluation of goodwill and other indefinite-lived asset impairment analyses.
- Evaluating management’s determination of reporting units and segments
- Reviewing and independently corroborating management’s calculation of the fair value of the Company, which consists of a single reporting unit, utilizing a market capitalization approach.
- Reviewing management’s inputs, assumptions and projections utilized in the estimation of the fair value of the Company’s indefinite-lived tradenames.
- Testing completeness and accuracy of the data used in impairment analyses.
- Performing sensitivity analyses over the Company’s annual goodwill and indefinite-lived tradename impairment analyses.

Restaurant Revitalization Fund Program

Critical Audit Matter Description –

As described in Notes 2 and 3 of the combined and consolidated financial statements, the Company entered into a business combination transaction during the year ended December 31, 2021. Certain assets and liabilities acquired were as result of the acquired company applying for and receiving funds under the Restaurant Revitalization Fund (“RRF”) Program which was part of a COVID-19 federal government stimulus program passed into law as part of the Coronavirus Aid, and Economic Security Act (“CARES Act”). Management assessed the eligibility of the use of funds prior to the business combination as well as the eligibility of the acquired company to apply for the program in determining the fair value of the assets and liabilities to be recognized in the business combination accounting.

We identified this as a critical audit matter because of the judgments necessary to determine if a contingency was present regarding the acquired company’s application for and use of funds under the RRF program prior to the acquisition. This matter required substantial audit effort due judgements involved in determining program eligibility and proper use of funds as well as the materiality of the RRF proceeds received.

How the Critical Audit Matter Was Addressed in the Audit –

The primary audit procedures we performed to address this critical audit matter included:

- Obtaining an understanding of the relevant controls related to management’s accounting unusual and complex transactions.
- Reviewing management’s assessment that the acquired entity was eligible to receive funds under the RRF program as well as compared the funds utilized under the program to available guidance issued by the United States federal government.

/s/ Cherry Bekaert LLP

We have served as the Company’s auditor since 2015.

Charlotte, North Carolina
April 15, 2022

Amergent Hospitality Group, Inc. and Subsidiaries
Consolidated and Combined Balance Sheets

(in thousands except share and per share data)	December 31, 2021	December 31, 2020
ASSETS		
Current assets:		
Cash	\$ 646	\$ 678
Restricted cash	1,672	1,250
Investments	50	413
Accounts and other receivables	865	314
Inventories	182	173
Prepaid expenses and other current assets	360	291
TOTAL CURRENT ASSETS	3,775	3,119
Property and equipment, net	3,115	3,703
Operating lease assets	8,021	9,529
Intangible assets, net	3,129	3,044
Goodwill	7,810	8,591
Investments	16	365
Deposits and other assets	352	296
TOTAL ASSETS	\$ 26,218	\$ 28,647
LIABILITIES, REDEEMABLE SHARES, AND STOCKHOLDERS' DEFICIT		
Current liabilities:		
Accounts payable and accrued expenses	\$ 6,844	\$ 8,667
Current maturities of long-term debt and notes payable	3,264	2,339
Current operating lease liabilities	4,599	4,209
Deferred grant income	1,545	—
Derivative liabilities	—	185
TOTAL CURRENT LIABILITIES	16,252	15,400
Long-term operating lease liabilities	8,644	10,678
Contract liabilities	757	795
Deferred tax liabilities	150	109
Long-term debt and notes payable (includes debt measured at fair value of \$599 at December 31, 2021)	6,593	4,354
TOTAL LIABILITIES	32,396	31,336
Commitments and contingencies (see Note 13)		
Convertible Preferred Stock: Series 2: \$1,000 stated value; authorized 1,500 shares; 100 and 787 shares issued and outstanding at December 31, 2021 and December 31, 2020, respectively	58	460
Stockholders' Deficit:		
Common stock: \$0.0001 par value; authorized 50,000,000 shares; 15,706,736 and 14,282,736 shares issued and outstanding at December 31, 2021 and December 31, 2020, respectively	2	1
Additional paid-in-capital	92,882	92,433
Accumulated deficit	(97,963)	(94,587)
Accumulated other comprehensive loss	—	(26)
Total Amergent Hospitality Group, Inc. Stockholders' Deficit	(5,079)	(2,179)
Non-controlling interests	(1,157)	(970)
TOTAL STOCKHOLDERS' DEFICIT	(6,236)	(3,149)
TOTAL LIABILITIES, REDEEMABLE SHARES AND STOCKHOLDERS' DEFICIT	\$ 26,218	\$ 28,647

See accompanying notes to the consolidated and combined financial statements

Amergent Hospitality Group, Inc. and Subsidiaries
Consolidated and Combined Statements of Operations

(in thousands except share and per share data)	Year Ended	
	December 31, 2021	December 31, 2020
Revenue:		
Restaurant sales, net	\$ 19,797	\$ 18,131
Gaming income, net	403	292
Franchise income	452	341
Total revenue	20,652	18,764
Expenses:		
Restaurant cost of sales	6,172	5,750
Restaurant operating expenses	13,262	13,195
Restaurant pre-opening and closing expenses	8	288
General and administrative expenses	5,210	4,692
Asset impairment charges	1,456	1,578
Depreciation and amortization	1,047	1,525
Employee retention credit and other grant income	(3,009)	—
Total expenses	24,146	27,028
Operating loss	(3,494)	(8,264)
Other income (expense):		
Interest expense	(656)	(684)
Change in fair value of derivative liabilities	119	616
Change in fair value of investment	(244)	(1,232)
Change in fair value of convertible promissory note	95	—
Debt extinguishment expense	—	(11,808)
Gain on sale of subsidiary	58	—
Gain on extinguished lease liabilities	412	506
Other income	310	282
Total other income (expense)	94	(12,320)
Loss before income taxes	(3,400)	(20,584)
Income tax expense	(118)	(7)
Consolidated and combined net loss	(3,518)	(20,591)
Less: Net loss attributable to non-controlling interests	142	620
Net loss attributable to Amergent Hospitality Group, Inc.	(3,376)	(19,971)
Dividends on redeemable preferred stock	—	(28)
Net loss attributable to common shareholders of Amergent Hospitality Group, Inc.	\$ (3,376)	\$ (19,999)
Net loss attributable to Amergent Hospitality Group, Inc. per common share, basic and diluted	\$ (0.22)	\$ (1.46)
Weighted average shares outstanding, basic and diluted	15,303,558	13,708,985

See accompanying notes to the consolidated and combined financial statements

Amergent Hospitality Group, Inc. and Subsidiaries
Consolidated and Combined Statements of Comprehensive Loss

(in thousands)	Year Ended	
	December 31, 2021	December 31, 2020
Net loss attributable to Amergent Hospitality Group, Inc.	\$ (3,376)	\$ (19,971)
Foreign currency translation gain	26	20
Comprehensive loss	<u>\$ (3,350)</u>	<u>\$ (19,951)</u>

See accompanying notes to the consolidated and combined financial statements

Amergent Hospitality Group, Inc. and Subsidiaries
Consolidated and Combined Statements of Stockholders' Deficit
Year Ended December 31, 2021

(in thousands except share data)	(Temporary equity) Preferred Series 2		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Non- Controlling Interest	Total
	Shares	Amount	Shares	Amount					
Balance, January 1, 2021	787	\$ 460	14,282,736	\$ 1	\$ 92,433	\$ (94,587)	\$ (26)	\$ (970)	\$ (3,149)
Conversion of preferred stock into common stock	(687)	(402)	1,374,000	1	401	—	—	—	402
Common stock issued for compensation	—	—	50,000	—	27	—	—	—	27
Share-based compensation expense	—	—	—	—	21	—	—	—	21
Foreign currency translation	—	—	—	—	—	—	26	—	26
Non-controlling interest distribution	—	—	—	—	—	—	—	(45)	(45)
Net loss	—	—	—	—	—	(3,376)	—	(142)	(3,518)
Balance, December 31, 2021	<u>100</u>	<u>\$ 58</u>	<u>15,706,736</u>	<u>\$ 2</u>	<u>\$ 92,882</u>	<u>\$ (97,963)</u>	<u>\$ —</u>	<u>\$ (1,157)</u>	<u>\$ (6,236)</u>

See accompanying notes to the consolidated and combined financial statements

Amergent Hospitality Group, Inc. and Subsidiaries
Consolidated and Combined Statements of Stockholders' Deficit
Year ended December 31, 2020

(in thousands except share data)	(Temporary equity) Preferred Series 2		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Non- Controlling Interest	Total
	Shares	Amount	Shares	Amount					
Balance, January 1, 2020	—	\$ —	10,404,347	\$ 1	\$ 71,506	\$ (75,068)	\$ (46)	\$ 456	\$ (3,152)
Common stock:									
Preferred unit dividend	—	—	37,518	—	19	(28)	—	—	(9)
Exercise of warrants	—	—	2,414,022	—	1,529	(325)	—	—	1,204
Preferred shares - Series 2:									
Issuance of shares, net of transaction costs of \$95	1,500	1,405	—	—	—	—	—	—	—
Bifurcation of derivative liability	—	(529)	—	—	—	—	—	—	—
Beneficial conversion feature	—	(729)	—	—	729	—	—	—	729
Preferred stock deemed dividend	—	729	—	—	(729)	—	—	—	(729)
Conversion of Series 2 preferred to common	(713)	(416)	1,426,849	—	416	—	—	—	416
Reclassification of warrants and conversion feature	—	—	—	—	11,894	—	—	—	11,894
Warrant issued for True-Up Payment extension	—	—	—	—	28	—	—	—	28
Cash consideration of merger consideration, net of transaction costs of \$588	—	—	—	—	5,412	—	—	—	5,412
Contribution of warrant portion of merger consideration	—	—	—	—	1,629	—	—	—	1,629
Foreign currency translation	—	—	—	—	—	—	20	—	20
Reclassification of non-controlling interest	—	—	—	—	—	806	—	(806)	—
Net loss	—	—	—	—	—	(19,971)	—	(620)	(20,591)
Balance, December 31, 2020	<u>787</u>	<u>\$ 460</u>	<u>14,282,736</u>	<u>\$ 1</u>	<u>\$ 92,433</u>	<u>\$ (94,587)</u>	<u>\$ (26)</u>	<u>\$ (970)</u>	<u>\$ (3,149)</u>

See accompanying notes to the consolidated and combined financial statements

Amergent Hospitality Group, Inc. and Subsidiaries
Consolidated and Combined Statements of Cash Flows

(in thousands)	Year Ended	
	December 31, 2021	December 31, 2020
Cash flows from operating activities:		
Net loss	\$ (3,518)	\$ (20,591)
Adjustments to reconcile net loss to net cash flows used in operating activities:		
Depreciation and amortization	1,047	1,525
Amortization of operating lease assets	1,011	1,081
Asset impairment charges	1,456	1,578
Gain on extinguished lease liabilities	(412)	(506)
Gain on sale of subsidiary	(58)	—
Operating lease liabilities remeasurement	—	(224)
Warrant issued for True-Up payment extension	—	28
Share-based compensation	48	—
Change in fair value of investment	244	1,232
Change in fair value of convertible promissory note	(95)	—
Amortization of debt discount	186	134
Loss on extinguishment of redeemable Series 1 Preferred	—	162
Debt extinguishment expense	—	11,808
Change in fair value of derivative liabilities	(119)	(616)
Change in operating assets and liabilities (net of impact for acquisition):		
Accounts and other receivables	(555)	(33)
Prepaid expenses and other assets	(22)	(29)
Inventories	(46)	107
Accounts payable and accrued expenses	(1,592)	377
Deferred tax liabilities	41	6
Deferred grant income	(455)	—
Operating lease liabilities	(1,495)	(1,492)
Derivative liabilities	(66)	—
Contract liabilities	(74)	(164)
Net cash flows used in operating activities	(4,474)	(5,617)
Cash flows from investing activities:		
Cash and restricted cash acquired in connection with acquisition of Pie Squared Holdings	2,071	—
Purchase of property and equipment	(129)	(64)
Net proceeds from sale of subsidiary	568	—
Proceeds from sale of investments	468	—
Net cash flows provided by (used in) investing activities	2,978	(64)
Cash flows from financing activities:		
Proceeds from Series 2 Preferred stock	—	1,405
Proceeds from warrant exercises	—	885
Redemption of Series 1 Preferred	—	(880)
Loan proceeds	2,000	2,992
Loan repayments	(53)	(2,706)
Merger consideration, net	—	5,412
Distributions to non-controlling interests	(45)	—
Net cash flows provided by financing activities	1,902	7,108
Effect of exchange rate of cash	(16)	—
Net increase in cash and restricted cash	390	1,427
Cash and restricted cash, beginning of year	1,928	501
Cash and restricted cash, end of year	<u>\$ 2,318</u>	<u>\$ 1,928</u>

See accompanying notes to the consolidated and combined financial statements

Amergent Hospitality Group, Inc and Subsidiaries
Consolidated and Combined Statements of Cash Flows

	Year Ended	
	December 31, 2021	December 31, 2020
Supplemental cash flow information:		
Cash paid for interest and income taxes		
Interest	\$ 402	\$ 472
Income taxes	\$ 76	\$ 26
Non-cash investing and financing activities		
Preferred stock dividends paid through issuance of common stock	\$ —	\$ 20
Issuance of convertible promissory note as consideration for Pie Squared Holdings acquisition	\$ 1,194	\$ —
Change in operating lease assets and liabilities due to new and amended leases	\$ 404	\$ —
Conversion of Preferred Series 2 stock to common stock	\$ 402	\$ 416
Accrued interest paid through warrant exercise	\$ —	\$ 319
Bifurcation of derivative liability from Preferred Series 2 stock	\$ —	\$ 529
Warrant portion of merger consideration	\$ —	\$ 1,629
Reclassification of warrants and conversion feature from liability to equity	\$ —	\$ 11,894

See accompanying notes to the consolidated and combined financial statements

Amergent Hospitality Group, Inc. and Subsidiaries
Notes to the Consolidated and Combined Financial Statements

1. NATURE OF BUSINESS

BASIS OF PRESENTATION

Amergent Hospitality Group, Inc. (“Amergent”) was incorporated on February 18, 2020 as a wholly-owned subsidiary of Chanticleer Holdings, Inc. (“Chanticleer”) for the purpose of conducting the business of Chanticleer and its subsidiaries after completion of the spin-off of Amergent to the shareholders of Chanticleer. The spin-off transaction was completed on April 1, 2020. Amergent is in the business of owning, operating and franchising fast casual dining concepts.

On March 31, 2020, Chanticleer contributed all its assets and liabilities, including the stock interest in all its subsidiaries (other than Amergent), to Amergent. Based on this being a transaction between entities under common control, the carryover basis of accounting was used to record the assets and liabilities contributed to Amergent. Further, as a common control transaction the consolidated and combined financial statements of Amergent reflect the transaction as if the contribution had occurred as of the earliest period presented herein.

As such, the accompanying consolidated and combined financial statements include the accounts of Amergent and its subsidiaries along with Chanticleer and its subsidiaries (collectively “we,” “us,” “our,” or the “Company”). All intercompany and inter-entity balances have been eliminated in consolidation and combination.

ORGANIZATION, MERGER, SPIN-OFF, REVERSE SPLIT

On April 1, 2020, Chanticleer completed its merger transaction with Sonnet BioTherapeutics, Inc. (“Sonnet”), in accordance with the terms of the Agreement and Plan of Merger, dated as of October 10, 2019, among Chanticleer, Sonnet, Biosub Inc. (“Merger Sub”), and Sonnet Sub, as amended by Amendment No. 1 thereto, dated as of February 7, 2020 (as so amended, the “Merger Agreement”), pursuant to which Merger Sub merged with and into Sonnet Sub, with Sonnet Sub surviving as a wholly-owned subsidiary of Chanticleer (the “Merger”). On April 1, 2020, in connection with the Merger, Chanticleer changed its name to “Sonnet BioTherapeutics Holdings, Inc.”

In connection with and prior to the Merger, Chanticleer contributed and transferred to Amergent, a newly-formed, wholly-owned subsidiary of Chanticleer, all of the assets and liabilities relating to Chanticleer’s restaurant business. On March 16, 2020, the board of directors of Chanticleer declared a dividend with respect to the shares of Chanticleer’s common stock outstanding at the close of business on March 26, 2020 of one share of the Amergent common stock held by Chanticleer for each outstanding share of Chanticleer common stock. The dividend, which together with the contribution and transfer of Chanticleer’s restaurant business described above, is referred to as the “Spin-Off.” Prior to the Spin-Off, Amergent engaged in no business or operations.

The Spin-Off of Amergent to the stockholders of record on March 26, 2020 occurred prior to the Merger on April 1, 2020 (“Spin-Off Date”). As a result of the Spin-Off, Amergent emerged as successor to the business, operations, assets and liabilities of pre-merger Chanticleer. Additionally, Amergent’s shareholder base and their holdings (on a pro-rata basis) are substantially identical to that of pre-merger Chanticleer.

In connection with the Merger on April 1, 2020, Amergent received proceeds from Sonnet of \$6.0 million as well as a warrant to purchase 2% of the outstanding common shares of Sonnet (186,161 shares) for \$0.01 per share (“Merger Consideration”). Amergent simultaneously entered into agreements to refinance a note payable and issue warrants to the note holder. See Note 8 for additional information on the note refinancing.

Amergent Hospitality Group, Inc. and Subsidiaries
Notes to the Consolidated and Combined Financial Statements

During 2021, the Company purchased all of the outstanding membership interests in Pie Squared Holdings LLC and its wholly-owned subsidiaries (“Pie Squared Holdings”) (see Note 3).

The consolidated and combined financial statements include the accounts of Amergent and its subsidiaries presented below:

Amergent Hospitality Group, Inc.	Jurisdiction of Incorporation	Percent owned
American Roadside Burgers, Inc.	DE, USA	
American Burger Ally, LLC	NC, USA	100%
American Burger Morehead, LLC	NC, USA	100%
American Burger Prosperity, LLC	NC, USA	50%
American Roadside Burgers Smithtown, Inc.	DE, USA	100%
BGR Acquisition, LLC	NC, USA	100%
BGR Franchising, LLC	VA, USA	100%
BGR Operations, LLC	VA, USA	100%
BGR Acquisition 1, LLC	NC, USA	100%
BGR Annapolis, LLC	MD, USA	100%
BGR Arlington, LLC	VA, USA	46%
BGR Columbia, LLC	MD, USA	100%
BGR Michigan Ave, LLC	DC, USA	100%
BGR Mosaic, LLC	VA, USA	100%
BGR Old Keene Mill, LLC	VA, USA	100%
BGR Washingtonian, LLC	MD, USA	46%
Capitol Burger, LLC	MD, USA	100%
BT Burger Acquisition, LLC	NC, USA	100%
BT’s Burgerjoint Rivergate LLC	NC, USA	100%
BT’s Burgerjoint Sun Valley, LLC	NC, USA	100%
LBB Acquisition, LLC	NC, USA	100%
Cuarto LLC	OR, USA	100%
LBB Acquisition 1 LLC	OR, USA	100%
LBB Hassalo LLC	OR, USA	80%
LBB Platform LLC	OR, USA	80%
LBB Capitol Hill LLC	WA, USA	50%
LBB Franchising LLC	NC, USA	100%
LBB Green Lake LLC	OR, USA	50%
LBB Lake Oswego LLC	OR, USA	100%
LBB Magnolia Plaza LLC	NC, USA	50%
LBB Multnomah Village LLC	OR, USA	50%
LBB Progress Ridge LLC	OR, USA	50%
LBB Rea Farms LLC	NC, USA	50%
LBB Wallingford LLC	WA, USA	50%
LBB Downtown PDX LLC	WA, USA	100%
Noveno LLC	OR, USA	100%
Octavo LLC	OR, USA	100%
Primero LLC	OR, USA	100%
Quinto LLC	OR, USA	100%
Segundo LLC	OR, USA	100%
Septimo LLC	OR, USA	100%
Sexto LLC	OR, USA	100%
LBB University of Oregon LLC	OR, USA	100%
Jantzen Beach Wings, LLC	OR, USA	100%
Oregon Owl’s Nest, LLC	OR, USA	100%
West End Wings LTD (sold in 2021)	United Kingdom	100%
Pie Squared Holdings LLC	DE, USA	100%
PizzaRev Franchising LLC	DE, USA	100%
Pie Squared Pizza LLC	CA, USA	100%
Pie Squared Austin LLC	DE, USA	100%
PizzaRev IP Holdings LLC	DE, USA	100%

Amergent Hospitality Group, Inc. and Subsidiaries
Notes to the Consolidated and Combined Financial Statements

LIQUIDITY, CAPITAL RESOURCES AND GOING CONCERN

Liquidity, Capital Resources and Going Concern

As of December 31, 2021, the Company's cash balance was \$2.3 million, of which \$1.7 million was restricted cash, its working capital deficiency was \$12.5 million and it had significant near-term commitments and contractual obligations. The level of additional cash needed to fund operations and our ability to conduct business for the next 12 months will be influenced primarily by the following factors:

- our ability to access the capital and debt markets to satisfy current obligations and operate the business;
- our ability to qualify for and access financial stimulus programs available through federal and state government programs;
- our ability to refinance or otherwise extend maturities of current debt obligations;
- our ability to manage our operating expenses and maintain gross margins;
- popularity of and demand for our fast-casual dining concepts; and
- general economic conditions and changes in consumer discretionary income.

We have typically funded our operating costs, acquisition activities, working capital requirements and capital expenditures with proceeds from the issuances of our common stock and other financing arrangements, including convertible debt, lines of credit, notes payable, capital leases, and other forms of external financing.

On March 10, 2020, the World Health Organization characterized the novel COVID-19 virus as a global pandemic. The COVID-19 outbreak in the United States has resulted in a significant impact throughout the hospitality industry. The Company has been impacted due to restrictions placed by state and local governments that caused temporary restaurant closures or significantly reduced the Company's ability to operate, temporarily restricting the Company's restaurants to take-out only. It is difficult to estimate the length or severity of this outbreak; however, the Company has made operational changes, as needed, to reduce the impact. However, there can be no certainty regarding the length and severity of the outbreak and as such its ultimate financial impact on the Company's operations.

On March 27, 2020, Congress passed The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), which included the Paycheck Protection Program ("PPP") for small businesses. On April 27, 2020, Amergent received a PPP loan in the amount of \$2.1 million. Due to the Spin-Off and Merger, Amergent was not publicly traded at the time of the loan application or funding. On February 25, 2021, the Company received an additional \$2.0 million PPP loan. Amergent was not listed on a national securities exchange at the time of the loan application or funding. In addition, during the year ended December 31, 2021, the Company obtained \$2.5 million of refundable tax credits from the Employee Retention Credit ("ERC") under the CARES Act. The program ended on January 1, 2022. Additionally, the American Rescue Plan Act established the Restaurant Revitalization Fund ("RRF") to provide funding to help restaurants and other eligible businesses keep their doors open during the COVID-19 pandemic. Pie Squared Holdings received a grant under the RRF, and \$2.0 million of unused funds received under the RRF at the closing of the acquisition were placed into escrow for the benefit of the Company. The Company recognized \$0.5 million in RRF grant income during the year ended December 31, 2021.

Amergent Hospitality Group, Inc. and Subsidiaries
Notes to the Consolidated and Combined Financial Statements

The Company expects to have to seek additional debt or equity funding to support operations and there can be no assurances that such funding would be available at commercially reasonable terms, if at all.

As Amergent executes its business plan over the next 12 months, it intends to carefully monitor its working capital needs and cash balances relative to the availability of cost-effective debt and equity financing. In the event that capital is not available, Amergent may then have to scale back or freeze its growth plans, sell assets on less than favorable terms, reduce expenses, and/or curtail future acquisition plans to manage its liquidity and capital resources.

The Company's current operating losses, combined with its working capital deficit and uncertainties regarding the impact of COVID-19, raise substantial doubt about our ability to continue as a going concern.

The accompanying consolidated and combined financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts and classification of liabilities that might be necessary should the Company be unable to continue as a going concern.

2. SIGNIFICANT ACCOUNTING POLICIES

BASIS OF PRESENTATION

The accompanying consolidated and combined financial statements have been prepared in conformity with U.S. generally accepted accounting principles ("U.S. GAAP"). Any reference in these notes to applicable guidance is meant to refer to U.S. GAAP as found in the Accounting Standards Codification ("ASC") and Accounting Standards Updates ("ASU") promulgated by the Financial Accounting Standards Board ("FASB"). The consolidated and combined financial statements include accounts of the Company and its wholly-owned subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation.

Certain prior year amounts have been updated to conform to the current year presentation. The Company has opted to present the financial information on the consolidated and combined balance sheets and consolidated and combined statements of operations, comprehensive loss, stockholders' deficit and cash flows in thousands.

USE OF ESTIMATES

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Significant estimates include valuing derivatives, options, warrants and convertible notes payable using the Binomial Lattice, Black-Scholes and Monte Carlo models, and analysis of the recoverability of goodwill and long-lived assets. Actual results could differ from those estimates, particularly given the significant social and economic disruptions and uncertainties associated with the ongoing COVID-19 pandemic and the COVID-19 control responses.

FAIR VALUE OF FINANCIAL INSTRUMENTS

The Company measures and records certain financial assets and liabilities at fair value on a recurring basis. U.S. GAAP provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority, referred to as Level 1, to quoted prices in active markets for identical assets and liabilities. The next priority, referred to as Level 2, is given to quoted prices for similar assets or liabilities in active markets or quoted prices for identical or similar assets or liabilities in markets that are not active; that is, markets in which there are few transactions for the asset or liability. The lowest priority, referred to as Level 3, is given to unobservable inputs. The table below reflects the level of the inputs used in the Company's fair value calculations:

(in thousands)	Quoted Prices in Active Markets (Level 1)	Significant Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total Fair Value
December 31, 2021				
Assets (Note 5)				
Common stock of Sonnet	\$ 50	\$ —	\$ —	\$ 50
Liabilities (Note 4)				
Convertible note payable	\$ —	\$ —	\$ 1,099	\$ 1,099
(in thousands)	Quoted Prices in Active Markets (Level 1)	Significant Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total Fair Value
December 31, 2020				
Assets (Note 5)				
Common stock of Sonnet	\$ 413	\$ —	\$ —	\$ 413
Liabilities (Note 12)				
True-up provision of Convertible Preferred Series 2	\$ —	\$ —	\$ 185	\$ 185

Inputs used in the Company's Level 3 calculation of fair value for the convertible note payable issued in conjunction with the PizzaRev acquisition are discussed in Note 4. Inputs used in the Company's Level 3 calculation of fair value for the True-up provision of Convertible Preferred Series 2 are discussed in Note 12.

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The Company is required to disclose fair value information about financial instruments when it is practicable to estimate that value. The carrying amounts of the Company's cash, restricted cash, accounts receivable, other receivables, accounts payable, other current liabilities, convertible notes payable (other than the convertible note payable discussed above) and notes payable approximate fair value due to the short-term maturities of these financial instruments and/or because related interest rates offered to the Company approximate current rates.

SEGMENTS

Operating segments are defined as components of an enterprise about which separate discrete information is available for evaluation by the chief operating decision maker, or decision-making group, in deciding how to allocate resources and in assessing performance. The Company operates under four brands but views its operations and manages its business in one segment – fast casual dining.

CASH

Cash consists of deposits held at financial institutions and is stated at fair value. The Company limits its credit risk associated with cash by maintaining its bank accounts at major financial institutions.

RESTRICTED CASH

As of December 31, 2021 and 2020, the Company maintained restricted cash of \$1.7 million and \$1.3 million, respectively. The restricted cash is maintained in a segregated bank account. The restrictions on the restricted cash at December 31, 2020 have lapsed and the restricted cash at December 31, 2021 relates to the acquisition discussed in Note 3.

For purposes of the cash flow statements, the restricted cash is aggregated with cash of \$0.6 million and \$0.7 million to arrive at total cash and restricted cash of \$2.3 million and \$1.9 million at December 31, 2021 and 2020, respectively.

ACCOUNTS AND OTHER RECEIVABLES

The Company monitors its exposure for credit losses on its receivable balances and the credit worthiness of its receivables on an ongoing basis and records related allowances for doubtful accounts. Allowances are estimated based upon specific customer and other balances where a risk of default has been identified, and also include a provision for non-customer specific defaults based upon historical experience. The majority of the Company's accounts are from customer credit card transactions with minimal historical credit risk. As of December 31, 2021 and 2020, the Company has not recorded an allowance for doubtful accounts. If circumstances related to specific customers change, estimates of the recoverability of receivables could also change.

INVENTORIES

Inventories are recorded at the lower of cost (first-in, first-out method) or net realizable value, and consist primarily of restaurant food items, supplies, beverages and merchandise.

PROPERTY AND EQUIPMENT

Property and equipment are stated at cost, less accumulated depreciation. Depreciation and amortization, are recorded generally using the straight-line method over the estimated useful lives of the respective assets. Leasehold improvements are amortized over the lesser of the expected lease term or the estimated useful lives of the related assets using the straight-line method. Maintenance and repairs that do not improve or extend the useful lives of the assets are not considered assets and are charged to expense when incurred.

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The estimated useful lives used to compute depreciation and amortization are as follows:

Leasehold improvements	5-15 years
Restaurant furnishings and equipment	3-10 years
Furniture and fixtures	3-10 years
Office and computer equipment	3-7 years

INTANGIBLE ASSETS

Trademark/Tradenames

Certain of the Company's trademark/tradenames have been determined to have a definite life and are being amortized on a straight-line basis over estimated useful lives of 3-10 years. The amortization expense of these definite-lived intangibles is included in depreciation and amortization in the Company's consolidated and combined statements of operations and comprehensive loss. Certain of the Company's trademark/tradenames have been classified as indefinite-lived intangible assets and are not amortized. Definite lived intangible assets are assessed for impairment the using methods discussed below in the *long-lived assets* section. The Company's indefinite-lived intangible assets are tested for impairment at least annually by estimating their fair value and comparing it to the asset's carrying value. The Company estimates the fair value of trademarks using the relief-from-royalty method, which requires assumptions related to projected sales from its annual long-range plan; assumed royalty rates that could be payable if the Company did not own the trademarks; and a discount rate.

Franchise Rights

Intangible assets are recorded for the initial franchise fees for our Hooters and PizzaRev restaurants. The Company amortizes these amounts over a 20 and 5 year period, respectively, which is the life of the franchise agreements. As of December 31, 2021, the Company no longer has any active franchise agreements with Hooters. The Company also has intangible assets representing the acquisition date fair value of customer contracts acquired in connection with BGR's franchise business. The Company also amortizes these amounts over the estimated useful life of the related intangible asset and amortizes the related asset over the weighted average life of the underlying franchise agreements.

LONG-LIVED ASSETS

Long-lived assets, such as property and equipment, operating lease assets, and purchased intangible assets subject to depreciation and amortization, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Some of the events or changes in circumstances that would trigger an impairment test include, but are not limited to:

- significant under-performance relative to expected and/or historical results (negative comparable sales growth or operating cash flows for two consecutive years);
- significant negative industry or economic trends;
- knowledge of transactions involving the sale of similar property at amounts below the Company's carrying value; or
- the Company's expectation to dispose of long-lived assets before the end of their estimated useful lives, even though the assets do not meet the criteria to be classified as "Held for Sale."

If circumstances require a long-lived asset or asset group be tested for possible impairment, the Company first compares undiscounted cash flows expected to be generated by that asset or asset group to its carrying value. If the carrying value of the long-lived asset or asset group is not recoverable on an undiscounted cash flow basis, an impairment is recognized to the extent that the carrying value exceeds its fair value. Fair value is determined through various valuation techniques, including discounted cash flow models, quoted market values and third-party independent appraisals, as considered necessary.

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During the third quarter of 2019 and continuing in 2020 and 2021, the Company determined that triggering events occurred, some of which were related to the COVID-19 outbreak, requiring management to review certain long-lived assets for impairment. Due to the continued impact of this pandemic on the Company's business, management has performed an impairment analysis of its long-lived assets at each quarter end in 2020 and through December 31, 2021, and determined that the carrying value of the Company's definite lived trademark/tradename intangible asset, property and equipment and operating lease assets (see Notes 6, 7, and 13 for further discussion) were impaired during the years ended December 31, 2021 and 2020. The determination was based on the best judgment of management for the future of the asset and on information known at the time of the assessment.

GOODWILL

Goodwill, which is not subject to amortization, is evaluated for impairment annually as of the end of the Company's year-end, or more frequently if an event occurs or circumstances change, such as material deterioration in performance or a significant number of store closures, that would indicate an impairment may exist. Goodwill is tested for impairment at a level of reporting referred to as a reporting unit. Management determined that the Company has one reporting unit.

As discussed in Note 1, in March 2020, the World Health Organization declared coronavirus COVID-19 a global pandemic. Due to the continued impact of this pandemic on the Company's business, management has performed an impairment analysis of goodwill beginning in each quarter end in 2020 through 2021, including December 31, 2021 and 2020.

When evaluating goodwill for impairment, the Company may first perform a qualitative assessment to determine whether it is more likely than not that a reporting unit is impaired. If the Company does not perform a qualitative assessment, or determines that it is not more likely than not that the fair value of the reporting unit exceeds its carrying amount, a quantitative assessment is performed to calculate the estimated fair value of the reporting unit. If the carrying amount of the reporting unit exceeds the estimated fair value, an impairment charge is recorded to reduce the carrying value to the estimated fair value. The Company's decision to perform a qualitative impairment assessment is influenced by a number of factors, including the significance of the excess of the reporting unit's estimated fair value over carrying value at the last quantitative assessment date, the amount of time in between quantitative fair value assessments, and the price of our common stock.

Step one of the impairment test is based upon a comparison of the carrying value of net assets, including goodwill balances, to the fair value of net assets. The Company performed a quantitative assessment at each quarter end during 2021 and 2020 and determined that goodwill was not impaired due to the excess fair value of the reporting unit over its carrying value based on the best judgement of management on information known at the time of the assessment.

CONVERTIBLE NOTES PAYABLE

The Company analyzes its convertible debt instruments for embedded attributes that may require bifurcation from the host and accounting as derivatives. At the inception of each instrument, the Company performs an analysis of the embedded features requiring bifurcation and may elect, if eligible, to account for the entire debt instrument at fair value. If the fair value option were to be elected, any changes in fair value would be recognized in the accompanying statements of operations until the instrument is settled. The Company elected to account for its convertible note payable issued in 2021 in connection with the PizzaRev acquisition (see Note 3) at fair value and, as such, has recognized the change in fair value in the consolidated and combined statements of operations and comprehensive loss for the year ended December 31, 2021. For the convertible note payable issued in 2020, the Company performed an analysis of embedded features requiring bifurcation and concluded that the convertible debt includes redemption features that required bifurcation (see Note 8).

FOREIGN CURRENCY TRANSLATION

Assets and liabilities denominated in local currency are translated to U.S. dollars using the exchange rates as in effect at the balance sheet date. Results of operations are translated using average exchange rates prevailing throughout the period. Adjustments resulting from the process of translating foreign currency financial statements from functional currency into U.S. dollars are included in accumulated other comprehensive loss within stockholders' equity. Foreign currency transaction gains and losses are included in current earnings. The Company has determined that local currency is the functional currency for its foreign operations. The foreign subsidiary was sold in 2021 and there are no foreign assets held at December 31, 2021.

REVENUE RECOGNITION

The Company generates revenues from the following sources: (i) restaurant sales; (ii) gaming income; and (iii) franchise income, consisting of royalties based on a percentage of sales reported by franchise restaurants and initial signing fees.

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Restaurant Sales, Net

The Company records revenue from restaurant sales at the time of sale, net of discounts, coupons, employee meals, and complimentary meals. Sales tax and value added tax (“VAT”) collected from customers and remitted to governmental authorities are presented on a net basis within revenue in the consolidated and combined statements of operations.

Gaming Income

The Company receives revenue from operating a gaming facility adjacent to its restaurant in Jantzen Beach, Oregon. Revenue from gaming is recognized as earned from gaming activities, net of payouts to customers, taxes and government fees. These fees are recognized as they are earned based on the terms of the agreements.

Franchise Income

The Company grants franchises to operators in exchange for initial franchise license fees and continuing royalty payments. The license granted for each restaurant or area is considered a performance obligation. All other obligations (such as providing assistance during the opening of a restaurant) are combined with the license and were determined to be a single performance obligation. Accordingly, the total transaction price (comprised of the restaurant opening and territory fees) is allocated to each restaurant expected to be opened by the licensee under the contract. There are significant judgments regarding the estimated total transaction price, including the number of stores expected to be opened. We recognize the fee allocated to each restaurant as revenue on a straight-line basis over the restaurant’s license term, which generally begins upon the signing of the contract for area development agreements and upon the signing of a store lease for franchise agreements. The payments for these upfront fees are generally received upon contract execution. Continuing fees, which are based upon a percentage of franchisee revenues and are not subject to any constraints, are recognized on the accrual basis as those sales occur. The payments for these continuing fees are generally made on a weekly basis.

Contract Liabilities

Contract liabilities consist of deferred revenue resulting from initial and renewal franchise license fees paid by franchisees, which are generally recognized on a straight-line basis over the term of the underlying franchise agreement, as well as upfront development fees paid by franchisees, which are generally recognized on a straight-line basis over the term of the underlying franchise agreement once it is executed. The recognition of initial and renewal license fees are accelerated if the development agreement is terminated. Approximately \$0.1 million and \$0.2 million of revenue related to contract liabilities was recognized during the years ended December 31, 2021 and 2020, respectively.

RESTAURANT PRE-OPENING AND CLOSING EXPENSES

Restaurant pre-opening expenses consist of the costs of hiring and training the initial hourly work force for each new restaurant, travel, the cost of food and supplies used in training, grand opening promotional costs, the cost of the initial stocking of operating supplies and other direct costs related to the opening of a restaurant, including rent during the construction and in-restaurant training period. Restaurant opening expenses are expensed as incurred.

Restaurant closing expenses consist of costs related to closing a restaurant location and include, among other things lease termination costs and franchise breakage fees directly related to the closure. Impairment charges associated with closed locations are recorded as a component of asset impairment charges. The derecognition of lease liabilities due to the Company negotiating the cancellation of its obligations under certain lease agreements is recorded as gain on extinguished lease liabilities. Restaurant closing costs are expensed as incurred.

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LIQUOR LICENSES

The costs of obtaining non-transferable liquor licenses that are directly issued by local government agencies for nominal fees are expensed as incurred. The costs of purchasing transferable liquor licenses through open markets in jurisdictions with a limited number of authorized liquor licenses are capitalized as indefinite-lived intangible assets and included in other assets. Liquor licenses are reviewed for impairment annually or when events or changes in circumstances indicate that the carrying amount may not be recoverable. Annual liquor license renewal fees are expensed over the renewal term.

ADVERTISING

Advertising costs are expensed as incurred. Advertising expenses, which are included in restaurant operating expenses and general and administrative expenses in the accompanying consolidated and combined statements of operations, totaled approximately \$0.2 million and \$0.3 million for the years ended December 31, 2021 and 2020, respectively.

LEASES

We determine if a contract contains a lease at inception. Our material operating leases consist of restaurant locations and office space. Our leases generally have remaining terms of 1-20 years and most include options to extend the leases for additional 5-year periods. Generally, the lease term is the minimum of the non-cancelable period of the lease or the lease term inclusive of reasonably certain renewal periods up to a term of 20 years. If the estimate of our reasonably certain lease term was changed, our depreciation and rent expense could differ materially.

Operating lease assets and liabilities are recognized at the lease commencement date. Operating lease liabilities represent the present value of lease payments not yet paid. Operating lease assets represent our right to use an underlying asset and are based upon the operating lease liabilities adjusted for prepayments or accrued lease payments, initial direct costs, lease incentives, and impairment of operating lease assets. To determine the present value of lease payments not yet paid, we estimate incremental borrowing rates corresponding to the reasonably certain lease term. We estimated this rate based on prevailing financial market conditions, comparable company and credit analysis, and management judgment. If the estimate of our incremental borrowing rate was changed, our operating lease assets and liabilities could differ materially.

In April 2020, the FASB staff issued a question and answer document ("FASB Q&A") focused on the application of lease accounting guidance to lease concessions provided as a result of the COVID-19 pandemic. Under existing lease guidance, the Company would have to determine, on a lease-by-lease basis, if a lease concession was the result of a new arrangement reached with the tenant or if a lease concession was under the enforceable rights and obligations within the existing lease agreement. The FASB Q&A allows the Company, if certain criteria have been met, to bypass the lease-by-lease analysis, and instead elect to either apply the lease modification accounting framework or not, with such election applied consistently to leases with similar characteristics and similar circumstances. The Company elected to apply such relief and availed itself of the election to avoid performing a lease-by-lease analysis for the lease concessions received as the concessions granted as relief were due to the COVID-19 pandemic and result in the cash flows to the landlord remaining substantially the same or less.

EMPLOYEE RETENTION CREDIT

The ERC under the CARES Act is a refundable tax credit which encourages businesses to keep employees on the payroll during the COVID-19 pandemic. Eligible employers can qualify for up to \$7,000 of credit for each employee based on qualified wages paid after December 31, 2020 and before January 1, 2022. Qualified wages are the wages paid to an employee during an economic hardship, specifically, either (1) a full or partial suspension of operations by order of a governmental authority due to COVID-19, or (2) a significant decline in gross receipts. The Company recognized \$2.5 million of ERC as a contra-expense in the consolidated and combined statement of operations for the year ended December 31, 2021. Approximately \$0.8 million of ERC is included in accounts and other receivables in the consolidated and combined balance sheet as of December 31, 2021. No such activity existed for the year ended December 31, 2020.

RESTAURANT REVITALIZATION FUND

The American Rescue Plan Act established the Restaurant Revitalization Fund ("RRF") to provide funding to help restaurants and other eligible businesses keep their doors open. This program provided restaurants with funding equal to their pandemic-related revenue loss up to \$10.0 million per business and no more than \$5.0 million per physical location. Recipients are not required to repay the funding as long as funds are used for eligible uses no later than March 11, 2023. In 2021 and prior to the acquisition (see Note 3), Pie Squared Holdings received a grant under the U.S. Small Business Administration's ("SBA") RRF for approximately \$10.0 million. The proceeds received were mainly used to repay existing debt and to also pay operating expenses. The unused funds received under the RRF at closing of the acquisition were \$2.0 million, and these funds were placed into escrow for the benefit of the Company for working capital to be used solely in the operations of the acquired business. The Company recognizes grant income as it expends the funds on eligible costs. The Company recognized \$0.5 million of RRF as a contra-expense in the consolidated and combined statement of operations for the year ended December 31, 2021. See additional information regarding RRF funds received in Note 3. No such activity existed for the year ended December 31, 2020.

SHARE-BASED COMPENSATION

The Company measures and recognizes share-based compensation expense for both employee and nonemployee awards based on the grant date fair value of the awards. The Company recognizes share-based compensation expense on a straight-line basis over the requisite service period of the awards, which is generally the vesting period. The Company recognizes forfeitures as they occur.

The Company estimates the fair value of employee and non-employee stock awards as of the date of grant using the Black-Scholes option pricing model. Management estimates the expected share price volatility based on the historical volatility of the Company. The expected term of the Company's stock awards has been determined utilizing the "simplified" method for awards that qualify as "plain-vanilla" stock awards. The risk-free interest rate is determined by reference to the yield curve of a zero-coupon U.S. Treasury bond on the date of grant of the award for time periods approximately equal to the expected term of the award. Expected dividend yield is zero based on the fact that the Company has never paid cash dividends on common stock and does not expect to pay any cash dividends in the foreseeable future.

INCOME TAXES

Deferred income taxes are provided on the liability method whereby deferred tax assets are recognized for deductible temporary differences and operating loss and tax credit carryforwards and deferred tax liabilities are recognized for taxable temporary differences. Temporary differences are the differences between the reported amounts of assets and liabilities and their tax basis. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. Deferred tax assets and liabilities are adjusted for the effects of changes in tax laws and rates on the date of enactment.

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Based on the rules of the Internal Revenue Code ("IRC"), Amergent has determined that it has approximately \$17.9 million of net operating loss carryforwards available to the Company as of December 31, 2021 to offset future taxable income of the Company. Approximately \$7.2 million of the net operating loss carryforwards available will be limited by section 382 of the IRC. There were no other income tax implications to Amergent as a result of the Merger and Spin-off.

The Company has provided a valuation allowance for the full amount of the deferred tax assets in the accompanying consolidated and combined financial statements.

As of December 31, 2021 and 2020, the Company had no accrued interest or penalties relating to any income tax obligations. The Company currently has no federal or state examinations in progress, nor has it had any federal or state tax examinations since its inception. The last three years of the Company's tax years are subject to federal and state tax examination.

LOSS PER COMMON SHARE

The Company computes net loss per share using the weighted-average number of common shares outstanding during the period. Basic and diluted net loss per share are the same because the conversion, exercise or issuance of all potential common stock equivalents, which comprise the entire amount of the Company's outstanding warrants, as described in Note 11, the potential conversion of the convertible debt instruments, as described in Note 8, and share-based compensation awards as described in Note 14, would be anti-dilutive.

COMPREHENSIVE INCOME (LOSS)

Standards for reporting and displaying comprehensive income (loss) and its components (revenues, expenses, gains and losses) in a full set of general-purpose financial statements requires that all items that are required to be recognized under accounting standards as components of comprehensive income (loss) be reported in a financial statement that is displayed with the same prominence as other financial statements. We are required to (a) classify items of other comprehensive income (loss) by their nature in financial statements, and (b) display the accumulated balance of other comprehensive income (loss) separately in the equity section of the balance sheet for all periods presented. Other comprehensive income (loss) represents foreign currency translation adjustments.

RECENTLY ADOPTED ACCOUNTING PRONOUNCEMENTS

In December 2019, the FASB issued ASU 2019-12, *Simplifying the Accounting for Income Taxes (Topic 740)*. The objective of the standard is to improve areas of U.S. GAAP by removing certain exceptions permitted by ASC 740 and clarifying existing guidance to facilitate consistent application. The standard was effective for the Company beginning on January 1, 2021. The adoption of ASU 2019-12 as of January 1, 2021 did not have a material impact on the consolidated and combined financial statements.

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In August 2020, the FASB issued ASU 2020-06, *Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging – Contracts in Entity’s Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity’s Own Equity*, to address the complexity associated with applying U.S. GAAP to certain financial instruments with characteristics of liabilities and equity. ASU 2020-06 includes amendments to the guidance on convertible instruments and the derivative scope exception for contracts in an entity’s own equity and simplifies the accounting for convertible instruments which include beneficial conversion features or cash conversion features by removing certain separation models in Subtopic 470-20. Additionally, ASU 2020-06 will require entities to use the “if-converted” method when calculating diluted earnings per share for convertible instruments. ASU 2020-06 is effective for fiscal years beginning after December 15, 2023 (fiscal year 2024 for the Company), including interim periods within those fiscal years, and early adoption permitted. The Company early adopted ASU 2020-06 on January 1, 2021.

RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS

In May 2021, the FASB issued ASU 2021-04, *Earnings per Share (Topic 260), Debt – Modifications and Extinguishments (Subtopic 470-50), Compensation – Stock Compensation (Topic 718), and Derivatives and Hedging – Contracts in Entity’s Own Equity (Subtopic 815-40): Issuer’s Accounting for Certain Modifications or Exchanges or Freestanding Equity-Classified Written Call Options*. The pronouncement outlines how an entity should account for modifications made to equity-classified written call options, including stock options and warrants to purchase the entity’s own common stock. The guidance in the ASU requires an entity to treat a modification of an equity-classified option that does not cause the option to become liability-classified as an exchange of the original option for a new option. This guidance applies whether the modification is structured as an amendment to the terms and conditions of the equity-classified written call option or as termination of the original option and issuance of a new option. The guidance is effective prospectively for fiscal years beginning after December 15, 2021, and early adoption is permitted. The Company plans to adopt this guidance on January 1, 2022, and does not expect it to have a material effect on the consolidated and combined financial statements.

In November 2021, the FASB issued ASU 2021-10, *Government Assistance (Topic ASC 832): Disclosures by Business Entities about Government Assistance*. This standard requires disclosures about transactions with a government that have been accounted for by analogizing to a grant or contribution accounting model to increase transparency about the types of transactions, the accounting for the transactions, and the effect of the transactions on an entity’s financial statements. The new standard is effective for fiscal years beginning after December 15, 2021. The Company plans to adopt this guidance on January 1, 2022, and does not expect it to have a material effect on the consolidated and combined financial statements.

We reviewed all other recently issued accounting pronouncements and concluded that they were either not applicable or not expected to have a significant impact to the consolidated and combined financial statements.

3. ACQUISITION

On August 30, 2021, the Company purchased all of the outstanding membership interests in Pie Squared Holdings pursuant to a Unit Purchase Agreement (“Purchase Agreement”). Pie Squared Holdings, directly and through its four wholly-owned subsidiaries, owns, operates and franchises pizza restaurants operating under the tradename PizzaRev. The PizzaRev stores consist of three company owned stores and nine franchised locations. The purchase price is an 8% secured, convertible promissory note (“Note”) with a face value of \$1.0 million and a fair value of \$1.2 million at the acquisition date. Transaction costs of \$0.2 million were incurred in connection with the acquisition and charged to general and administrative expenses in the consolidated and combined statement of operations for the year ended December 31, 2021. Of the total transaction costs, \$0.1 million were for services provided by a related-party entity which is owned by a major investor of the Company and the Company’s Chief Financial Officer.

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The assets acquired and liabilities assumed as of the acquisition date consists of the following (in thousands):

Assets acquired:	
Cash	\$ 71
Restricted cash	2,000
Property and equipment	348
Operating lease asset	1,391
Trademark/tradename intangible asset	410
Franchise rights intangible asset	410
Goodwill	51
Deposits and other assets	126
Total assets acquired	<u>\$ 4,807</u>
Liabilities assumed:	
Gift card liability	\$ 139
Contract liabilities (deferred revenue)	36
Deferred grant income	2,000
Operating lease liabilities	1,438
Total liabilities assumed	<u>\$ 3,613</u>
Net purchase price	<u>\$ 1,194</u>

Interest on the Note is due quarterly and \$0.5 million of principal is due on August 30, 2022, and any remaining unpaid/non-converted amount on August 30, 2023. The Note is convertible at any time, in whole or in part, at the holder's option but includes a beneficial ownership blocker of 4.99%. The conversion price at any time is the volume weighted average price of the Company's common stock the 30 trading days immediately prior to delivery of notice of conversion, less a discount of 15%; provided, however, that the conversion price has a floor of \$0.50 per share and a cap of \$2.00 per share. The Note contains customary provisions preventing dilution and providing the holder rights in the event of fundamental transactions. The Note is secured by various security and other instruments creating a first priority lien on all of the membership interests and all of the assets of Pie Squared Holdings and subsidiaries in favor of the sellers. The Note has an estimated fair value of \$1.2 million at the acquisition date as determined using a Monte Carlo simulation and the following assumptions:

Volatility	90.00%
Risk free rate	0.08% - 0.20%
Stock price	\$ 0.52
Credit spread	6.35%

In 2021, and prior to the acquisition, Pie Squared Holdings received a grant under the U.S. SBA's RRF for approximately \$10.0 million. The proceeds received were mainly used to repay existing debt and to also pay operating expenses. The unused funds received under the RRF at closing of \$2.0 million were placed into escrow for the benefit of the Company for working capital to be used solely in the operations of the acquired business. The Company will periodically submit to the escrow agent the planned uses of these funds, and the sellers have the right to review the planned uses to determine whether, in the sellers' opinion, the planned uses meet the criteria of "eligible uses" under the RRF. If determined to not meet such criteria, then the escrow agent will not distribute that portion of the request. Any unused funds on March 11, 2023, or if applicable, the awardee permanently closed before using all funds on authorized purposes, are repayable to the U.S. SBA.

Restricted cash and a deferred grant income liability has been recorded on the opening balance sheet for the unused proceeds from the RRF, and the liability is being reduced as the restricted cash is used for eligible costs incurred under the RRF post acquisition.

As the Company acquired all the outstanding membership interests in Pie Squared Holdings, the Company assumed all the rights and obligations of Pie Squared Holdings that arose from transactions of Pie Squared Holdings prior to the sale event, both stated rights and obligations as well as those that are contingent. As noted above, Pie Squared Holdings applied for and received an approximately \$10.0 million grant from the U.S. SBA under the RRF and used approximately \$8.0 million to repay existing debt of Pie Squared Holdings and to fund some of its operating expenses. Under the RRF there is a requirement that the grant monies be for "eligible uses." The Company, through the structure of the acquisition, is now responsible that the grant proceeds were, in fact, properly obtained and disbursed for "eligible uses." If it is determined that Pie Squared Holdings obtained the grant improperly or the disbursement of such grant monies were not "eligible uses," then the Company would be responsible for the ramifications of such actions, including repayment of the approximately \$10.0 million of grant monies, among other items. Management completed its analysis of this contingency and concluded that, at this time, a liability does not need to be recorded for this contingency. In connection with the acquisition, the Company obtained an indemnification from the sellers which is inclusive of any matters related to the RRF.

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4. FAIR VALUE OF FINANCIAL INSTRUMENTS

The reconciliation of the Note issued in connection with the acquisition of Pie Squared Holdings on August 30, 2021 (see Note 3) measured at fair value on a recurring basis using significant unobservable inputs (Level 3) is as follows:

(in thousands)	December 31, 2021
Balance at January 1, 2021	\$ —
Fair value at issuance date	1,194
Change in fair value	(95)
Balance at December 31, 2021	\$ 1,099

The Company evaluated the Note in accordance with ASC Topic 815, *Derivatives and Hedging*, and determined that the conversion price discount creates a derivative. This derivative was not clearly and closely related to the debt host and was required to be separated and accounted for as a derivative instrument. The Company elected to initially and subsequently measure the Note at fair value, with changes in fair value recognized in operations.

The Note had an estimated fair value of \$1.1 million at December 31, 2021 as determined using a Monte Carlo simulation and the following assumptions:

Volatility	90.00%
Risk free rate	0.26% - 0.62%
Stock price	\$ 0.40
Credit spread	6.78%

5. INVESTMENTS

Investments consist of the following:

(in thousands)	December 31, 2021	December 31, 2020
Common stock of Sonnet, at fair value	\$ 50	\$ 413
Chanticleer Investors, LLC, at cost	16	365
Total	\$ 66	\$ 778

Common stock of Sonnet

Upon consummation of the Merger discussed in Note 1, the Company received a warrant to purchase 2% of the common stock of Sonnet as part of the Merger Consideration. Amergent could not exercise the warrant until 180 days after the closing of the Merger.

The estimated fair value of the warrant to purchase 2% of the common stock of Sonnet (186,161 shares) was \$1.6 million as of April 1, 2020 and was recognized as a capital contribution in accompanying 2020 consolidated and combined statement of stockholders' deficit. The warrant had an exercise price of \$0.01 per share and was exercisable beginning on September 28, 2020 through April 1, 2025. The estimated fair value of the warrant was determined based on the \$8.76 closing stock price of a common share of Sonnet as of April 1, 2020, net of the \$0.01 exercise price multiplied by the 186,161 shares issuable upon exercise of the warrant. This value is also equal to the value under the Black-Scholes option pricing model with the following inputs:

As of April 1, 2020	
Fair value of Sonnet common stock	\$ 8.76
Exercise price	\$ 0.01
Term	5 years
Volatility	103%
Risk-free interest rate	0.37%

On November 17, 2020, the Company exercised the warrant in a cashless exercise and received 185,422 shares of Sonnet common stock.

On December 4, 2020, the Company sold 100 shares of Sonnet common stock for net proceeds of \$244. As of December 31, 2020, the remaining 185,322 shares of Sonnet common stock held by the Company were marked to market using the Sonnet closing trading price of \$2.23 per share.

Shares were sold in 2021 and the Company received proceeds of \$0.1 million. As of December 31, 2021, the remaining 122,064 shares of Sonnet common stock held by the Company were marked to market using the Sonnet closing trading price of \$0.41 per share.

Chanticleer Investors, LLC

The Company invested \$0.8 million during 2011 and 2012 in exchange for a 22% ownership stake in Chanticleer Investors, LLC, which in turn held a 3% interest in Hooters of America, the operator and franchisor of the Hooters Brand worldwide. As a result, the Company's effective economic interest in Hooters of America was approximately 0.6%. Effective June 28, 2019, Hooters of America closed on the sale of a controlling interest in the company. The consideration paid in the sale transaction was a combination of cash proceeds and equity in the newly formed company. The Company netted approximately \$48,000 in cash upon the transaction and retained a non-controlling interest in the equity of the newly-formed company.

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Hooters of America redeemed a portion of the Company's ownership interest and paid \$0.3 million to the Company in October 2021. After the redemption, the Company's effective economic interest in Hooters of America was less than 1%.

6. PROPERTY AND EQUIPMENT, NET

Property and equipment, net consists of the following:

(in thousands)	December 31, 2021	December 31, 2020
Leasehold improvements	\$ 5,511	\$ 7,302
Restaurant furniture and equipment	2,768	2,133
Construction in progress	20	5
Office and computer equipment	33	125
Office furniture and fixtures	57	60
	8,389	9,625
Accumulated depreciation and amortization	(5,274)	(5,922)
	\$ 3,115	\$ 3,703

As discussed in Note 1, the COVID-19 outbreak in the United States has resulted in a significant impact throughout the hospitality industry. The impact has varied by state/geographical area within the United States at various intervals since the pandemic has been declared. Accordingly, the operating results and cash flows at the store level have varied significantly leading to an analysis of impairment at the store level for each quarter end in 2021 and 2020, including December 31, 2021 and 2020. Several stores were permanently or temporarily closed during 2020 while others are operating at reduced capacity. Based on the assessment of recoverability, an impairment charge of \$0.4 million and \$0.8 million for property and equipment was recorded during the years ended December 31, 2021 and 2020, respectively.

Depreciation expense was \$0.6 million and \$1.2 million for the years ended December 31, 2021 and 2020, respectively.

7. INTANGIBLE ASSETS, NET

GOODWILL

A rollforward of goodwill is as follows:

(in thousands)	Year Ended	
	December 31, 2021	December 31, 2020
Beginning balance	\$ 8,591	\$ 8,568
Acquisition of Pie Squared Holdings	51	—
Sale of Hooters UK	(820)	—
Foreign currency translation gain (loss)	(12)	23
Ending balance	\$ 7,810	\$ 8,591

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On October 8, 2021, the Company, through its wholly-owned UK subsidiary, Chanticleer UK Group Limited, sold West End Wings LTD, the Company's Hooters restaurant located in Nottingham, England, to Hard Four Consultancy Limited (UK) for the final purchase price of £0.4 million (approximately \$0.6 million). The Company recognized a gain on sale of subsidiary of \$0.1 million in the consolidated and combined statement of operations for the year ended December 31, 2021.

OTHER INTANGIBLE ASSETS

Franchise and trademark/tradename intangible assets consist of the following:

(in thousands)		December 31, 2021	December 31, 2020
Trademark, Tradenames:			
American Roadside Burger	10 years	\$ 561	\$ 1,787
BGR: The Burger Joint	Indefinite	739	739
Little Big Burger	Indefinite	1,550	1,550
PizzaRev	5 years	410	—
		<u>3,260</u>	<u>4,076</u>
Acquired Franchise Rights:			
BGR: The Burger Joint	7 years	828	828
PizzaRev	5 years	410	—
		<u>1,238</u>	<u>828</u>
Franchise License Fees:			
Hooters Pacific NW	20 years	—	74
Hooters UK	5 years	—	11
		<u>—</u>	<u>85</u>
Total intangibles at cost		4,498	4,989
Accumulated amortization		(1,369)	(1,945)
Intangible assets, net		<u>\$ 3,129</u>	<u>\$ 3,044</u>

Based on an analysis of the recoverability of the carrying value at each quarter end during 2021 and 2020, including December 31, 2021 and 2020, an impairment charge of approximately \$0.3 million was recorded to trademark/tradenames for ABC: American Burger Company during the year ended December 31, 2021, and an impairment charge of approximately \$0.2 million was recorded to trademark/tradenames for BRG: The Burger Joint during the year ended December 31, 2020. No other intangible assets were impaired during the years ended December 31, 2021 or 2020.

Amortization of intangible assets was \$0.4 million for each of the years ended December 31, 2021 and 2020. Amortization expense for the next five years is as follows (in thousands):

Year ended December 31:		
2022	\$	238
2023		164
2024		164
2025		164
2026		110
	<u>\$</u>	<u>840</u>

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8. DEBT AND NOTES PAYABLE

Debt and notes payable are summarized as follows:

(in thousands)	December 31, 2021	December 31, 2020
Convertible debt (a)	\$ 4,038	\$ 4,038
Convertible promissory note (measured at fair value) (b)	1,099	—
PPP loans (c)	4,109	2,109
EIDL loans (d)	300	300
UK Bounce Back loan (e)	—	68
Contractor note (f)	348	348
Notes payable (g)	—	27
Notes payable (h)	—	26
Total Debt	9,894	6,916
Less: discount on convertible debt (a)	(37)	(223)
Total Debt, net of discount	\$ 9,857	\$ 6,693
Current portion of long-term debt and notes payable	\$ 3,264	\$ 2,339
Long-term debt and notes payable, less current portion	\$ 6,593	\$ 4,354

(a) In connection with and prior to the Spin-Off and Merger, on April 1, 2020, pursuant to an agreement among Chanticleer, Oz Rey and certain original holders of the 8% non-convertible debentures that were satisfied during 2020, the Company issued a 10% secured convertible debenture to Oz Rey in exchange for the 8% non-convertible debentures. The principal amount of the 10% secured convertible debenture is \$4.0 million, payable in full on April 1, 2022, subject to extension by the holders in two-year intervals for up to 10 years from the issuance date upon Amergent meeting certain conditions. In March 2022, the maturity date was extended to April 2024. Interest is payable quarterly in cash. Prior to August 17, 2020, the 10% secured convertible debenture was convertible at any time by Oz Rey into common stock at the lower of \$0.10 per share and the volume weighted average price on the last 10 trading days immediately prior to conversion. The 10% secured convertible debenture is also subject to adjustment if Amergent sells securities below this price (down round protection), among other triggers. In connection with the exchange of the debentures, Amergent issued warrants to Oz Rey and the original 8% non-convertible debenture holders to purchase 2,925,200 shares of common stock. The exercise price is \$0.125 for 2,462,600 warrants and \$0.50 for 462,500 warrants. The warrants can be exercised on a cashless basis and expire 10 years from the issuance date.

Through August 16, 2020, Amergent did not have an adequate amount of authorized common stock to cover shares issuable upon exercise of the warrants and conversion of the 10% convertible notes. As such, the warrants were liability classified and the conversion feature was bifurcated from the host debt instrument and accounted for as a derivative and recorded as a liability in the accompanying consolidated and combined balance sheets through August 16, 2020, with the change in the liability for the warrants and the conversion feature from the April 1, 2020 issuance date through August 16, 2020 recorded in the accompanying consolidated and combined statement of operations.

The warrants issued had an estimated fair value of \$0.9 million as of April 1, 2020 using a Monte Carlo simulation to determine the value. The fair value of the conversion feature was \$11.2 million as of April 1, 2020 using a Monte Carlo simulation to determine the value. The estimated carrying value of the 10% convertible secured debentures without the conversion feature was \$3.7 million, and with the conversion feature was \$14.9 million.

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On August 17, 2020, the Company and Oz Rey amended the 10% secured convertible debenture to fix the conversion rate into common stock at \$0.10 per share. Further, the amendment provides a limitation on Oz Rey's ability to convert the debenture into common stock so that the conversion would not result in the issuance of common stock exceeding the amount of authorized shares. Oz Rey may, however, upon reasonable notice to the Company, require the Company to include in its proxy materials, for any annual meeting of shareholders being held by the Company, a proposal to amend the Company's certificate of incorporation to increase the Company's authorized shares to a number sufficient to allow for conversion of all shares underlying the debenture, on a fully diluted basis. Oz Rey also agreed that the Company would not be required under any circumstances to make a cash payment to settle the conversion feature not exercisable due to the authorized share cap or in an event that the Company was unable to deliver shares under the conversion feature. Oz Rey also agreed to waive any event of default under the debenture that occurred or existed prior to August 17, 2020. As a result of these modifications, the warrants are no longer liability classified and the conversion feature is no longer required to be bifurcated from the debt host as of the date of the amendment.

Through the date of the amendment, the warrants and the conversion feature were marked to fair value with the change in the liability recorded in the accompanying consolidated and combined statement of operations. The liabilities for the warrants and conversion feature were reclassified into additional paid in-capital at the amendment date. The estimated fair value of the warrants and conversion feature at August 16, 2020 were \$0.9 million and \$11.0 million, respectively. The change in value of these instruments from the issuance date through August 16, 2020 of (\$11,000) and (\$0.3 million) has been recorded as a component of other income (expense) and included in change in fair value of derivative liabilities in the accompanying consolidated statement of operations for the year ended December 31, 2020.

The exchange of the notes has been accounted for as an extinguishment of the 8% non-convertible notes with the difference in the carrying value of the 8% non-convertible notes, \$4.0 million, and the fair value of the 10% convertible notes and warrants, \$15.8 million, at the date of the exchange recorded as debt extinguishment expense of \$11.8 million in the accompanying consolidated and combined statement of operations for the year ended December 31, 2020.

The Company recorded a debt discount of approximately \$0.4 million for the difference between the face value of the 10% secured convertible debenture and the estimated fair value at the April 1, 2020 issuance date and is amortizing this discount over the two-year period of the notes. Amortization of \$0.2 million and \$0.1 million was recorded as interest expense during the years ended December 31, 2021 and 2020, respectively.

(b) On August 30, 2021, the Company purchased all of the outstanding membership interests in Pie Squared Holdings pursuant to the Purchase Agreement (see Note 3). The purchase price was an 8% secured, convertible promissory note ("Note") with a face value of \$1.0 million and a fair value of \$1.2 million at the acquisition date. Interest on the Note is due quarterly and \$0.5 million of principal is due on August 30, 2022. Any remaining unpaid amount is due on August 30, 2023. The Company has elected to measure the Note at fair value, with changes being recognized in the consolidated and combined statement of operations. See Note 4 for additional information on the valuation of the Note as of December 31, 2021.

(c) On April 27, 2020, Amergent received a PPP loan in the amount of approximately \$2.1 million. Due to the Spin-Off and Merger, Amergent was not publicly traded at the time of the loan application or funding. The note bears interest at 1% per year, matures in April 2022, and requires monthly interest and principal payments of approximately \$0.1 million beginning in November 2020 and through maturity. The currently issued guidelines of the program allow for the loan proceeds to be forgiven if certain requirements are met. Any loan proceeds not forgiven will be repaid in full. The Company had applied for loan forgiveness in the full amount of the loan, but the request was initially denied. The Company discussed the forgiveness request with the government agency that granted the loan and in March 2022, the U.S. SBA reversed its initial decision and will once again review the Company's application for loan forgiveness. No assurance can be given as to the amount, if any, of forgiveness. The application for forgiveness allowed the Company to defer the timing of repayment until the forgiveness assessment is completed.

On February 25, 2021, the Company received a second PPP loan in the amount of \$2.0 million. Amergent was not listed on a national securities exchange at the time of the loan application or funding. The note bears interest at 1% per year, matures on February 25, 2026, and requires monthly principal and interest payments of approximately \$45,000 beginning June 25, 2022 through maturity. The loan may be forgiven if certain criteria are met. No assurance can be given as to the amount, if any, of forgiveness.

(d) On August 4, 2020, the Company obtained two loans under the Economic Injury Disaster Loan ("EIDL") assistance program from the U.S. SBA in light of the impact of the COVID-19 pandemic on the Company's business. The principal amount of the loans is \$0.3 million, with proceeds to be used for working capital purposes. Interest accrues at the rate of 3.75% per year. Total installment payments of \$1,462, including principal and interest, are due monthly. The balance of principal and interest is payable over the next thirty years from the date of the promissory note (August 2050). There are no penalties for prepayment. Based upon guidance issued by the U.S. SBA on June 19, 2020, the EIDL loans are not required to be refinanced by the PPP loan. In March 2022, the U.S. SBA extended the deferral period for the EIDL payments for an additional 12 months. The Company's installment payments will begin August 4, 2023.

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(e) On November 24, 2020, Amergent received approximately \$0.1 million through the Bounce Back Loan Scheme in the United Kingdom. The loan had a term of six years that could be extended to 10 years. No payments were required and no interest was accrued for the first 12 months after the loan was received. After the first year, the loan was to accrue interest at 2.5% per year. This loan was assumed by the buyer in 2021 in conjunction with the sale of the Hooters UK entity (see Note 7).

(f) The Company entered into a promissory note to repay a contractor for the build-out of a new Little Big Burger location. The note had a balance of approximately \$0.3 million as of both December 31, 2021 and 2020, and a stated interest rate of 12% per year. In connection with and prior to the Merger and Spin-Off, on April 1, 2020, this note was assumed by Amergent. The Company is currently in default on this loan and a writ of garnishment was ordered against the Company in 2020 for approximately \$0.4 million. The additional \$0.1 million is included in accounts payable and accrued expenses at December 31, 2021 and 2020.

(g) During September 2019 and October 2019, the Company entered into two merchant capital advances in the amount of approximately \$46,000 and \$0.1 million, respectively. The Company agreed to repay these advances through daily payments until those amounts were repaid with the specified interest rate per those agreements. These notes were fully repaid in 2021.

(h) In connection with the assets acquired from the two BGR franchisees, the Company entered into notes payable of approximately \$9,600 and \$0.2 million during 2018. The notes bore interest at 4% per year and were due within 12 months of each acquisition date. Principal and interest payments were due monthly, and the notes were fully repaid in 2021.

The Company's various loan agreements contain financial and non-financial covenants and provisions providing for cross-default. The evaluation of compliance with these provisions is subject to interpretation and the exercise of judgment. The Company's lender has provided a waiver of certain financial covenants through December 31, 2021.

Future minimum payments as of December 31, 2021 are as follows (in thousands):

Year ended December 31:	
2022	\$ 3,264
2023	1,033
2024	4,579
2025	547
2026	98
Thereafter	274
	<u>9,795</u>
Less: discount on convertible debt	(37)
Add: fair value adjustment	99
	<u>9,857</u>
Less: current maturities of long-term debt and notes payable	(3,264)
Long-term debt and notes payable	<u>\$ 6,593</u>

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9. ACCOUNTS PAYABLE AND ACCRUED EXPENSES

Accounts payable and accrued expenses are summarized as follows:

(in thousands)	December 31, 2021	December 31, 2020
Accounts payable	\$ 2,544	\$ 3,752
Accrued expenses	1,955	1,437
Accrued taxes (VAT, sales, payroll, etc.)	2,149	3,356
Accrued interest	196	122
	<u>\$ 6,844</u>	<u>\$ 8,667</u>

As of December 31, 2021 and 2020, approximately \$2.0 million and \$3.0 million, respectively, of employee and employer taxes and associated interest and penalties have been accrued but not remitted to certain taxing authorities by the Company. These accruals are for periods prior to 2019 for cash compensation paid and are reflected as a component of the accrued taxes line above. As a result, the Company is liable for such payroll taxes and any related penalties and interest. Upon the advice of our tax professionals, we are paying the trust fund portion of the outstanding tax accruals which represents the portion of taxes withheld from our employees but not remitted to the taxing authorities. For our locations that have permanently closed, our tax liability after paying the trust fund balance is approximately \$0.8 million and is recorded within accrued taxes on our consolidated and combined balance sheet as of December 31, 2021. The taxing authorities have indicated that we are still liable for these amounts, however, since the locations are permanently closed and have no assets, they will stop active collection procedures on these amounts.

10. INCOME TAXES

The income tax expense consists of the following:

(in thousands)	2021	2020
Foreign		
Current	\$ 38	\$ —
Deferred	36	(36)
Change in valuation allowance	(36)	36
U.S. Federal		
Current	—	—
Deferred	575	5,766
Change in valuation allowance	(627)	(5,815)
State and local		
Current	—	—
Deferred	61	(103)
Change in valuation allowance	71	159
	<u>\$ 118</u>	<u>\$ 7</u>

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The income tax expense using the statutory U.S. federal tax rate of 21% is reconciled to the Company's effective tax rate as follows:

(in thousands)	2021	2020
Computed "expected" income tax benefit	\$ (580)	\$ (4,325)
State income taxes, net of federal benefit	61	(57)
Prior year true-ups and other deferred tax balances	1,329	25
Permanent items	25	2,500
Rate change	(169)	(142)
Other	45	(249)
Adjustment to NOLs due to Merger	—	8,350
Change in valuation allowance	(593)	(6,095)
	<u>\$ 118</u>	<u>\$ 7</u>

Deferred income taxes reflect the net tax effect of temporary differences between the carrying amounts of assets and liabilities for financial reporting and the amounts used for tax purposes. Major components of deferred tax assets at December 31, 2021 and 2020 were:

(in thousands)	December 31, 2021	December 31, 2020
Net operating loss carryforwards	\$ 6,582	\$ 6,802
Capital loss carryforwards	387	369
Fixed assets and intangibles	750	1,119
Section 1231 loss carryforwards	—	40
Charitable contribution carryforwards	7	13
Section 163(j) limitation	848	789
Other	—	—
Restaurant start-up expenses	77	5
Accrued expenses	733	915
Credits	153	—
Contract liabilities	198	227
Total deferred tax assets	<u>9,735</u>	<u>10,279</u>
Deferred occupancy liabilities	(21)	(39)
Investments	(323)	(202)
Other	(18)	(31)
Total deferred tax liabilities	<u>(362)</u>	<u>(272)</u>
Net deferred tax assets	9,373	10,007
Valuation allowance	(9,523)	(10,116)
	<u>\$ (150)</u>	<u>\$ (109)</u>

As of December 31, 2021, the Company has U.S. federal and state net operating loss carryovers of approximately \$25.2 million, which will expire at various dates beginning in 2031 through 2036 if not utilized, with exception of loss carryovers generated in tax years after 2017. As a result of Tax Cuts and Jobs Act of 2017 ("TCJA"), net operating losses generated in 2018 and beyond have indefinite lives. In accordance with Section 382 of the internal revenue code, deductibility of the Company's U.S. net operating loss carryovers may be subject to an annual limitation in the event of a change of control as defined under the Section 382 regulations. Quarterly ownership changes for the past three years were analyzed, and it was determined that there was no change of control as of December 31, 2021.

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In assessing the realization of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Management considers the scheduled reversal of deferred tax liabilities, projected future taxable income and tax planning strategies in making this assessment. After consideration of all of the information available, management believes that significant uncertainty exists with respect to future realization of the deferred tax assets and has therefore established a full valuation allowance. For the years ended December 31, 2021 and 2020, the change in valuation allowance was approximately \$(0.6) million and \$(5.9) million respectively.

The Company evaluated the provisions of ASC 740 related to the accounting for uncertainty in income taxes recognized in the financial statements. ASC 740 prescribes a comprehensive model for how a company should recognize, present, and disclose uncertain positions that the company has taken or expects to take in its return. For those benefits to be recognized, a tax position must be more-likely-than-not to be sustained upon examination by taxing authorities. Differences between two positions taken or expected to be taken in a tax return and the benefit recognized and measured pursuant to the interpretation are referred to as “unrecognized benefits”. A liability is recognized for an unrecognized tax benefit because it represents an enterprise’s potential future obligation to the taxing-authority for a tax position that was not recognized as a result of applying the provisions of ASC 740.

Interest related to uncertain tax positions are required to be calculated, if applicable, and would be classified as “interest expense” in the combined and consolidated statements of operations. Penalties would be recognized as a component of “general and administrative expenses”. For the years ended December 31, 2021 and 2020, no interest or penalties were required to be reported.

The Company previously did not record a provision for taxes on undistributed foreign earnings, based on an intention and ability to permanently reinvest the earnings of its foreign subsidiaries in those operations. Under the TCJA, the Company has re-assessed its strategies by evaluating the impact of the TCJA on its operations. As a result of the TCJA, the Company analyzed if a liability needed to be recorded for the deemed repatriation of undistributed earnings. It was determined that there is no outstanding liability associated with this based on overall negative undistributed earnings (accumulated deficit) in the consolidated foreign group.

An additional provision of the TCJA is the implementation of the Global Intangible-Low Taxed Income Tax, or “GILTI.” The Company has elected to account for the impact of GILTI in the period in which the tax actually applies to the Company. Due to foreign losses in 2021 and 2020, the impact of GILTI on taxable income is nil.

11. STOCKHOLDER’S EQUITY

Redeemable Preferred Stock – Series 1

Beginning in December 2016, the Company conducted a rights offering of units, each unit consisting of one share of 9% Redeemable Series 1 Preferred Stock (“Series 1 Preferred”) and one Series 1 Warrant (“Series 1 Warrant”) to purchase 10 shares of common stock. Preferred unit dividends of 37,518 shares were paid in 2020. In connection with the Merger, on April 1, 2020, all outstanding Series 1 Preferred units, comprised of shares of Series 1 Preferred and Series 1 Warrants, were redeemed and extinguished for their cash redemption price of \$0.50 per unit. The difference between the carrying value of the Series 1 Preferred and the cash redemption amount of \$0.2 million was recognized as a loss on extinguishment and included in other expense during the year ended December 31, 2020.

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2020 Bridge Financing

Pursuant to a Securities Purchase Agreement dated February 7, 2020, the Company sold 1,500 shares of a new series of convertible preferred stock of Chanticleer (the “Series 2 Preferred”) to an institutional investor for gross proceeds to the Company of \$1.5 million less transaction costs of \$0.1 million. In addition, pursuant to the original agreement with the investors, the Company issued 5-year warrants to purchase an aggregate of 350,000 shares of common stock to the investors at \$1.25 per share. Each share of Series 2 Preferred has a stated value of \$1,000. Upon issuance, the Company bifurcated and recorded, as a liability, an embedded derivative (more fully described below and in Note 12) in the amount of \$0.5 million. The effective conversion price of the Series 2 Preferred after the bifurcation of the derivative resulted in a beneficial conversion feature of \$0.7 million, which was then immediately recorded as a deemed dividend as the preferred stock is immediately convertible. In March 2020, an aggregate of 713 shares of Series 2 Preferred were converted into 1,426,849 shares of common stock. In connection with the Merger, all remaining outstanding shares of the Series 2 Preferred were automatically cancelled and exchanged for substantially similar shares of preferred stock in Amergent, the shareholders of Chanticleer common stock received shares of Amergent on a 1 for 1 basis (spin-off shares) and received 1 share of Sonnet common stock for 26 shares of Chanticleer common stock held at the time of the Merger. At December 31, 2020, 787 shares of Series 2 Preferred Stock were outstanding.

On August 17, 2020, the Company and the holders of the Series 2 Preferred entered into a Waiver, Consent, and Amendment to the Certificate of Designations (the “Extension Agreement”) which included provisions for an extension of the True-Up Payment discussed below from August 7, 2020 to December 10, 2020, and permitted the shares of Amergent obtained by the investor in the Spin-off to be included in the determination of the True-Up Payment discussed below, with the Company paying all expenses incurred by the institutional investor in connection with the Extension Agreement and certain consideration for the institutional investor’s willingness to extend the date of the True-Up Payment. The consideration included \$66,000 of cash and warrants to purchase 134,000 shares of the Company’s common stock with a value of \$28,060 (see below).

On February 16, 2021, the Company and the holders of the Series 2 Preferred entered into a Waiver, Consent and Amendment to the Certificate of Designations (the “Waiver”). Pursuant to the Waiver, the Company filed the Second Amendment and Restated Certificate of Designations of Series 2 Convertible Preferred Stock (“Amended COD”) with the Delaware Secretary of State (i) providing for the extension of the True-Up Payment to April 1, 2021, (ii) providing for the deduction of proceeds to the original holders from sales of Series 2 Preferred for the True-Up Payment, and (iii) providing for a reduction in amount of cash subject to restriction as discussed below from \$1.3 million to \$0.9 million.

During the year ended December 31, 2021, the investors converted 637 shares of the Series 2 Preferred into 1,274,000 common shares and sold those common shares in the market. In addition, the investors sold their remaining 150 Series 2 Preferred to other investors. The shares sold to the investors no longer contain the True-Up Payment provision. The new investors converted 50 shares of Series 2 Preferred into 100,000 shares of common stock during May 2021, and 100 Series 2 Preferred remain outstanding at December 31, 2021.

The Series 2 Preferred is classified in the accompanying consolidated and combined balance sheets as temporary equity due to certain contingent redemption features which are outside the control of the Company.

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Designations, rights and preferences of Series 2 Preferred:

Stated value: Each share of Series 2 Preferred had a stated value of \$1,000.

True-Up Payment: Amergent was required to pay the original holder an amount in cash equal to the dollar value of 125% of the stated value of the Series 2 Preferred less the proceeds previously realized by the holder from the sale of all conversion and spin-off shares received by the original holder in Amergent, net of brokerage commissions and any other fees incurred by the holder in connection with the sale of any conversion shares or spin-off shares on April 1, 2021 (which period was extended). The True-Up Payment was settled in July 2021 with a payment of \$0.1 million, and the cash account is no longer subject to restriction for this matter.

The Company determined that the True-Up Payment constituted a “make-whole” provision as defined by U.S. GAAP that was required to be settled in cash and as such, was bifurcated from the host instrument, the Series 2 Preferred, and was accounted for as a derivative liability. The fair value of the derivative was estimated using a Monte Carlo model and a liability of \$0.5 million was recorded at the Series 2 Preferred issuance date. The fair value at December 31, 2020 was a liability of \$0.2 million. The \$0.3 million decrease in the liability from the issuance date through December 31, 2020 is recorded as a component of the change in fair value of derivative liabilities in the accompanying consolidated and combined statement of operations for the year ended December 31, 2020. The \$0.1 million decrease in the liability from December 31, 2020 until settlement in July 2021 is recorded as a component of the change in fair value of derivative liabilities in the accompanying consolidated and combined statement of operations for the year ended December 31, 2021.

Redemption: If the Merger was not completed within six months of issuance of the Series 2 Preferred, the Company would have been required to redeem all the outstanding Series 2 Preferred for 125% of the aggregate stated value of the Series 2 Preferred then outstanding plus any default interest and any other fees or liquidated damages then due and owing thereon under the Certificate of Designations. Additionally, there are other triggering events, as defined, that can cause the Series 2 Preferred to be redeemable at the option of the holder, some of which are outside the control of the Company.

Conversion at option of holder/ beneficial ownership limitation The Series 2 Preferred is convertible at the option of holder at the lesser of (i) \$1.00 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like) or (ii) 90% of the five day volume weighted average price of the common, provided the conversion price has a floor of \$0.50 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like). Conversion is subject to a beneficial ownership limitation of 4.99%. This limitation was increased by the holder to 9.99% prior to the Merger.

Forced conversion: The Company had the right to require the holder to convert up to 1,400 shares of Series 2 Preferred upon delivery of notice three days prior to the Merger, subject to the beneficial ownership limitation and applicable Nasdaq rules. Unconverted shares of Series 2 Preferred automatically were exchanged for an equal number of shares of Series 2 Preferred in Amergent on substantially the same terms.

Liquidation preference: Upon any liquidation, dissolution or winding-up of the Company, the holder is entitled to receive out of the assets, whether capital or surplus, an amount equal to 125% of the stated value plus any default interest and any other fees or liquidated damages then due and owing thereon under the Certificate of Designations, for each share of Series 2 Preferred before any distribution or payment to the holders of common stock.

Voting rights: The holder of Series 2 Preferred has the right to vote together with the holders of common stock as a single class on an as-converted basis on all matters presented to the holders of common stock and shall vote as a separate class on all matters presented to the holders of Series 2 Preferred. In addition, without the approval of the holder, the Company is required to obtain the approval of Series 2 Preferred, as is customary, for certain events and transactions not contemplated by the Merger.

Triggering events: Breach of Company’s obligations will trigger a redemption event.

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Anti-dilution: The Series 2 Preferred provides for customary adjustments in the event of dividends or stock splits and anti-dilution protection. Concurrently with the Preferred Securities Purchase Agreement, the parties entered into a registration rights agreement (the “Preferred Registration Rights Agreement”). Pursuant to the Preferred Registration Rights Agreement, the Company was required to file a registration statement registering the conversion shares no later than 15 days from the closing of this transaction.

2020 Merger Transaction

As a result of the Merger, the following reflects the net equity contribution of Merger Consideration to the Company which reflects the gross proceeds received, offset of the direct costs incurred for the transaction, the difference between the redemption payment and carrying value of the Series 1 Preferred, and redemption of certain warrants.

The following is in thousands:

Contributed cash portion of Merger Consideration	\$ 6,000
Contribution of Sonnet warrant portion of Merger Consideration	1,629
Transaction cost incurred	(588)
	<u>\$ 7,041</u>

Options and Warrants

The Company’s shareholders approved the Chanticleer Holdings, Inc. 2014 Stock Incentive Plan (the “2014 Plan”) authorizing the issuance of options, stock appreciation rights, restricted stock awards and units, performance shares and units, phantom stock and other stock-based and dividend equivalent awards. Pursuant to the approved 2014 Plan, 400,010 were approved for grant. This Plan did not survive the Merger, and in connection with the Merger and Spin-Off, all restricted and unrestricted stock options were cancelled.

In March 2020, the Company lowered the strike price for certain warrants from within several classes of warrants to \$0.50 as an inducement to incentivize the warrant holders to exercise their warrants. The Company accounted for the warrant inducement as a deemed dividend based on the difference in the Black-Scholes value of the warrants immediately before and immediately after the inducement. The significant assumptions used by the Company included common stock volatility of between 88% - 95%, risk free rate between 1.70% and 0.84%, a weighted average term between 6.5 and 8 years and the stock price of the Company as of the date of inducement. Based on the Black-Scholes values calculated the Company recorded a deemed dividend to additional paid in capital and retained earnings on the inducement of approximately \$0.3 million and received proceeds from the warrants exercised of approximately \$1.2 million.

In connection with the Merger and Spin-Off on April 1, 2020, 261,050 warrants were redeemed by the Company for \$0.1 million and 525,554 warrants remained with the Company. Additionally, 3,275,200 warrants were issued, of which 2,925,200 warrants were issued with an exercise price ranging between \$0.125 and \$0.50 in connection with the issuance of the Company’s 10% convertible note agreement and 350,000 warrants with an exercise price of \$1.25 were issued to the Company’s bridge financing investor.

On August 17, 2020, warrants for 134,000 shares of common stock were issued in connection with the extension of the True-Up Payment provision. See Note 12. The warrants are immediately exercisable at \$1.25 per share and expire in August 2025. The value of these warrants was \$28,060.

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A summary of the warrant activity during the year ended December 31, 2021 is presented below:

	Number of Warrants	Weighted Average Exercise Price	Weighted Average Remaining Life
Outstanding at December 31, 2020	3,409,200	\$ 0.34	8.6
Granted	—		
Exercised	—		
Forfeited/Other Adjustments	—		
Outstanding at December 31, 2021	3,409,200	\$ 0.34	7.6
Exercisable December 31, 2021	3,409,200	\$ 0.34	7.6

At December 31, 2021, the outstanding warrants consisted of the following:

Date issued	Number of warrants	Exercise Price	Expiration Date
April 1, 2020	2,462,600	\$ 0.125	April 1, 2030
April 1, 2020	462,600	\$ 0.500	April 1, 2030
March 30, 2020	350,000	\$ 1.250	March 30, 2025
August 17, 2020	134,000	\$ 1.250	August 17, 2025
	3,409,200		

See Note 14 for additional information on stock options.

12. DERIVATIVE LIABILITIES

The derivative liabilities at December 31, 2020 consisted of the True-Up Payment provision of the Series 2 Preferred (see Note 11). The True-Up Payment was settled in July 2021 with a cash payment of \$0.1 million.

As discussed in Note 8(a), warrants were issued in connection with the 10% convertible note. The Company did not have an adequate amount of authorized common shares issuable upon exercise of the warrants and conversion of the 10% convertible note. As such, the warrants were liability classified and the conversion feature was bifurcated from the host debt instrument and both instruments were accounted for as derivatives. As a result of the amendment to the note discussed in Note 8(a), the warrant and conversion feature no longer required liability classification as of August 16, 2020 and were reclassified to equity.

The table presented below is a summary of changes in the fair market value of the Company's Level 3 valuations for the years ended December 31, 2021 and 2020.

(in thousands)	True-Up Payment	Warrants	Debt Conversion Feature	Total
Balance at January 1, 2020	\$ —	\$ —	\$ —	\$ —
Inception of the instrument	529	935	11,231	12,695
Change in fair value during the period	(344)	(11)	(261)	(616)
Instruments no longer meeting liability classification	—	(924)	(10,970)	(11,894)
Balance at December 31, 2020	185	—	—	185
Change in fair value during the period	(119)	—	—	(119)
Settlement of derivative liability	(66)	—	—	(66)
Balance at December 31, 2021	\$ —	\$ —	\$ —	\$ —

Assumptions used in calculating the fair value of the warrants at the issuance date and as of August 16, 2020 include the following:

As of April 1, 2020	
Stock price per share	\$ 0.34
Term	10.0 years
Expected volatility	102%
Dividend yield	—%
Risk-free interest rate	0.62%

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As of August 16, 2020

Stock price per share	\$	0.34
Term		9.63 years
Expected volatility		102%
Dividend yield		—%
Risk-free interest rate		0.51%

The Company also considered the probability, timing and amount of future capital raises.

Assumptions used in calculating the fair value of the convertible notes at the issuance date and as of August 16, 2020 include the following (amounts in thousands except conversion price data):

As of April 1, 2020

Face value	\$	4,038
Term		2.0 years
Expected volatility		120%
Risk-free interest rate		0.23%
Coupon		10.00%
Conversion price	\$	0.10
Credit spread		15.0%

As of August 16, 2020

Face value	\$	4,038
Term		1.63 years
Expected volatility		127%
Risk-free interest rate		0.23%
Coupon		10.00%
Conversion price	\$	0.10
Credit spread		15.0%

The Company also considered the probability, timing and amount of future capital raises.

Assumptions used in calculating the fair value of the True-Up Payment provision at the issuance date and as of December 31, 2020 include the following:

Issuance Date

Term		0.5 years
Expected volatility		83%
Dividend yield		—%
Risk-free interest rate		1.56%

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December 31, 2020

Term	0.25 years
Expected volatility	89%
Dividend yield	—%
Risk-free interest rate	0.09%

13. COMMITMENTS AND CONTINGENCIES

Legal proceedings

Indemnification agreement and tail policy

On March 25, 2020, pursuant to the requirements of the Merger Agreement, Chanticleer, Sonnet and Amergent entered into an indemnification agreement (“Indemnification Agreement”) providing that Amergent will fully indemnify and hold harmless each of Chanticleer and Sonnet, and each of their respective, directors, officers, stockholders and managers who assumes such role upon or following the closing of the merger against all actual or threatened claims, losses, liabilities, damages, judgments, fines and reasonable fees, costs and expenses, including attorneys’ fees and disbursements, incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, administrative, investigative or otherwise, related to the Spin-Off Business prior to or in connection with its disposition to Amergent. The Indemnification Agreement will expire on March 25, 2026.

In addition, pursuant to Merger Agreement, prior to closing of the Merger, the Spin-Off Entity acquired a tail insurance policy in a coverage amount of \$3.0 million, prepaid in full by the Spin-Off Entity, at no cost to the indemnitees, and effective for at least six years following the consummation of the disposition, covering the Spin-Off Entity’s indemnification obligations to the indemnitees (referred to herein as the “Tail Policy”). No claims have arisen to date and the Company does not anticipate that any potential liability would exceed the insured amount.

Litigation related to leased properties

During 2021 and 2020 the Company was in arrears on rent due on several of its leases as a result of the COVID-19 pandemic. As a result, the Company has pending litigation related to seven sites of which four have permanently closed. The outcome of this litigation could result in the permanent closure of additional restaurant locations as well as the possibility of the Company being required to pay interest and damages, modify certain leases on unfavorable terms and could result in material impairments to the Company’s assets. See *Leases* section below for discussion of past due rent on abandoned locations.

No amounts have been accrued as of December 31, 2021 and December 31, 2020 in the accompanying consolidated and combined balance sheets as management does not believe the outcome will result in additional liabilities to the Company; however, there can be no guarantees.

From time to time, the Company may be involved in other legal proceedings and claims that have arisen in the ordinary course of business are generally covered by insurance. As of December 31, 2021, the Company does not expect the amount of ultimate liability with respect to these matters to be material to the Company’s financial condition, results of operations or cash flows.

Leases

The Company’s leases typically contain rent escalations over the lease term. The Company recognizes expense for these leases on a straight-line basis over the lease term. Additionally, tenant incentives used to fund leasehold improvements are recognized when earned and reduce our right-of-use asset related to the lease. These are amortized through the right-of-use asset as reductions of expense over the lease term.

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Some of the Company's leases include rent escalations based on inflation indexes and fair market value adjustments. Certain leases contain contingent rental provisions that include a fixed base rent plus an additional percentage of the restaurant's sales in excess of stipulated amounts. Operating lease liabilities are calculated using the prevailing index or rate at lease commencement. Subsequent escalations in the index or rate and contingent rental payments are recognized as variable lease expenses. The Company's lease agreements do not contain any material residual value guarantees or material restrictive covenants. As part of the lease agreements, the Company is also responsible for payments regarding non-lease components (common area maintenance, operating expenses, etc.) and percentage rent payments based on monthly or annual restaurant sales amounts which are considered variable costs and are not included as part of the lease liabilities.

Related to the adoption of Leases Topic 842, our policy elections were as follows:

Short-term policy

The Company has elected the short-term lease recognition exemption for all applicable classes of underlying assets. Leases with an initial term of 12 months or less, that do not include an option to purchase the underlying asset that the Company is reasonably certain to exercise, are not recorded on the balance sheet.

Supplemental balance sheet information related to leases is as follows (in thousands):

Operating Leases	Classification	December 31, 2021	December 31, 2020
Right-of-use assets	Operating lease assets	\$ 8,021	\$ 9,529
Current lease liabilities	Current operating lease liabilities	\$ 4,599	\$ 4,209
Non-current lease liabilities	Long-term operating lease liabilities	8,644	10,678
		<u>\$ 13,243</u>	<u>\$ 14,887</u>

Lease term and discount rate are as follows:

	December 31, 2021	December 31, 2020
Weighted average remaining lease term (years)	6.7	7.7
Weighted average discount rate	8.1%	10.0%

COVID-19 has negatively impacted operating results and cash flows at significantly varying amounts at the store level. Several stores were permanently closed during the year ended December 31, 2020 while others operated at a reduced capacity. Based on an assessment of the recoverability of the right-of-use asset as of December 31, 2021, an impairment charge of \$0.7 million was recorded during the year then ended. Based on an assessment of the recoverability of the right-of-use asset as of December 31, 2020, impairment charges of \$0.5 million were recorded during the year then ended.

During the year ended December 31, 2021, \$0.4 million of lease liabilities were derecognized due to the Company negotiating the cancellation of its obligations under certain lease agreements. The cancellations resulted from the COVID-19 pandemic. At December 31, 2021, the Company had lease liabilities of \$3.1 million related to abandoned leases. These lease liabilities are presented as part of current operating lease liabilities.

During the year ended December 31, 2020, \$0.5 million of lease liabilities were derecognized due to the Company negotiating the cancellation of its obligations under certain lease agreements. The cancellations resulted from the COVID-19 pandemic. At December 31, 2020, the Company had lease liabilities of \$3.1 million related to abandoned leases. These lease liabilities are presented as part of current operating lease liabilities.

Rent expense of approximately \$2.4 million was incurred during the year ended December 31, 2021, of which approximately \$0.1 million was variable. Rent expense of approximately \$2.5 million was recognized during the year ended December 31, 2020, of which approximately \$0.1 million was variable.

PPP loans

The Company received two PPP loans totaling \$4.1 million, which were established under the CARES Act and administered by the U.S. SBA. The application for the PPP loans requires the Company to, in good faith, certify that the current economic uncertainty made the loan requests necessary to support the ongoing operations of the Company. This certification further requires the Company to take into account current business activity and the Company's ability to access other sources of liquidity sufficient to support the ongoing operations in a manner that is not significantly detrimental to the business. The receipt of funds from the PPP loans and forgiveness of the PPP loans is dependent on the Company having initially qualified for the PPP loans and qualifying for the forgiveness of such PPP loans based on funds being used for certain expenditures such as payroll costs and rent, as required by the terms of the PPP loans. There is no assurance that the Company's obligation under the PPP loans will be forgiven. If the PPP loans are not forgiven, the Company will need to repay the PPP loans over the applicable deferral period.

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Presently, the U.S. SBA and other governmental communications have indicated that all loans in excess of \$2.0 million will be subject to audit and that those audits could take up to seven years to complete. If the U.S. SBA determines that the PPP loans were not properly obtained and/or expenditures supporting forgiveness were not appropriate, the Company would need to repay some or all of the PPP loans and record additional expense which could have a material adverse impact on the business, financial condition and results of operations in a future period. See Note 8 for additional information regarding the PPP loan forgiveness process.

RRF

As discussed in Note 3, Pie Squared Holdings received an approximately \$10.0 million grant under the RRF and the Company assumed the risks and rewards related to the grant through the acquisition of Pie Squared Holdings. If it is determined that Pie Squared Holdings obtained the grant improperly or the disbursement of such grant monies was not for “eligible uses,” then the Company would be responsible for the ramifications of such actions including repayment of the \$10.0 million of grant monies, among other items. See Note 3 for further discussion.

14. SHARE-BASED COMPENSATION

In August 2021, the Company adopted the 2021 Inducement Plan (“the Plan”). Under the 2021 Inducement Plan, the Company can grant stock options and stock awards. There are 500,000 shares of common stock reserved for issuance under the Plan. As of December 31, 2021, 50,000 shares remained available for future grants.

In November 2021, the Company adopted the 2021 Equity Incentive Plan (the “Incentive Plan”). Under the 2021 Incentive Plan, the Company can grant stock options and stock awards. The stockholders of the Company approved the Incentive Plan on December 30, 2021. There are 2,000,000 shares of common stock reserved for issuance under the Incentive Plan. As of December 31, 2021, 2,000,000 shares remained available for future grants.

Share-based awards generally vest over a period of three years, and share-based awards that lapse or are forfeited are available to be granted again. The contractual life of all share-based awards is five years. The expiration date of the outstanding share-based awards is August 2026.

The Company measures share-based awards at their grant-date fair value and records compensation expense on a straight-line basis over the service period of the awards. Share-based compensation is allocated to employees and consultants based on their respective departments.

The Company recorded share-based compensation expense of \$47,793 in general and administrative expenses during the year ended December 31, 2021.

The assumptions used in the Black-Scholes option pricing model to determine the fair value of share-based awards granted to employees during the year ended December 31, 2021 were as follows:

Volatility	90.00%
Risk free rate	0.66%
Expected term	2.54 years
Dividend yield	—%

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The following table summarizes the share-based award activity for the periods presented:

	Number of Options	Weighted Average Exercise Price Per Share	Weighted Average Remaining Contractual Term (years)
Outstanding at January 1, 2020	-	\$ -	-
Granted	450,000	\$ 1.38	
Outstanding at December 31, 2021	450,000	\$ 1.38	4.6
Exercisable at December 31, 2021	175,000	\$ 2.22	4.6
Vested and expected to vest at December 31, 2021	450,000	\$ 1.38	4.6

The weighted average fair value of share-based awards granted during the year ended December 31, 2021 was \$0.15. As of December 31, 2021, the unrecognized compensation cost related to outstanding share-based awards was approximately \$49,000 and is expected to be recognized as expense over a weighted-average period of approximately 1.9 years.

15. SUBSEQUENT EVENTS

The Company has evaluated subsequent events from the balance sheet date through the date at which the consolidated and combined financial statements were available to be issued, and there are no other items requiring disclosure except the following and the items discussed in Note 8 with respect to debt and notes payable.

In March 2022, the Company terminated its international Master Franchise Agreement. The Master Franchisee had not met the requirements in the agreement and all international stores had been closed. The Master Franchisee notified the Company that it would not be reopening these stores. The Company recorded \$0.7 million in cancellation income in the first quarter of 2022.

In March 2022, the Company received a dividend from its investment in Hooters of America of approximately \$0.1 million.

In March 2022, the Company entered into an 8% senior unsecured convertible debenture and warrant financing arrangement from which the Company has received \$1.3 million in bridge financing.

In February and March 2022, eight of Company-owned stores received \$0.3 million in cash under notes payable to Toast Capital Loans. The terms of the notes require payment of 13.2% of daily credit card sales of the eight stores until the notes are paid in full. The terms of the notes are 270 days and the implied interest rate is 12.75% per year.

In February 2022, the Company settled outstanding accounts with a supplier in the amount of \$0.3 million for an agreed amount of \$0.08 million. The Company recorded \$0.2 million in other income in the first quarter of 2022.

16. RESTATEMENTS OF PREVIOUSLY ISSUED INTERIM FINANCIAL STATEMENTS (UNAUDITED)

The Company, while undergoing the audit of its consolidated and combined financial statements as of December 31, 2021 and for the year then ended, determined that it had over-depreciated assets from January 1, 2021 through September 30, 2021 and had incorrectly stated the UK subsidiary's balances as of and for the three and six month periods ended June 30, 2021 and for the three months ended September 30, 2021. This impacted the previously reported amounts for cash, property and equipment, intangible assets, accounts payable and accrued expenses, restaurant sales, restaurant cost of sales, restaurant operating expenses, and depreciation and amortization, among other line items in the condensed consolidated and combined interim financial statements.

The following tables sets forth the effects of the adjustments on affected items within the Company's previously reported Condensed Consolidated and Combined Interim Balance Sheets as of March 31, 2021, June 30, 2021, and September 30, 2021, had the adjustments been made in the corresponding quarters:

(in thousands)	March 31, 2021		
	As reported	Adjustment	As restated
Property and equipment, net	\$ 3,172	\$ 136	\$ 3,308
Accumulated deficit	\$ (97,136)	\$ 136	\$ (97,000)

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(in thousands)	June 30, 2021		
	As reported	Adjustment	As restated
Cash	\$ 2,083	\$ 179	\$ 2,262
Accounts and other receivables	\$ 157	\$ 5	\$ 162
Inventories	\$ 154	\$ 9	\$ 163
Property and equipment, net	\$ 2,908	\$ 272	\$ 3,180
Intangible assets, net	\$ 2,541	\$ (1)	\$ 2,540
Accounts payable and accrued expenses	\$ 8,168	\$ 159	\$ 8,327
Accumulated deficit	\$ (96,869)	\$ 306	\$ (96,563)

(in thousands)	September 30, 2021		
	As reported	Adjustment	As restated
Property and equipment, net	\$ 3,002	\$ 408	\$ 3,410
Accumulated deficit	\$ (96,963)	\$ 408	\$ (96,555)

The following tables sets forth the effects of the adjustments on affected items within the Company's previously reported Condensed Consolidated and Combined Interim Statements of Operations for the three months ended March 31, 2021, June 30, 2021, and September 30, 2021, had the adjustments been made in the corresponding quarters:

(in thousands except per share data)	Three Months Ended March 31, 2021		
	As reported	Adjustment	As restated
Depreciation and amortization	\$ 368	\$ (136)	\$ 232
Operating (loss) income	\$ (2,790)	\$ 136	\$ (2,654)
Consolidated and combined net (loss) income	\$ (2,713)	\$ 136	\$ (2,577)
Net (loss) income attributable to Amergent Hospitality Group, Inc.	\$ (2,548)	\$ 136	\$ (2,412)
Net (loss) income attributable to Amergent Hospitality Group, Inc. per common share, basic and diluted	\$ (0.18)	\$ 0.01	\$ (0.17)

(in thousands except per share data)	Three Months Ended June 30, 2021		
	As reported	Adjustment	As restated
Restaurant sales, net	\$ 4,738	\$ 479	\$ 5,217
Restaurant cost of sales	\$ 1,435	\$ 182	\$ 1,617
Restaurant operating expenses	\$ 3,180	\$ 275	\$ 3,455
General and administrative expenses	\$ 1,194	\$ 14	\$ 1,208
Depreciation and amortization	\$ 362	\$ (135)	\$ 227
Operating income	\$ 256	\$ 143	\$ 399
Other income	\$ 144	\$ 27	\$ 171
Consolidated and combined net income	\$ 327	\$ 170	\$ 497
Net income attributable to Amergent Hospitality Group, Inc.	\$ 267	\$ 170	\$ 437
Net income attributable to Amergent Hospitality Group, Inc. per common share, basic	\$ 0.02	\$ 0.01	\$ 0.03
Net income attributable to Amergent Hospitality Group, Inc. per common share, diluted	\$ 0.01	\$ 0.01	\$ 0.02

(in thousands except per share data)	Three Months Ended September 30, 2021		
	As reported	Adjustment	As restated
Restaurant sales, net	\$ 6,106	\$ (479)	\$ 5,627
Restaurant cost of sales	\$ 2,032	\$ (182)	\$ 1,850
Restaurant operating expenses	\$ 3,675	\$ (275)	\$ 3,400
General and administrative expenses	\$ 1,395	\$ (14)	\$ 1,381
Depreciation and amortization	\$ 351	\$ (137)	\$ 214
Operating income	\$ 137	\$ 129	\$ 266
Other income (expense)	\$ 18	\$ (27)	\$ (9)
Consolidated and combined net (loss) income	\$ (89)	\$ 102	\$ 13
Net (loss) income attributable to Amergent Hospitality Group, Inc.	\$ (94)	\$ 102	\$ 8
Net (loss) income attributable to Amergent Hospitality Group, Inc. per common share, basic and diluted	\$ (0.01)	\$ 0.01	\$ 0.00

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The following tables sets forth the effects of the adjustments on affected items within the Company's previously reported Condensed Consolidated and Combined Interim Statements of Operations for the six months ended June 30, 2021, had the adjustments been made in the corresponding quarter:

(in thousands except per share data)	Six Months Ended June 30, 2021		
	As reported	Adjustment	As restated
Restaurant sales, net	\$ 9,182	\$ 479	\$ 9,661
Restaurant cost of sales	\$ 2,751	\$ 182	\$ 2,933
Restaurant operating expenses	\$ 6,426	\$ 275	\$ 6,701
General and administrative expenses	\$ 2,361	\$ 14	\$ 2,375
Depreciation and amortization	\$ 730	\$ (271)	\$ 459
Operating (loss) income	\$ (2,533)	\$ 279	\$ (2,254)
Other income	\$ 147	\$ 27	\$ 174
Consolidated and combined net (loss) income	\$ (2,386)	\$ 306	\$ (2,080)
Net (loss) income attributable to Amergent Hospitality Group, Inc.	\$ (2,282)	\$ 306	\$ (1,976)
Net (loss) income attributable to Amergent Hospitality Group, Inc. per common share, basic and diluted	\$ (0.15)	\$ 0.02	\$ (0.13)

The following tables sets forth the effects of the adjustments on affected items within the Company's previously reported Condensed Consolidated and Combined Interim Statements of Operations for the nine months ended September 30, 2021, had the adjustments been made in the corresponding quarter:

(in thousands except per share data)	Nine Months Ended September 30, 2021		
	As reported	Adjustment	As restated
Depreciation and amortization	\$ 1,081	\$ (408)	\$ 673
Operating (loss) income	\$ (2,397)	\$ 408	\$ (1,989)
Consolidated and combined net (loss) income	\$ (2,475)	\$ 408	\$ (2,067)
Net (loss) income attributable to Amergent Hospitality Group, Inc.	\$ (2,376)	\$ 408	\$ (1,968)
Net (loss) income attributable to Amergent Hospitality Group per common share, basic and diluted	\$ (0.16)	\$ 0.03	\$ (0.13)

The following tables sets forth the effects of the adjustments on affected items within the Company's previously reported Condensed Consolidated and Combined Interim Statements of Cash Flows for the six months ended June 30, 2021, had the adjustments been made in the corresponding quarter:

(in thousands)	Six Months Ended June 30, 2021		
	As reported	Adjustment	As restated
Net cash flows from operating activities	\$ (1,346)	\$ 179	\$ (1,167)
Net increase in cash and restricted cash	\$ 595	\$ 179	\$ 774

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

There are not and have not been any disagreements between us and our accountant on any matter of accounting principles, practices or financial statement disclosure.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We evaluated, under the supervision and with the participation of the principal executive officer and principal financial officer, the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities and Exchange Act of 1934, as amended (“Exchange Act”)) as of December 31, 2021, the end of the period covered by this Report. Based on this evaluation, our Chairman, President and Chief Executive Officer (principal executive officer) and our Chief Financial Officer (principal financial officer) have concluded that our disclosure controls and procedures were not effective at the reasonable assurance level at December 31, 2021 because of the material weakness in the Company’s internal control over financial reporting that existed at December 31, 2020 that has not been fully remediated by the end of this period.

Disclosure controls and procedures are designed to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act (i) is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms, and (ii) is accumulated and communicated to management, including the principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosures. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. Due to the inherent limitations of control systems, not all misstatements may be detected. These inherent limitations include the realities that judgments in decision-making can be faulty and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. Controls and procedures can only provide reasonable, not absolute, assurance that the above objectives have been met.

Changes in Internal Control over Financial Reporting

Other than the material weakness and remediation activities discussed below, there were no changes in our internal control over financial reporting during the quarter ended December 31, 2021 that have materially affected, or are reasonably likely to materially affect, the Company’s internal control over financial reporting.

Material Weakness in Internal Control over Financial Reporting

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

Management identified the following deficiency in its internal control over financial reporting:

- We identified a deficiency related to our financial close process including maintaining a sufficient complement of personnel commensurate with our accounting and financial reporting requirements, as well as development and extension of controls over the recording of closing journal entries, accounting for business combinations, contingencies and proper cut-off of accounts payable and accrued expenses at period end.

Management determined that the deficiency could potentially result in a material misstatement of the consolidated and combined financial statements in a future annual or interim period that would not be prevented or detected. Therefore, the deficiency constitutes a material weakness in internal control.

Remediation Plans

We initiated several steps to evaluate and implement measures designed to improve our internal control over financial reporting in order to remediate the control deficiencies noted above, including recruitment of an accounting consultant and seeking outside advice from other third-party consultants to assist in improving the Company's internal control, simplify its reporting processes and reduced the risk of undetected errors. In June 2020, the Company hired an accounting consultant that has appropriate expertise in accounting and reporting under U.S. GAAP and SEC regulations and has allowed the Company to be better aligned with segregation of duties. With the hiring of this consultant, the Company will be instituting monthly and quarterly meetings to identify significant, infrequent and unusual transactions as well as ensure timely reporting. Additionally, in September 2020 the Company engaged a third-party accounting and advisory firm to assist with, among other areas, the analysis of complex, infrequent and unusual transactions as well as provide valuation services to the Company.

The Chief Financial Officer has initiated a preliminary assessment of management's internal control over financial reporting in accordance with the 2013 integrated framework, as prescribed by the Committee of Sponsoring Organizations of the Treadway Commission, or COSO.

Inherent Limitations on Effectiveness of Controls

An effective internal control system, no matter how well designed, has inherent limitations, including the possibility of human error or overriding of controls, and, therefore, can provide only reasonable assurance with respect to reliable financial reporting. Because of its inherent limitations, our internal control over financial reporting may not prevent or detect all misstatements, including the possibility of human error, the circumvention or overriding of controls, or fraud. Effective internal control can provide only reasonable assurance with respect to the preparation and fair presentation of financial statements.

ITEM 9B. OTHER INFORMATION

In March 2022, the Company commenced a private placement of up to \$3.0 million of 8% senior unsecured convertible debentures ("8% Debentures") and warrants ("Warrants"). As of the date hereof, the Company sold \$1.3 million of the 8% Debentures and Warrants to purchase 1,300,000 shares of common stock of the Company to accredited investors. Gross proceeds to the company, after deduction of fees and expenses were approximately \$1.25 million.

The purchase agreement includes standard representations, warranties and covenants of the Company and purchasers. The purchase agreement also provides for the payment by the Company customary penalties and liquidated damages in the event of legend removal failure.

The 8% Debentures mature 18 months after issuance and are subject to acceleration in the event of customary events of default. The 8% Debentures may be converted by holders at any time at fixed conversion price of \$0.40. Each whole Warrant entitles the holder to purchase one share of common stock at an exercise price of \$0.50 per share for a period of five years. Conversion of the 8% Debentures and exercise of the Warrants is subject to customary beneficial ownership limitations of 4.99% that may be waived at the option of each holder upon 61 days' notice to the Company.

Holders have piggyback registration rights with respect to the shares underlying the 8% Debentures and Warrants ("Registrable Securities"). After the earlier of maturity date of the 8% Debentures or the one year anniversary of the date 100% of the 8% Debentures have been converted into common stock, holders of 51% of Registrable Securities then outstanding may request registration under the Securities Act of 1933, as amended (the "Securities Act") of all or any portion of their Registrable Securities on Form S-3, if available, or Form S-1, provided Form S-3 is not available.

In connection with the transaction, Oz Rey, LLC agreed to subordinate payment of its 10% senior secured convertible debenture to payment of the 8% Debentures. Oz Rey, LLC receives a fee equal to two percent (2.0%) of the principal amount of the 8% Debentures issued in the transaction as well as a one-time payment of \$15,000 for legal fees and expenses.

The 8% Debentures, the Warrants and the shares of common stock underlying the 8% Debentures and Warrants have not been registered under the Securities Act, pursuant to a registration statement and have been instead offered pursuant to the exemption provided in Section 4(a)(2) under the Securities Act and Rule 506(b) promulgated thereunder.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

None.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS, AND CORPORATE GOVERNANCE.

The following section sets forth the names, ages and current positions with the Company held by our directors and executive officers, together with certain biographical information. There is no immediate family relationship between or among any of our directors and our executive officers, and the Company is not aware of any arrangement or understanding between any director or executive officer and any other person pursuant to which he was elected to his current position.

Each director and executive officer will serve until he or she resigns or is removed or otherwise disqualified to serve or until his or her successor is elected. Each director was appointed to the board of Amergent concurrently with the Merger and Spin-Off.

Our bylaws give the board authority to expand or reduce the number of available board seats between five and nine, provided reduction may not be implemented below number of occupied seats. For as long as Oz Rey, LLC holds 10% debentures, it has the right, but not the obligation, to appoint two directors to Amergent's board. Amergent agreed that its board or Governance Committee, if it has one, will re-nominate the appointees as a directors at annual meetings and recommend that stockholders vote "for" such appointees at annual meetings. All proxies given to management will also vote in favor of such Appointees. This right to designate the appointees will be subject to Nasdaq Listing Rules in the event Amergent seeks listing on one of the exchanges of the Nasdaq Stock Market. Oz Rey, LLC has not yet submitted any appointees to Amergent.

DIRECTORS

Name	Age	Position
Michael D. Pruitt	61	Chairman, Chief Executive Officer
Frederick L. Glick	56	Director, President
Keith J. Johnson	62	Director, Chairman of Audit Committee, Member Compensation Committee
Neil G. Kiefer	70	Director, Chairman of Compensation Committee Member of Nominating and Governance Committee
J. Eric Wagoner	69	Director, Chairman of Nominating and Governance Committee Member of Audit Committee

Michael D. Pruitt founded Avenel Financial Group, a boutique financial services firm concentrating on emerging technology company investments, in 1999. In 2001, he formed Avenel Ventures, a technology investment and private venture capital firm. In February 2005, Mr. Pruitt formed Chanticleer Holdings, Inc., which commenced operations in June 2005 with him as Chairman and Chief Executive Officer, roles he continued to serve through the Merger and Spin-Off. In January 2011, Mr. Pruitt became a director of the board of Hooters of America, LLC. Mr. Pruitt received a Bachelor of Arts degree from Coastal Carolina University in Conway, South Carolina, where he sits on the Board of Visitors of the E. Craig Wall Sr. College of Business Administration, the Coastal Education Foundation Board, and the Athletic Committee of the Board of Trustees.

Frederick L. Glick was appointed to serve as President of Chanticleer on November 16, 2018 and subsequently appointed as director effective May 10, 2019. Mr. Glick was the Vice President of Brewery Restaurants for the Karl Strauss Brewing Company brand in San Diego, California from 2013 to the present. Prior, from 2008 to 2013, Mr. Glick was the VP of Operations for Phil's BBQ in San Diego, California. From 1991 to 2008, Mr. Glick was the President, CEO, Operating Partner of Hootwine, Inc., a Hooters franchise, in Oceanside, California. Mr. Glick graduated with a B.S. in Business Administration from Lehigh University in 1986. Each year, Mr. Glick volunteers with local service and charitable organizations and serves on the state board of directors of the California Restaurant Association and CRAF (California Restaurant Association Foundation).

Keith J. Johnson is the Chief Financial Officer of Watertech Equipment & Sales. He served as the Manager of Business Development for Hudson Technologies from November 2012 through September 2013. From August 2010 through November 2012, Mr. Johnson was President of Efficiency Technologies, Inc., the wholly-owned operating subsidiary of Efftec International, Inc. He was the President and Chief Executive Officer of YRT² (Your Residential Technology Team) in Charlotte, North Carolina since 2004. Mr. Johnson has a BS in Accounting from Fairfield University in Fairfield, Connecticut. Mr. Johnson served on the board of directors of Chanticleer from April 2007 through March 31, 2020 and also served as the Chairman of its Audit Committee and a member of its Compensation Committee. Mr. Johnson was asked to serve as director based in part on his financial expertise and general proven success in business.

Neil G. Kiefer is the Chief Executive Officer of Hooters Management Corporation, Hooters, Inc., and all its affiliated companies, a position he has held since May 1992. In 1994, Mr. Kiefer was appointed to the boards of those entities, and he continues to serve on those boards. He was also Chief Executive Officer of the Hooters Casino Hotel in Las Vegas, Nevada from 2006 to 2012. Mr. Kiefer received his bachelor's degree from Bethany College in Bethany, West Virginia and received his law degree from Hofstra University in Hempstead, New York. He was admitted to the Florida Bar in 1979. Mr. Kiefer served on the board of Chanticleer from January 2017 through March 31, 2020 and was a member of its compensation committee. He possesses extensive knowledge of the casual dining industry and is an experienced having served on the boards of numerous companies.

J. Eric Wagoner has served as a Managing Director and Head of the High-Yield & Distressed Securities division of Source Capital Group since 1995. Mr. Wagoner has over 35 years of investment securities experience and has developed specialized expertise in high yield and distressed debt instruments. He serves as a member of the board of directors of Argus Research Group, a leading independent equity research firm, and is a member of the Board of Visitors at Wake Forest University. Mr. Wagoner is a graduate of the University of North Carolina and received his MBA from the Babcock Graduate School of Management at Wake Forest University. Mr. Wagoner holds NASD Series 7, 24 and 63 licenses. Mr. Wagoner served on Chanticleer's board of directors from March 2018 through the Merger and Spin-Off and was a member of its audit committee and compensation committee. He was asked to serve as director based in part on his extensive securities knowledge and general proven success in business.

EXECUTIVE OFFICERS

Name	Age	Position
Michael D. Pruitt	61	Chairman and Chief Executive Officer
Frederick L. Glick	56	President
Stephen J. Hoelscher	62	Chief Financial Officer

Biographies for Mr. Pruitt and Mr. Glick are included with the director profiles above. Messrs. Pruitt and Glick were appointed to their respective positions concurrently with the Merger and Spin-Off.

Stephen J. Hoelscher was appointed Chief Financial Officer on January 19, 2021. Mr. Hoelscher is a Certified Public Accountant and has 40 years of accounting and auditing experience. Prior to joining the Company, Mr. Hoelscher was and continues to be the Chief Financial Officer for Mastodon Ventures, Inc., a strategic restaurant advisory firm in Austin, Texas since June 2000. Mr. Hoelscher oversaw investments in a number of companies owning a variety of restaurant assets including over 100 KFC restaurants, and various other fast casual, casual, fine dining, franchisee and franchisor concepts. Mr. Hoelscher previously occupied the roles Chief Financial Officer and Chief Accounting Officer at two public companies, serving as Chief Financial Officer and a member of the Board of Directors of Anpath Group Inc., from 2006 to 2015, and as Chief Financial Officer on part-time basis for Enxnet Inc., from 2004 to 2019. Mr. Hoelscher also served as controller and Chief Accounting Officer for Aperian from 1996 to 2000. Mr. Hoelscher serves on several board of directors for non-profit organizations. He received a Bachelor of Business Administration Degree from West Texas A&M University.

Mr. Hoelscher's engagement with Amergent is on a part-time basis. Mr. Hoelscher serves as an officer of entities affiliated with Oz Rey, LLC (holder of Amergent's 10% secured convertible debenture in the principal amount of \$4.0 million). Oz Rey, LLC's debenture is secured by a first priority interest in Amergent's assets and guaranteed by all of Amergent's subsidiaries. Mr. Hoelscher serves as (a) a Manager and also the Chief Financial Officer of Oz Rey, LLC; (b) Chief Financial Officer of Mastodon Ventures, Inc., an affiliate of Oz Rey, LLC; and (c) as Manager and Chief Financial Officer of MV Amanth LLC and its subsidiaries, also affiliates of Oz Rey, LLC. Mr. Hoelscher may engage in other positions and pursuits from time to time during his employment; provided however, Mr. Hoelscher will notify the Company in advance of accepting new positions or embarking on new pursuits.

Legal Proceedings

To the best of our knowledge, none of our executive officers or directors are parties to any material proceedings adverse to Amergent, have any material interest adverse to Amergent or have, during the past ten years been subject to legal or regulatory proceedings required to be disclosed hereunder.

Family Relationships

There are no family relationships between any of our executive officers and directors.

Corporate Governance

Audit Committee of the Board

The Audit Committee was formed on July 6, 2020. Messrs. Johnson and Wagoner serve on the Audit Committee. Mr. Johnson is the chairman of the Audit Committee. The board has determined that each member of our Audit Committee is an "independent director" as defined by Rule 5605(a)(2) of The Nasdaq Stock Market Rules and that members of the Audit Committee are independent under the additional requirements of Rule 10A-3(b)(1) under the Securities Exchange Act of 1934 (the "Exchange Act"). The board has determined J. Eric Wagoner meets SEC requirements of an "audit committee financial expert" within the meaning of the Sarbanes Oxley Act of 2002, Section 407(b). In addition, the board determined that (i) none of the Audit Committee members have participated in the preparation of the financial statements of the company at any time during the past three years and (2) Audit Committee members are able to read and understand fundamental financial statements. Additionally, we intend to continue to have at least one member of the Audit Committee whose experience or background results in the individual's financial sophistication. The Audit Committee charter is posted on our website at www.amergenthg.com.

Code of Ethics

Our Chief Executive Officer and all senior financial officers, including the Chief Financial Officer, are bound by a Code of Ethics that complies with Item 406 of Regulation S-B of the Exchange Act. Our Code of Ethics is posted on our website at www.amergenthg.com.

Compliance with Section 16(a) of the Exchange Act

Section 16(a) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) requires our directors and executive officers and beneficial holders of more than 10% of our common stock to file with the SEC initial reports of ownership and reports of changes in ownership of our equity securities.

To our knowledge, based solely upon a review of Forms 3 and 4 and amendments thereto furnished to Amergent under 17 CFR 240.16a-3(e) during our fiscal year ended December 31, 2021, none of our officers or directors filed a late Form 3 and Frederick L. Glick filed one late Form 4 representing one transaction. None of our officers or directors filed Form 5.

Stockholder Director Nomination Procedures

There have not been any material changes to the procedures by which stockholders may recommend nominees to our board of directors.

ITEM 11. EXECUTIVE COMPENSATION

Overview of Compensation Practices

The responsibilities of the Compensation Committee include overseeing the evaluation of executive officers (including the Chief Executive Officer) of the Company, determining the compensation of executive officers of the Company, and overseeing the management of risks associated therewith. The Compensation Committee determines and approves the Chief Executive Officer’s compensation. The Compensation Committee also administers the Company’s equity-based plans and makes recommendations to the board with respect to actions that are subject to approval of the board regarding such plans.

Generally, we intend to compensate our executive officers with a compensation package that is designed to drive Company performance to maximize stockholder value while meeting our needs and the needs of our executives. The following are objectives we consider:

- Alignment — to align the interests of executives and stockholders through equity-based compensation awards;
- Retention — to attract, retain and motivate highly qualified, high performing executives to lead our growth and success; and
- Performance — to provide, when appropriate, compensation that is dependent upon the executive's achievements and the Company's performance.

In order to achieve the above objectives, our executive compensation philosophy is guided by the following principles:

- Rewards under incentive plans are based upon our short-term and longer-term financial results and increasing stockholder value;
- Executive pay is set at sufficiently competitive levels to attract, retain and motivate highly talented individuals who are necessary for us to achieve our goals, objectives and overall financial success;
- Compensation of an executive is based on such individual's role, responsibilities, performance and experience; and
- Annual performance of the Company and the executive are taken into account in determining annual bonuses with the goal of fostering a pay-for-performance culture.

Compensation Elements

We intend to compensate our executives through a variety of components, which may include a base salary, annual performance-based incentive bonuses, equity incentives, and benefits and perquisites, in order to provide our executives with a competitive overall compensation package. The mix and value of these components are impacted by a variety of factors, such as responsibility level, individual negotiations and performance and market practice.

Accounting and Tax Considerations

We consider the accounting and tax implications of all aspects of our executive compensation strategy and, so long as doing so does not conflict with our general performance objectives described above, we strive to achieve the most favorable accounting and tax treatment possible to the Company and our executive officers.

Process for Setting Executive Compensation; Factors Considered

When making pay determinations for named executive officers, the Compensation Committee will consider a variety of factors including, among others: (1) actual Company performance as compared to pre-established goals, (2) individual executive performance and expected contribution to our future success, (3) changes in economic conditions and the external marketplace, (4) prior years' bonuses and long-term incentive awards, and (5) in the case of executive officers, other than Chief Executive Officer, the recommendation of our Chief Executive Officer, and in the case of our Chief Executive Officer, his negotiations with our board. No specific weighting is assigned to these factors nor are particular targets set for any particular factor. Ultimately, the Compensation Committee will use its judgment and discretion when determining how much to pay our executive officers and will set the pay for such executives by element (including cash versus non-cash compensation) and in the aggregate, at levels that it believes are competitive and necessary to attract and retain talented executives capable of achieving the Company's long-term objectives.

Summary Compensation Table

The information included in the Summary Compensation Table below reflects compensation earned from Amergent during the fiscal years ended December 31, 2021 and 2020 by each person serving in capacities of a named executive officer.

Name and Principal Position	Year	Salary	Bonus	Stock Awards	All Other Compensation	Total
Michael D. Pruitt	2021	\$ 287,003	—	—	—	\$ 287,003
Chief Executive Officer	2020	\$ 287,003	—	—	—	\$ 287,003
Frederick L. Glick	2021	\$ 275,000	—	—	—	\$ 275,000
President	2020	\$ 260,291	—	—	—	260,291
Stephen J. Hoelscher (1)	2021	\$ 112,192	—	—	—	\$ 112,192
Chief Financial Officer	2020	\$ —	—	—	—	\$ —

(1) Mr. Hoelscher was appointed to serve as Chief Financial Officer effective January 19, 2020.

Employment Agreements

Frederick L. Glick, President

On July 9, 2021 we entered into an at-will amended and restated employment agreement with Frederick L. Glick, which agreement induced Mr. Glick to continue to serve Amergent in the office of President and governs the terms of his continued employment, commencing July 1, 2021 and terminating June 30, 2024. Mr. Glick receives a base salary of \$250,000, which salary increases 2.5% on each of July 1, 2022 and July 1, 2023. Mr. Glick will also receive a \$25,000 signing bonus. Mr. Glick has the opportunity to earn bonuses based on set metrics forth in the agreement as well as an annual discretionary bonus. The agreement contains restrictions on the use of confidential information as well as protective covenants governing non-solicitation of customers and employees protecting Amergent's trade secrets. Mr. Glick is entitled to customary severance benefits afforded executive officers in the event of termination by Amergent without cause or by Mr. Glick without good reason (including by reason of "Change in Control", as defined in the agreement). The agreement further includes a garden leave period, which may be invoked at Amergent's discretion.

Mr. Glick received equity compensation pursuant to the company's 2021 Inducement Plan adopted by the board of directors. The plan reserved 500,000 shares of common stock for grant to Mr. Glick under his agreement. Mr. Glick received a grant of 50,000 shares of unrestricted common stock. He also received non-qualified options to purchase up to 450,000 shares of common stock, subject to vesting schedules and pricing set forth in his agreement and in compliance with applicable law.

The Compensation Committee of Amergent's board comprised of independent directors recommended adoption of the agreement and plan to the board of directors.

Stephen J. Hoelscher, Chief Financial Officer

On February 4, 2021 we entered into an at will employment agreement and non-solicitation and confidentiality agreement with Stephen J. Hoelscher, which agreements govern the terms of the engagement of Mr. Hoelscher as Amergent's new Chief Financial Officer. Either party may terminate the employment agreement with or without cause and with or without advance notice, at any time. Mr. Hoelscher receives a base salary of \$120,000 and has the opportunity to earn an annual bonus of \$30,000 based on metrics to be determined by the board of directors of Amergent. The non-solicitation and confidentiality agreement contains customary restrictions on the use of confidential information, protecting Amergent's trade secrets, as well as protective covenants governing non-solicitation of customers and employees and restricting interference with Amergent's business.

Patrick Harkleroad, Former Chief Financial Officer

On December 1, 2020, we accepted the resignation of Patrick Harkleroad from the position of Chief Financial Officer, effective December 31, 2020, which resignation was contingent upon the waiver by the board of the 90 day notice requirement for non-renewal under his employment agreement. His was assigned to Amergent April 1, 2020 in conjunction with Amergent's spin-off from Chanticleer. Mr. Harkleroad agreed to continue to provide support to Amergent in a consulting capacity to assist with the transition of his duties in 2021.

On March 26, 2021, we entered into a separation and release agreement with Mr. Harkleroad. Pursuant to the Agreement, Mr. Harkleroad was paid \$15,000 for transition services through March 31, 2021. Amergent reaffirmed its indemnification obligations to Mr. Harkleroad in the Agreement, pursuant to the terms of that certain Indemnification Agreement by and between the parties dated July 10, 2020. The Agreement also contains customary general releases by the parties as well as confidentiality, non-disparagement and cooperation provisions.

Change-in-Control Provisions

Except as described above concerning Frederick L. Glick's employment agreement, no other officers have agreements with change-in-control provisions.

Director Compensation Table

The following table reflects compensation earned for services performed in 2021 by members of Amergent's board who were not employees. The 2021 director fees are accrued and unpaid. Any director who is also an employee does not receive any compensation for service as a director. The compensation received by Messrs. Pruitt and Glick as employees is shown above in the Summary Compensation Table. Amergent reimbursed all directors for expenses incurred in their capacity as directors.

Name	Director Fees Earned or Paid in Cash (1)	Stock Awards	Option Awards	Total
Keith J. Johnson	\$ 28,000	—	—	\$ 28,000
Neil G. Kiefer	\$ 28,000	—	—	\$ 28,000
J. Eric Wagoner	\$ 28,000	—	—	\$ 28,000

(1) Director fees earned in 2021 are accrued and unpaid.

Outstanding Equity Awards at Year-End

The following table sets forth information regarding unexercised options and equity incentive plan awards for each Named Executive Officer outstanding as of December 31, 2021:

Name and Position	Number of Securities Underlying Unexercised Options (#) Exercisable	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options	Option Exercise Price	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested (\$)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested (#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested (\$)
Fredrick J. Glick, President	150,000	—	\$ 2.50	8/1/2026	—	—	—	—
Fredrick J. Glick, President	100,000	100,000	\$ 0.56	8/1/2026	50,000	\$ 20,000	—	—
Fredrick J. Glick, President	100,000	100,000	\$ 0.81	8/1/2026	100,000	40,000	—	—
Fredrick J. Glick, President	100,000	100,000	\$ 1.08	8/1/2026	100,000	40,000	—	—
Totals	450,000	300,000			250,000	\$ 100,000		

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

Security ownership of certain beneficial owners and management

To our knowledge, the following table sets forth information with respect to beneficial ownership of outstanding common stock as of April 13, 2022 by:

- each person known by the Company to beneficially own more than 5% of the outstanding shares of the common stock;
- each of our Named Executive Officers;
- each of our directors; and
- all of our directors and executive officers as a group.

Beneficial ownership is determined in accordance with the rules of the SEC and includes voting or investment power with respect to the securities as well as securities which the individual or group has the right to acquire within 60 days of the determination date. Unless otherwise indicated, the address for those listed below is c/o Amergent Hospitality Group, Inc., PO Box 460695 Charlotte, NC 28247. Except as indicated by footnote, and subject to applicable community property laws, the persons named in the table have sole voting and investment power with respect to all shares of common stock shown as beneficially owned by them. The number of shares of the common stock outstanding used in calculating the percentage for each listed person includes the shares of common stock underlying warrants, options or other convertible securities held by such persons that are exercisable within 60 days of April 8, 2021 but excludes shares of common stock underlying warrants, options or other convertible securities held by any other person. The number of shares of common stock issued and outstanding as of March 17, 2021 was 14,541,120. Except as noted otherwise, the amounts reflected below are based upon information provided to the Company and filings with the SEC.

Name of Beneficial Owner	Number of Shares Beneficially Owned	Percent of Class
Michael D. Pruitt ⁽¹⁾	102,367	*
Frederick L. Glick ⁽²⁾	550,764	*
Stephen J. Hoelscher	—	*
Keith J. Johnson	45,569	*
Neil G. Kiefer ⁽³⁾	40,091	*
J. Eric Wagoner ⁽⁴⁾	41,336	*
Directors and Executive Officers as a Group (6 persons)	780,127	4.83%
Oz Rey, LLC ⁽⁵⁾	725,601	4.99%
Arena Funds ⁽⁶⁾	1,492,000	9.05%
NY Farms Group, Inc. ⁽⁷⁾	950,060	6.05%

* less than 1%

(1) Includes 45,529 shares held directly by Mr. Pruitt's individual IRA account; 21,876 shares held directly, and 34,962 shares held directly by Avenel Financial Group. Mr. Pruitt exercises voting and dispositive control over these shares.

(2) Includes 20,769 shares held directly by Mr. Glick's individual IRA account. Mr. Glick exercises voting and dispositive control over these shares.

(3) Includes 2,000 shares held directly by Mr. Kiefer's individual IRA account. Mr. Kiefer exercises voting and dispositive control over these shares.

(4) Includes 10,690 shares held directly by Mr. Wagoner's individual IRA account. Mr. Wagoner exercises voting and dispositive control over these shares.

(5) 10% Secured Convertible Debenture and Warrant held by Oz Rey, LLC subject to 4.99% beneficial ownership blocker. The address for Oz Rey, LLC is 918 Congress Avenue, Suite 100, Austin, Texas 78701.

(6) Arena Funds collectively are made up of the following holdings:

- Arena Origination Co., LLC holds 231,679 shares
- Arena Special Opportunities Funds L.P. holds 152,321 shares
- Westaim Origination Holdings, Inc holds 231,679 shares
- Arena Special Opportunities Fund (Onshore) L.P. holds 152,321 shares
- Arena Investors, LP holds 384,000 shares
- Arena Investors GP, LLC holds 340,000 shares

The address for Arena Funds is c/o Arena Investors LP, 405 Lexington Avenue, 59th Floor, New York, New York 10174.

(7) The address for NY Farms Group, Inc. is 98 Cutter Mill Rd, Great Neck, NY 11021.

Securities Authorized for Issuance under Equity Compensation Plans

Plan not Approved by Stockholders

The 2021 Inducement Plan was adopted by the board of directors on July 8, 2021, and amended on July 27, 2021, to provide incentive compensation to Frederick L. Glick pursuant to his Amended and Restated Employment Agreement effective July 1, 2021. The 2021 Inducement Plan was registered on Form S-8.

The board of directors of Amergent, upon recommendation of the Compensation Committee, granted and issued the equity awards set forth below to Mr. Glick under the 2021 Inducement Plan:

- Fifty thousand (50,000) unrestricted shares of the Corporation's common stock, \$0.0001 par value (shares of the Corporation's common stock referred to herein as "Shares");
- Fully vested 5-year stock options to purchase 150,000 shares at an exercise price of \$2.50 per Share; and
- 5-year stock options to purchase an aggregate of 300,000 Shares, 100,000 of which are exercisable at \$0.56 per Share, 100,000 of which are exercisable at \$0.81 per Share, and 100,000 of which are exercisable at \$1.08 per Share. These option awards vest in twelve equal installments, the first installment vesting immediately and the remaining installments vesting on each of October 1, 2021, January 1, 2022, April 1, 2022, July 1, 2022, October 1, 2022, January 1, 2023, April 1, 2023, July 1, 2023, October 1, 2023, January 1, 2024, and April 1, 2024. These option awards further vest based on exercise price, with lower priced options vesting first.

We issued an unrestricted stock award agreement and nonstatutory option award agreements to Frederick L. Glick evidencing the grants.

Plan Approved by Stockholders

On December 30, 2021, the 2021 Incentive Plan for issuance of up to 2,000,000 shares was approved by our stockholders. We intend to register the 2021 Incentive Plan on Form S-8 after we file this Annual Report on Form 10-K. No awards have yet been granted under the 2021 Incentive Plan.

The following table provides information, as of December 31, 2021, with respect to equity securities authorized for issuance under compensation plans:

Plan Category	Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights (a)	Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights (b)	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (excluding securities reflected in Column (a))
Equity compensation plans approved by security holders	—	\$ —	2,000,000
Equity compensation plans not approved by security holders	450,000	1.38	—
TOTAL	450,000	\$ 1.38	2,000,000

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

RELATED PERSON TRANSACTIONS

Our board of directors has adopted written policies and procedures for the review of any transaction, arrangement or relationship between Amergent and one of our executive officers, directors, director nominees or 5% or greater stockholders (or their immediate family members), each of whom we refer to as a "related person," in which such related person has a direct or indirect material interest.

If a related person proposes to enter into such a transaction, arrangement or relationship, defined as a "related party transaction," the related party must report the proposed related party transaction to our Chief Financial Officer. The policy calls for the proposed related party transaction to be reviewed and, if deemed appropriate, approved by the Governance Committee. Our Governance Committee is comprised of Messrs. Kiefer and Wagoner. Mr. Wagoner serves as Chairman. The board of directors has determined both of the members of the Governance Committee are independent under the rules of the Nasdaq Stock Market, LLC. If practicable, the reporting, review and approval will occur prior to entry into the transaction. If advance review and approval is not practicable, the Governance Committee will review, and, in its discretion, may ratify the related party transaction. Any related party transactions that are ongoing in nature will be reviewed annually at a minimum. The terms obtained or consideration that we pay or receive, as applicable, in connection with related party transactions are considered for approval if they are comparable to or better than terms available or the amounts that would be paid or received, as applicable, in arm's-length transactions. Related party transactions are transactions in which we were or are to be a participant and the amount involved exceeded or exceeds the lesser of \$120,000 or one percent of the average of our total assets at year-end for the last two completed fiscal years and in which any related person had or will have a direct or indirect material interest (other than compensation described under "Executive Compensation").

Except as set forth below, we have not engaged in related party transactions since the beginning of fiscal 2021 and there are no currently proposed related party transactions.

Oz Rey, LLC

In connection with the private financing transaction of up to \$3.0 of 8% Debentures and Warrants, Oz Rey, LLC agreed to subordinate payment of its 10% senior secured convertible debenture to payment of the 8% Debentures. Oz Rey, LLC receives a fee equal to two percent (2.0%) of the principal amount of the 8% Debentures issued in the transaction as well as a one-time payment of \$15,000 for legal fees and expenses.

Oz Rey, LLC further agreed to extend the maturity date of its 10% secured convertible debenture to April 1, 2024.

Stephen J. Hoelscher

Stephen J. Hoelscher was appointed Chief Financial Officer on January 19, 2021. Mr. Hoelscher's engagement with Amergent is on a part-time basis. Mr. Hoelscher serves as an officer of entities affiliated with Oz Rey, LLC. Mr. Hoelscher's engagement with Amergent is on a part-time basis. Mr. Hoelscher serves as an officer of entities affiliated with Oz Rey, LLC (holder of Amergent's 10% secured convertible debenture in the principal amount of \$4.0 million). Oz Rey, LLC's debenture is secured by a first priority interest in Amergent's assets and guaranteed by all of Amergent's subsidiaries. Mr. Hoelscher serves as (a) a Manager and also the Chief Financial Officer of Oz Rey, LLC; (b) Chief Financial Officer of Mastodon Ventures, Inc., an affiliate of Oz Rey, LLC; and (c) as Manager and Chief Financial Officer of MV Amanth LLC and its subsidiaries, also affiliates of Oz Rey, LLC. Mr. Hoelscher may engage in other positions and pursuits from time to time during his employment; provided however, Mr. Hoelscher will notify the Company in advance of accepting new positions or embarking on new pursuits.

DIRECTOR INDEPENDENCE

Our board determined that Messrs. Johnson, Kiefer and Wagoner are "independent directors" as defined under Nasdaq rules.

As of the date of this Report, our board has five directors and the following three standing committees: an Audit Committee, a Compensation Committee, and a Governance Committee. The board determined through 2021, that each of Messrs. Johnson, Kiefer and Wagoner is an "independent director" as defined by Rule 5605(a)(2) of The Nasdaq Stock Market Rules (the "Nasdaq Rules"). Independence of board members is re-evaluated by the board annually.

Our board of directors has adopted written policies and procedures for the review of any transaction, arrangement or relationship between Amergent and one of our executive officers, directors, director nominees or 5% or greater stockholders (or their immediate family members), each of whom we refer to as a "related person," in which such related person has a direct or indirect material interest. If a related person proposes to enter into such a transaction, arrangement or relationship, defined as a "related party transaction," the related party must report the proposed related party transaction to our Chief Financial Officer. The policy calls for the proposed related party transaction to be reviewed and, if deemed appropriate, approved by the Governance Committee. Our Governance Committee is comprised of Messrs. Kiefer and Wagoner. Mr. Wagoner serves as Chairman. The board of directors has determined that both members of the Governance Committee are independent under the Nasdaq rules. If practicable, the reporting, review and approval will occur prior to entry into the transaction. If advance review and approval is not practicable, the Governance Committee will review, and, in its discretion, may ratify the related party transaction. Any related party transactions that are ongoing in nature will be reviewed annually at a minimum.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

The following table summarizes the fees for professional services rendered by Cherry Bekaert LLP, the Company's (and Chanticleer's prior to the Merger) independent registered public accounting firms, for each of the respective last two fiscal years:

Fee Category	2021	2020
Audit Fees	\$ 521,023	\$ 512,033
Audit-Related Fees	21,592	67,650
Tax Fees	—	—
Total Fees	\$ 542,615	\$ 579,683

Audit Fees

Represents fees for professional services provided in connection with the audit of the Company's annual consolidated and combined financial statements and reviews of the Company's quarterly interim consolidated and combined financial statements.

Audit-Related Fees

Fees related to review of registration statements and statutory audits.

Tax Fees

Tax fees are associated with advice.

Audit Committee Pre-Approval Policies and Procedures

The Audit Committee is responsible for appointing, setting compensation and overseeing the work of the independent auditors. The Audit Committee is required to review and approve the proposed retention of independent auditors to perform any proposed auditing and non-auditing services as outlined in its charter. The Audit Committee has not established policies and procedures separate from its charter concerning the pre-approval of auditing and non-auditing related services. As required by Section 10A of the Exchange Act, our Audit Committee has authorized all auditing and non-auditing services provided by Cherry Bekaert LLP during 2021 and 2020 and the fees paid for such services. However, the pre-approval requirement may be waived with respect to the provision of non-audit services for the Company if the “de minimis” provisions of Section 10A(i)(1)(B) of the Exchange Act are satisfied.

The Audit Committee has considered whether the provision of Audit-Related Fees, Tax Fees, and all other fees as described above is compatible with maintaining Cherry Bekaert LLP’s independence and has determined that such services for fiscal years 2021 and 2020 were compatible. All such services were approved by the Audit Committee pursuant to Rule 2-01 of Regulation S-X under the Exchange Act to the extent that rule was applicable.

The Audit Committee is responsible for reviewing and discussing the audited consolidated financial statements with management, discussing with the independent registered public accountants the matters required by Public Company Accounting Oversight Board Auditing Standard No. 1301 *Communications with Audit Committees*, receiving written disclosures from the independent registered public accountants required by the applicable requirements of the Public Company Accounting Oversight Board regarding the independent registered public accountants’ communications with the Audit Committee concerning independence and discussing with the independent registered public accountants their independence, and recommending to the Board that the audited consolidated financial statements be included in the Company’s Annual Report on Form 10-K.

There were no hours expended on the principal accountant’s engagement to audit the registrant’s financial statements for the most recent fiscal year that were attributed to work performed by persons other than the principal accountant’s full-time, permanent employees.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENTS

(a) 1. Financial Statements

See Index to Financial Statements in Item 8 of this Annual Report on Form 10-K, which is incorporated herein by reference.

2. Financial Statement Schedules

All other financial statement schedules have been omitted because they are either not applicable or the required information is shown in the financial statements or notes thereto.

3. Exhibits

See the Exhibit Index, which follows the signature page of this Annual Report on Form 10-K, which is incorporated herein by reference.

(b) Exhibits

See Item 15(a) (3) above.

(c) Financial Statement Schedules

See Item 15(a) (2) above.

ITEM 16. FORM 10K SUMMARY

Not applicable.

SIGNATURES

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

Date: April 15, 2022

AMERGENT HOSPITALITY GROUP INC.
a Delaware corporation

By: /s/ Michael D. Pruitt

Michael D. Pruitt
Chief Executive Officer

In accordance with the Exchange Act, this Report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Michael D. Pruitt.</u> Michael D. Pruitt	Chief Executive Officer, (Principal Executive Officer), Chairman of the Board	April 15, 2022
<u>/s/ Stephen J. Hoelscher</u> Stephen J. Hoelscher	Chief Financial Officer (Principal Financial Officer)	April 15, 2022
<u>/s/ Keith J. Johnson</u> Keith J. Johnson	Director	April 15, 2022
<u>/s/ Frederick L. Glick</u> Frederick L. Glick	President, Director	April 15, 2022
<u>/s/ J. Eric Wagoner</u> J. Eric Wagoner	Director	April 15, 2022
<u>/s/ Neil J. Kiefer</u> Neil J. Kiefer	Director	April 15, 2022

EXHIBIT INDEX

Exhibit Number	Exhibit Description
2.1	<u>Distribution Agreement by and between Chanticleer and Amergent dated March 25, 2020, incorporated by reference to Exhibit 2.1 to Form 10-12G/A, filed July 2, 2020</u>
2.2	<u>Contribution Agreement by and between Chanticleer and Amergent dated March 31, 2020, incorporated by reference to Exhibit 2.2 to Form 10-12G/A, filed July 2, 2020</u>
2.3#	<u>Agreement and Plan of Merger, by and among Chanticleer, Sonnet, and Merger-Sub, dated October 10, 2019, incorporated by reference to Exhibit 2.3 to Form 10-12G/A, filed July 2, 2020</u>
2.4	<u>Amendment No. 1 to Agreement and Plan of Merger, by and among Chanticleer, Sonnet and Merger-Sub dated February 7, incorporated by reference to Exhibit 2.4 to Form 10-12G/A, filed July 2, 2020</u>
3.1	<u>Certificate of Incorporation of Registrant filed February 18, 2020 with the Delaware Secretary of State, incorporated by reference to Exhibit 3.1 to Form 10-12G/A, filed July 2, 2020</u>
3.2	<u>Certificate of Designations of Series 2 Convertible Preferred Stock filed April 1, 2020 with the Delaware Secretary of State, incorporated by reference to Exhibit 3.2 to Form 10-12G/A, filed July 2, 2020</u>
3.3	<u>Amended and Restated Certificate of Designations of Series 2 Convertible Preferred Stock dated August 16, 2020, incorporated by reference to exhibit 3.1 to Form 10Q, as filed August 19, 2020</u>
3.4	<u>Second Amended and Restated Certificate of Designations of Series 2 Convertible Preferred Stock dated February 16, 2021, incorporated by reference to Exhibit 3.4 to Form 10-K filed April 15, 2021</u>
3.5	<u>Form of Bylaws, incorporated by reference to Exhibit 3.3 to Form 10-12G/A, filed July 2, 2020</u>
4.1	<u>Specimen Stock Certificate, incorporated by reference to Exhibit 4.1 to Form 10-12G/A, filed July 2, 2020</u>
4.2	<u>Specimen Preferred Stock Certificate, incorporated by reference to Exhibit 4.2 to Form 10-12G/A, filed July 2, 2020</u>
4.3	<u>Spin-Off Entity Warrant, incorporated by reference to Exhibit 4.3 to Form 10-12G/A, filed July 2, 2020</u>
4.4	<u>Form of Warrant issued to Oz Rey, LLC on April 1, 2020, incorporated by reference to Exhibit 4.4 to Form 10-12G/A, filed July 2, 2020</u>
4.5	<u>Form of Warrant issued to certain holders of Series 2 Convertible Preferred dated April 1, 2020, incorporated by reference to Exhibit 4.5 to Form 10-12G/A, filed July 2, 2020</u>
4 (vi)	<u>Description of Registrant's Common Stock, incorporated by reference to Exhibit 4(vi) to Form 10-K, filed April 15, 2021</u>
10.1	<u>Securities Purchase Agreement by and among Amergent, Oz Rey, LLC and certain other purchasers dated April 1, 2020, incorporated by reference to Exhibit 10.1 to Form 10-12G/A, filed July 2, 2020</u>
10.2	<u>Form of Secured Convertible Debenture of Amergent in favor of Oz Rey, LLC issued April 1, 2020, incorporated by reference to Exhibit 10.2 to Form 10-12G/A, filed July 2, 2020</u>
10.3	<u>Registration Rights Agreement by and among Amergent, Oz Rey, LLC and certain holders of registrable securities, incorporated by reference to Exhibit 10.3 to Form 10-12G/A, filed July 2, 2020</u>
10.4	<u>Subsidiary Guarantee in favor of Oz Rey, LLC dated April 1, 2020, incorporated by reference to Exhibit 10.4 to Form 10-12G/A, filed July 2, 2020</u>
10.5	<u>Security Agreement in favor of Oz Rey, LLC dated April 1, 2020, incorporated by reference to Exhibit 10.5 to Form 10-12G/A, filed July 2, 2020</u>

- 10.6 [Form of Franchise Agreement between Chanticleer and Hooters of America, LLC, incorporated by reference to Exhibit 10.8 to Form 10-12G/A, filed July 2, 2020](#)
- 10.7 [Lease Agreement between Redus NC Commercial, LLC and Chanticleer, incorporated by reference to Exhibit 10.9 to Form 10-12G/A, filed July 2, 2020](#)
- 10.8 [Gaming Assignment dated July 1, 2014, incorporated by reference to Exhibit 10.10 to Form 10-12G/A, filed July 2, 2020](#)
- 10.9 [Form of Indemnification Agreement, incorporated by reference to Exhibit 10.11 to Form 10-12G/A, filed July 2, 2020](#)
- 10.10 [Securities Purchase Agreement, dated as of February 7, 2020, by and among Chanticleer and the investors party thereto, incorporated by reference to Exhibit 10.12 to Form 10-12G/A, filed July 2, 2020](#)
- 10.11 [Note in favor of TowneBank in amount of \\$2,000,000 dated February 25, 2021, incorporated by reference to Exhibit 10.13 to Form 10-K, filed April 15, 2021](#)
- 10.12** [Separation and Release Agreement by and between Amergent and Patrick Harkleroad, dated March 26, 2021, incorporated by reference to Exhibit 10.13 to Form 10-K, filed April 15, 2021](#)
- 10.13 [Waiver, Consent and Amendment to Certificate of Designations by and between Amergent and holders of Series 2 Convertible Preferred Stock dated August 17, 2020, incorporated by reference to Exhibit 10.13 to Form 10-K, filed April 15, 2021](#)
- 10.14 [Waiver, Consent and Amendment to Certificate of Designations by and between Amergent and holders of Series 2 Convertible Preferred Stock dated February 16, 2021, incorporated by reference to Exhibit 10.13 to Form 10-K, filed April 15, 2021](#)
- 10.15** [Employment Agreement by and between Amergent and Steve J. Hoelscher dated February 4, 2021, incorporated by reference to Exhibit 10.13 to Form 10-K, filed April 15, 2021](#)
- 10.16** [Non-Solicitation and Confidentiality Agreement by and between Amergent and Steve J. Hoelscher dated February 4, 2021, incorporated by reference to Exhibit 10.13 to Form 10-K, filed April 15, 2021](#)
- 10.17 [Amendment No. 3 to 10% Secured Convertible Debenture dated March 9, 2021 by and between Amergent and Oz Rey, LLC, filed herewith](#)
- 10.18 [Unit Purchase Agreement by and between Pie Squared Investment, LLC, PizzaRev Acquisition, LLC and Amergent dated August 30, 2021, incorporated by reference to Exhibit 10.1 to Form 8-K dated August 30, 2021](#)
- 10.19 [Convertible Promissory Note of Amergent in favor of PizzaRev Acquisition, LLC, incorporated by reference to Exhibit 10.2 to Form 8-K dated August 30, 2021](#)
- 10.10 [Security Agreement by and between PizzaRev Acquisition, LLC and Amergent, incorporated by reference to Exhibit 10.3 to Form 8-K dated August 30, 2021](#)

10.21	<u>Guaranty of Pie Squared Holdings, LLC, incorporated by reference to Exhibit 10.4 to Form 8-K dated August 30, 2021</u>
10.22	<u>Security Agreement of Pie Squared Holdings LLC and PizzaRev Acquisition, LLC, incorporated by reference to Exhibit 10.5 to Form 8-K dated August 30, 2021</u>
10.23	<u>Escrow Agreement, incorporated by reference to Exhibit 10.6 to Form 8-K dated August 30, 2021</u>
10.24	<u>Guaranty of PizzaRev Franchising, LLC, incorporated by reference to Exhibit 10.7 to Form 8-K dated August 30, 2021</u>
10.25	<u>Waiver of Security Interests and Liens of Oz Rey, LLC, incorporated by reference to Exhibit 10.13 to Form 8-K dated August 30, 2021</u>
10.26	<u>Indemnification Agreement of PizzaRev Acquisition, LLC, incorporated by reference to Exhibit 10.14 to Form 8-K dated August 30, 2021</u>
10.27	<u>Indemnification Agreement of Principal, incorporated by reference to Exhibit 10.5 to Form 8-K dated August 30, 2021</u>
10.28	<u>Purchase and Sale Agreement dated October 8, 2021 by and between Chanticleer UK Group Limited and West End Wings Limited (UK), incorporated by reference to Exhibit 10.16 to Form 10Q filed November 22, 2021</u>
10.29	<u>Amendment No. 2 to 10% Convertible Debenture and Warrants dated September 27, 2021 by and between Amergent and Oz Rey, LLC, incorporated by reference to exhibit 10.17 to Form 10Q filed November 22, 2021</u>
10.30**	<u>Amended and Restated Employment Agreement by and between Frederick L. Glick and Amergent effective July 1, 2021, incorporated by reference to Exhibit 10.1 to Form 8-K dated August 2, 2021</u>
10.31**	<u>Unrestricted Stock Award Agreement by and between Amergent and Frederick L. Glick, incorporated by reference to Exhibit 10.2 to Form 8-K dated August 2, 2021</u>
10.32**	<u>Nonstatutory Stock Option Agreement (No.1) by and between Amergent and Frederick L. Glick, incorporated by reference to Exhibit 10.3 to Form 8-K dated August 2, 2021</u>
10.33**	<u>Nonstatutory Stock Option Agreement (No.2) by and between Amergent and Frederick L. Glick, incorporated by reference to Exhibit 10.4 to Form 8-K dated August 2, 2021</u>
10.34	<u>Form of Securities Purchase Agreement for up to \$3,000,000 of 8% Senior Unsecured Convertible Debentures and Warrants, filed herewith</u>
10.35	<u>Form of 8% Senior Unsecured Convertible Debenture, filed herewith</u>
10.36	<u>Form of Warrant issued with 8% Senior Unsecured Convertible Debentures, filed herewith</u>
14.1	<u>Code of Ethics, incorporated by reference to Exhibit 14.1 to Form 10-K, filed April 15, 2021</u>
21	<u>Subsidiaries of Amergent Hospitality Group Inc., filed herewith</u>
22(ii)	<u>Affiliate Guarantor, filed herewith</u>
31.1	<u>Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, filed herewith</u>
31.2	<u>Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, filed herewith</u>
32.1	<u>Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 filed herewith</u>
32.2	<u>Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 filed herewith</u>
99.1**	<u>Amergent Hospitality Group Inc. 2021 Equity Incentive Plan, filed herewith</u>
99.2**	<u>2021 Amergent Hospitality Group Inc. Inducement Plan, as amended, incorporated by reference to Exhibit 4.4 to Amergent's Registration Statement on Form S-8, File No. 333-258345, as filed August 2, 2021</u>
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Label Linkbase Document
101.LAB	XBRL Taxonomy Extension Presentation Linkbase Document
101.PRE	XBRL Taxonomy Extension Label Linkbase Document

** Management Compensatory Contract or Arrangement

The schedules and exhibits to this agreement have been omitted pursuant to Item 601(b)(2) of Regulation S-K. A copy of any omitted schedule and/or exhibit will be furnished to the Securities and Exchange Commission upon request.

**AMENDMENT NO. 3 TO
10% SECURED CONVERTIBLE DEBENTURE**

This Amendment No. 3 (the "Amendment") to 10% Secured Convertible Debenture in the original principal amount of \$4,037,889.00 originally dated April 1, 2020 (as amended pursuant to those certain Amendments Nos. 1 and 2, the "Debenture"), is entered into and effective as of March 4, 2022 (the "Effective Date"), by and between Amergent Hospitality Group Inc., a Delaware corporation (the "Company") and Oz Rey, LLC, a Texas limited liability company ("Holder"). Capitalized terms not otherwise defined herein have the meanings set forth in the Debenture.

WHEREAS, the preamble to the Debenture provides that the Holder may extend the Maturity date of the Debenture for additional two year periods, provided that in no event shall the Maturity Date be extended beyond 10 years from the Original Issue Date;

WHEREAS, the Holder desires to extend the Maturity Date of the Debenture for two years; and

WHEREAS, the Company desires to acknowledge such extension; and

WHEREAS, the Company and Holder desire that all terms and provisions of the Debenture not specifically modified by this Amendment remain unaltered and in full force and effect as written in the Debenture.

NOW THEREFORE, in consideration of their mutual covenants and obligations contained herein, the Company and Holder, agree as follows:

1. Extension of Maturity Date. Pursuant to the preamble of the Debenture, the Holder hereby extends the Maturity Date of the Debenture to April 1, 2024. Any references in the Debenture to a Maturity Date of April 1, 2022 are hereby deleted and replaced with April 1, 2024.
2. Sale of Senior Unsecured Convertible Debentures. Upon the sale of the Senior Unsecured Convertible Debentures in the aggregate principal amount of up to \$3,000,000 (the "Convertible Debentures") with an interest rate of 8% and an 18-month maturity date, the Company shall pay the Holder, upon closing, a fee equal to two percent (2.0%) of the principal amount of the Convertible Debentures issued.
3. Legal Fees. In connection with this amendment and the issuance of the Convertible Notes, the Company shall pay to the Holder its legal fees and expenses incurred in the amount of \$15,000.
4. No Other Changes. Except as set forth herein, all other terms and conditions contained in the Debenture that are not changed, amended or modified through this Amendment shall remain unchanged and in full force and effect.

[Signature page follows]

IN WITNESS WHEREOF, this AMENDMENT NO. 3 TO 10% SECURED CONVERTIBLE DEBENTURE has been duly executed by or on behalf of each of the parties as of the date first written above

AMERGENT HOSPITALITY GROUP INC.,
a Delaware corporation

Michael D. Pruitt

Name: Michael D. Pruitt
Its: Chief Executive Officer

HOLDER:

OZ REY, LLC
a Texas limited liability company



By: Robert S. Hensch
Its: Manager

SIGNATURE PAGE TO
AMENDMENT NO. 3 TO 10% SECURED CONVERTIBLE DEBENTURE

SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (this “Agreement”) is dated as of the date set forth on each Purchaser’s signature page, between Amergent Hospitality Group Inc., a Delaware corporation (“Amergent”) and each purchaser identified on the signature pages hereto and each purchaser identified on the signature pages hereto, a “Purchaser” and collectively, the “Purchasers”).

WHEREAS, Company and each Purchaser are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(2) of the Securities Act of 1933, as amended (the “Securities Act”), and Rule 506 of Regulation D (“Regulation D”) as promulgated by the United States Securities and Exchange Commission (the “Commission”) under the Securities Act.

WHEREAS, each Purchaser, severally and not jointly, wishes to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement, (i) an 8% Senior Unsecured Convertible Debenture in the aggregate principal amount set forth below such Purchaser’s name on the signature page of this Agreement which aggregate amount for all Purchasers together shall be \$3,000,000 and (ii) five-year warrants to acquire up to that number of shares of common stock of the Company, \$0.0001 par value, set forth below such Purchaser’s name on the signature page of this Agreement, at an exercise price of \$0.50 per share set forth, which number is equal to the dollar amount of each Purchaser’s investment (rounded up to the nearest whole share).

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and each Purchaser agree as follows:

ARTICLE I. DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms have the meanings set forth in this Section 1.1:

“Acquiring Person” shall have the meaning ascribed to such term in Section 4.7.

“Action” shall have the meaning ascribed to such term in Section 3.1(h).

“Affiliate” means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

“Board of Directors” means the board of directors of the Company.

“Business Day” means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“Closing” means the completion of the purchase and sale of the Securities as to one or more Purchaser(s).

“Closing Date” means the Trading Day on which a Closing occurs.

“Commission” means the United States Securities and Exchange Commission.

“Common Stock” means the common stock of the Company, par value \$0.0001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

“Common Stock Equivalents” means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“Company Counsel” means Raines Feldman LLP, with offices located at 1800 Avenue of the Stars, 12th Floor, Los Angeles, CA 90067.

“Conversion Shares” means any shares of Common Stock issuable upon conversion of the Debentures.

“Debenture” means the 8% Senior Unsecured Convertible Debenture delivered to the Purchasers at the Closing in accordance with Section 2.2(a) hereof in the form of Exhibit A attached hereto.

“Disclosure Schedules” shall have the meaning ascribed to such term in Section 3.1.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“FCPA” means the Foreign Corrupt Practices Act of 1977, as amended.

“GAAP” shall have the meaning ascribed to such term in Section 3.1(oo).

“Intellectual Property Rights” shall have the meaning ascribed to such term in Section 3.1(o).

“Legend Removal Date” shall have the meaning ascribed to such term in Section 4.1(c).

“Liens” means a lien, charge, pledge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

“Material Adverse Effect” shall have the meaning assigned to such term in Section 3.1(b).

“Material Permits” shall have the meaning ascribed to such term in Section 3.1(l).

“Maximum Rate” shall have the meaning ascribed to such term in Section 5.17.

“Minimum Subscription Amount” means aggregate subscriptions in the principal amount of \$250,000.00 required as a condition of Closing under this Purchase Agreement.

“Oz Rey” means Oz Rey, LLC, a Texas limited liability company, holder of the Oz Rey Debenture.

“Oz Rey Debenture” means that certain 10% Secured Convertible Debenture dated April 1, 2020, in the original principal amount of \$4,037,889, as amended, by the Company in favor of Oz Rey, LLC.

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Proceeding” means an action, claim, suit, investigation or proceeding (including, without limitation, an informal investigation or partial proceeding, such as a deposition), whether commenced or threatened.

“Purchase Price” means a Purchaser’s subscription amount, which shall be equal to the principal amount of the Debenture to be issued to Purchaser

“Purchaser Party” shall have the meaning ascribed to such term in Section 4.9.

“Required Approvals” shall have the meaning ascribed to such term in Section 3.1(e).

“Required Minimum” means, as of any date, the maximum aggregate number of shares of Common Stock then issued or potentially issuable in the future pursuant to the Transaction Documents, including any Warrant Shares issuable upon exercise in full of all Warrants and any Conversion Shares issuable upon conversion in full of the Debentures at the Fixed Conversion Price set forth therein, ignoring any exercise limits set forth therein.

“Rule 144” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“SEC Reports” shall have the meaning ascribed to such term in Section 3.1(h).

“Securities” means the Debentures, the Conversion Shares, the Warrants, and the Warrant Shares.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Shares” means the Warrant Shares and the Conversion Shares.

“Subordination Agreement” means the debt subordination agreement between the Company and Oz Rey, LLC and holders of the Debentures in the form attached hereto as Exhibit C.

“Subsidiary” means any subsidiary of the Company as set forth in the Company’s SEC Reports and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

“Trading Day” means a day on which the principal Trading Market is open for trading.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE MKT, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange (or any successors to any of the foregoing).

“Transaction Documents” means this Agreement, the Debentures, the Warrants, the Subordination Agreement and all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated hereunder.

“Transfer Agent” means Securities Transfer Corporation, the transfer agent of the Company, with a mailing address of 901 N Dallas Parkway, Suite 380 and a facsimile number of (469) 633-0088, and any successor transfer agent of the Company.

“Warrants” means, the Common Stock purchase warrants delivered to the Purchasers at the Closing in accordance with Section 2.2(a) hereof, which Warrants shall be exercisable from the date of issuance and have a term of exercise equal to five (5) years, in the form of Exhibit B attached hereto.

“Warrant Shares” means the shares of Common Stock issuable upon exercise of the Warrants.

ARTICLE II. PURCHASE AND SALE

2.1 Closings. One or more Closings to take place on a rolling basis on or before February 28, 2022, subject to one 30-day extension, at the election of the Company. Funds will be available to the Company to deploy immediately upon each Closing. On each Closing Date, upon the terms and subject to the conditions set forth herein, substantially concurrent with the execution and delivery of this Agreement by the parties hereto, (a) the Company hereby agrees to sell, and Purchaser agrees to buy, the Debentures and (b) the Company agrees to issue, and the Purchasers, severally and not jointly, agree to acquire the Warrants in the denominations set forth on Schedule 2.1. The Company and each Purchaser shall deliver the items set forth in Section 2.2 deliverable at the Closing. Upon satisfaction of the covenants and conditions set forth in Sections 2.2 and 2.3, the Closing shall occur remotely by facsimile transmission or other electronic means as the parties may mutually agree.

2.2 Deliveries.

(a) On the Closing Date, the Company shall deliver or cause to be delivered to the appropriate Purchaser the following:

- (i) this Agreement duly executed by the Company;
- (ii) a Debenture with a principal amount equal to the Purchase Price set forth on the signature page hereof;
- (iii) a Warrant registered in the name of such Purchaser to purchase up to a number of shares of Common Stock equal to the dollar amount of the Purchase Price, subject to adjustment therein;
- (iv) the Subordination Agreement, duly executed by Oz Rey, LLC and the Company; and
- (v) Amendment to the Oz Rey Debenture extending the Maturity Date of the Oz Rey Debenture to no earlier than April 1, 2024, duly executed by Oz Rey, LLC.

(b) On the Closing Date, the Purchaser shall deliver or cause to be delivered to the Company the following:

- (i) this Agreement duly executed by such Purchaser;
- (ii) the Subordination Agreement, duly executed by Purchaser; and
- (ii) wire transfer of immediately available funds in the amount of Purchase Price payable to the Company pursuant to the wire transfer instructions attached hereto as Appendix 1.

2.3 Closing Conditions.

(a) The obligations of the Company hereunder in connection with the Closing are subject to the following conditions being met:

- (i) the representations and warranties made by the applicable Purchaser(s) in Section 3.3 shall be true and correct when made, and shall be true and correct on the Closing Date or the applicable additional Closing Date;

(ii) *Governmental Approvals and Filings*. Except for any notices required or permitted to be filed after the Closing Date or the applicable additional Closing Date with certain federal and state securities commissions, the Company shall have obtained all governmental approvals required in connection with the lawful sale and issuance of the Securities

(iii) *Legal Requirements*. At the Closing and at each additional Closing, the sale and issuance by the Company, and the purchase by the applicable Purchaser(s), of the Securities shall be legally permitted by all laws and regulations to which such Purchaser or the Company are subject.

(iv) all obligations, covenants and agreements of each Purchaser required to be performed at or prior to each Closing Date shall have been performed; and

(v) the delivery by each Purchaser of the items set forth in Section 2.2(b) of this Agreement.

(b) The respective obligations of the Purchasers hereunder in connection with the Closing are subject to the following conditions being met:

(i) The representations and warranties made by the Company in Section 3.2. shall have been true and correct when made, and shall be true and correct on the applicable additional Closing Date;

(ii) *Governmental Approvals and Filings*. Except for any notices required or permitted to be filed after the Closing Date or the applicable additional Closing Date with certain federal and state securities commissions, the Company shall have obtained all governmental approvals required in connection with the lawful sale and issuance of the Securities

(iii) *Legal Requirements*. At the Closing and at each additional Closing, the sale and issuance by the Company, and the purchase by the applicable Purchaser(s), of the Securities shall be legally permitted by all laws and regulations to which such Purchaser or the Company are subject.

(iv) all obligations, covenants and agreements of the Company required to be performed at or prior to the Closing Date shall have been performed;

(v) the delivery by the Company of the items set forth in Section 2.2(a) of this Agreement;

(vi) there shall have been no Material Adverse Effect with respect to the Company since the date hereof; and

(vii) confirmation of receipt by Company of the Minimum Subscription Amount.

**ARTICLE III.
REPRESENTATIONS AND WARRANTIES**

3.1 Representations and Warranties of the Company. Except as set forth in the Disclosure Schedules, which Disclosure Schedules shall be deemed a part hereof and shall qualify any representation or otherwise made herein to the extent of the disclosure contained in the corresponding section of the Disclosure Schedules, the Company hereby makes the following representations and warranties to each Purchaser:

(a) Subsidiaries. All of the direct and indirect subsidiaries of the Company are set forth in the Company's SEC Reports. The Company owns, directly or indirectly, the capital stock or other equity interests of each Subsidiary free and clear of any Liens, and all of the issued and outstanding shares of capital stock of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities.

(b) Organization and Qualification. The Company and each of the Subsidiaries is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any Subsidiary is in violation nor default of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents. Each of the Company and the Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in: (i) a material adverse effect on the legality, validity or enforceability of any Transaction Document, (ii) a material adverse effect on the results of operations, assets, business, prospects or condition (financial or otherwise) of the Company and the Subsidiaries, taken as a whole, or (iii) a material adverse effect on the Company's ability to perform in any material respect on a timely basis its obligations under any Transaction Document (any of (i), (ii) or (iii), a "Material Adverse Effect") and no Proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(c) Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and each of the other Transaction Documents by the Company and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company, the Board of Directors or the Company's stockholders in connection herewith or therewith other than in connection with the Required Approvals. This Agreement and each other Transaction Document to which it is a party has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except: (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(d) No Conflicts. The execution, delivery and performance by the Company of this Agreement and the other Transaction Documents to which it is a party, the issuance and sale of the Securities and the consummation by it of the transactions contemplated hereby and thereby do not and will not: (i) conflict with or violate any provision of the Company's or any Subsidiary's certificate or articles of incorporation, bylaws or other organizational or charter documents, (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected, or (iii) subject to the Required Approvals, conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected.

(e) Filings, Consents and Approvals. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than: (i) the filings required pursuant to Section 4.6 of this Agreement, (ii) the notice and/or application(s) to each applicable Trading Market for the issuance and sale of the Securities and the listing of the Warrant Shares and Conversion Shares for trading thereon in the time and manner required thereby, and (iii) the filing of Form D with the Commission and such filings as are required to be made under applicable state securities laws (collectively, the "Required Approvals").

(f) Issuance of the Securities. The Securities are duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in the Transaction Documents. The Warrant Shares and Conversion Shares, when issued in accordance with the terms of the Transaction Documents, will be validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in the Transaction Documents. The Company has reserved from its duly authorized capital stock a number of shares of Common Stock for issuance of the Warrant Shares and Conversion Shares at least equal to the Required Minimum on the date hereof.

(g) Capitalization. The issued, authorized and outstanding capitalization of the Company, including all rights to acquire shares of Common Stock and the prices upon which such shares may be acquired prior to any Closing(s) hereunder is set forth in the Company's SEC Reports. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. Except as a result of the purchase and sale of the Securities, there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire any shares of Common Stock or the capital stock of any Subsidiary, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents or capital stock of any Subsidiary. The issuance and sale of the Securities will not obligate the Company or any Subsidiary to issue shares of Common Stock or other securities to any Person (other than the Purchasers) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under any of such securities. There are no outstanding securities or instruments of the Company or any Subsidiary that contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to redeem a security of the Company or such Subsidiary. The company does not have any stock appreciation rights or "phantom stock" plans or any similar plan or agreement. All of the outstanding shares of capital stock of the Company are duly authorized, validly issued, fully paid and nonassessable, have been issued in compliance with all federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. No further approval or authorization of any stockholder, the Board of Directors or others is required for the issuance and sale of the Securities. There are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders.

(h) Litigation. Except as set forth in the SEC Reports, there is no action, suit, inquiry, notice of violation, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company, any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) (collectively, an "Action"). Neither the Company nor any Subsidiary, nor any director or officer thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the Commission involving the Company or any current or former director or officer of the Company.

(i) Labor Relations. No labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company. The Company and its Subsidiaries believe that their relationships with their employees are good. To the knowledge of the Company, no executive officer of the Company or any Subsidiary, is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement or non-competition agreement, or any other contract or agreement or any restrictive covenant in favor of any third party, and the continued employment of each such executive officer does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are in compliance with all U.S. federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours.

(j) Compliance. Neither the Company nor any Subsidiary: (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any judgment, decree or order of any court, arbitrator or other governmental authority or (iii) is or has been in violation of any statute, rule, ordinance or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters.

(k) Environmental Laws. The Company and its Subsidiaries (i) are in compliance with all federal, state, local and foreign laws relating to pollution or protection of human health or the environment (including ambient air, surface water, groundwater, land surface or subsurface strata), including laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, "Hazardous Materials") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands, or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations, issued, entered, promulgated or approved thereunder ("Environmental Laws"); (ii) have received all permits licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses; and (iii) are in compliance with all terms and conditions of any such permit, license or approval where in each clause (i), (ii) and (iii), the failure to so comply could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

(l) Regulatory Permits. The Company and the Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses as described in the SEC Reports ("Material Permits"), and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any Material Permit.

(m) Title to Assets. The Company and the Subsidiaries have good and marketable title in fee simple to all real property owned by them and good and marketable title in all personal property owned by them that is material to the business of the Company and the Subsidiaries, in each case free and clear of all Liens, except for (i) Liens as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries and (ii) Liens for the payment of federal, state or other taxes, for which appropriate reserves have been made therefor in accordance with GAAP and, the payment of which is neither delinquent nor subject to penalties (except as set forth in the SEC Reports). Any real property and facilities held under lease by the Company and the Subsidiaries are held by them under valid, subsisting and enforceable leases with which the Company and the Subsidiaries are in compliance.

(n) Intellectual Property. The Company and the Subsidiaries have, or have rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, trade secrets, inventions, copyrights, licenses and other intellectual property rights and similar rights as described in the SEC Reports as necessary or required for use in connection with their respective businesses (collectively, the “Intellectual Property Rights”). None of, and neither the Company nor any Subsidiary has received a notice (written or otherwise) that any of, the Intellectual Property Rights has expired, terminated or been abandoned, or is expected to expire or terminate or be abandoned, within two (2) years from the date of this Agreement. Neither the Company nor any Subsidiary has received, since the date of the latest audited financial statements included within the SEC Reports, a written notice of a claim or otherwise has any knowledge that the Intellectual Property Rights violate or infringe upon the rights of any Person. To the knowledge of the Company, all such Intellectual Property Rights are enforceable and there is no existing infringement by another Person of any of the Intellectual Property Rights. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their intellectual properties.

(o) Insurance. The Company and the Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Company and the Subsidiaries are engaged, including, but not limited to, directors and officers insurance coverage. Neither the Company nor any Subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business without a significant increase in cost.

(p) Certain Fees. Brokerage or finder’s fees incurred by Purchaser will be the sole obligation of that Purchaser. The Company may pay brokerage fees up to 5.0% of the gross proceeds of the offering to participating brokers. After the Closing of the offering, the Company will pay to Oz Rey, LLC 2% of the principal amount of Debentures issued in this offer. The Purchasers shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section that may be due in connection with the transactions contemplated by the Transaction Documents.

(q) Private Placement. Assuming the accuracy of the Purchasers’ representations and warranties set forth in Section 3.2, no registration under the Securities Act is required for the offer and sale of the Securities by the Company to the Purchasers as contemplated hereby. The issuance and sale of the Securities hereunder does not contravene the rules and regulations of the Trading Market.

(r) Investment Company. The Company is not, and is not an Affiliate of, and immediately after receipt of payment for the Securities, will not be or be an Affiliate of, an “investment company” within the meaning of the Investment Company Act of 1940, as amended. The Company shall conduct its business in a manner so that it will not become an “investment company” subject to registration under the Investment Company Act of 1940, as amended.

(s) Registration Rights. Other than the holders of Series 2 Convertible Preferred Stock and related warrants and Oz Rey, LLC, no Person has any right to cause the Company to effect the registration under the Securities Act of any securities of the Company or any Subsidiaries.

(t) Application of Takeover Protections. The Company and the Board of Directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's certificate of incorporation (or similar charter documents) or the laws of its state of incorporation that is or could become applicable to the Purchasers as a result of the Purchasers and the Company fulfilling their obligations or exercising their rights under the Transaction Documents, including without limitation as a result of the Company's issuance of the Securities and the Purchasers' ownership of the Securities.

(u) Disclosure. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, the Company confirms that neither it nor any other Person acting on its behalf has provided any of the Purchasers or their agents or counsel with any information that it believes constitutes or might constitute material, non-public information. The Company understands and confirms that the Purchasers will rely on the foregoing representation in effecting transactions in securities of the Company. All of the disclosure furnished by or on behalf of the Company to the Purchasers regarding the Company and its Subsidiaries, their respective businesses and the transactions contemplated hereby, including the Disclosure Schedules to this Agreement, is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The press releases disseminated by the Company during the twelve months preceding the date of this Agreement taken as a whole do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made and when made, not misleading. The Company acknowledges and agrees that no Purchaser makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3.3 hereof.

(v) No Integrated Offering. Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 3.2, neither the Company, nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Securities to be integrated with prior offerings by the Company for purposes of (i) the Securities Act which would require the registration of any such securities under the Securities Act, or (ii) any applicable shareholder approval provisions of any Trading Market on which any of the securities of the Company are listed or designated.

(x) Tax Status. Except as set forth in the Company's SEC Reports, the Company and its Subsidiaries each (i) has made or filed all United States federal, state and local income and all foreign income and franchise tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations and (iii) has set aside on its books provision reasonably adequate for the payment of all material taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company or of any Subsidiary know of no basis for any such claim.

(y) No General Solicitation. Neither the Company nor any Person acting on behalf of the Company has offered or sold any of the Securities by any form of general solicitation or general advertising. The Company has offered the Securities for sale only to the Purchasers and certain other "accredited investors" within the meaning of Rule 501 under the Securities Act.

(z) Foreign Corrupt Practices. Neither the Company nor any Subsidiary, nor to the knowledge of the Company or any Subsidiary, any agent or other person acting on behalf of the Company or any Subsidiary, has: (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company or any Subsidiary (or made by any person acting on its behalf of which the Company is aware) which is in violation of law or (iv) violated in any material respect any provision of FCPA.

(aa) Accountants. The Company's accounting firm is Cherry Bekaert LLP. To the knowledge and belief of the Company, such accounting firm: (i) is a registered public accounting firm as required by the Exchange Act and (ii) shall express its opinion with respect to the financial statements to be included in the Company's Annual Report for the fiscal year ending December 31, 2021.

(bb) Seniority. As of the Closing Date, no indebtedness or other claim against the Company is senior to the Debentures in right of payment, whether with respect to interest or upon liquidation or dissolution, or otherwise, other than indebtedness secured by purchase money security interests (which is senior only as to underlying assets covered thereby) and capital lease obligations (which is senior only as to the property covered thereby); provided however, Oz Rey, LLC will continue to receive quarterly interest payments as provided in the Oz Rey Debenture.

(cc) No Disagreements with Accountants and Lawyers. There are no disagreements of any kind presently existing, or reasonably anticipated by the Company to arise, between the Company and the accountants and lawyers formerly or presently employed by the Company and the Company is current with respect to any fees owed to its accountants and lawyers which could affect the Company's ability to perform any of its obligations under any of the Transaction Documents.

(dd) Acknowledgment Regarding Purchasers' Purchase of Securities. The Company acknowledges and agrees that each of the Purchasers is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated thereby. The Company further acknowledges that no Purchaser is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by any Purchaser or any of their respective representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to the Purchasers' purchase of the Securities. The Company further represents to each Purchaser that the Company's decision to enter into this Agreement and the other Transaction Documents has been based solely on the independent evaluation of the transactions contemplated hereby by the Company and its representatives.

(ee) Acknowledgment Regarding Purchaser's Trading Activity. Anything in this Agreement or elsewhere herein to the contrary notwithstanding (except for Sections 3.2(g) and 4.15 hereof), it is understood and acknowledged by the Company that: (i) none of the Purchasers has been asked by the Company to agree, nor has any Purchaser agreed, to desist from purchasing or selling, long and/or short, securities of the Company, or "derivative" securities based on securities issued by the Company or to hold the Securities for any specified term, (ii) past or future open market or other transactions by any Purchaser, specifically including, without limitation, Short Sales or "derivative" transactions, before or after the Closing of this or future private placement transactions, may negatively impact the market price of the Company's publicly-traded securities, (iii) any Purchaser, and counter-parties in "derivative" transactions to which any such Purchaser is a party, directly or indirectly, may presently have a "short" position in the Common Stock and (iv) each Purchaser shall not be deemed to have any affiliation with or control over any arm's length counter-party in any "derivative" transaction. The Company further understands and acknowledges that (y) one or more Purchasers may engage in hedging activities at various times during the period that the Securities are outstanding, including, without limitation, during the periods that the value of the Warrant Shares and Conversion Shares deliverable with respect to Securities are being determined, and (z) such hedging activities (if any) could reduce the value of the existing stockholders' equity interests in the Company at and after the time that the hedging activities are being conducted. The Company acknowledges that such aforementioned hedging activities do not constitute a breach of any of the Transaction Documents.

(ff) Regulation M Compliance. The Company has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company.

(gg) Office of Foreign Assets Control. Neither the Company nor any Subsidiary nor, to the Company's knowledge, any director, officer, agent, employee or affiliate of the Company or any Subsidiary is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC").

(hh) U.S. Real Property Holding Corporation. The Company is not and has never been a U.S. real property holding corporation within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended, and the Company shall so certify upon Purchaser's request.

(ii) Bank Holding Company Act. Neither the Company nor any of its Subsidiaries or Affiliates is subject to the Bank Holding Company Act of 1956, as amended (the "BHCA") and to regulation by the Board of Governors of the Federal Reserve System (the "Federal Reserve"). Neither the Company nor any of its Subsidiaries or Affiliates owns or controls, directly or indirectly, five percent (5%) or more of the outstanding shares of any class of voting securities or twenty-five percent or more of the total equity of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. Neither the Company nor any of its Subsidiaries or Affiliates exercises a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.

(jj) Money Laundering. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial record-keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes and applicable rules and regulations thereunder (collectively, the "Money Laundering Laws"), and no Action or Proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any Subsidiary with respect to the Money Laundering Laws is pending or, to the knowledge of the Company or any Subsidiary, threatened.

(kk) No Disqualification Events. With respect to the Securities to be offered and sold hereunder in reliance on Rule 506 under the Securities Act, none of the Company, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Company participating in the offering hereunder, any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the Securities Act) connected with the Company in any capacity at the time of sale (each, an "Issuer Covered Person" and, together, "Issuer Covered Persons") is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "Disqualification Event"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). The Company has exercised reasonable care to determine whether any Issuer Covered Person is subject to a Disqualification Event. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to the Purchasers a copy of any disclosures provided thereunder.

(ll) Other Covered Persons. The Company is not aware of any person (other than any Issuer Covered Person) that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the sale of any Securities.

(mm) Notice of Disqualification Events. The Company will notify the Purchasers in writing, prior to the Closing Date of (i) any Disqualification Event relating to any Issuer Covered Person and (ii) any event that would, with the passage of time, become a Disqualification Event relating to any Issuer Covered Person.

(nn) Use of Proceeds. Proceeds may be used for working capital, general corporate purposes and in connection with payments made for acquisitions by the Company. Proceeds may be used for payment of outstanding accounts payable arising in ordinary course. Proceeds may not be used to repay debt owed to Oz Rey, LLC; provided however quarterly interest payments due under the Oz Rey Debenture will continue to be paid by the Company.

(oo) SEC Reports; Financial Statements. The Company has timely filed all reports, statements and documents required under the Securities Act and Exchange Act (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the “SEC Reports”). As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Exchange Act, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Company has never been an issuer subject to Rule 144(i) under the Securities Act. The financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved (“GAAP”), except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments.

(pp) Material Changes; Undisclosed Events, Liabilities or Developments. Since the date of the latest audited financial statements included within the SEC Reports: (i) there has been no event, occurrence or development that has had or that could reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company’s financial statements pursuant to GAAP or disclosed in filings made with the Commission, (iii) the Company has not altered its method of accounting, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock except for quarterly dividend payment in common stock to its Series 1 Preferred Unit holders and (v) other than included within the SEC Reports, \Company has not issued any equity securities to any officer, director or Affiliate. The Company does not have pending before the Commission any request for confidential treatment of information. Except for the issuance of the Securities contemplated by this Agreement, no event, liability, fact, circumstance, occurrence or development has occurred or exists or is reasonably expected to occur or exist with respect to the Company or its Subsidiaries or their respective businesses, properties, operations, assets or financial condition, that would be required to be disclosed by the Company under applicable securities laws at the time this representation is made or deemed made that has not been publicly disclosed at least 1 Trading Day prior to the date that this representation is made.

3.3 Representations and Warranties of the Purchasers. Each Purchaser, for itself and for no other Purchaser, hereby represents and warrants as of the date hereof and as of the Closing Date to the Company as follows (unless as of a specific date therein, in which case they shall be accurate as of such date):

(a) Organization; Authority. Such Purchaser is either an individual or an entity duly incorporated or formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation with full right, corporate, partnership, limited liability company or similar power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of the Transaction Documents and performance by such Purchaser of the transactions contemplated by the Transaction Documents have been duly authorized by all necessary corporate, partnership, limited liability company or similar action, as applicable, on the part of such Purchaser. Each Transaction Document to which it is a party has been duly executed by such Purchaser, and when delivered by such Purchaser in accordance with the terms hereof, will constitute the valid and legally binding obligation of such Purchaser, enforceable against it in accordance with its terms, except: (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(b) Own Account. Such Purchaser understands that the Securities are "restricted securities" and have not been registered under the Securities Act or any applicable state securities law and is acquiring the Securities as principal for its own account and not with a view to or for distributing or reselling such Securities or any part thereof in violation of the Securities Act or any applicable state securities law, has no present intention of distributing any of such Securities in violation of the Securities Act or any applicable state securities law and has no direct or indirect arrangement or understandings with any other persons to distribute or regarding the distribution of such Securities in violation of the Securities Act or any applicable state securities law (this representation and warranty not limiting such Purchaser's right to sell the Securities pursuant to a registration statement or otherwise in compliance with applicable federal and state securities laws). Such Purchaser is acquiring the Securities hereunder in the ordinary course of its business.

(c) Purchaser Status. At the time such Purchaser was offered the Securities, it was, and as of the date hereof it is, and on each date on which it exercises any Warrants it will be an "accredited investor" as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7) or (a)(8) under the Securities Act.

(d) Experience of Such Purchaser. Such Purchaser, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of such investment. Such Purchaser is able to bear the economic risk of an investment in the Securities and, at the present time, is able to afford a complete loss of such investment.

(e) General Solicitation. Such Purchaser is not, to such Purchaser's knowledge, purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or any other general solicitation or general advertisement.

(f) Access to Information. Such Purchaser acknowledges that it has had the opportunity to review the Transaction Documents (including all exhibits and schedules thereto) and the SEC Reports and has been afforded (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Securities and the merits and risks of investing in the Securities; (ii) access to information about the Company and its financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment.

The Company acknowledges and agrees that the representations contained in this Section 3.3 shall not modify, amend or affect such Purchaser's right to rely on the Company's representations and warranties contained in this Agreement or any representations and warranties contained in any other Transaction Document or any other document or instrument executed and/or delivered in connection with this Agreement or the consummation of the transactions contemplated hereby.

ARTICLE IV. OTHER AGREEMENTS OF THE PARTIES

4.1 Transfer Restrictions.

(a) The Securities may only be disposed of in compliance with state and federal securities laws. In connection with any transfer of Securities other than pursuant to an effective registration statement or Rule 144, to the Company or to an Affiliate of a Purchaser or in connection with a pledge as contemplated in Section 4.1(b), the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Securities under the Securities Act. As a condition of transfer, any such transferee shall agree in writing to be bound by the terms of this Agreement and shall have the rights and obligations of a Purchaser under this Agreement.

(b) The Purchasers agree to the imprinting, so long as is required by this Section 4.1, of a legend on any of the Securities in the following form:

[NEITHER] THIS SECURITY [NOR THE SECURITIES INTO WHICH THIS SECURITY IS CONVERTIBLE [EXERCISABLE] HAS [NOT] BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THIS SECURITY [AND THE SECURITIES ISSUABLE UPON CONVERSION [EXERCISE] OF THIS SECURITY] MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT WITH A REGISTERED BROKER-DEALER OR OTHER LOAN WITH A FINANCIAL INSTITUTION THAT IS AN “ACCREDITED INVESTOR” AS DEFINED IN RULE 501(a) UNDER THE SECURITIES ACT OR OTHER LOAN SECURED BY SUCH SECURITIES.

The Company acknowledges and agrees that a Purchaser may from time to time pledge pursuant to a bona fide margin agreement with a registered broker-dealer or grant a security interest in some or all of the Securities to a financial institution that is an “accredited investor” as defined in Rule 501(a) under the Securities Act and, if required under the terms of such arrangement, such Purchaser may transfer pledged or secured Securities to the pledgees or secured parties. Such a pledge or transfer would not be subject to approval of the Company and no legal opinion of legal counsel of the pledgee, secured party or pledgor shall be required in connection therewith. Further, no notice shall be required of such pledge. At the appropriate Purchaser’s expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of Securities may reasonably request in connection with a pledge or transfer of the Securities.

(c) Certificates evidencing the Shares shall not contain any legend (including the legend set forth in Section 4.1(b) hereof): (i) while a registration statement covering the resale of such security is effective under the Securities Act, (ii) following any sale of such Shares pursuant to Rule 144, (iii) if such Shares are eligible for sale under Rule 144 or (iv) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission). The Company shall cause its counsel to issue a legal opinion to the Transfer Agent if required by the Transfer Agent to effect the removal of the legend hereunder. If all or any portion of a Warrant is exercised or a Debenture is converted at a time when there is an effective registration statement to cover the resale of the Shares, or if such Shares may be sold under Rule 144 without the requirement for the Company to be in compliance with the current public information required under Rule 144 as to such Shares and without volume or manner-of-sale restrictions or if such legend is not otherwise required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission) then such Shares shall be issued free of all legends. The Company agrees that following the Effective Date or at such time as such legend is no longer required under this Section 4.1(c), it will, no later than the earlier of (i) three (3) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined below) following the delivery by a Purchaser to the Company or the Transfer Agent of a certificate representing Shares, as applicable, issued with a restrictive legend (such third Trading Day, the “Legend Removal Date”), deliver or cause to be delivered to such Purchaser a certificate representing such shares that is free from all restrictive and other legends. The Company may not make any notation on its records or give instructions to the Transfer Agent that enlarge the restrictions on transfer set forth in this Section 4. Certificates for Shares subject to legend removal hereunder shall be transmitted by the Transfer Agent to the Purchaser by crediting the account of the Purchaser’s prime broker with the Depository Trust Company System as directed by such Purchaser. As used herein, “Standard Settlement Period” means the standard settlement period, expressed in a number of Trading Days, on the Company’s primary Trading Market with respect to the Common Stock as in effect on the date of delivery of a certificate representing Shares, as applicable, issued with a restrictive legend.

(e) Each Purchaser, severally and not jointly with the other Purchasers, agrees with the Company that such Purchaser will sell any Securities pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if Securities are sold pursuant to a Registration Statement, they will be sold in compliance with the plan of distribution set forth therein, and acknowledges that the removal of the restrictive legend from certificates representing Securities as set forth in this Section 4.1 is predicated upon the Company's reliance upon this understanding.

4.2 Absolute Obligation. The Company acknowledges that its obligations under the Transaction Documents, including, without limitation, its obligation to issue the Shares pursuant to the Transaction Documents, are unconditional and absolute and not subject to any right of set off, counterclaim, delay or reduction, regardless of the effect of any such dilution or any claim the Company may have against any Purchaser and regardless of the dilutive effect that such issuance may have on the ownership of the other stockholders of the Company.

4.3 Furnishing of Information; Public Information. Until the Warrants have expired and the Debentures have been paid in full, the Company covenants to promptly seek and, thereafter, maintain the registration of the Common Stock under Section 12(b) or 12(g) of the Exchange Act and to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act even if the Company is not then subject to the reporting requirements of the Exchange Act.

4.4 Integration. The Company shall not sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of the Securities in a manner that would require the registration under the Securities Act of the sale of the Securities or that would be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any Trading Market such that it would require shareholder approval prior to the closing of such other transaction unless shareholder approval is obtained before the closing of such subsequent transaction.

4.5 Exercise Procedures.

(a) The form of Notice of Exercise included in the Warrants set forth the totality of the procedures required of the Purchasers in order to exercise the Warrants. Without limiting the preceding sentences, no ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise form be required in order to exercise the Warrants. No additional legal opinion, other information or instructions shall be required of the Purchasers to exercise their Warrants. The Company shall honor exercises of the Warrants and shall deliver Shares in accordance with the terms, conditions and time periods set forth in the Transaction Documents.

(b) The form of Notice of Conversion included in the Debentures set forth the totality of the procedures required of the Purchasers in order to convert the Debentures. Without limiting the preceding sentences, no ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required in order to convert the Debentures. No additional legal opinion, other information or instructions shall be required of the Purchasers to convert their Debentures. The Company shall honor conversions of the Debentures and shall deliver Shares in accordance with the terms, conditions and time periods set forth in the Transaction Documents.

4.6 Securities Laws Disclosure; Publicity. The Company shall (a) by 9:30 a.m. (New York City time) on the Trading Day immediately following the date hereof, issue a press release disclosing the material terms of the transactions contemplated hereby, and (b) file a Current Report on Form 8-K, including the Transaction Documents as exhibits thereto, with the Commission within the time required by the Exchange Act. From and after the issuance of such press release, the Company represents to the Purchasers that it shall have publicly disclosed all material, non-public information delivered to any of the Purchasers by the Company or any of its Subsidiaries, or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Transaction Documents. In addition, effective upon the issuance of such press release, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, agents, employees or Affiliates on the one hand, and any of the Purchasers or any of their Affiliates on the other hand, shall terminate. The Company and each Purchaser shall consult with each other in issuing any other press releases with respect to the transactions contemplated hereby, and neither the Company nor any Purchaser shall issue any such press release nor otherwise make any such public statement without the prior consent of the Company, with respect to any press release of any Purchaser, or without the prior consent of each Purchaser, with respect to any press release of the Company, which consent shall not unreasonably be withheld or delayed, except if such disclosure is required by law, in which case the disclosing party shall promptly provide the other party with prior notice of such public statement or communication. Notwithstanding the foregoing, the Company shall not publicly disclose the name of any Purchaser, or include the name of any Purchaser in any filing with the Commission or any regulatory agency or Trading Market, without the prior written consent of such Purchaser, except: (a) as required by federal securities law in connection with (i) any registration statement and (ii) the filing of final Transaction Documents with the Commission and (b) to the extent such disclosure is required by law or Trading Market regulations, in which case the Company shall provide the Purchasers with prior notice of such disclosure permitted under this clause (b).

4.7 Shareholder Rights Plan. No claim will be made or enforced by the Company or, with the consent of the Company, any other Person, that any Purchaser is an “Acquiring Person” under any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or similar anti-takeover plan or arrangement in effect or hereafter adopted by the Company, or that any Purchaser could be deemed to trigger the provisions of any such plan or arrangement, by virtue of receiving Securities under the Transaction Documents or under any other agreement between the Company and the Purchasers.

4.8 Non-Public Information. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, which shall be disclosed pursuant to Section 4.6, the Company covenants and agrees that neither it, nor any other Person acting on its behalf will provide any Purchaser or its agents or counsel with any information that constitutes, or the Company reasonably believes constitutes, material non-public information, unless prior thereto such Purchaser shall have consented to the receipt of such information and agreed with the Company to keep such information confidential. The Company understands and confirms that each Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Company. To the extent that the Company delivers any material, non-public information to a Purchaser without such Purchaser's consent, the Company hereby covenants and agrees that such purchaser shall not have any duty of confidentiality to Company, any of its Subsidiaries, or any of their respective officers, directors, agents, employees or Affiliates, or a duty to the Company, and of its Subsidiaries or any of their respective officers, directors, agents, employees or Affiliates not to trade on the basis of, such material, non-public information, provided that the Purchaser shall remain subject to applicable law. To the extent that any notice provided pursuant to any Transaction Document constitutes, or contains, material, non-public information regarding the Company or any Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Company understands and confirms that each Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Company.

4.9 Indemnification of Purchasers. Subject to the provisions of this Section 4.9, the Company shall indemnify and hold each Purchaser and its directors, officers, shareholders, members, partners, employees and agents (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title), each Person who controls such Purchaser (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, shareholders, agents, members, partners or employees (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title) of such controlling persons (each, a "Purchaser Party") harmless from any and all losses, liabilities, obligations, claims, contingencies, damages, costs and expenses, including all judgments, amounts paid in settlements, court costs and reasonable attorneys' fees and costs of investigation that any such Purchaser Party may suffer or incur as a result of or relating to (a) any breach of any of the representations, warranties, covenants or agreements made by the Company in this Agreement or in the other Transaction Documents or (b) any action instituted against the Purchaser Parties in any capacity, or any of them or their respective Affiliates, by any stockholder of the Company who is not an Affiliate of such Purchaser Party, with respect to any of the transactions contemplated by the Transaction Documents (unless such action is based upon a breach of such Purchaser Party's representations, warranties or covenants under the Transaction Documents or any agreements or understandings such Purchaser Party may have with any such stockholder or any violations by such Purchaser Party of state or federal securities laws or any conduct by such Purchaser Party which constitutes fraud, gross negligence, willful misconduct or malfeasance). If any action shall be brought against any Purchaser Party in respect of which indemnity may be sought pursuant to this Agreement, such Purchaser Party shall promptly notify the Company in writing, and the Company shall have the right to assume the defense thereof with counsel of its own choosing reasonably acceptable to the Purchaser Party. Any Purchaser Party shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Purchaser Party except to the extent that (i) the employment thereof has been specifically authorized by the Company in writing, (ii) the Company has failed after a reasonable period of time to assume such defense and to employ counsel or (iii) in such action there is, in the reasonable opinion of counsel, a material conflict on any material issue between the position of the Company and the position of such Purchaser Party, in which case the Company shall be responsible for the reasonable fees and expenses of no more than one such separate counsel. The Company will not be liable to any Purchaser Party under this Agreement (y) for any settlement by a Purchaser Party effected without the Company's prior written consent, which shall not be unreasonably withheld or delayed; or (z) to the extent, but only to the extent that a loss, claim, damage or liability is attributable to any Purchaser Party's breach of any of the representations, warranties, covenants or agreements made by such Purchaser Party in this Agreement or in the other Transaction Documents. The indemnification required by this Section 4.9 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or are incurred. The indemnity agreements contained herein shall be in addition to any cause of action or similar right of any Purchaser Party against the Company or others and any liabilities the Company may be subject to pursuant to law.

4.10 Reservation and Listing of Securities.

(a) The Company shall maintain a reserve of the Required Minimum from its duly authorized shares of Common Stock for issuance pursuant to the Transaction Documents in such amount as may then be required to fulfill its obligations in full under the Transaction Documents.

(b) If, on any date, the number of authorized but unissued (and otherwise unreserved) shares of Common Stock is less than the Required Minimum on such date, then the Board of Directors shall use commercially reasonable efforts to amend the Company's certificate or articles of incorporation to increase the number of authorized but unissued shares of Common Stock to at least the Required Minimum at such time, as soon as possible and in any event not later than the 75th day after such date.

(c) The Company shall, if applicable: (i) in the time and manner required by the principal Trading Market, prepare and file with such Trading Market an additional shares listing application covering a number of shares of Common Stock at least equal to the Required Minimum on the date of such application, (ii) take all steps necessary to cause such shares of Common Stock to be approved for listing or quotation on such Trading Market as soon as possible thereafter, (iii) provide to the Purchasers evidence of such listing or quotation and (iv) maintain the listing or quotation of such Common Stock on any date at least equal to the Required Minimum on such date on such Trading Market or another Trading Market. The Company agrees to maintain the eligibility of the Common Stock for electronic transfer through the Depository Trust Company or another established clearing corporation, including, without limitation, by timely payment of fees to the Depository Trust Company or such other established clearing corporation in connection with such electronic transfer.

4.11 Form D: Blue Sky Filings. The Company agrees to timely file a Form D with respect to the Securities as required under Regulation D and to provide a copy thereof, promptly upon request of any Purchaser. The Company shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to qualify the Securities for, sale to the Purchasers at the Closing under applicable securities or "Blue Sky" laws of the states of the United States and shall provide evidence of such actions promptly upon request of any Purchaser

**ARTICLE V.
MISCELLANEOUS**

5.1 Termination. This Agreement may be terminated by any Purchaser, as to such Purchaser's obligations hereunder only and without any effect whatsoever on the obligations between the Company and the other Purchasers, by written notice to the other parties, if the Closing has not been consummated on or before April 1, 2020; provided, however, that such termination will not affect the right of any party to sue for any breach by any other party (or parties).

5.2 Fees and Expenses. Except as expressly set forth in the Transaction Documents to the contrary, each party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of this Agreement. The Company shall pay all Transfer Agent fees (including, without limitation, any fees required for same-day processing of any instruction letter delivered by the Company and any conversion or exercise notice delivered by a Purchaser), stamp taxes and other taxes and duties levied in connection with the delivery of any Securities to the Purchasers.

5.3 Entire Agreement. The Transaction Documents, together with the exhibits and schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules.

5.4 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of: (a) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email as set forth on the signature pages attached hereto at or prior to 5:30 p.m. (New York City time) on a Trading Day, (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email as set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (c) the fifth (5th) Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be the Company's address as set forth in its SEC Reports, which may be updated from time to time and as set forth on Schedule 2.1 for all the Purchasers.

5.5 Amendments; Waivers. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and Purchasers holding at least 51% in interest of the Debentures then outstanding or, in the case of a waiver, by the party against whom enforcement of any such waived provision is sought, provided that if any amendment, modification or waiver disproportionately and adversely impacts a Purchaser (or group of Purchasers), the consent of such disproportionately impacted Purchaser (or group of Purchasers) shall also be required. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right. Any proposed amendment or waiver that disproportionately, materially and adversely affects the rights and obligations of any Purchaser relative to the comparable rights and obligations of the other Purchasers shall require the prior written consent of such adversely affected Purchaser. Any amendment effected in accordance with accordance with this Section 5.5 shall be binding upon each Purchaser and holder of Securities and the Company.

5.6 Headings. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

5.7 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of each Purchaser (other than by merger). Any Purchaser may assign any or all of its rights under this Agreement to any Person to whom such Purchaser assigns or transfers any Securities, provided that such transferee agrees in writing to be bound, with respect to the transferred Securities, by the provisions of the Transaction Documents that apply to the "Purchasers."

5.8 No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as otherwise set forth in Section 4.10 and this Section 5.8.

5.9 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflicts of law thereof. Each party agrees that all legal Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of Charlotte, State of North Carolina. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of Charlotte, State of North Carolina, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Action or Proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such Action or Proceeding is improper or is an inconvenient venue for such Proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such Action or Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If any party hereto shall commence an Action or Proceeding to enforce any provisions of the Transaction Documents, then, in addition to the obligations of the Company under Section 4.10, the prevailing party in such Action or Proceeding shall be reimbursed by the non-prevailing party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such Action or Proceeding.

5.10 Survival. The representations and warranties contained herein shall survive the Closing and the delivery of the Securities.

5.11 Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to each other party, it being understood that the parties need not sign the same counterpart. Notwithstanding the foregoing, this Agreement shall be binding upon the Company upon the execution of a counterpart of this Agreement, notwithstanding that the other Purchasers may not have yet executed this Agreement. With respect to each Purchaser, this Agreement shall become binding, following the execution hereof by the Company upon such Purchaser when such Purchaser delivers an executed copy hereof to the Company. No Warrant shall be issued to any Purchaser prior to such Purchaser's execution of this Agreement. This Agreement may be executed and delivered in original, via DocuSign, Right Signature or any other comparable signature software, via facsimile or email with PDF attachment, or other commercially acceptable electronic form, in any number of counterparts, each of which shall be deemed an original, and all of which shall together constitute but one and the same instrument, which instrument shall for all purposes be sufficiently evidenced by any such counterpart.

5.12 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

5.13 Rescission and Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) any of the other Transaction Documents, whenever any Purchaser exercises a right, election, demand or option under a Transaction Document and the Company does not timely perform its related obligations within the periods therein provided, then such Purchaser may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights; provided, however, that in the case of a rescission of an exercise of a Warrant, the applicable Purchaser shall be required to return any shares of Common Stock subject to any such rescinded exercise notice concurrently with the return to such Purchaser of the aggregate exercise price paid to the Company for such shares and the restoration of such Purchaser's right to acquire such shares pursuant to such Purchaser's Warrant (including, issuance of a replacement warrant certificate evidencing such restored right).

5.14 Replacement of Securities. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof (in the case of mutilation), or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction. The applicant for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs (including customary indemnity) associated with the issuance of such replacement Securities.

5.15 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each of the Purchasers and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations contained in the Transaction Documents and hereby agree to waive and not to assert in any Action for specific performance of any such obligation the defense that a remedy at law would be adequate.

5.16 Payment Set Aside. To the extent that the Company makes a payment or payments to any Purchaser pursuant to any Transaction Document or a Purchaser enforces or exercises its rights thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

5.17 Usury. To the extent it may lawfully do so, the Company hereby agrees not to insist upon or plead or in any manner whatsoever claim and will resist any and all efforts to be compelled to take the benefit or advantage of, usury laws wherever enacted, now or at any time hereafter in force, in connection with any Action or Proceeding that may be brought by any Purchaser in order to enforce any right or remedy under any Transaction Document. Notwithstanding any provision to the contrary contained in any Transaction Document, it is expressly agreed and provided that the total liability of the Company under the Transaction Documents for payments in the nature of interest shall not exceed the maximum lawful rate authorized under applicable law (the "Maximum Rate"), and, without limiting the foregoing, in no event shall any rate of interest or default interest, or both of them, when aggregated with any other sums in the nature of interest that the Company may be obligated to pay under the Transaction Documents exceed such Maximum Rate. It is agreed that if the maximum contract rate of interest allowed by law and applicable to the Transaction Documents is increased or decreased by statute or any official governmental action subsequent to the date hereof, the new maximum contract rate of interest allowed by law will be the Maximum Rate applicable to the Transaction Documents from the effective date thereof forward, unless such application is precluded by applicable law. If under any circumstances whatsoever, interest in excess of the Maximum Rate is paid by the Company to any Purchaser with respect to indebtedness evidenced by the Transaction Documents, such excess shall be applied by such Purchaser to the unpaid principal balance of any such indebtedness or be refunded to the Company, the manner of handling such excess to be at such Purchaser's election.

5.18 Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser under any Transaction Document are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance or non-performance of the obligations of any other Purchaser under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Purchaser pursuant hereto or thereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Purchaser shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of the other Transaction Documents, and it shall not be necessary for any other Purchaser to be joined as an additional party in any Proceeding for such purpose. Each Purchaser has been represented by its own separate legal counsel in its review and negotiation of the Transaction Documents. For reasons of administrative convenience only, each Purchaser and its respective counsel have chosen to communicate with the Company through Shearman. Shearman does not represent any of the Purchasers. The Company has elected to provide all Purchasers with the same terms and Transaction Documents for the convenience of the Company and not because it was required or requested to do so by any of the Purchasers.

5.20 Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken, or such right may be exercised on the next succeeding Business Day.

5.21 Construction. The parties agree that each of them and/or their respective counsel have reviewed and had an opportunity to revise the Transaction Documents and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Transaction Documents or any amendments thereto. In addition, each and every reference to share prices and shares of Common Stock in any Transaction Document shall be subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the date of this Agreement.

5.22 **WAIVER OF JURY TRIAL**. IN ANY ACTION, SUIT, OR PROCEEDING IN ANY JURISDICTION BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY, THE PARTIES EACH KNOWINGLY AND INTENTIONALLY, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND EXPRESSLY WAIVES FOREVER TRIAL BY JURY.

(Signature Pages Follow)

IN WITNESS WHEREOF, the parties hereto have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

AMERGENT HOSPITALITY GROUP INC.

By: _____
Name:
Title:

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOR PURCHASER FOLLOWS]

[SIGNATURE PAGE FOR SECURITIES PURCHASE AGREEMENT]

[PURCHASER SIGNATURE PAGES TO AMERGENT HOSPITALITY GROUP INC. SECURITIES PURCHASE AGREEMENT]

IN WITNESS WHEREOF, the undersigned have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

Name of Purchaser: _____

Signature of Authorized Signatory of Purchaser: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

Email Address of Authorized Signatory: _____

Address for Notice to Purchaser: _____

Address for Delivery of Securities to Purchaser (if not same as address for notice):

Purchase Price: \$ _____

Debenture Principal Amount (equal to Purchase Price) \$ _____

Warrants (number equal to dollar amount of Purchase Price) _____

SS/ EIN Number: _____

☐ Notwithstanding anything contained in this Agreement to the contrary, by checking this box (i) the obligations of the above-signed to purchase the securities set forth in this Agreement to be purchased from the Company by the above-signed, and the obligations of the Company to sell such securities to the above-signed, shall be unconditional and all conditions to Closing shall be disregarded, (ii) the Closing shall occur on or before February 28, 2022, subject to the Company's 30 extension, in its sole discretion, following the date of this Agreement and (iii) any condition to Closing contemplated by this Agreement (but prior to being disregarded by clause (i) above) that required delivery by the Company or the above-signed of any agreement, instrument, certificate or the like or purchase price (as applicable) shall no longer be a condition and shall instead be an unconditional obligation of the Company or the above-signed (as applicable) to deliver such agreement, instrument, certificate or the like or purchase price (as applicable) to such other party on the Closing Date.

[SIGNATURE PAGES CONTINUE]

[SIGNATURE PAGE FOR SECURITIES PURCHASE AGREEMENT]

APPENDIX 1

WIRE INSTRUCTIONS

ABA/Routing Number:	O51408949
Beneficiary Bank:	TowneBank
Address of Beneficiary Bank:	5716 High Street West Portsmouth, VA 23703
Beneficiary Party:	Amergent Hospitality Group Inc.
Physical Address of Beneficiary Party:	7529 Red Oak Lane Charlotte, NC 28226
Account #	0279027648
Special Instructions:	Purchaser Name:

[SIGNATURE PAGE FOR SECURITIES PURCHASE AGREEMENT]

EXHIBIT A

[SIGNATURE PAGE FOR SECURITIES PURCHASE AGREEMENT]

EXHIBIT B

[SIGNATURE PAGE FOR SECURITIES PURCHASE AGREEMENT]

EXHIBIT C

[SIGNATURE PAGE FOR SECURITIES PURCHASE AGREEMENT]

Issue Date: March _____, 2022

8.0% SENIOR UNSECURED CONVERTIBLE DEBENTURE
DUE _____, 2023

THIS 8.0% SENIOR UNSECURED CONVERTIBLE DEBENTURE is one of a series of duly authorized and validly issued 8.0% Senior Unsecured Convertible Debentures of Amergent Hospitality Group Inc., a Delaware corporation (the "Company"), having its principal place of business at 7529 Red Oak Lane, Charlotte, NC 28226, designated as its 8.0% Senior Unsecured Convertible Debenture (this debenture, the "Debenture" and, collectively with the other debentures of such series, the "Debentures") due _____, 2023 (*date that is 18 months from the Issue Date*, the "Maturity Date"). This Debenture is one of a series of Debentures in the aggregate principal amount not to exceed \$3,000,000 and is issued pursuant to that certain Securities Purchase Agreement (the "Purchase Agreement") by and among the Company and purchasers signatory thereto dated _____, 2022. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Purchase Agreement.

FOR VALUE RECEIVED, the Company promises to pay to _____ or its registered assigns (the "Holder"), or shall have paid pursuant to the terms hereunder, the principal sum of _____ (\$_____) plus all accrued and unpaid interest on the Maturity Date. This Debenture is subject to the following additional provisions:

Section 1. Definitions. For the purposes hereof, in addition to the terms defined elsewhere in this Debenture, (a) capitalized terms not otherwise defined herein shall have the meanings set forth in the Purchase Agreement and (b) the following terms shall have the following meanings:

"Bankruptcy Event" means any of the following events: (a) the Company or any Subsidiary thereof commences a case or other proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction relating to the Company or any Subsidiary thereof, (b) there is commenced against the Company or any Subsidiary thereof any such case or proceeding that is not dismissed within 60 days after commencement, (c) the Company or any Subsidiary thereof is adjudicated insolvent or bankrupt or any order of relief or other order approving any such case or proceeding is entered, (d) the Company or any Subsidiary thereof suffers any appointment of any custodian or the like for it or any substantial part of its property that is not discharged or stayed within 60 calendar days after such appointment, (e) the Company or any Subsidiary thereof makes a general assignment for the benefit of creditors, (f) the Company or any Subsidiary thereof calls a meeting of its creditors with a view to arranging a composition, adjustment or restructuring of its debts, (g) the Company or any Subsidiary thereof admits in writing that it is generally unable to pay its debts as they become due, (h) the Company or any Subsidiary thereof, by any act or failure to act, expressly indicates its consent to, approval of or acquiescence in any of the foregoing or takes any corporate or other action for the purpose of effecting any of the foregoing.

“Business Day” means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“Common Stock” means the common stock of the Company.

“Common Stock Equivalent” means any securities of the Company entitling the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“Conversion Price” means \$0.40 per share.

“Debenture Register” shall have the meaning set forth in Section 2(b).

“Event of Default” shall have the meaning set forth in Section 7.

“Fundamental Transaction” shall have the meaning set forth in Section 6(a).

“Fixed Conversion Price” shall be \$0.40 per share of Common Stock, subject to adjustment as provided for herein.

“Issue Date” means the Closing Date.

“Lien” means a mortgage, deed of trust, pledge, hypothecation, assignment, security interest, encumbrance, lien or other security interest or security agreement of any kind or nature whatsoever.

“NC Courts” shall have the meaning set forth in Section 8(d).

“Notice of Conversion” means a notice in the form of Attachment A.

“Original Issue Date” means the date of the first issuance of the Debentures, regardless of any transfers of any Debenture and regardless of the number of instruments which may be issued to evidence such Debentures.

“Purchase Agreement” has the meaning set forth in the first paragraph of this Debenture.

“Registrable Securities” means the Conversion Shares and the Warrant Shares.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Successor Entity” has the meaning set forth in Section 6.

“Trading Day” means a day on which the principal market or exchange, on which the Common Stock is listed or quoted for trading, is open (e.g., the Nasdaq Capital Market, the NYSE AMEX Equities Exchange, the New York Stock Exchange, the OTC Bulletin Board, OTCQX, OTCQB or the Pink Sheets as operated by OTC Markets Group, Inc., etc.).

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE MKT, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, or the New York Stock Exchange (or any successors to any of the foregoing).

Section 2. Interest.

a) Payment of Interest in Cash. The Company shall pay interest to the Holder on the aggregate then outstanding principal amount of this Debenture in cash at the rate of 8.0% per annum, payable quarterly on January 1, April 1, July 1 and October 1, beginning on the first such date after the Issue Date, and on the Maturity Date (each such date, an “Interest Payment Date”) (if any Interest Payment Date is not a Business Day, then the applicable payment shall be due on the next succeeding Business Day).

b) Interest Calculations. Interest shall be calculated on the basis of a 360-day year, consisting of twelve 30 calendar day periods, and shall accrue daily commencing on the Issue Date until payment in full of the outstanding principal, together with all accrued and unpaid interest, liquidated damages and other amounts which may become due hereunder, has been made. Interest hereunder will be paid to the Person in whose name this Debenture is registered on the records of the Company regarding registration and transfers of this Debenture (the “Debenture Register”).

c) Prepayment. The Company may prepay any portion of the principal amount of the Debentures in whole or in part upon 10 days’ prior written notice to the Holders. Partial pre-payments by the Company will be made on a pro-rata basis to Holders based on the face value of the Debentures held by such Holders.

Section 3. Registration of Transfers and Exchanges.

a) Different Denominations. This Debenture is exchangeable for an equal aggregate principal amount of Debentures of different authorized denominations, as requested by the Holder surrendering the same. No service charge will be payable for such registration of transfer or exchange.

b) Investment Representations. This Debenture has been issued subject to certain investment representations of the Holder set forth in the Purchase Agreement and may be transferred or exchanged only in compliance with the Purchase Agreement and applicable federal and state securities laws and regulations.

c) Reliance on Debenture Register. Prior to due presentment for transfer to the Company of this Debenture, the Company and any agent of the Company may treat the Person in whose name this Debenture is duly registered on the Debenture Register as the owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Debenture is overdue, and neither the Company nor any such agent shall be affected by notice to the contrary.

Section 4. Conversion.

a) Conversion of Outstanding Balance. Beginning on the Issue Date and until this Debenture is no longer outstanding, this Debenture shall be convertible, in whole or in part, into fully paid and nonassessable shares of Common Stock ("Conversion Shares") at the option of the Holder, upon delivery of a Notice of Conversion to the Company, at the Conversion Price. The number of Conversion Shares into which the Debenture may be converted shall be determined by dividing the aggregate principal amount together with all accrued interest to the date of conversion by the Conversion Price.

b) Conversions. The Holder shall effect any conversions under this section by delivering to the Company a fully completed Notice of Conversion. To effect conversions hereunder, the Holder shall not be required to physically surrender this Debenture to the Company unless the entire principal amount of this Debenture, plus all accrued and unpaid interest thereon, has been so converted. Conversions hereunder shall have the effect of lowering the outstanding amount of this Debenture in an amount equal to the applicable conversion. The Holder and the Company shall maintain records showing the amount(s) converted and the date of such conversion(s). The Holder, and any assignee by acceptance of this Debenture, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of a portion of this Debenture, the unpaid and unconverted amount of this Debenture may be less than the amount stated on the face hereof.

c) Mechanics of Conversion.

i. Delivery of Conversion Shares Upon Conversion. Conversion Shares purchased hereunder shall be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's or its designee's balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Conversion Shares to or resale of the Conversion Shares by the Holder or (B) the Conversion Shares are eligible for resale by the Holder without volume or manner-of-sale limitations pursuant to Rule 144, and otherwise by physical delivery of a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Conversion Shares to which the Holder is entitled pursuant to such conversion to the address specified by the Holder in the Notice of Conversion by the date that is the earlier of (i) three (3) Trading Days after the delivery to the Company of the Notice of Conversion and (ii) the number of Trading Days comprising the Standard Settlement Period after the delivery to the Company of the Notice of Conversion (such date, the "Conversion Share Delivery Date"). Upon delivery of the Notice of Conversion, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Conversion Shares with respect to which this Debenture has been converted, irrespective of the date of delivery of the Conversion Shares. If the Company fails for any reason to deliver to the Holder the Conversion Shares subject to a Notice of Conversion by the Conversion Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each \$1,000 of Conversion Shares subject to such conversion (based on the VWAP of the Common Stock on the date of the applicable Notice of Conversion), \$10 per Trading Day (increasing to \$20 per Trading Day on the fifth Trading Day after such liquidated damages begin to accrue) for each Trading Day after such Conversion Share Delivery Date until such Conversion Shares are delivered or Holder rescinds such conversion. If qualified, the Company agrees to maintain a transfer agent that is a participant in the FAST program so long as this Debenture remains outstanding and exercisable. As used herein, "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Conversion.

ii. Delivery of New Debentures Upon Conversion. If this Debenture shall have been converted in part, the Company shall, at the request of a Holder and upon surrender of this Debenture, at the time of delivery of the Conversion Shares, deliver to the Holder a new Debenture evidencing the principal outstanding and the rights of the Holder to acquire Conversion Shares called for by this Debenture, which new Debenture shall in all other respects be identical with this Debenture.

iii. Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Conversion Shares pursuant to Section 4(c)(i) by the Conversion Share Delivery Date, then the Holder will have the right to rescind such conversion.

iv. Compensation for Buy-In on Failure to Timely Deliver Conversion Shares Upon Conversion. In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to transmit to the Holder the Conversion Shares in accordance with the provisions of Section 4(c)(i) above pursuant to a conversion on or before the Conversion Share Delivery Date, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Conversion Shares which the Holder anticipated receiving upon such conversion (a "Buy-In"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Conversion Shares that the Company was required to deliver to the Holder in connection with the conversion at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Debenture and equivalent number of Conversion Shares for which such conversion was not honored (in which case such conversion shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its conversion and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted conversion of shares of Common Stock with an aggregate sale price giving rise to such purchase obligation of \$10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder \$1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon conversion of the Debenture as required pursuant to the terms hereof.

v. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of this Debenture. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such conversion, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Conversion Price or round up to the next whole share.

vi. Charges, Taxes and Expenses. Issuance of Conversion Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Conversion Shares, all of which taxes and expenses shall be paid by the Company, and such Conversion Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that in the event that Conversion Shares are to be issued in a name other than the name of the Holder, this Debenture when surrendered for conversion shall be accompanied by the Assignment Form, in the form attached hereto as Attachment B, duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Conversion Shares.

vii. Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely conversion of this Debenture, pursuant to the terms hereof.

Section 5. Certain Adjustments.

a) Stock Dividends and Splits. If the Company, at any time while this Debenture is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon conversion of this Debenture), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the Fixed Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 5(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re- classification.

b) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 5(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to all record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Debenture immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

c) Calculations. All calculations under this Section 5 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 5, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

Section 6. Fundamental Transaction.

(a) If, at any time while this Debenture is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, the Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Debenture and the other Transaction Documents (as defined in the Purchase Agreement) in accordance with the provisions of this Section 6 pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the holder of this Debenture, deliver to the Holder in exchange for this Debenture a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Debenture, which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Debenture prior to such Fundamental Transaction, and with an conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of this Debenture immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Debenture and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Debenture and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

(b) Notice to Holder.

i. Adjustment to Fixed Conversion Price. Whenever the Fixed Conversion Price is adjusted pursuant to any provision of this Section 6, the Company shall promptly deliver to the Holder by facsimile or email a notice setting forth the Fixed Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Conversion by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by facsimile or email to the Holder at its last facsimile number or email address as it shall appear upon the Debenture Register of the Company, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. The Holder shall remain entitled to conversion this Debenture during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 7. Events of Default.

a) “Event of Default” means, wherever used herein, any of the following events (whatever the reason for such event and whether such event shall be voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court, or any order, rule or regulation of any administrative or governmental body):

i. any default in the payment of (A) the principal amount of any Debenture or (B) interest, liquidated damages and other amounts owing to a Holder on any Debenture, as and when the same shall become due and payable (whether on the Maturity Date or by acceleration or otherwise) which default, solely in the case of an interest payment or other default under clause (B) above, is not cured within 3 Trading Days;

ii. any Event of Default under the Oz Rey Debenture;

iii. the Company shall fail to observe or perform any other covenant or agreement contained in the Debentures or in any Transaction Document, which failure is not cured, if possible, to cure, within the earlier to occur of (A) 5 Trading Days after notice of such failure sent by the Holder or by any other Holder to the Company and (B) 10 Trading Days after the Company has become or should have become aware of such failure;

iv. a default or event of default (subject to any grace or cure period provided in the applicable agreement, document or instrument) shall occur under any of the Transaction Documents;

v. Any representation or warranty made in this Debenture, any other Transaction Documents, any written statement pursuant hereto or thereto or any other report, financial statement or certificate made or delivered to the Holder or any other Holder shall be untrue or incorrect in any material respect as of the date when made or deemed made;

vi. the Company or any significant Subsidiary shall be subject to a Bankruptcy Event;

vii. the Company or any Subsidiary shall default on any of its obligations under any mortgage, credit agreement or other facility, indenture agreement, factoring agreement or other instrument under which there may be issued, or by which there may be secured or evidenced, any indebtedness for borrowed money or money due under any long term leasing or factoring arrangement that (a) involves an obligation greater than \$150,000, whether such indebtedness now exists or shall hereafter be created, and (b) results in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise become due and payable; or

viii. any monetary judgment, writ or similar final process shall be entered or filed against the Company, any subsidiary or any of their respective property or other assets for more than \$100,000, and such judgment, writ or similar final process shall remain unvacated, unbonded or unstayed for a period of 45 calendar days.

Notwithstanding anything set forth herein to the contrary, an Event of Default is neither triggered nor accrues unless and until the Company receives notice from holders of at least 51% in principal amount of the then outstanding Debentures declaring an Event of Default.

b) Remedies Upon Event of Default. If any Event of Default occurs, the outstanding principal amount of this Debenture, plus accrued but unpaid interest, liquidated damages and other amounts owing in respect thereof through the date of acceleration, shall become, at the Holder's election, immediately due and payable in cash. Commencing 5 days after the occurrence of any Event of Default that results in the eventual acceleration of this Debenture, the interest rate on this Debenture shall accrue at an interest rate equal to the lesser of 18% per annum or the maximum rate permitted under applicable law. In connection with such acceleration described herein, the Holder need not provide, and the Company hereby waives, any presentment, demand, protest or other notice of any kind, and the Holder may immediately and without expiration of any grace period enforce any and all of its rights and remedies hereunder and all other remedies available to it under applicable law. Such acceleration may be rescinded and annulled by Holder at any time prior to payment hereunder and the Holder shall have all rights as a holder of the Debenture until such time, if any, as the Holder receives full payment pursuant to this Section 7(b). No such rescission or annulment shall affect any subsequent Event of Default or impair any right consequent thereon.

Section 8. Miscellaneous

a) Notices. Any and all notices or other communications or deliveries to be provided by the Holder hereunder, shall be in writing and delivered personally, by facsimile, by email, or sent by a nationally recognized overnight courier service, addressed to the Company, at the address set forth above, or such other facsimile number, email address, or address as the Company may specify for such purposes by notice to the Holder delivered in accordance with this Section 8(a). Any and all notices or other communications or deliveries to be provided by the Company hereunder shall be in writing and delivered personally, by facsimile, by email, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number, email address or address of the Holder appearing on the books of the Company, or if no such facsimile number or email or address appears on the books of the Company, at the principal place of business of such Holder, as set forth in the Purchase Agreement. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email to the email address set forth on the signature pages attached hereto prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email to the email address set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (iv) upon actual receipt by the party to whom such notice is required to be given.

b) Absolute Obligation. Except as expressly provided herein, no provision of this Debenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, liquidated damages and accrued interest, as applicable, on this Debenture at the time, place, and rate, and in the coin or currency, herein prescribed. This Debenture is a direct debt obligation of the Company. This Debenture ranks pari passu with all other Debentures now or hereafter issued under the terms set forth herein.

c) Lost or Mutilated Debenture. If this Debenture shall be mutilated, lost, stolen or destroyed, the Company shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated Debenture, or in lieu of or in substitution for a lost, stolen or destroyed Debenture, a new Debenture for the principal amount of this Debenture so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such Debenture, and of the ownership hereof, reasonably satisfactory to the Company.

d) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Debenture shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by any of the Transaction Documents (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of Charlotte, County of Mecklenburg, state of North Carolina (the “NC Courts”). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the NC Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such NC Courts, or such NC Courts are improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Debenture and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Debenture or the transactions contemplated hereby. If any party shall commence an action or proceeding to enforce any provisions of this Debenture, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorney’s fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

e) Waiver. Any waiver by the Company or the Holder of a breach of any provision of this Debenture shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Debenture. The failure of the Company or the Holder to insist upon strict adherence to any term of this Debenture on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Debenture on any other occasion. Any waiver by the Company or the Holder must be in writing.

f) Severability. If any provision of this Debenture is invalid, illegal or unenforceable, the balance of this Debenture shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law. The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law which would prohibit or forgive the Company from paying all or any portion of the principal of or interest on this Debenture as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Debenture, and the Company (to the extent it may lawfully do so) hereby expressly waives all benefits or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Holder, but will suffer and permit the execution of every such as though no such law has been enacted.

g) Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Debenture shall be cumulative and in addition to all other remedies available under this Debenture and any of the other Transaction Documents at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Debenture. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to an injunction restraining any such breach or any such threatened breach, without the necessity of showing economic loss and without any bond or other security being required. The Company shall provide all information and documentation to the Holder that is requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Debenture.

h) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

i) Headings. The headings contained herein are for convenience only, do not constitute a part of this Debenture and shall not be deemed to limit or affect any of the provisions hereof.

j) Senior Obligation. The obligations of the Company under this Debenture are senior debt obligations of the Company and are subject to the terms and conditions of the Subordination Agreement.

k) No Rights as Stockholder Until Conversion. Except as otherwise provided herein, this Debenture does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof.

l) Authorized Shares. The Company covenants that, during the period the Debenture is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Conversion Shares upon the exercise of any conversion rights under this Debenture. The Company further covenants that its issuance of this Debenture shall constitute full authority to its officers who are charged with the duty of issuing the necessary Conversion Shares upon the exercise of the conversion rights under this Debenture. The Company will take all such reasonable action as may be necessary to assure that such Conversion Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. The Company covenants that all Conversion Shares which may be issued upon the exercise of the conversion rights represented by this Debenture will, upon exercise of the conversion rights represented by this Debenture in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue). Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Debenture, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Debenture against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any Conversion Shares above the Conversion Price immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Conversion Shares upon the exercise of this Debenture and (iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Debenture. Before taking any action, which would result in an adjustment in the number of Conversion Shares for which this Debenture is exercisable or in the Conversion Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

m) Holder's Conversion Limitations. The Company shall not effect any conversion of this Debenture, and a Holder shall not have the right to convert any portion of this Debenture, pursuant to Section 4 or otherwise, to the extent that after giving effect to such issuance after conversion as set forth on the applicable Notice of Conversion, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates, such other Persons, "Attribution Parties")), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder, its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon conversion of this Debenture with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) conversion of the remaining, unconverted portion of this Debenture beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 8(m), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 8(m), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within two Trading Days confirm orally or in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Debenture, by the Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of this Debenture. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 8(m) and the provisions of this Section 8(m) shall continue to apply. Any increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 8(m) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Debenture.

n) Registration Rights.

i) Piggyback Registration Rights. Whenever the Company proposes to register any shares of its Common Stock under the Securities Act (other than a registration effected solely to implement an employee benefit plan or a transaction to which Rule 145 of the Securities Act is applicable, or a Registration Statement on Form S-4, S-8 or any successor form thereto or another form not available for registering the Registrable Securities for sale to the public, whether for its own account or for the account of one or more stockholders of the Company and the form of registration statement to be used may be used to register the Registrable Securities (a "Piggyback Registration"), the Company shall give prompt written notice prior to the filing of such registration statement (or its confidential submission to the SEC in draft form) to the Holders of Registrable Securities of its intention to effect such a registration and, subject to limitations set forth in this section, shall include in such registration Registrable Securities with respect to which the Company has received written requests for inclusion from the holders of Registrable Securities within 5 days after the Company's notice has been given to each such holder. The Company may postpone or withdraw the filing or effectiveness of a Piggyback Registration at any time in its sole discretion. A Piggyback Registration shall not be considered a Demand Registration for purposes of this Agreement. In connection with any offering involving an underwriting of Company securities pursuant, the Company shall not be required to include any of the Registrable Securities in such underwriting unless the holders accept the terms of the underwriting as agreed upon between the Company and its underwriters, and then only in such quantity, if any, as the underwriters in their sole discretion determine will not jeopardize the success of the offering by the Company.

ii) Demand Registration. After the earlier of Maturity Date of the Debentures or the one year anniversary of the date 100% of the Debentures have been converted into Common Stock, Holders of 51% of the Registrable Securities then outstanding may request registration under the Securities Act of all or any portion of their Registrable Securities on Form S-3, if available, or Form S-1, provided Form S-3 is not available. The request shall specify the approximate number of Registrable Securities required to be registered. Upon receipt of such request, the Company shall promptly (but in no event later than 15 days following receipt thereof) deliver notice of such request to all other holders of Registrable Securities who shall then have 15 days from the date such notice is given to notify the Company in writing of their desire to be included in such registration. The Company shall cause the registration statement to be filed (or confidentially submitted in draft form to the SEC) within 60 days after the date on which the initial request is given and shall use its commercially reasonable best efforts to cause such registration statement to be declared effective by the SEC as soon as practicable thereafter. The Company shall not be required to effect a registration statement more one time for the holders of Registrable Securities as a group; provided, that a registration statement shall not count as a requested registration statement under this section unless and until it has become effective and the Holders requesting such registration are able to register and sell at least 75% of the Registrable Securities requested to be included in such registration.

(Signature Pages Follow)

IN WITNESS WHEREOF, the parties have caused this Debenture to be duly executed by their respective duly authorized officers as of the date first above indicated.

COMPANY:

AMERGENT HOSPITALITY GROUP INC.

By: _____
Michael D. Pruitt, Chief Executive Officer

PURCHASER:

By: _____

Its: _____

[SIGNATURE PAGE TO DEBENTURE]

ATTACHMENT A

NOTICE OF CONVERSION

The undersigned hereby elects to convert amounts outstanding under the 10% Secured Convertible Debenture of Amergent Hospitality Group Inc., a Delaware corporation (the "Company"), into shares of common stock (the "Common Stock"), of the Company according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and opinions as reasonably requested by the Company in accordance therewith. No fee will be charged to the Holders for any conversion, except for such transfer taxes, if any.

Date to Effect Conversion: _____
(if no date is set, conversion date shall be the date this notice is received)

Amount of Debenture to be Converted: \$ _____

Signature: _____

Name: _____

Address: _____

ATTACHMENT B

ASSIGNMENT FORM

(To assign the foregoing Debenture, execute this form and supply required information. Do not use this form to purchase shares.)

FOR VALUE RECEIVED, the foregoing Debenture and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Phone Number: _____

Email Address: _____

Dated: _____,

Holder's Signature: _____

Holder's Address: _____

NEITHER THIS SECURITY NOR THE SECURITIES FOR WHICH THIS SECURITY IS EXERCISABLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THIS SECURITY AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

COMMON STOCK PURCHASE WARRANT

AMERGENT HOSPITALITY GROUP INC.

Warrant Shares _____

THIS COMMON STOCK PURCHASE WARRANT (the "Warrant") certifies that, for value received, _____ or its assigns (the "Holder") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after), _____, 2022 (the "Initial Exercise Date") and on or prior to the close of business on the five (5) year anniversary of the Issue Date (the "Termination Date") but not thereafter, to subscribe for and purchase from Amergent Hospitality Group Inc., a Delaware corporation (the "Company"), up to _____ (_____) shares (as subject to adjustment hereunder, the "Warrant Shares") of Common Stock. The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

Section 1. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in that certain Securities Purchase Agreement (the "Purchase Agreement"), dated _____, 2022, among the Company and the purchasers signatory thereto.

Section 2. Exercise.

a) Exercise of Warrant. Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company or the Transfer Agent (or such other office or agency that the Company may designate by notice in writing to the registered Holder at the address of the Holder appearing on the books of the Company), as applicable, of a duly executed facsimile copy or PDF copy submitted by electronic (or e-mail attachment) of the Notice of Exercise in the form attached hereto as Exhibit A ("Notice of Exercise"). Within the earlier of (i) three (3) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined in Section 2(d)(i) herein) following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the shares specified in the applicable Notice of Exercise by wire transfer or cashier's check drawn on a United States bank unless the cashless exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise form be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise within two (2) Business Days of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

b) Exercise Price. The exercise price per share of the Common Stock under this Warrant shall be \$0.50, subject to adjustment hereunder (the “Exercise Price”).

c) Cashless Exercise. This Warrant may also be exercised, in whole or in part, at such time by means of a “cashless exercise” in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 2(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 2(a) hereof on a Trading Day prior to the opening of “regular trading hours” (as defined in Rule 600(b)(64) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise or (z) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg L.P. as of the time of the Holder’s execution of the applicable Notice of Exercise if such Notice of Exercise is executed during “regular trading hours” on a Trading Day and is delivered within two (2) hours thereafter pursuant to Section 2(a) hereof or (iii) the VWAP on the date of the applicable Notice of Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is both executed and delivered pursuant to Section 2(a) hereof after the close of “regular trading hours” on such Trading Day;

(B) = the Exercise Price of this Warrant, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the characteristics of the Warrants being exercised, and the holding period of the Warrant Shares being issued may be tacked on to the holding period of this Warrant. The Company agrees not to take any position contrary to this Section 2(c).

“Bid Price” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the bid price of the Common Stock for the time in question (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported in the “Pink Sheets” published by OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Purchasers of a majority in interest of the Debentures then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported in the “Pink Sheets” published by OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Purchasers of a majority in interest of the Debentures then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

Notwithstanding anything herein to the contrary, on the Termination Date, this Warrant shall be automatically exercised via cashless exercise pursuant to this Section 2(c).

d) Mechanics of Exercise.

i. Delivery of Warrant Shares Upon Exercise. Warrant Shares purchased hereunder shall be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's or its designee's balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by the Holder or (B) the Warrant Shares are eligible for resale by the Holder without volume or manner-of-sale limitations pursuant to Rule 144, and otherwise by physical delivery of a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by the date that is the earlier of (i) the earlier of (A) three (3) Trading Days after the delivery to the Company of the Notice of Exercise and (B) one (1) Trading Day after delivery of the aggregate Exercise Price to the Company and (ii) the number of Trading Days comprising the Standard Settlement Period after the delivery to the Company of the Notice of Exercise (such date, the "Warrant Share Delivery Date"). Upon delivery of the Notice of Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received within the earlier of (i) three Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period following delivery of the Notice of Exercise. If the Company fails for any reason to deliver to the Holder the Warrant Shares subject to a Notice of Exercise by the Warrant Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each \$1,000 of Warrant Shares subject to such exercise (based on the VWAP of the Common Stock on the date of the applicable Notice of Exercise), \$10 per Trading Day (increasing to \$20 per Trading Day on the fifth Trading Day after such liquidated damages begin to accrue) for each Trading Day after such Warrant Share Delivery Date until such Warrant Shares are delivered or Holder rescinds such exercise. The Company agrees to maintain a transfer agent that is a participant in the FAST program so long as this Warrant remains outstanding and exercisable. As used herein, "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise.

ii. Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

iii. Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date (subject to receipt of the aggregate exercise price for the applicable exercise (other than in the case of a Cashless Exercise)), then the Holder will have the right to rescind such exercise.

iv. Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares in accordance with the provisions of Section 2(d)(i) above pursuant to an exercise on or before the Warrant Share Delivery Date (subject to receipt of the aggregate Exercise Price for the applicable exercise (other than in the case of a Cashless Exercise)), and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "Buy-In"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted exercise of shares of Common Stock with an aggregate sale price giving rise to such purchase obligation of \$10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder \$1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

v. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

vi. Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form, in the form attached hereto as Exhibit A, duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares.

vii. Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

Section 3. Certain Adjustments.

a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to all record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

c) Pro Rata Distributions. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock as a class, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution.

d) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a “Fundamental Transaction”), then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder, the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the “Alternate Consideration”) receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Transaction. For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the “Successor Entity”) to assume in writing all of the obligations of the Company under this Warrant and the other Transaction Documents in accordance with the provisions of this Section 3(d) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant and the other Transaction Documents referring to the “Company” shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

f) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

g) Notice to Holder.

i. Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly deliver to the Holder by facsimile or email a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by facsimile or email to the Holder at its last facsimile number or email address as it shall appear upon the Warrant Register of the Company, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall promptly file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 4. Transfer of Warrant.

a) Transferability. Subject to compliance with any applicable securities laws and the conditions set forth in Section 4(d) hereof and to the provisions of Section 4.1 of the Purchase Agreement, this Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date the Holder delivers an assignment form to the Company assigning this Warrant in full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the original Issue Date and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the “Warrant Register”), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

d) Transfer Restrictions. If, at the time of the surrender of this Warrant in connection with any transfer of this Warrant, the transfer of this Warrant shall not be either (i) registered pursuant to an effective registration statement under the Securities Act and under applicable state securities or blue sky laws or (ii) eligible for resale without volume or manner-of-sale restrictions or current public information requirements pursuant to Rule 144, the Company may require, as a condition of allowing such transfer, that the Holder or transferee of this Warrant, as the case may be, comply with the provisions of Section 5.7 of the Purchase Agreement.

e) Representation by the Holder. The Holder, by the acceptance hereof, represents and warrants that it is acquiring this Warrant and, upon any exercise hereof, will acquire the Warrant Shares issuable upon such exercise, for its own account and not with a view to or for distributing or reselling such Warrant Shares or any part thereof in violation of the Securities Act or any applicable state securities law, except pursuant to sales registered or exempted under the Securities Act.

Section 5. Miscellaneous.

a) No Rights as Stockholder Until Exercise. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3.

b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then, such action may be taken or such right may be exercised on the next succeeding Business Day.

d) Authorized Shares. The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue). Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant and (iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant. Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

e) Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be determined in accordance with the provisions of the Purchase Agreement.

f) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered and the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state and federal securities laws.

g) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies, notwithstanding the fact that all rights hereunder terminate on the Termination Date. If the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

h) Notices. Any notice, request or other document required or permitted to be given or delivered to the Holder by the Company shall be delivered in accordance with the notice provisions of the Purchase Agreement.

i) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

j) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

k) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

l) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

m) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

n) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

o) Acceptance. Receipt of this Warrant by the Holder shall constitute acceptance of and agreement to all of the terms and conditions contained herein.

p) Holder's Exercise Limitations. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates, such other Persons, "Attribution Parties")), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder, its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 2(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 2(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within two Trading Days confirm orally or in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 2(e) and the provisions of this Section 2(e) shall continue to apply. Any increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(e) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant.

q) Registration Rights.

i) Piggyback Registration Rights. Whenever the Company proposes to register any shares of its Common Stock under the Securities Act (other than a registration effected solely to implement an employee benefit plan or a transaction to which Rule 145 of the Securities Act is applicable, or a Registration Statement on Form S-4, S-8 or any successor form thereto or another form not available for registering the Registrable Securities for sale to the public, whether for its own account or for the account of one or more stockholders of the Company and the form of registration statement to be used may be used to register the Registrable Securities (a "Piggyback Registration"), the Company shall give prompt written notice prior to the filing of such registration statement (or its confidential submission to the SEC in draft form) to the Holders of Registrable Securities of its intention to effect such a registration and, subject to limitations set forth in this section, shall include in such registration Registrable Securities with respect to which the Company has received written requests for inclusion from the holders of Registrable Securities within 5 days after the Company's notice has been given to each such holder. The Company may postpone or withdraw the filing or effectiveness of a Piggyback Registration at any time in its sole discretion. A Piggyback Registration shall not be considered a Demand Registration for purposes of this Agreement. In connection with any offering involving an underwriting of Company securities pursuant, the Company shall not be required to include any of the Registrable Securities in such underwriting unless the holders accept the terms of the underwriting as agreed upon between the Company and its underwriters, and then only in such quantity, if any, as the underwriters in their sole discretion determine will not jeopardize the success of the offering by the Company.

ii) Demand Registration. After the earlier of Maturity Date of the Debentures or the one year anniversary of the date 100% of the Debentures have been converted into Common Stock, Holders of 51% of the Registrable Securities then outstanding may request registration under the Securities Act of all or any portion of their Registrable Securities on Form S-3, if available, or Form S-1, provided Form S-3 is not available. The request shall specify the approximate number of Registrable Securities required to be registered. Upon receipt of such request, the Company shall promptly (but in no event later than 15 days following receipt thereof) deliver notice of such request to all other holders of Registrable Securities who shall then have 15 days from the date such notice is given to notify the Company in writing of their desire to be included in such registration. The Company shall cause the registration statement to be filed (or confidentially submitted in draft form to the SEC) within 60 days after the date on which the initial request is given and shall use its commercially reasonable best efforts to cause such registration statement to be declared effective by the SEC as soon as practicable thereafter. The Company shall not be required to effect a registration statement more one time for the holders of Registrable Securities as a group; provided, that a registration statement shall not count as a requested registration statement under this section unless and until it has become effective and the Holders requesting such registration are able to register and sell at least 75% of the Registrable Securities requested to be included in such registration.

(Signature Page Follows)

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

AMERGENT HOSPITALITY GROUP INC.,
a Delaware corporation

Name: Michael D. Pruitt
Its: Chief Executive Officer

HOLDER:

INVESTING ENTITY

Printed Name of Investing Entity

By: _____
Printed Name: _____
Its: _____

OR

INDIVIDUAL

Signature: _____
Printed Name: _____

[SIGNATURE PAGE TO WARRANT]

NOTICE OF EXERCISE

TO: AMERGENT HOSPITALITY GROUP INC.

(1) The undersigned hereby elects to purchase _____ Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of (check applicable box):

☐ in lawful money of the United States; or

☐ [if permitted the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

The Warrant Shares shall be delivered to the following DWAC Account Number:

(4) Accredited Investor. The undersigned is an “accredited investor” as defined in Regulation D promulgated under the Securities Act of 1933, as amended.

[SIGNATURE OF HOLDER]

Name of Investing Entity:

Signature of Authorized Signatory of Investing Entity:

Name of Authorized Signatory:

Title of Authorized Signatory:

Date:

ASSIGNMENT FORM

(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Phone Number: _____

Email Address: _____

Dated: _____, _____

Holder's Signature: _____

Holder's Address: _____

Name	Jurisdiction of Incorporation	Percent Owned
AMERGENT HOSPITALITY GROUP, INC.	DE, USA	
American Roadside Burgers, Inc.	DE, USA	100%
American Burger Ally, LLC	NC, USA	100%
American Burger Morehead, LLC	NC, USA	100%
American Burger Prosperity, LLC	NC, USA	50%
American Roadside Burgers Smithtown, Inc.	DE, USA	100%
BGR Acquisition, LLC	NC, USA	100%
BGR Franchising, LLC	VA, USA	100%
BGR Operations, LLC	VA, USA	100%
BGR Acquisition 1, LLC	NC, USA	100%
BGR Annapolis, LLC	MD, USA	100%
BGR Arlington, LLC	VA, USA	46%
BGR Columbia, LLC	MD, USA	100%
BGR Michigan Ave, LLC	DC, USA	100%
BGR Mosaic, LLC	VA, USA	100%
BGR Old Keene Mill, LLC	VA, USA	100%
BGR Washingtonian, LLC	MD, USA	46%
Capitol Burger, LLC	MD, USA	100%
BT Burger Acquisition, LLC	NC, USA	100%
BT's Burgerjoint Rivergate LLC	NC, USA	100%
BT's Burgerjoint Sun Valley, LLC	NC, USA	100%
LBB Acquisition, LLC	NC, USA	100%
Cuarto LLC	OR, USA	100%
LBB Acquisition 1 LLC	OR, USA	100%
LBB Hassalo LLC	OR, USA	80%
LBB Platform LLC	OR, USA	80%
LBB Capitol Hill LLC	WA, USA	50%
LBB Franchising LLC	NC, USA	100%
LBB Green Lake LLC	OR, USA	50%
LBB Lake Oswego LLC	OR, USA	100%
LBB Magnolia Plaza LLC	NC, USA	50%
LBB Multnomah Village LLC	OR, USA	50%
LBB Progress Ridge LLC	OR, USA	50%
LBB Rea Farms LLC	NC, USA	50%
LBB Wallingford LLC	WA, USA	50%
LBB Downtown PDX LLC	OR, USA	100%
Noveno LLC	OR, USA	100%
Octavo LLC	OR, USA	100%
Primero LLC	OR, USA	100%
Quinto LLC	OR, USA	100%
Segundo LLC	OR, USA	100%
Septimo LLC	OR, USA	100%
Sexto LLC	OR, USA	100%
LBB University of Oregon LLC	OR, USA	100%
Jantzen Beach Wings, LLC	OR, USA	100%
Oregon Owl's Nest, LLC	OR, USA	100%
West End Wings LTD (sold 9/30/2021)	United Kingdom	100%
Pie Squared Holdings LLC	DE, USA	100%
PizzaRev Franchising LLC	DE, USA	100%
Pie Squared Pizza LLC	CA, USA	100%
Pie Squared Austin LLC	DE, USA	100%
PizzaRev IP Holdings LLC	DE, USA	100%

AMERGENT HOSOPITALITY GROUP INC.

AFFILIATE GUARANTEES

Oz Rey, LLC holds a first priority secured note with a principal balance of \$4.0 million, guaranteed by all of Amergent's subsidiaries. Oz Rey, LLC's security interest is subordinate only to certain interests of holders of Series 2 Preferred.

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002**

I, Michael D. Pruitt, certify that:

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

Date: April 15, 2022

/s/ Michael D. Pruitt

Michael D. Pruitt
Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002**

I, Stephen Hoelscher, certify that:

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

Date: April 15, 2022

/s/ Stephen Hoelscher

Stephen Hoelscher
Chief Financial Officer
(Principal Financial Officer)

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of Amergent Hospitality Group Inc., a Delaware corporation (the “Company”) for the year ended December 31, 2021, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), Michael D. Pruitt, Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge and belief:

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

AMERGENT HOSPITALITY GROUP INC.

Date: April 15, 2022

By: /s/ Michael D. Pruitt
Michael D. Pruitt
Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of Amergent Hospitality Group Inc., a Delaware corporation (the “Company”) for the year ended December 31, 2021, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), Stephen Hoelscher, Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge and belief, that:

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

AMERGENT HOSPITALITY GROUP INC.

Date: April 15, 2022

By: /s/ Stephen Hoelscher
Stephen Hoelscher
Chief Financial Officer
(Principal Financial Officer)

Amergent Hospitality Group Inc. 2021 Equity Incentive Plan

1. Purpose of the Plan

This Plan is intended to promote the interests of the Company (as defined below) and its shareholders by providing employees non-employee directors, consultants, and other selected service providers of the Company, who are largely responsible for the management, growth, and protection of the business of the Company, with incentives and rewards to encourage them to continue in the service of the Company.

2. Definitions

As used in the Plan or in any instrument governing the terms of any award granted under the Plan, the following definitions apply to the terms indicated below:

- (a) “Award Agreement” means a written agreement, in a form determined by the Committee from time to time, entered into by each Participant and the Company, evidencing the grant of a Stock Incentive Award under the Plan.
 - (b) “Board of Directors” means the Board of Directors of Amergent Hospitality Group Inc., a Delaware corporation.
 - (c) “Change in Control” means (i) any one person, or more than one person acting as a group (as defined under Treasury Regulation § 1.409A-3(i)(5)(v)(B)) acquires ownership of stock of the Company that, together with stock held by such person or group, constitutes more than fifty percent of the total fair market value or total Voting Power of the stock of the Company; or (ii) any one person, or more than one person acting as a group (as defined under Treasury Regulation § 1.409A-3(i)(5)(v)(B)) acquires (or has acquired during the twelve-month period ending on the date of the most recent acquisition by such person or persons) ownership of stock of the Company possessing thirty percent or more of the total Voting Power of the stock of the Company; or (iii) a majority of members of the Board of Directors is replaced during any twelve-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board of Directors before the date of each appointment or election; or (iv) any one person, or more than one person acting as a group (as defined in Treasury Regulation § 1.409A-3(i)(5)(v)(B)) acquires (or has acquired during the twelve-month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that have a total gross fair market value equal to or more than forty percent of the total gross fair market value of all of the assets of the Company immediately before such acquisition or acquisitions. For purposes of subsection (iv), gross fair market value means the value of the assets of the Company, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets. The foregoing subsections (i) through (iv) shall be interpreted in a manner that is consistent with the Treasury Regulations promulgated pursuant to section 409A of the Code so that all, and only, such transactions or events that could qualify as a “change-in-control event” within the meaning of Treasury Regulation § 1.409A-3(i)(5)(i) will be deemed to be a Change in Control for purposes of this Plan.
 - (d) “Code” means the Internal Revenue Code of 1986, as amended from time to time, and all regulations, interpretations, and administrative guidance issued thereunder.
 - (e) “Committee” means the Compensation Committee of the Board of Directors or such other committee as the Board of Directors shall appoint from time to time to administer the Plan and to otherwise exercise and perform the authority and functions assigned to the Committee under the terms of the Plan.
 - (f) “Common Stock” means Amergent Hospitality Group Inc. common stock, \$0.0001 par value per share, or any other security into which the common stock shall be changed pursuant to the adjustment provisions of Section 9. of the Plan.
 - (g) “Company” means Amergent Hospitality Group Inc., a Delaware corporation (and any successor thereto).
 - (h) “Effective Date” means November 25, 2021.
-

(i) “Employment” means the period during which an individual is classified or treated by the Company as an employee, non-employee director, consultant, or other service provider of the Company, as applicable.

(j) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(k) “Fair Market Value” means, with respect to a share of Common Stock, as of the applicable date of determination or if the market is not open for trading on such date, the immediately preceding day on which the market is open for trading, the closing price as reported on the date of determination on the principal securities exchange on which shares of Common Stock are then listed or admitted to trading (or if shares of Common Stock are then principally traded on a national securities exchange, in the reported “composite transactions” for such exchange). In the event that the price of a share of Common Stock shall not be so reported, the Fair Market Value of a share of Common Stock shall be determined by the Committee in its sole discretion.

(l) “Option” means a stock option to purchase shares of Common Stock granted to a Participant pursuant to

Section 6.

(m) “Other Stock-Based Award” means an award granted to a Participant pursuant to Section 7.

(n) “Participant” means an employee, consultant or director of the Company who is eligible to participate in the Plan and to whom one or more Stock Incentive Awards have been granted pursuant to the Plan and have not been fully settled or cancelled and, following the death of any such Person, his successors, heirs, executors, and administrators, as the case may be.

(o) “Person” means a “person” as such term is used in section 13(d) and 14(d) of the Exchange Act, including any “group” within the meaning of section 13(d)(3) under the Exchange Act.

(p) “Plan” means the 2020 Amergent Hospitality Group Inc. Equity Incentive Plan, as it may be amended from time to time.

(q) “Securities Act” means the Securities Act of 1933, as amended.

(r) “Stock Incentive Award” means an Option or Other Stock-Based Award granted pursuant to the terms of the Plan.

(s) “Voting Power” means the number of votes available to be cast (determined by reference to the maximum number of votes entitled to be cast by the holders of Voting Securities, or by the holders of any Voting Securities for which other Voting Securities may be convertible, exercisable, or exchangeable, upon any matter submitted to shareholders where the holders of all Voting Securities vote together as a single class) by the holders of Voting Securities.

(t) “Voting Securities” means any securities or other ownership interests of an entity entitled, or which may be entitled, to matters submitted to Persons holding such securities or other ownership interests in such entity generally (whether or not entitled to vote in the general election of directors), or securities or other ownership interests which are convertible into, or exercisable in exchange for, such Voting Securities, whether or not subject to the passage of time or any contingency.

3. Stock Subject to the Plan

(a) Stock Subject to the Plan

The maximum number of shares of Common Stock that may be covered by Stock Incentive Awards granted under the Plan shall not exceed 2,000,000 shares of Common Stock in the aggregate. Out of such aggregate, the maximum number of shares of Common Stock that may be covered by Options that are designated as “incentive stock options” within the meaning of section 422 of the Code shall not exceed 2,000,000 shares of Common Stock. The maximum number of shares referred to in the preceding sentences of this Section 3.(a) shall in each case be subject to adjustment as provided in Section 9. and the following provisions of this Section 3. Of the shares described, one hundred percent may be delivered in connection with “full-value Awards,” meaning Stock Incentive Awards other than Options or stock appreciation rights. Any shares granted under Options or stock appreciation rights shall be counted against the share limit on a one-for-one basis and any shares granted as full-value Stock Incentive Awards shall be counted against the share limit on a one-for-one basis. Shares of Common Stock issued under the Plan may be authorized and unissued shares, treasury shares, shares purchased by the Company in the open market, or any combination of the preceding categories as the Committee determines in its sole discretion.

For purposes of the preceding paragraph, shares of Common Stock covered by Stock Incentive Awards shall only be counted as used to the extent they are actually issued and delivered to a Participant (or such Participant’s permitted transferees as described in the Plan) pursuant to the Plan; provided, however, that if a Stock Incentive Award is settled for cash or if shares of Common Stock are withheld to pay the exercise price of an Option or to satisfy any tax withholding requirement in connection with a Stock Incentive Award, the shares issued (if any) in connection with such settlement, the shares in respect of which the Stock Incentive Award was cash-settled, and the shares withheld, will be deemed delivered for purposes of determining the number of shares of Common Stock that are available for delivery under the Plan. In addition, if shares of Common Stock are issued subject to conditions which may result in the forfeiture, cancellation, or return of such shares to the Company, any portion of the shares forfeited, cancelled or returned shall be treated as not issued pursuant to the Plan. In addition, if shares of Common Stock owned by a Participant (or such Participant’s permitted transferees as described in the Plan) are tendered (either actually or through attestation) to the Company in payment of any obligation in connection with a Stock Incentive Award, the number of shares tendered shall be added to the number of shares of Common Stock that are available for delivery under the Plan.

Shares of Common Stock covered by Stock Incentive Awards granted pursuant to the Plan in connection with the assumption, replacement, conversion, or adjustment of outstanding equity-based awards in the context of a corporate acquisition or merger (within the meaning of Nasdaq Listing Rule 5635) shall not count as used under the Plan for purposes of this Section 3.

(b) Individual Award Limits

Subject to adjustment as provided in Section 8., the maximum number of shares of Common Stock that may be covered by Stock Incentive Awards granted under the Plan to any Participant in any calendar year shall not exceed 2,000,000 shares.

(c) Non-Employee Director Limits

Subject to adjustment as provided in Section 8., the maximum number of shares of Common Stock that may be covered by Stock Incentive Awards granted under the Plan to any non-employee director in any calendar year shall not exceed 500,000 shares.

4. Administration of the Plan

The Plan shall be administered by a Committee of the Board of Directors consisting of two or more persons, each of whom qualifies as a “non-employee director” (within the meaning of Rule 16b-3 promulgated under section 16 of the Exchange Act) and as “independent” as required by Nasdaq or any security exchange on which the Common Stock is listed, in each case if and to the extent required by applicable law or necessary to meet the requirements of such rule, section or listing requirement at the time of determination. The Committee shall, consistent with the terms of the Plan, from time to time designate those individuals who shall be granted Stock Incentive Awards under the Plan and the amount, type, and other terms and conditions of such Stock Incentive Awards. All of the powers and responsibilities of the Committee under the Plan may be delegated by the Committee, in writing, to any subcommittee thereof, in which case the acts of such subcommittee shall be deemed to be acts of the Committee hereunder. The Committee may also from time to time authorize a subcommittee consisting of one or more members of the Board of Directors (including members who are employees of the Company) or employees of the Company to grant Stock Incentive Awards to persons who are not “executive officers” of the Company (within the meaning of Rule 16a-1 under the Exchange Act), subject to such restrictions and limitations as the Committee may specify and to the requirements of section 157 of the Delaware General Corporation Law.

The Committee shall have full discretionary authority to administer the Plan, including discretionary authority to interpret and construe any and all provisions of the Plan and any Award Agreement thereunder, and to adopt, amend, and rescind from time to time such rules and regulations for the administration of the Plan, including rules and regulations related to sub-plans established for the purpose of satisfying applicable foreign laws and/or qualifying for preferred tax treatment under applicable foreign tax laws, as the Committee may deem necessary or appropriate. Decisions of the Committee shall be final, binding, and conclusive on all parties. For the avoidance of doubt, the Committee may exercise all discretion granted to it under the Plan in a non-uniform manner among Participants.

The Committee may delegate the administration of the Plan to one or more officers or employees of the Company, and such administrator(s) may have the authority to execute and distribute Award Agreements, to maintain records relating to Stock Incentive Awards, to process or oversee the issuance of Common Stock under Stock Incentive Awards, to interpret and administer the terms of Stock Incentive Awards, and to take such other actions as may be necessary or appropriate for the administration of the Plan and of Stock Incentive Awards under the Plan, provided that in no case shall any such administrator be authorized (i) to grant Stock Incentive Awards under the Plan (except in connection with any delegation made by the Committee pursuant to the first paragraph of this Section 4.), (ii) to take any action inconsistent with section 409A of the Code, or (iii) to take any action inconsistent with applicable provisions of the Delaware General Corporation Law. Any action by any such administrator within the scope of its delegation shall be deemed for all purposes to have been taken by the Committee and, except as otherwise specifically provided, references in this Plan to the Committee shall include any such administrator. The Committee and, to the extent it so provides, any subcommittee, shall have sole authority to determine whether to review any actions and/or interpretations of any such administrator, and if the Committee shall decide to conduct such a review, any such actions and/or interpretations of any such administrator shall be subject to approval, disapproval, or modification by the Committee.

On or after the date of grant of an Incentive Award under the Plan, the Committee may (i) accelerate the date on which any such Incentive Award becomes vested, exercisable or transferable, as the case may be, (ii) extend the term of any such Incentive Award, including, without limitation, extending the period following a termination of a Participant's Employment during which any such Incentive Award may remain outstanding, (iii) waive any conditions to the vesting, exercisability or transferability, as the case may be, of any such Incentive Award or (iv) provide for the payment of dividends or dividend equivalents with respect to any such Incentive Award; provided, that the Committee shall not have any such authority to the extent that the grant of such authority would cause any tax to become due under Section 409A of the Code. Notwithstanding anything herein to the contrary, the Company shall not reprice any stock option (within the meaning of Nasdaq Listing Rule 5635(c) and any other formal or informal guidance issued by Nasdaq) without the approval of the shareholders of the Company, nor shall the Company purchase any underwater options for cash. No member of the Committee shall be liable for any action, omission, or determination relating to the Plan, and the Company shall indemnify and hold harmless each member of the Committee and each other director or employee of the Company to whom any duty or power relating to the administration or interpretation of the Plan has been delegated, against any cost or expense (including counsel fees) or liability (including any sum paid in settlement of a claim with the approval of the Committee) arising out of any action, omission, or determination relating to the Plan, unless, in either case, such action, omission, or determination was taken or made by such member, director, or employee in bad faith and without reasonable belief that it was in the best interests of the Company.

5. Eligibility

The Persons who shall be eligible to receive Stock Incentive Awards pursuant to the Plan shall be those employees non-employee directors, consultants and other selected service providers of the Company whom the Committee shall select from time to time, including officers of the Company, whether or not they are directors. Each Stock Incentive Award granted under the Plan shall be evidenced by an Award Agreement.

6. Options

The Committee may from time to time grant Options on such terms as it shall determine, subject to the terms and conditions set forth in the Plan. The Award Agreement shall clearly identify such Option as either an “incentive stock option” within the meaning of section 422 of the Code or as a non-qualified stock option.

(a) Exercise Price

The exercise price per share of Common Stock covered by any Option shall be not less than one hundred percent of the Fair Market Value of a share of Common Stock on the date on which such Option is granted, other than assumptions in accordance with a corporate acquisition or merger as described in Section 3.

(b) Term and Exercise of Options

(1) Each Option shall become vested and exercisable on such date or dates, during such period and for such number of shares of Common Stock as shall be determined by the Committee on or after the date such Option is granted, subject to Approval as provided in Section 21.; provided, further that no Option shall be exercisable after the expiration of ten years from the date such Option is granted; and, provided, further, that each Option shall be subject to earlier termination, expiration, or cancellation as provided in the Plan or the Award Agreement.

(2) Each Option shall be exercisable in whole or in part; provided, however that no partial exercise of an Option shall be for an aggregate exercise price of less than \$1,000. The partial exercise of an Option shall not cause the expiration, termination, or cancellation of the remaining portion thereof.

(3) An Option shall be exercised by such methods and procedures as the Committee determines from time to time, including without limitation through net physical settlement or other method of cashless exercise.

(c) Special Rules for Incentive Stock Options

(1) The aggregate Fair Market Value of shares of Common Stock with respect to which “incentive stock options” (within the meaning of section 422 of the Code) are exercisable for the first time by a Participant during any calendar year under the Plan and any other stock option plan of the Company or any of its “subsidiaries” (within the meaning of section 424 of the Code) shall not exceed \$100,000. Such Fair Market Value shall be determined as of the date on which each such stock option is granted. In the event that the aggregate Fair Market Value of shares of Common Stock with respect to such incentive stock options exceeds \$100,000, then incentive stock options granted hereunder to such Participant shall, to the extent and in the order required by regulations promulgated under the Code (or any other authority having the force of regulations), automatically be deemed to be non-qualified stock options, but all other terms and provisions of such stock options shall remain unchanged. In the absence of such regulations (and authority), or in the event such regulations (or authority) require or permit a designation of the Options which shall cease to constitute incentive stock options, incentive stock options granted hereunder shall, to the extent of such excess and in the order in which they were granted, automatically be deemed to be non-qualified stock options, but all other terms and provisions of such stock options shall remain unchanged.

(2) Incentive stock options may only be granted to individuals who are employees of the Company. No incentive stock option may be granted to an individual if, at the time of the proposed grant, such individual owns stock possessing more than ten percent of the total combined Voting Power of all classes of stock of the Company or any of its “subsidiaries” (within the meaning of section 424 of the Code), unless (i) the exercise price of such incentive stock option is at least 110 percent of the Fair Market Value of a share of Common Stock at the time such incentive stock option is granted and (ii) such incentive stock option is not exercisable after the expiration of five years from the date such incentive stock option is granted.

7. Other Stock-Based Awards

The Committee may from time to time grant equity-based or equity-related awards not otherwise described herein in such amounts and on such terms as it shall determine, subject to the terms and conditions set forth in the Plan, including Approval requirement set forth in Section 21. Without limiting the generality of the preceding sentence, each such Other Stock-Based Award may (i) involve the transfer of actual shares of Common Stock to Participants, either at the time of grant or thereafter, or payment in cash or otherwise of amounts based on the value of shares of Common Stock, (ii) be subject to performance-based and/or service-based conditions, (iii) be in the form of stock appreciation rights, phantom stock, restricted stock, restricted stock units, performance shares, deferred share units, or share-denominated performance units, and (iv) be designed to comply with applicable laws of jurisdictions other than the United States; provided, that each Other Stock-Based Award shall be denominated in, or shall have a value determined by reference to, a number of shares of Common Stock that is specified at the time of the grant of such Stock Incentive Award.

8. Adjustment upon Certain Changes

Subject to any action by the shareholders of Company required by law, applicable tax rules or the rules of any exchange on which shares of common stock of Company are listed for trading:

(a) Shares Available for Grants

In the event of any change in the number of shares of Common Stock outstanding by reason of any stock dividend or split, recapitalization, merger, consolidation, combination, or exchange of shares or similar corporate change, the maximum aggregate number or type of shares of Common Stock with respect to which the Committee may grant Stock Incentive Awards, the maximum number of shares of Common Stock that may be covered by Options that are designated as “incentive stock options” within the meaning of section 422 of the Code and the maximum aggregate number of shares of Common Stock with respect to which the Committee may grant Stock Incentive Awards to any individual Participant in any year and to any non-employee director shall be appropriately adjusted or substituted by the Committee. In the event of any change in the type or number of shares of Common Stock of Company outstanding by reason of any other event or transaction, the Committee shall, to the extent deemed appropriate by the Committee, make such adjustments to the type or number of shares of Common Stock with respect to which Stock Incentive Awards may be granted.

(b) Increase or Decrease in Issued Shares Without Consideration

In the event of any increase or decrease in the number of issued shares of Common Stock resulting from a subdivision or consolidation of shares of Common Stock or the payment of a stock dividend (but only on the shares of Common Stock), or any other increase or decrease in the number of such shares effected without receipt or payment of consideration by the Company, the Committee shall, to the extent deemed appropriate by the Committee, adjust the type or number of shares of Common Stock subject to each outstanding Stock Incentive Award and the exercise price per share of Common Stock of each such Stock Incentive Award.

(c) Certain Mergers and Other Transactions

In the event of any merger, consolidation, or similar transaction as a result of which the holders of shares of Common Stock receive consideration consisting exclusively of securities of the surviving corporation in such transaction, the Committee shall, to the extent deemed appropriate by the Committee, adjust each Stock Incentive Award outstanding on the date of such merger or consolidation so that it pertains and applies to the securities which a holder of the number of shares of Common Stock subject to such Stock Incentive Award would have received in such merger or consolidation.

In the event of (i) a dissolution or liquidation of Company, (ii) a sale of all or substantially all of the Company's assets (on a consolidated basis), (iii) a merger, consolidation, or similar transaction involving Company in which the holders of shares of Common Stock receive securities and/or other property, including cash, the Committee shall, to the extent deemed appropriate by the Committee, have the power to:

(i) cancel, effective immediately prior to the occurrence of such event, each Stock Incentive Award (whether or not then exercisable or vested), and, in full consideration of such cancellation, pay to the Participant to whom such Stock Incentive Award was granted an amount in cash, for each share of Common Stock subject to such Stock Incentive Award, equal to the value, as determined by the Committee, of such Stock Incentive Award, provided that with respect to any outstanding Option such value shall be equal to the excess of (A) the value, as determined by the Committee, of the property (including cash) received by the holder of a share of Common Stock as a result of such event over (B) the exercise price of such Option; or

(ii) provide for the exchange of each Stock Incentive Award (whether or not then exercisable or vested) for a Stock Incentive Award with respect to (A) some or all of the property which a holder of the number of shares of Common Stock subject to such Stock Incentive Award would have received in such transaction or (B) securities of the acquiror or surviving entity and, incident thereto, make an equitable adjustment as determined by the Committee in the exercise price of the Stock Incentive Award, or the number of shares or amount of property subject to the Stock Incentive Award or provide for a payment (in cash or other property) to the Participant to whom such Stock Incentive Award was granted in partial consideration for the exchange of the Stock Incentive Award.

(d) Other Changes

In the event of any change in the capitalization of Company, corporate change, corporate transaction or other event other than those specifically referred to in Sections 9(a), (b) or (c), the Committee shall, to the extent deemed appropriate by the Committee, make such adjustments in the number and class of shares subject to Stock Incentive Awards outstanding on the date on which such change occurs and in such other terms of such Stock Incentive Awards as the Committee deems appropriate.

(e) No Other Rights

Except as expressly provided in the Plan or any Award Agreement, no Participant shall have any rights by reason of any subdivision or consolidation of shares of stock of any class, the payment of any dividends or dividend equivalents, any increase or decrease in the number of shares of stock of any class or any dissolution, liquidation, merger, or consolidation of the Company or any other corporation. Except as expressly provided in the Plan, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number of shares or amount of other property subject to, or the terms related to, any Stock Incentive Award.

(f) Savings Clause

No provision of this Section 8. shall be given effect to the extent that such provision would cause any tax to become due under section 409A of the Code.

9. Change in Control; Termination of Employment

(a) Change in Control

Unless otherwise provided in an Award Agreement, in the event of a Change in Control of the Company to the extent the successor company does not assume or substitute for a Stock Incentive Award (or in which the Company is the ultimate parent corporation and does not continue the Stock Incentive Award), then immediately prior to the Change in Control: (i) those Options and stock appreciation rights outstanding as of the date of the Change in Control that are not assumed or substituted for (or continued) shall immediately vest and become fully exercisable, and (ii) the restrictions, other limitations and other conditions applicable to any Other Stock-Based Awards or any other Awards that are not assumed or substituted for (or continued) shall lapse, and such Other Stock-Based Awards or such other Awards shall become free of all restrictions, limitations, and conditions and become fully vested and transferable to the full extent of the original grant.

(b) Termination of Employment

(1) Except as to any awards constituting stock rights subject to section 409A of the Code, termination of Employment shall mean a separation from service within the meaning of section 409A of the Code, unless the Participant is retained as a consultant pursuant to a written agreement and such agreement provides otherwise. Without limiting the generality of the foregoing, the Committee shall determine whether an authorized leave of absence, or absence in military or government service, shall constitute termination of Employment, provided that a Participant who is an employee will not be deemed to cease employment in the case of any leave of absence approved by the Company. Furthermore, no payment shall be made with respect to any Stock Incentive Awards under the Plan that are subject to section 409A of the Code as a result of any such authorized leave of absence or absence in military or government service unless such authorized leave or absence constitutes a separation from service for purposes of section 409A of the Code and the regulations promulgated thereunder.

(2) The Award Agreement shall specify the consequences with respect to such Stock Incentive Awards of the termination of Employment of the Participant holding the Stock Incentive Awards.

(3) A Participant who ceases to be an employee of the Company but continues, or simultaneously commences, services as a director of the Company shall be deemed to continue Employment for purposes of the Plan.

10. Rights Under the Plan

No Person shall have any rights as a shareholder with respect to any shares of Common Stock covered by or relating to any Stock Incentive Award until the date of the issuance of such shares on the books and records of the Company Except as otherwise expressly provided in Section 8. hereof, no adjustment of any Stock Incentive Award shall be made for dividends or other rights for which the record date occurs prior to the date of such issuance. Nothing in this Section 10. is intended, or should be construed, to limit authority of the Committee to cause the Company to make payments based on the dividends that would be payable with respect to any share of Common Stock if it were issued or outstanding, or from granting rights related to such dividends.

The Company shall not have any obligation to establish any separate fund or trust or other segregation of assets to provide for payments under the Plan. To the extent any person acquires any rights to receive payments hereunder from the Company, such rights shall be no greater than those of an unsecured creditor.

11. No Special Employment Rights; No Right to Stock Incentive Awards

(a) Nothing contained in the Plan or any Award Agreement shall confer upon any Participant any right with respect to the continuation of his or her Employment by the Company or interfere in any way with the right of the Company at any time to terminate such Employment or to increase or decrease the compensation of the Participant from the rate in existence at the time of the grant of a Stock Incentive Award.

(b) No person shall have any claim or right to receive a Stock Incentive Award hereunder. The Committee's granting of a Stock Incentive Award to a Participant at any time shall neither require the Committee to grant a Stock Incentive Award to such Participant or any other Participant or other person at any time nor preclude the Committee from making subsequent grants to such Participant or any other Participant or other person.

12. Securities Matters

(a) The Company shall be under no obligation to affect the registration pursuant to the Securities Act of any shares of Common Stock to be issued hereunder or to effect similar compliance under any state or local laws. Notwithstanding anything herein to the contrary, the Company shall not be obligated to cause to be issued shares of Common Stock pursuant to the Plan unless and until the Company is advised by its counsel that the issuance is in compliance with all applicable laws, regulations of governmental authority, and the requirements of any securities exchange on which shares of Common Stock are traded. The Committee may require, as a condition to the issuance of shares of Common Stock pursuant to the terms hereof, that the recipient of such shares make such covenants, agreements, and representations, and that any related certificates representing such shares bear such legends, as the Committee, in its sole discretion, deems necessary or desirable.

(b) The exercise or settlement of any Stock Incentive Award (including, without limitation, any Option) granted hereunder shall only be effective at such time as counsel to Company shall have determined that the issuance and delivery of shares of Common Stock pursuant to such exercise is in compliance with all applicable laws, regulations of governmental authority, and the requirements of any securities exchange on which shares of Common Stock are traded. Company may, in its sole discretion, defer the effectiveness of any exercise or settlement of a Stock Incentive Award granted hereunder in order to allow the issuance of shares pursuant thereto to be made pursuant to registration or an exemption from registration or other methods for compliance available under federal or state or local securities laws. Company shall inform the Participant in writing of its decision to defer the effectiveness of the exercise or settlement of a Stock Incentive Award granted hereunder. During the period that the effectiveness of the exercise of a Stock Incentive Award has been deferred, the Participant may, by written notice, withdraw such exercise and obtain the refund of any amount paid with respect thereto.

13. Withholding Taxes

(a) Cash Remittance

Whenever withholding tax obligations are incurred in connection with any Stock Incentive Award, the Company shall have the right to require the Participant to remit to the Company in cash an amount sufficient to satisfy federal, state, and local withholding tax requirements, if any, attributable to such event. In addition, upon the exercise or settlement of any Stock Incentive Award in cash, or the making of any other payment with respect to any Stock Incentive Award (other than in shares of Common Stock), the Company shall have the right to withhold from any payment required to be made pursuant thereto an amount sufficient to satisfy the federal, state, and local withholding tax requirements, if any, attributable to such exercise, settlement, or payment.

(b) Stock Remittance

At the election of the Participant, subject to the approval of the Committee, whenever withholding tax obligations are incurred in connection with any Stock Incentive Award, the Participant may tender to the Company (including by attestation) a number of shares of Common Stock having a Fair Market Value at the tender date determined by the Committee to be sufficient to satisfy the minimum federal, state, and local withholding tax requirements, if any, attributable to such event. Such election shall satisfy the Participant's obligations under Section 13.(a) hereof, if any.

(c) Stock Withholding

At the election of the Participant, subject to the approval of the Committee, whenever withholding tax obligations are incurred in connection with any Stock Incentive Award, the Company shall withhold a number of such shares having a Fair Market Value determined by the Committee to be sufficient to satisfy the minimum federal, state, and local withholding tax requirements, if any, attributable to such event. Such election shall satisfy the Participant's obligations under Section 13.(a) hereof, if any.

14. No Obligation to Exercise

The grant to a Participant of a Stock Incentive Award shall impose no obligation upon such Participant to exercise such Stock Incentive Award.

15. Transfers

Stock Incentive Awards may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised, during the lifetime of a Participant, only by the Participant; provided, however that the Committee may permit Options or other Stock Incentive Awards that are not incentive stock options to be sold, pledged, assigned, hypothecated, transferred, or disposed of, on a general or specific basis, subject to such conditions and limitations as the Committee may determine. Upon the death of a Participant, outstanding Stock Incentive Awards granted to such Participant may be exercised only by the executors or administrators of the Participant's estate or by any person or persons who shall have acquired such right to exercise by will or by the laws of descent and distribution. No transfer by will or the laws of descent and distribution of any Stock Incentive Award, or the right to exercise any Stock Incentive Award, shall be effective to bind the Company unless the Committee shall have been furnished with (a) written notice thereof and with a copy of the will and/or such evidence as the Committee may deem necessary to establish the validity of the transfer and (b) an agreement by the transferee to comply with all the terms and conditions of the Stock Incentive Award that are or would have been applicable to the Participant and to be bound by the acknowledgements made by the Participant in connection with the grant of the Stock Incentive Award.

16. Expenses and Receipts

The expenses of the Plan shall be paid by the Company. Any proceeds received by the Company in connection with any Stock Incentive Award will be used for general corporate purposes.

17. Failure to Comply

In addition to the remedies of the Company elsewhere provided for herein, failure by a Participant to comply with any of the terms and conditions of the Plan or any Award Agreement, unless such failure is remedied by such Participant within ten days after having been notified of such failure by the Committee, shall be grounds for the cancellation and forfeiture of such Stock Incentive Award, in whole or in part, as the Committee, in its absolute discretion, may determine.

18. Relationship to Other Benefits

No payment with respect to any Stock Incentive Awards under the Plan shall be taken into account in determining any benefits under any pension, retirement, profit sharing, group insurance, or other benefit plan of the Company except as otherwise specifically provided in such other plan.

19. Governing Law

The Plan and the rights of all persons under the Plan shall be construed and administered in accordance with the laws of the State of Delaware without regard to its conflict of law principles.

20. Severability

If all or any part of this Plan is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity shall not serve to invalidate any portion of this Plan not declared to be unlawful or invalid. Any Section or part of a Section so declared to be unlawful or invalid shall, if possible, be construed in a manner that will give effect to the terms of such Section or part of a Section to the fullest extent possible while remaining lawful and valid.

21. Effective Date and Term of Plan

The Effective Date of the Plan is November 26, 2021, subject to the approval of the Plan by the shareholders of Company within 12 months of the Effective Date ("Approval"). Only Options may be granted prior to Approval, provided no Option granted prior to Approval may be exercisable, in whole or in part, prior to Approval, and the Plan will be unwound, and all outstanding Options forfeited and cancelled, if Approval is not obtained. No grants of Stock Incentive Awards may be made under the Plan after November 26, 2031.

22. Amendment or Termination of the Plan

The Board of Directors may at any time suspend or discontinue the Plan or revise or amend it or any Stock Incentive Award in any respect whatsoever; provided, however, that to the extent that any applicable law, tax requirement, or rule of a stock exchange requires shareholder approval in order for any such revision or amendment to be effective, such revision or amendment shall not be effective without such approval. The preceding sentence shall not restrict the Committee's ability to exercise its discretionary authority hereunder pursuant to Section 4. hereof, which discretion may be exercised without amendment to the Plan. No provision of this Section 22. shall be given effect to the extent that such provision would cause any tax to become due under section 409A of the Code. Except as expressly provided in the Plan, no action hereunder may, without the consent of a Participant, adversely affect the Participant's rights under any previously granted and outstanding Stock Incentive Award. Nothing in the Plan shall limit the right of the Company to pay compensation of any kind outside the terms of the Plan.

23. Recoupment

Notwithstanding anything in the Plan or in any Award Agreement to the contrary, the Company will be entitled to the extent permitted or required by applicable law, Company policy and/or the requirements of an exchange on which the Company's shares are listed for trading, in each case, as in effect from time to time to recoup compensation of whatever kind paid by the Company at any time to a Participant under this Plan.

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

FORM 10-K

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

For the fiscal year ended December 31, 2020

☐ 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: 000-56160

AMERGENT HOSPITALITY GROUP, INC.

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

84-4842958
(IRS Employer
Identification Number)

7529 Red Oak Lane
Charlotte, NC
(Address of Principal Executive Offices)

28226
(Zip Code)

(704) 366-5122
(Registrant's Telephone Number, Including Area Code)

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

Securities registered under Section 12(g) of the Act: **Common Stock**

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
N/A	N/A	N/A

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

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

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

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

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

Large accelerated filer ☐
Non-accelerated filer ☒

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 has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☐

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date. There were a total of 14,782,736 shares of Common Stock outstanding as of April 6, 2021.

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CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS AND INFORMATION

This Annual Report on Form 10-Q (the “Report”) contains forward-looking statements. These forward-looking statements are identified by terms and phrases such as “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “predict,” “project,” “should,” and “will” and similar expressions and include references to assumptions and relate to our future prospects, developments and business strategies. There are a number of important factors that could cause the actual results to differ materially from those expressed in any forward-looking statement made by us. These factors include, but are not limited to:

- the accuracy of our estimates regarding expenses, capital requirements and need for additional financing;
- our ability to operate our business and generate profits. We have not been profitable to date;
- decline in global financial markets and economic downturn resulting from the coronavirus COVID-19 global pandemic;
- business interruptions resulting from the coronavirus COVID-19 global pandemic;
- our ability to remediate weaknesses we identified in our disclosure controls and procedures and our internal control over financial reporting in a timely enough manner to eliminate the risks posed by such material weaknesses in future periods;
- general risk factors affecting the restaurant industry, including current economic climate, costs of labor and food prices;
- intensive competition in our industry and competition with national, regional chains and independent restaurant operators;
- our rights to operate and franchise the Hooters-branded restaurants are dependent on the Hooters’ franchise agreements;
- our ability, and our dependence on the ability of our franchisees, to execute on business plans effectively;
- actions of our franchise partners or operating partners which could harm our business;
- failure to protect our intellectual property rights, including the brand image of our restaurants;
- changes in customer preferences and perceptions;
- increases in costs, including food, rent, labor and energy prices;
- constraints could affect our ability to maintain competitive cost structure, including, but not limited to labor constraints;
- work stoppages at our restaurants or supplier facilities or other interruptions of production;
- the risks associated with leasing space subject to long-term non-cancelable leases;
- we may not attain our target development goals and aggressive development could cannibalize existing sales;
- negative publicity about the ingredients we use, or the potential occurrence of food-borne illnesses or other problems at our restaurants;
- breaches of security of confidential consumer information related to our electronic processing of credit and debit card transactions;
- we may be unable to reach agreements with various taxing authorities on payment plans to pay off back taxes; and
- our debt financing agreements expose us to interest rate risks, contain obligations that may limit the flexibility of our operations, and may limit our ability to raise additional capital.

We undertake no obligation to update or revise the forward-looking statements included in this Report, whether as a result of new information, future events or otherwise, after the date of this Report. Our actual results, performance or achievements could differ materially from the results expressed in, or implied by, these forward-looking statements. Factors that could cause or contribute to such differences are discussed in the section entitled “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included herein.

Unless otherwise noted, references in this Report to the “Registrant,” “Company,” “Amergent,” “Spin-Off Entity,” “we,” “our” or “us” means Amergent Hospitality Group Inc., a Delaware corporation and our subsidiaries.

PART I

ITEM 1. BUSINESS

BACKGROUND- MERGER AND SPIN-OFF

OVERVIEW

Amergent Hospitality Group Inc. was incorporated on February 18, 2020 as a wholly-owned subsidiary of Chanticleer Holdings Inc., a Delaware corporation (“Chanticleer” or “Parent”) for the purpose of conducting the business of Chanticleer and its subsidiaries after completion of the spin-off of all the shares of Amergent to the shareholders of Chanticleer.

In connection with and prior to its merger (“Merger”) with Sonnet BioTherapeutics Holdings Inc., a New Jersey Corporation (“Sonnet”), Chanticleer, contributed and transferred to Amergent, a newly formed, wholly owned subsidiary of Chanticleer, all of Chanticleer’s business, operations, assets and liabilities, pursuant to the Contribution Agreement between Chanticleer and Amergent dated March 31, 2020. The contributed assets included the stock interest in all Chanticleer’s subsidiaries (other than Amergent and the merger-sub formed for the purposes of effecting the merger (“Merger-Sub”). On March 16, 2020, pursuant to the disposition agreement between Chanticleer and Amergent dated March 25, 2020 (“Disposition Agreement”), the Chanticleer board declared a dividend with respect to the shares of common stock outstanding at the close of business on March 26, 2020 of one share of the Amergent common stock for each outstanding share of Chanticleer common stock. The dividend, which together with the contribution and transfer of Chanticleer’s restaurant business, assets and liabilities described above, is referred to herein as the “Spin-Off,” was paid on April 1, 2020. Prior to the Spin-Off, Amergent engaged in no business or operations.

All of Chanticleer’s then current restaurant business operations were contributed to Amergent and the stockholders of record received the same pro-rata ownership in Amergent as in Chanticleer.

As a result of the Spin-Off, Amergent emerged as successor to the business, operations, assets and liabilities of pre-merger Chanticleer. Additionally, Amergent’s shareholder base and their holdings (on a pro-rata basis) are identical to that of pre-merger Chanticleer.

The financial information included in this Report include the accounts of Amergent and its subsidiaries combined with Chanticleer and its subsidiaries. Since all of Chanticleer’s then current restaurant business operations were contributed to Amergent and the stockholders of record received the same pro-rata ownership in Amergent as in Chanticleer, the Spin-Off has been recognized by Amergent at the carrying value of the assets and liabilities contributed by Chanticleer. Further, as a common control transaction, the financial statements of Amergent reflect the transaction as if the contribution had occurred as of the earliest period presented in the respective financial statements included herein.

AGREEMENTS RELATED TO THE SPIN-OFF

Following the separation and distribution, Amergent and Parent operate separately and independently.

Merger Agreement

Conditions to closing under the Merger Agreement impacting Amergent:

- Completion of disposition of the Spin-Off Business;
- Spin-Off Entity was required to assume all indebtedness or other liabilities not extinguished at the time of Merger;
- The Spin-Off Entity was required to enter into an indemnification agreement, acceptable to Sonnet in form and substance, providing that Chanticleer, Sonnet, and each of their respective directors, officers, stockholders and managers who assumes such role upon or following the Merger will be fully indemnified and held harmless by the Spin-Off Entity, to the greatest extent permitted under applicable law, for any and all claims in connection with the Spin-Off for a period of six years from the date of the disposition; and
- the Spin-Off Entity was required to obtain a tail insurance policy, acceptable to Sonnet in form and substance, in a coverage amount of at least \$3 million, prepaid in full by the Spin-Off Entity, at no cost to the other parties, effective for at least six years following the consummation of the disposition, covering the Spin-Off Entity’s indemnification obligations.

Disposition Agreement

On March 16, 2020, pursuant to the Disposition Agreement between Chanticleer and Amergent dated March 25, 2020, the Chanticleer board of directors declared a dividend with respect to the shares of common stock outstanding at the close of business on March 26, 2020 of one share of the Amergent common stock for each outstanding share of Chanticleer common stock.

Contribution Agreement

In connection with and prior to its merger with Sonnet, Chanticleer contributed and transferred to Amergent, a newly formed, wholly owned subsidiary of Chanticleer, all of Chanticleer's business, operations, assets and liabilities, pursuant to the Contribution Agreement between Chanticleer and Amergent dated March 31, 2020. In exchange for the contribution, Chanticleer received 100% of the equity in the Spin-Off Entity.

Indemnification Agreement and Tail Policy

On March 25, 2020, pursuant to the requirements of the Merger Agreement, Chanticleer, Sonnet and the Amergent entered into an indemnification agreement ("Indemnification Agreement") providing that Amergent will fully indemnify and hold harmless each of Chanticleer and Sonnet, and each of their respective, directors, officers, stockholders and managers who assumes such role upon or following the closing of the merger against all actual or threatened claims, losses, liabilities, damages, judgments, fines and reasonable fees, costs and expenses, including attorneys' fees and disbursements, incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, administrative, investigative or otherwise, related to the Spin-Off Business prior to or in connection with its disposition to Amergent.

In addition, pursuant to Merger Agreement, prior to closing of the Merger, the Spin-Off Entity acquired a tail insurance policy in a coverage amount of \$3.0 million, prepaid in full by the Spin-Off Entity, at no cost to the indemnitees, and effective for at least six years following the consummation of the disposition, covering the Spin-Off Entity's indemnification obligations to the indemnitees (referred to herein as the "Tail Policy").

Debenture Refinancing

In connection with and prior to the Merger and Spin-Off, pursuant to a securities purchase agreement between Chanticleer, Amergent, Oz Rey LLC, a Texas limited liability company, and certain other purchasers dated April 1, 2020, Chanticleer was released from all of its obligations under its 8% secured debentures. The 8% debentures were cancelled. In exchange Amergent (i) issued 10% secured convertible debentures in principal amount of \$4,037,889 in Amergent to Oz Rey, LLC, (iii) issued 10-year warrants to purchase up to 2,462,400 shares of common stock to the purchasers at an exercise price of \$0.125, and (ii) issued a 10-year warrant to purchase 462,600 shares of common stock to Oz Rey, LLC at an exercise price of \$0.50 (\$0.50 Warrants") and (iii) remitted \$2,000,000 of the proceeds of the Merger to Oz Rey, LLC (minus \$650,000 previously advanced, plus expenses). Upon issuance, the debenture was able to be converted at any time with limitations as described below at the option of holder at the lower of \$0.10 per share and the volume weighted average price for Amergent's common stock 10 trading days immediately prior to delivery of the conversion notice. The warrants include a cashless exercise provision. The debentures and warrants include standard anti-dilution provisions as well as weighted average anti-dilution protection in the event Amergent shares are issued below either the exercise/conversion price of the warrants/debenture or the volume weighted average price of Amergent's common stock for the five trading days immediately prior to issuance of such other securities. The obligation is subject to a first priority security interest in substantially all the assets (excluding the segregated account securing the repayment of the guaranteed return on Series 2 Preferred and Spin-Off Entity Warrant) of Amergent and is guaranteed by all Amergent's subsidiaries.

On August 17, 2020, the Company and Oz Rey amended the 10% secured convertible debenture to fix the conversion rate into common stock at \$0.10 per share. Further, the amendment provides a limitation on Oz Rey's ability to convert the debenture into common stock so that the conversion would not result in the issuance of common stock exceeding the number of authorized shares. Oz Rey may; however, upon reasonably notice to the Company, require the Company to include in its proxy materials, for any annual meeting of shareholders being held by the Company, a proposal to amend the Company's certificate of incorporation to increase the Company's authorized shares to a number sufficient to allow for conversion of all shares underlying the debenture, on a fully diluted basis. Oz Rey also agreed that the Company would not be required under any circumstances to make a cash payment to settle the conversion feature not exercisable due to the authorized share cap or in an event that the Company was unable to deliver shares under the conversion feature. Oz Rey also agreed to waive any event of default under the debenture that occurred or existed prior to August 17, 2020.

Pursuant to a registration rights agreement, Amergent granted the investors registration rights for shares of common stock underlying the 10% secured convertible debenture and warrants.

Further, contingent upon the termination of Amergent's interest in the Spin-Off Entity Warrant and Oz Rey, LLC's cash exercise of \$0.50 Warrants, Amergent will assign to Oz Rey, LLC, from the Spin-Off Entity Warrant, a warrant to purchase up to one share of Sonnet's common stock for each twenty-six \$.050 Warrants exercised, up to a maximum of 17,792 shares of Sonnet's common stock.

For as long as Oz Rey, LLC holds 10% debentures, it has the right, but not the obligation, to appoint two directors ("Appointees") to Amergent's board. Amergent agreed that its board or governance committee, if it has one, will re-nominate the Appointees as a directors at annual meetings. and recommend that stockholders vote "for" such Appointees at annual meetings. All proxies given to management also voted in favor of such Appointees. This right to designate the Appointees is subject to Nasdaq Listing Rules in the event Amergent seeks listing on one of the exchanges of the Nasdaq Stock Market.

SPIN-OFF PROCEEDS AND ASSUMED LIABILITIES

Cash Proceeds

In connection with the Merger, on April 1, 2020, Chanticleer received proceeds from Sonnet of \$6,000,000.

Of these proceeds,

- \$2,929,987.37 was remitted directly to satisfy outstanding indebtedness and other liabilities of Chanticleer immediately prior to the closing, including the following: satisfaction in full of outstanding secured credit facilities with Towne Bank (formerly Paragon Bank), payment to Oz Rey, LLC pursuant to securities purchase agreement dated April 1, 2020 refinancing outstanding 8% debentures reducing principal and reimbursing expenses, redemption of Series 1 Preferred Stock, required payment to holders of certain outstanding warrants; repayment of bridge loan received from Sonnet, and payment of Chanticleer's legal fees and expenses;
- \$1,250,000 was remitted directly, on behalf of Amergent, to a segregated cash account securing Amergent's Series 2 Preferred Stock obligation, pursuant to the requirements of securities purchase agreement dated February 7, 2020; and
- \$1,820,012.63 was remitted to Amergent.

Spin-Off Entity Warrant

Pursuant to the Merger Agreement, Sonnet issued the Spin-Off Entity Warrant to Amergent. It is a warrant to purchase 186,161, representing 2% of the aggregate outstanding shares of Sonnet, at an exercise price per share of \$0.01. It has 5-year term. The Spin-Off Entity Warrant may not be exercised for 180 days from the date of issuance and is a company asset. The underlying shares will not be distributed to shareholders when it is exercised.

Assumed Liabilities

Pursuant to the Merger Agreement, related Contribution Agreement and Distribution Agreement, Amergent assumed all liabilities of Chanticleer that were not paid-off at the effective time of the Merger.

Pursuant to the Indemnification Agreement, Amergent agreed to fully indemnify and hold harmless each of Chanticleer and Sonnet, and each of their respective, directors, officers, stockholders and managers who assumes such role upon or following the closing of the Merger against all actual or threatened claims, losses, liabilities, damages, judgments, fines and reasonable fees, costs and expenses, including attorneys' fees and disbursements, incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, administrative, investigative or otherwise, related to the Spin-Off Business prior to or in connection with its disposition to Amergent. In addition, Amergent acquired the Tail Policy to cover its indemnification obligations to the indemnitees under the Indemnification Agreement. The Tail Policy of up to \$3.0 million was prepaid in full by Amergent, at no cost to the indemnitees, and will be effective for six years following the consummation of the disposition.

As part of the Merger, all of the assets and liabilities of Chanticleers and its subsidiaries were contributed to Amergent.

Various subsidiaries of Amergent are delinquent in payment of payroll taxes to taxing authorities. As of December 31, 2020, approximately \$3.0 million of employee and employer taxes (including estimated penalties and interest) was accrued but not remitted in years prior to 2019 to certain taxing authorities by certain of these subsidiaries for cash compensation paid. As a result, these subsidiaries are liable for such payroll taxes. These subsidiaries have received warnings and demands from the taxing authorities and management is prioritizing and working with the taxing authorities to make these payments in order to avoid further penalties and interest. Failure to remit these payments promptly could result in increased penalty fees.

In connection with the Merger, former executive officer of Chanticleer, Richard Adams, filed a claim for damages against American Roadside Burgers, Inc., Chanticleer's wholly owned subsidiary for unpaid severance. Mr. Adams received timely notification of non-renewal of his employment agreement, which expired December 31, 2019, but argues he is entitled to severance benefits triggered by the Merger. Amergent has been advised by legal counsel that Mr. Adam's claim is frivolous and that he has a low probability of success. Mr. Adams complaint alleges damages in an amount over \$25,000.

Assumption of Series 2 Preferred Stock

In connection with the Merger and Spin-Off, all 787 outstanding shares of Series 2 Preferred Stock of Chanticleer were automatically exchanged for substantially identical shares of preferred stock in Amergent. The holders of Series 2 Preferred also received an aggregate of 1,426,845 shares of common stock in Amergent. The Amergent board approved the certificate of designations rights and preferences of Series 2 Preferred Stock, more fully set forth in a certificate of designations filed with the Secretary of State of Delaware and authorized the designation and immediate issuance of 787 shares of Series 2 Preferred. In addition, pursuant to Chanticleer's original agreement with the investors, Amergent issued 5-year warrants to purchase an aggregate of 350,000 shares of Amergent's common stock to the investors at \$1.25 per share. Each share of Series 2 Preferred has a stated value of \$1,000. In the event the proceeds received by the investor from the sale of all the shares of common stock issued upon conversion of Series 2 Preferred Stock in both Amergent and its former Parent ("Conversion Shares") do not equal at least \$1,875,000 on August 10, 2020, Amergent must pay the investors an amount in cash equal to the difference between \$1,875,000 and the proceeds previously realized by the investors from the sale of the Conversion Shares, net of brokerage commissions and any other fees incurred by investor in connection with the sale of Conversion Shares (the "True-Up payment"). The balance will be paid by Amergent out of either (i) the proceeds from the exercise by Amergent of existing Spin-off Entity Warrants to purchase shares of the common stock of Sonnet or (ii) from a segregated cash account. The segregated cash account was funded in the amount of \$1,250,000 at closing of the Merger from \$6,000,000 in proceeds received from Sonnet.

The True-up payment is accounted for as a derivative instrument. The fair value of the derivative was estimated using a Monte Carlo model and a liability of \$529,000 was recorded at the Series 2 Preferred Stock issuance date. The fair value is updated at each reporting date and the liability was \$184,800 at December 31, 2020 as reported in the consolidated and combined balance sheet.

The Series 2 Preferred Stock is convertible at the option of holder at the lesser of (i) \$1.00 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like) or (ii) 90% of the five day average volume weighted average price of the common, provided the conversion price has a floor of \$0.50 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like) Conversion is subject to a beneficial ownership limitation of 4.99%. This limitation may be increased by the holder up to 9.99%, with 61 days' notice. No dividends shall be declared or paid on the Series 2 Preferred Stock. Upon any liquidation, dissolution or winding-up of Amergent, the holder shall be entitled to receive out of the assets, whether capital or surplus, an amount equal to 125% of the stated value plus any default interest and any other fees or liquidated damages then due and owing thereon under the certificate of designations, for each share of Series 2 Preferred before any distribution or payment shall be made to the holders of Amergent common stock. The holder of Series 2 Preferred will vote together with the holders of common stock as a single class on an as-converted basis on all matters presented to the holders of common stock and shall vote as a separate class on all matters presented to the holders of Series 2 Preferred. Assuming conversion of Series 2 Preferred Stock into common stock at either \$0.50 or \$1.00 per share the holders of the Series 2 Preferred Stock would receive 1,574,000 or 787,000 shares of common stock and entitled to that number of votes, respectively. In addition, without the approval of the holder, Amergent will not, (i) sell all or substantially all of its assets, merge or consolidate with another entity or voluntarily liquidate or dissolve the corporation, (ii) alter or change the rights, preferences or privileges of the Series 2 Preferred, (iii) authorize or create any class of stock ranking as to dividends, redemption or distribution of assets upon a liquidation senior to, or otherwise pari passu with, the Series 2 Preferred Stock, (iv) amend its certificate of incorporation, as amended, or other charter documents in any manner that adversely affects any rights of the holder, (v) increase the number of authorized shares of Series 2 Preferred Stock, (vi) redeem any shares of capital stock of the company (other than any redemption of securities from officers or employees of the company pursuant to existing contractual arrangements with such officers or employees or in connection with the termination of their employment) or (vii) enter into any agreement with respect to any of the foregoing. Breach of Amergent's obligations and other circumstances set forth in the Certificate of Designation will trigger a redemption event. The Certificate of Designations provides for customary adjustments in the event of dividends or stock splits and anti-dilution protection.

On August 17, 2020, Amergent and the holders of Series 2 Preferred entered into a Waiver, Consent and Amendment to Certificate of Designations ("COD Amendment") extending the True-Up Date to December 10, 2020. In exchange, (i) Amergent issued warrants to purchase 134,000 shares of common stock to the holders of Series 2 Preferred, (ii) issued a cash payment of \$66,000 to the holders of Series 2 Preferred agreed to pay expenses of the holders of Series 2 Preferred incurred in connection with the Amendment and (iii) released the holders of Series 2 Preferred from claims related to the Certificate of Designations and the holders' investments in Amergent or its predecessor. Other than the issuance date, the new warrants are identical to the original warrants issued to the Series 2 Preferred investors. An Amended and Restated Certificate of Designations of Series 2 Convertible Preferred Stock ("Amended COD") that provides for the extension of the True-Up Date to December 10, 2020 and provides that the Amergent may not access any portion of funds held in the segregated account until the obligations under Series 2 Preferred are satisfied in full, was filed on August 17, 2020.

On February 16, 2021, the Company and the holders of the Series 2 Preferred Stock entered into a Waiver, Consent and Amendment to the Certificate of Designations (the "Waiver"). Pursuant to the Waiver, the Company filed the Second Amendment and Restated Certificate of Designations of Series 2 Convertible Preferred Stock ("Amended COD") (i) providing for the extension of the True-Up Payment to April 1, 2021, (ii) providing for the deduction of proceeds to the original holders from sales of Series 2 Preferred for the True-Up Payment, with the Delaware Secretary of State and (iii) providing for a reduction in amount required to be held in a segregated cash account from \$1,250,000 to \$850,000.

Assumption of 10% Debentures

See "Agreements Related to the Spin-Off-Debenture Refinancing" above.

BUSINESS

Amergent is in the business of owning, operating and franchising fast casual dining concepts domestically and internationally.

We operate and franchise a system-wide total of 35 fast casual restaurants of which 26 are company-owned and included in our consolidated and combined financial statements, and 9 are owned and operated by franchisees under franchise agreements.

American Burger Company (“ABC”) is a fast-casual dining chain consisting of 3 locations in North Carolina and New York, known for its diverse menu featuring fresh salads, customized burgers, milk shakes, sandwiches, and beer and wine.

BGR: The Burger Joint (“BGR”) was acquired in March 2015 and currently consists of 7 company-owned locations in the United States and 9 franchisee-operated locations in the United States and the Middle East.

Little Big Burger (“LBB”) was acquired in September 2015 and currently consists of 15 company-owned locations in the Portland, Oregon, Seattle, Washington, and Charlotte, North Carolina areas. Of the company-owned restaurants, 8 of those locations are operated under partnership agreements with investors we have determined we are the primary beneficiary as we control the management and operations of the stores and the partner supplies the capital to open the store in exchange for a noncontrolling interest.

As of December 31, 2020, we operated 1 company-owned Hooters full-service restaurant in the United Kingdom. Hooters restaurants are casual beach-themed establishments featuring music, sports on large flat screens, and a menu that includes seafood, sandwiches, burgers, salads and Hooters original chicken wings.

Through the use of partnerships, the Company partners with private investors who contribute all or substantially all of the capital required to open a restaurant in return for an ownership interest in the LLC and an economic interest in the net income of the restaurant location. The Company manages the operations of the restaurant in return for a management fee and an economic interest in the net income of the restaurant location. While terms may vary by LLC, the investor generally contributes between \$250,000 and \$350,000 per location and is entitled to 80% of the net income of the LLC until such time as the investor recoups the initial investment and the investor return on net income changes from 80% to 50%. The Company contributes the intellectual property and management related to operating a Little Big Burger, manages the construction, opening and ongoing operations of the store in return for a 5% management fee and 20% of net income until such time as the investor recoups the initial investment and the Company return on net income changes from 20% to 50%.

Additionally, we utilize franchise agreements to allow third parties to franchise a restaurant, and thus, are able to utilize the intellectual property, trademark, and trade dress in return for a franchise fee. The franchise agreement provides the franchisee with a designated territory or marketing area for an initial term of 10 years, with four successive five- year renewals. An upfront fee of \$40,000 is required along with a \$5,000 renewal fee and continuing fees based on a percent of revenues. We recognize the upfront fee allocated to each restaurant as revenue on a straight-line basis over the restaurant’s license term, which generally begins upon the signing of the contract for area development agreements and upon the signing of a store lease for franchise agreements. The payments for these upfront fees are generally received upon contract execution. Continuing fees, which are based upon a percentage of franchisee revenues (typically 5.5%) and are not subject to any constraints, are recognized on the accrual basis as those sales occur. The payments for these continuing fees are generally made on a weekly basis.

Franchises must be operated in strict compliance with our operations manual, which prescribes staffing requirements, minimum months, days and hours of operation, techniques and processes for service, length and method of training personnel, working capital and inventory requirements, accounting system and other operational standards. We provide up to five days of on-site training at no charge to franchisee. Additional on-site training may be requested by franchisee and will be provided at a daily rate of \$500. We have the right to approve the property lease for each new franchise. We maintain image control and may direct a franchise to remodel. We provide specifications for equipment, safety and security, subject to additional location regulations. Franchisees must utilize designated, approved suppliers or obtain pre-approval of any new supplier. Franchisees have certain prescribed marketing requirements and we may require franchisee to contribute a percentage of net sales to a regional brand development fund. Further, we may require certain of franchisee’s personnel to attend an annual conference or all franchisee’s personnel to attend refresher training, at franchisee’s sole expense.

Franchisees have sole control over the day-to-day operations of the franchise. The franchisee is responsible for the hiring and termination of its personnel and compliance with applicable laws. Franchisee must sell wine and beer at the store and may opt to sell other alcoholic beverages. Franchisee is responsible for obtaining all required business licenses, including liquor licenses and to carry required insurance.

Any improvements or new concepts developed by a franchisee (such as improvements to proprietary recipes, equipment, merchandise or software) belong to us. Our franchise agreement contains confidentiality and non-disclosure covenants and franchisee must require its personnel to execute confidentiality and non-disclosure agreements.

We also operate 1 Hooters location in the United Kingdom. Hooters restaurants are casual beach-themed establishments featuring music, sports on large flat screens, and a menu that includes seafood, sandwiches, burgers, salads, and of course, Hooters original chicken wings and the “nearly world famous” Hooters Girls. Amergent started initially as an investor in Hooters of America and subsequently evolved into a franchisee operator. We continue to hold a minority investment in corporate owned Hooters. However, we do not currently intend to open additional Hooters restaurants and instead plan to utilize the cash flows from these two restaurants to support growth in our other fast casual brands.

Restaurant Geographic Locations

United States

We currently operate ABC, BGR and LBB restaurants in the United States. ABC is in North Carolina and New York. BGR operates company restaurants in the mid-Atlantic region of the United States, as well as franchise locations across the US and internationally. LBB operates in Oregon, Washington and North Carolina. We also operate gaming machines in Portland, Oregon under license from the Oregon Lottery Commission.

Europe

We currently own and operate one Hooters restaurant in the United Kingdom located in Nottingham, England.

Competition

The restaurant industry is extremely competitive. We compete with other restaurants on the taste, quality and price of our food offerings. Additionally, we compete with other restaurants on service, ambience, location and overall customer experience. We believe that we compete primarily with local and regional sports bars and national casual dining and quick casual establishments, and to a lesser extent with quick service restaurants in general. Many of our competitors are well-established national, regional or local chains and many have greater financial and marketing resources than we do. We also compete with other restaurant and retail establishments for site locations and restaurant employees.

Proprietary Rights

We have trademarks and trade names associated with American Burger, BGR and Little Big Burger. We believe that the trademarks, service marks and other proprietary rights that we use in our restaurants have significant value and are important to our brand-building efforts and the marketing of our restaurant concepts. Although we believe that we have sufficient rights to all of our trademarks and service marks, we may face claims of infringement that could interfere with our ability to market our restaurants and promote our brand. Any such litigation may be costly and divert resources from our business. Moreover, if we are unable to successfully defend against such claims, we may be prevented from using our trademarks or service marks in the future and may be liable for damages.

We also use the “Hooters” mark and certain other service marks and trademarks used in our Hooters restaurant pursuant to our franchise agreements with Hooters of America.

Government Regulation

Environmental regulation

We are subject to a variety of federal, state and local environmental laws and regulations. Such laws and regulations have not had a significant impact on our capital expenditures, earnings or competitive position.

Local regulation

Our locations are subject to licensing and regulation by a number of government authorities, which may include health, sanitation, safety, fire, building and other agencies in the countries, states or municipalities in which the restaurants are located. Opening sites in new areas could be delayed by license and approval processes or by more requirements of local government bodies with respect to zoning, land use and environmental factors. Our agreements with our franchisees require them to comply with all applicable federal, state and local laws and regulations.

Each restaurant requires appropriate licenses from regulatory authorities allowing it to sell liquor, beer and wine, and each restaurant requires food service licenses from local health authorities. Our licenses to sell alcoholic beverages may be suspended or revoked at any time for cause, including violation by us or our employees of any law or regulation pertaining to alcoholic beverage control. We are subject to various regulations by foreign governments related to the sale of food and alcoholic beverages and to health, sanitation and fire and safety standards. Compliance with these laws and regulations may lead to increased costs and operational complexity and may increase our exposure to governmental investigations or litigation.

Franchise Regulations

We must comply with regulations adopted by the Federal Trade Commission (the “FTC”) and with several state and foreign laws that regulate the offer and sale of franchises. The FTC’s Trade Regulation Rule on Franchising (“FTC Rule”) and certain state and foreign laws require that we furnish prospective franchisees with a franchise disclosure document containing information prescribed by the FTC Rule and applicable state and foreign laws and regulations. We register the disclosure document in domestic and foreign jurisdictions that require registration for the sale of franchises. Our domestic franchise disclosure document complies with FTC Rule and various state disclosure requirements, and our international disclosure documents comply with applicable requirements.

We also must comply with state and foreign laws that regulate some substantive aspects of the franchisor-franchisee relationship. These laws may limit a franchisor’s ability to: terminate or not renew a franchise without good cause; interfere with the right of free association among franchisees; disapprove the transfer of a franchise; discriminate among franchisees regarding charges, royalties and other fees; and place new stores near existing franchises. Bills intended to regulate certain aspects of franchise relationships have been introduced into the United States Congress on several occasions during the last decade, but none have been enacted.

Employment Regulations

We are subject to state and federal employment laws that govern our relationship with our employees, such as minimum wage requirements, overtime and working conditions and citizenship requirements. Many of our employees are paid at rates which are influenced by changes in the federal and state wage regulations. Accordingly, changes in the wage regulations could increase our labor costs. The work conditions at our facilities are regulated by the Occupational Safety and Health Administration and are subject to periodic inspections by this agency. In addition, the enactment of recent legislation and resulting new government regulation relating to healthcare benefits may result in additional cost increases and other effects in the future.

Gaming Regulations

We are also subject to regulations in Oregon where we operate gaming machines. Gaming operations are generally highly regulated and conducted under the permission and oversight of the state or local gaming commission, lottery or other government agencies.

Other Regulations

We are subject to a variety of consumer protection and similar laws and regulations at the federal, state and local level. Failure to comply with these laws and regulations could subject us to financial and other penalties.

Seasonality

The sales of our restaurants may peak at various times throughout the year due to certain promotional events, weather and holiday related events. For example, our domestic fast casual restaurants tend to peak in the Spring, Summer and Fall months when the weather is milder. Quarterly results also may be affected by the timing of the opening of new stores and the closing of existing stores. For these reasons, results for any quarter are not necessarily indicative of the results that may be achieved for the full fiscal year.

Human Capital Resources

As of December 31, 2020, we had approximately 281 employees, including 3 in the United Kingdom, and 278 in the United States. We employ additional people on a part-time basis as needed.

Working Capital Practices

Historically, we have financed our operations through public and private sales of common stock, issuance of preferred and common stock, convertible debt instruments, term loans and credit lines from financial institutions, and cash generated from operations. On March 27, 2020, Congress passed “The Coronavirus Aid, Relief, and Economic Security Act” (CARES Act), which included the “Paycheck Protection Program” (PPP) for small businesses. On April 27, 2020, Amergent received a PPP loan in the amount of \$2.1 million. On February 25, 2021, the Company received a second PPP loan of \$2.0 million. These PPP loans may be forgiven if certain criteria are met.

Available Information

We are subject to the reporting requirements of the Exchange Act and, accordingly, we file annual reports, quarterly reports and other information with the Securities and Exchange Commission, or SEC. Access to copies of our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and other filings with the SEC, including amendments to such filings, may be obtained free of charge from our website, <http://www.amergenthg.com>. These filings are available promptly after we file them with, or furnish them to, the SEC. We are not incorporating our website or any information from the website into this annual report. The SEC also maintains a website, <http://www.sec.gov>, that contains our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Report on Form 8-K and other filings with the SEC. Access to these filings is free of charge.

ITEM 1A. RISK FACTORS

The following are some of the risks and uncertainties that could cause our actual results to differ materially from those presented in our forward-looking statements. The risks and uncertainties described below are not the only ones we face but do represent those risks and uncertainties that we believe are material to us. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also harm our business. All forward-looking statements in this document are based on information available to us as of the date hereof, and we assume no obligations to update any such forward-looking statements.

RISKS RELATED TO DELINQUENT PAYROLL TAXES

Various subsidiaries of the Company are delinquent in payment of payroll taxes to taxing authorities prior to the current year when previous management was in place, and a failure to remit these payments promptly or through settlements could have a material adverse effect on our business, financial condition and results of operations.

As of December 31, 2020, approximately \$3.0 million of employee and employer taxes (including estimated penalties and interest) has been accrued but not remitted in years prior to 2019 to certain taxing authorities by certain subsidiaries of the Company for cash compensation paid. As a result, these subsidiaries of the Company are liable for such payroll taxes. These various subsidiaries of the Company have received warnings and demands from the taxing authorities and management is prioritizing and working with the taxing authorities to make these payments in order to avoid further penalties and interest. Failure to remit these payments promptly could result in increased penalty fees and have a material adverse effect on our business, financial condition and results of operations. Interest and penalties on the remaining liability are accruing at approximately \$15,000 per month.

If an existing or future restaurant is not profitable, and we decide to close it, we may nonetheless be committed to perform our obligations under the applicable lease including, among other things, paying the base rent for the balance of the lease term. In addition, as each of our leases expires, we may fail to negotiate renewals, either on commercially acceptable terms or at all, which could cause us to pay increased occupancy costs or to close restaurants in desirable locations. These potential increased occupancy costs and closed restaurants could have a material adverse effect on our business, financial condition and results of operations.

As of December 31, 2020, there were eight restaurants that the Company had abandoned and maintained its operating lease liabilities as the Company had not negotiated the termination of the underlying leases with its landlord. Such liabilities amount to approximately \$3.1 million at December 31, 2020 and are reflected as operating lease liabilities on the consolidated and combined balance sheet included in this report.

We are not contractually obligated to guarantee leasing arrangements between franchisees and their landlords.

RISKS RELATED TO CORONAVIRUS

Pandemics or disease outbreaks, such as the recent outbreak of the novel coronavirus (COVID-19 virus), have disrupted, and may continue to disrupt, our business, and have materially affected our operations and results of operations.

Pandemics or disease outbreaks such as the novel coronavirus (COVID-19 virus) have and may continue to have a negative impact on customer traffic at our restaurants, may make it more difficult to staff our restaurants and, in more severe cases, may cause a temporary inability to obtain supplies and/or increase to commodity costs and have caused closures of affected restaurants, sometimes for prolonged periods of time. We have temporarily shifted to a “to-go” only operating model, suspending sit-down dining. We have also implemented closures, modified hours or reductions in onsite staff, resulting in cancelled shifts for some of our employees. COVID-19 may also materially adversely affect our ability to implement our growth plans, including delays in construction of new restaurants, or adversely impact our overall ability to successfully execute our plans to enter into new markets. These changes have negatively impacted our results of operations, and these and any additional changes may materially adversely affect our business or results of operations in the future, and may impact our liquidity or financial condition, particularly if these changes are in place for a significant amount of time. In addition, our operations could be further disrupted if any of our employees or employees of our business partners were suspected of having contracted COVID19 or other illnesses since this could require us or our business partners to quarantine some or all such employees or close and disinfect our impacted restaurant facilities. If a significant percentage of our workforce or the workforce of our business partners are unable to work, including because of illness or travel or government restrictions in connection with pandemics or disease outbreaks, our operations may be negatively impacted, potentially materially adversely affecting our business, liquidity, financial condition or results of operations. Furthermore, such viruses may be transmitted through human contact, and the risk of contracting viruses could continue to cause employees or guests to avoid gathering in public places, which has had, and could further have, adverse effects on our restaurant guest traffic or the ability to adequately staff restaurants, in addition to the measures we have already taken with respect to shifting to a “to-go” only operating model. We could also be adversely affected if government authorities continue to impose restrictions on public gatherings, human interactions, operations of restaurants or mandatory closures, seek voluntary closures, restrict hours of operations or impose curfews, restrict the import or export of products or if suppliers issue mass recalls of products. Additional regulation or requirements with respect to the compensation of our employees could also have an adverse effect on our business. Even if such measures are not implemented and a virus or other disease does not spread significantly within a specific area, the perceived risk of infection or health risk in such area may adversely affect our business, liquidity, financial condition and results of operations. The COVID-19 pandemic and mitigation measures have also had an adverse impact on global economic conditions, which could have an adverse effect on our business and financial condition. Our revenue and operating results may be affected by uncertain or changing economic and market conditions arising in connection with and in response to the COVID-19 pandemic, including prolonged periods of high unemployment, inflation, deflation, prolonged weak consumer demand, a decrease in consumer discretionary spending, political instability or other changes. The significance of the operational and financial impact to us will depend on how long and widespread the disruptions caused by COVID-19, and the corresponding response to contain the virus and treat those affected by it, prove to be. Currently, many states and municipalities in the U.S. and abroad have temporarily suspended the operation of restaurants in light of COVID-19.

RISKS RELATED TO MATERIAL WEAKNESS IN OUR INTERNAL CONTROL AND PROCEDURES AND INTERNAL CONTROL OVER FINANCIAL REPORTING

We have identified a material weakness in our internal control and procedures and internal control over financial reporting. If not remediated, our failure to establish and maintain effective disclosure controls and procedures and internal control over financial reporting could result in material misstatements in our financial statements and a failure to meet our reporting and financial obligations, each of which could have a material adverse effect on our financial condition and the trading price of our common stock.

Maintaining effective internal control over financial reporting and effective disclosure controls and procedures are necessary for us to produce reliable financial statements. We have re-evaluated our internal control over financial reporting and our disclosure controls and procedures and concluded that they were not effective as of December 31, 2020 and we concluded there was a material weakness in the design of our internal control over financial reporting.

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

We identified a deficiency related to our financial close process including maintaining a sufficient compliment of personnel commensurate with our accounting and financial reporting requirements, as well as development and extension of controls over the recording of journal entries and proper cutoff of accounts payable and accrued expenses at period end and in assessing agreements and the accounting treatment required to record the agreements correctly in the financial records.

The Company is committed to remediating its material weaknesses as promptly as possible. Implementation of the Company's remediation plans has commenced and is being overseen by the audit committee. As part of its remediation efforts, the Company hired two third party accounting firms with technical accounting experience during 2020 to support management to ensure accurate reporting. Further, the Company is in the process of designing and implementing procedures for control over the segregation of duties for the preparation of, approval and recording of journal entries and procedure to obtain the proper cut-off of accounts payable and accrued expenses in a period. However, there can be no assurance as to when these material weaknesses will be remediated or that additional material weaknesses will not arise in the future. Even effective internal control can provide only reasonable assurance with respect to the preparation and fair presentation of financial statements. Any failure to remediate the material weaknesses, or the development of new material weaknesses in our internal control over financial reporting, could result in material misstatements in our financial statements, which in turn could have a material adverse effect on our financial condition and the trading price of our common stock and we could fail to meet our financial reporting obligations.

RISKS RELATED TO OUR OPERATING LOSSES

We have not been profitable to date and operating losses could continue.

We have incurred operating losses and generated negative cash flows since our inception and have financed our operations principally through equity investments and borrowings. Future profitability is difficult to predict with certainty. Failure to achieve profitability could materially and adversely affect the value of our Company and our ability to effect additional financings. The success of the business depends on our ability to increase revenues to offset expenses. If our revenues fall short of projections or we are unable to reduce operating expenses, our business, financial condition and operating results will be materially adversely affected.

Our financial statements have been prepared assuming a going concern.

Our financial statements as of and for the fiscal years ended December 31, 2019 and December 31, 2020 were prepared under the assumption that we will continue as a going concern for the next 12 months from the date of issuance of these financial statements. Our independent registered public accounting firm has issued a report related to our annual financial statements that includes an explanatory paragraph referring to our losses from operations and expressing substantial doubt in our ability to continue as a going concern without additional capital becoming available. Our ability to continue as a going concern is dependent upon our ability to obtain additional financing, re-negotiate or extend existing indebtedness, obtain further operating efficiencies, reduce expenditures and ultimately, create profitable operations. We may not be able to refinance or extend our debt or obtain additional capital on reasonable terms. Our financial statements do not include adjustments that would result from the outcome of this uncertainty.

RISKS RELATED TO OUR DEBT FINANCING ARRANGEMENTS AND SIGNNIFICANT SHAREHOLDERS

We have debt financing arrangements that could have a material adverse effect on our financial health and our ability to obtain financing in the future and may impair our ability to react quickly to changes in our business.

Our exposure to debt financing could limit our ability to satisfy our obligations, limit our ability to operate our business and impair our competitive position. For example, it could:

- increase our vulnerability to adverse economic and industry conditions, including interest rate fluctuations, because a portion of our borrowings are at variable rates of interest;
- require us to dedicate significant future cash flows to the repayment of debt, reducing the availability of cash to fund working capital, capital expenditures or other general corporate purposes;
- limit our flexibility in planning for, or reacting to, changes in our business and industry; and
- limit our ability to obtain additional debt or equity financing due to applicable financial and restrictive covenants contained in our debt agreements.

We may also incur additional indebtedness in the future, which could materially increase the impact of these risks on our financial condition and results of operations. Failure to successfully recapitalize the business could have a material adverse effect on our business, financial condition and results of operations.

Our 10% Secured Convertible Debenture in favor of Oz Rey LLC (“Oz Rey”) contains financial and other covenants that, if breached, could trigger default.

Pursuant to our 10% Secured Convertible Debenture dated April 1, 2020 in favor of Oz Rey, we are required to:

- maintain a positive EBITDA
- timely file all reports required by Section 12(g) or Section 15(d) of the Exchange Act
- maintain positive net earnings;
- maintain a minimum market capitalization (based upon the number of shares of common stock outstanding and a 30-day VWAP) of at least \$5,500,000
- use commercially reasonable efforts to list the common stock on a Nasdaq Stock Market exchange;

Any breach that is not waived by Oz Rey could trigger default.

Oz Rey beneficially owns approximately 72.6% of our common stock and has right to appoint two directors to our board. Although Oz Rey does not currently hold any of our outstanding common stock, Oz Rey may greatly influence the outcome of all matters on which stockholders vote.

Because Oz Rey beneficially owns approximately 72.6% of our common stock (based on shares underlying 10% secured convertible debenture and currently exercisable warrants), it may greatly influence the outcome of all matters on which stockholders vote. Oz Rey LLC may also, upon reasonably notice to the Company, require the Company to include in its proxy materials, for any annual meeting of shareholders being held by the Company, a proposal to amend the Company’s certificate of incorporation to increase the Company’s authorized shares to a number sufficient to allow for conversion of all shares underlying the debenture, on a fully diluted basis, which would increase Oz Rey’s beneficial ownership of our common stock to approximately 72.6%. Oz Rey also has the right to appoint two directors to our board, which right Oz Rey has not yet exercised. As a result, Oz Rey is able to affect the outcome of, or exert significant influence over, all matters requiring stockholder approval, including the election and removal of directors and any change in control. This concentration of ownership of our common stock could have the effect of delaying or preventing a change of control of us or otherwise discouraging or preventing a potential acquirer from attempting to obtain control of us. This, in turn, could have a negative effect on the market price of our common stock. It could also prevent our stockholders from realizing a premium over the market prices for their shares of common stock. Moreover, the interests of this concentration of ownership may not always coincide with our interests or the interests of other stockholders, and accordingly, they could cause us to enter into transactions or agreements that we would not otherwise consider. (Beneficial ownership is calculated pursuant to Section 13d-3 of the Securities Exchange Act of 1934, as amended, and includes shares underlying derivative securities which may be exercised or converted within 60 days.)

Oz Rey's interests may not always coincide with the interests of other holders of our common stock.

Oz Rey is a secured creditor of Amergent, holding a first priority secured note with a principal balance of \$4,037,889, guaranteed by all of our subsidiaries. Oz Rey's security interest is subordinate only to certain interests of holders of our Series 2 Preferred stock and guaranteed by all Amergent's subsidiaries. As such, Oz Rey's interests may not always coincide with the interests of other holders of - common stock.

Transactions involving our common stock engaged by significant stockholders may have an adverse effect on the price of our stock.

The holders of our Series 2 Preferred contractually have a beneficial ownership limitation, as a group, together with their affiliates, of 9.99%. However, they hold registration rights for the shares underlying the Series 2 Preferred. The beneficial ownership limitation is not designed to inhibit sales of the underlying common stock. Oz Rey also holds registration rights for shares of common stock underlying 10% debentures and warrants. Sales of our shares by these stockholders could have the effect of lowering our stock price. The perceived risk associated with the possible sale of a large number of shares by these stockholders, or the adoption of significant short positions by hedge funds or other significant investors, could cause some of our stockholders to sell their stock, thus causing the price of our stock to decline. In addition, actual or anticipated downward pressure on our stock price due to actual or anticipated sales of stock could cause other institutions or individuals to engage in short sales of our common stock, which may further cause the price of our stock to decline.

RISKS RELATED TO OUR BUSINESS MODEL

We do not have full operational control over the franchisee-operated restaurants.

We are and will be dependent on our franchisees to maintain quality, service and cleanliness standards, and their failure to do so could materially affect our brands and harm our future growth. Our franchisees have flexibility in their operations, including the ability to set prices for our products in their restaurants, hire employees and select certain service providers. In addition, it is possible that some franchisees may not operate their restaurants in accordance with our quality, service and cleanliness, health or product standards. Although we intend to take corrective measures if franchisees fail to maintain high quality service and cleanliness standards, we may not be able to identify and rectify problems with sufficient speed and, as a result, our image and operating results may be negatively affected.

Any prior acquisitions, as well as future acquisitions, may have unanticipated consequences that could harm our business and our financial condition.

Any acquisition that we pursue, whether successfully completed or not, involves risks, including:

- material adverse effects on our operating results, particularly in the fiscal quarters immediately following the acquisition as the acquired restaurants are integrated into our operations;
- risks associated with entering into markets or conducting operations where we have no or limited prior experience;
- problems retaining key personnel;

- potential impairment of tangible and intangible assets and goodwill acquired in the acquisition;
- potential unknown liabilities;
- difficulties of integration and failure to realize anticipated synergies; and
- disruption of our ongoing business, including diversion of management's attention from other business concerns.

Future acquisitions of restaurants or other businesses, which may be accomplished through a cash purchase transaction, the issuance of our equity securities or a combination of both, could result in potentially dilutive issuances of our equity securities, the incurrence of debt and contingent liabilities and impairment charges related to goodwill and other intangible assets, any of which could harm our business and financial condition.

We are subject to the risks associated with leasing space subject to long-term non-cancelable leases.

We lease all the real property and we expect the new restaurants we open in the future will also be leased. We are obligated under non-cancelable leases for our restaurants and our corporate headquarters. Our restaurant leases generally require us to pay a proportionate share of real estate taxes, insurance, common area maintenance charges and other operating costs. Some restaurant leases provide for contingent rental payments based on sales thresholds, although we generally do not expect to pay significant contingent rent on these properties based on the thresholds in those leases. Additional sites that we lease are likely to be subject to similar long-term non-cancelable leases.

If an existing or future restaurant is not profitable, and we decide to close it, we may nonetheless be committed to perform our obligations under the applicable lease including, among other things, paying the base rent for the balance of the lease term. In addition, as each of our leases expires, we may fail to negotiate renewals, either on commercially acceptable terms or at all, which could cause us to pay increased occupancy costs or to close restaurants in desirable locations. These potential increased occupancy costs and closed restaurants could have a material adverse effect on our business, financial condition and results of operations.

As of December 31, 2020, there were eight restaurants that the Company had abandoned and maintained its operating lease liabilities as the Company had not negotiated the termination of the underlying leases with its landlord. Such liabilities amount to approximately \$3.1 million at December 31, 2020 and are reflected as operating lease liabilities on the consolidated and combined balance sheet included in this report.

We are not contractually obligated to guarantee leasing arrangements between franchisees and their landlords.

We may not attain our target development goals and aggressive development could cannibalize existing sales.

Our growth strategy depends in large part on our ability to open new stores (either directly or through franchisees or joint venture partners). The successful development of new units will depend in large part on our ability and the ability of our franchisees to open new restaurants and to operate these restaurants on a profitable basis. We cannot guarantee that we, or our franchisees or joint venture partners, will be able to achieve our expansion goals or that new restaurants will be operated profitably. Further, there is no assurance that any new restaurant will produce operating results like those of our existing restaurants. Other risks that could impact our ability to increase our ability to open new stores include prevailing economic conditions and our, or our franchisees' and joint venture partners', ability to obtain suitable restaurant locations, obtain required permits and approvals in a timely manner and hire and train qualified personnel.

Our franchisees and joint venture partners also frequently depend upon financing from banks and other financial institutions in order to construct and open new restaurants. If it becomes more difficult or expensive for them to obtain financing to develop new restaurants, our planned growth could slow, and our future revenue and cash flows could be adversely impacted.

In addition, the new restaurants could impact the sales of our existing restaurants nearby. It is not our intention to open new restaurants that materially cannibalize the sales of our existing restaurants. However, as with most growing retail and restaurant operations, there can be no assurance that sales cannibalization will not occur or become more significant in the future as we increase our presence in existing markets over time.

RISKS RELATED TO SPIN-OFF TRANSACTION

The Spin-Off does not qualify as a tax-free transaction, and therefore you and our Parent could be subject to material amounts of taxes.

The distribution of our shares by our Parent pursuant to this Form 10 does not qualify as a tax-free spin-off to our Parent's shareholders under Section 355 of the Code. As a consequence, you could be subject to material amounts of taxes. Each U.S. holder of our Parent's common stock who received our common stock in the Spin-Off will generally be treated as receiving a taxable distribution of property in an amount equal to the fair market value of our common stock received. That distribution will be taxable to each such shareholder as a dividend to the extent of such shareholder's share of our Parent's current and accumulated earnings and profits. For each such shareholder, any amount that exceeded its share of our Parent's earnings and profits will be treated first as a non-taxable return of capital to the extent of such shareholder's tax basis in his or her or its Parent common stock with any remaining amount being taxed as a capital gain. Our Parent will be subject to tax as if it had sold common stock in a taxable sale for their fair market value and would recognize taxable gain in an amount equal to the excess of the fair market value of such shares over its tax basis in such shares.

The Spin-Off could give rise to disputes or other unfavorable effects, which could have a material adverse effect on our business, financial position and results of operations.

Disputes with third parties could arise out of the distribution, and we could experience unfavorable reactions to the distribution from employees, investors, or other interested parties. These disputes and reactions of third parties could have a material adverse effect on our business, financial position, and results of operations. In addition, following the Spin-Off, disputes between us and Sonnet could arise in connection with any of the Indemnification Agreement or other agreements between the parties.

Our potential indemnification obligations pursuant to the Indemnification Agreement could materially adversely affect us.

Under the Indemnification Agreement we have an obligation to indemnify Sonnet for liabilities associated with our business and the assets and liabilities distributed to us or our subsidiaries in connection with the Spin-Off. We have obtained a Tail Policy with policy limits in the amount of \$3,000,000 to cover such liabilities; however, if we have to indemnify our Parent for unanticipated liabilities in excess of this amount, the cost of such indemnification obligations may have a material and adverse effect on our financial performance.

A court could deem the Spin-Off to be a fraudulent conveyance and void the transaction or impose substantial liabilities upon us.

If the transaction is challenged by a third party, a court could deem the distribution by our Parent of our common stock or certain internal restructuring transactions undertaken by us in connection with the Spin-off to be a fraudulent conveyance or transfer. Fraudulent conveyances or transfers are defined to include transfers made or obligations incurred with the actual intent to hinder, delay or defraud current or future creditors or transfers made or obligations incurred for less than reasonably equivalent value when the debtor was insolvent, or that rendered the debtor insolvent, inadequately capitalized or unable to pay its debts as they become due. In such circumstances, a court could void the transactions or impose substantial liabilities upon us, which could adversely affect our financial condition and our results of operations. Among other things, the court could require our stockholders to return to us some or all of the shares of our common stock issued in the Spin-off or require us to fund liabilities of other companies involved in the restructuring transactions for the benefit of creditors.

Our suppliers, vendors or other companies with whom we conduct business may need assurances that our financial stability on a stand-alone basis is sufficient to satisfy their requirements for doing or continuing to do business with them.

Some of our suppliers, vendors or other companies with whom we conduct business may need assurances that the Company's financial stability on a stand-alone basis is sufficient to satisfy their requirements for doing or continuing to do business with them. Any failure of parties to be satisfied with our financial stability could have an adverse effect on our business, financial condition, results of operations and cash flows.

There are risks inherent in expansion of operations, including our ability to generate profits from new restaurants, find suitable sites and develop and construct locations in a timely and cost-effective way.

We cannot project with certainty the number of new restaurants we and our franchisees will open. Our failure to effectively develop locations in new territories would adversely affect our ability to execute our business plan by, among other things, reducing our revenues and profits and preventing us from realizing our strategy. Furthermore, we cannot assure you that our new restaurants will generate revenues or profit margins consistent with those currently operated by us.

The number of openings and the performance of new locations will depend on various factors, including:

- the availability of suitable sites for new locations;
- our ability to negotiate acceptable lease or purchase terms for new locations, obtain adequate financing, on favorable terms, required to construct, build-out and operate new locations and meet construction schedules, and hire and train and retain qualified restaurant managers and personnel;
- managing construction and development costs of new restaurants at affordable levels;
- the establishment of brand awareness in new markets; and
- the ability of our Company to manage expansion.

Additionally, competition for suitable restaurant sites in target markets is intense. Restaurants we open in new markets may take longer to reach expected sales and profit levels on a consistent basis and may have higher construction, occupancy or operating costs than restaurants we open in existing markets, thereby affecting our overall profitability.

New markets may have competitive conditions, consumer tastes and discretionary spending patterns that are more difficult to predict or satisfy than our existing markets. We may need to make greater investments than we originally planned in advertising and promotional activity in new markets to build brand awareness. We may find it more difficult in new markets to hire, motivate and keep qualified employees who share our vision, passion and culture. We may also incur higher costs from entering new markets if, for example, we assign regional managers to manage comparatively fewer restaurants than in more developed markets.

We may not be able to successfully develop critical market presence for our brand in new geographical markets, as we may be unable to find and secure attractive locations, build name recognition or attract new customers. Inability to fully implement or failure to successfully execute our plans to enter new markets could have a material adverse effect on our business, financial condition and results of operations.

Not all of these factors are within our control or the control of our partners, and there can be no assurance that we will be able to accelerate our growth or that we will be able to manage the anticipated expansion of our operations effectively.

We may not be able to adequately protect our intellectual property, which could harm the value of our brand and have a material adverse effect on our business, financial condition and results of operations.

Our intellectual property is material to the conduct of our business. Our ability to implement our business plan successfully depends in part on our ability to further build brand recognition using our trademarks, tradenames and other proprietary intellectual property, including our name and logos and the unique ambience of our restaurants. While it is our policy to protect and defend vigorously our rights to our intellectual property, we cannot predict whether steps taken by us to protect our intellectual property rights will be adequate to prevent misappropriation of these rights or the use by others of restaurant features based upon, or otherwise similar to, our restaurant concept. It may be difficult for us to prevent others from copying elements of our concept and any litigation to enforce our rights will likely be costly and may not be successful. Although we believe that we have sufficient rights to all our trademarks and service marks, we may face claims of infringement that could interfere with our ability to market our restaurants and promote our brand. Any such litigation may be costly and could divert resources from our business. Moreover, if we are unable to successfully defend against such claims, we may be prevented from using our trademarks or service marks in the future and may be liable for damages, which in turn could have a material adverse effect on our business, financial condition and results of operations.

In addition, we license certain of our proprietary intellectual property, including our name and logos, to third parties. For example, we grant our franchisees and licensees a right to use certain of our trademarks in connection with their operation of the applicable restaurant. If a franchisee or other licensee fails to maintain the quality of the restaurant operations associated with the licensed trademarks, our rights to, and the value of, our trademarks could potentially be harmed. Negative publicity relating to the franchisee or licensee could also be incorrectly associated with us, which could harm our business. Failure to maintain, control and protect our trademarks and other proprietary intellectual property would likely have a material adverse effect on our business, financial condition and results of operations and on our ability to enter into new franchise agreements.

GENERAL RISKS RELATED TO OUR BUSINESS

Litigation and unfavorable publicity could negatively affect our results of operations as well as our future business.

We are subject to potential for litigation and other customer complaints concerning our food safety, service and/or other operational factors. Guests may file formal litigation complaints that we are required to defend, whether we believe them to be true or not. Substantial, complex or extended litigation could have an adverse effect on our results of operations if we incur substantial defense costs and our management is distracted. Employees may also, from time to time, bring lawsuits against us regarding injury, discrimination, wage and hour, and other employment issues. Additionally, potential disputes could subject us to litigation alleging non-compliance with franchise, development, support service, or other agreements. Additionally, we are subject to the risk of litigation by our stockholders as a result of factors including, but not limited to, performance of our stock price.

In certain states we are subject to “dram shop” statutes, which generally allow a person injured by an intoxicated person the right to recover damages from an establishment that wrongfully served alcoholic beverages to the intoxicated person. Some dram shop litigation against restaurant companies has resulted in significant judgments, including punitive damages. We carry liquor liability coverage as part of our existing comprehensive general liability insurance, but we cannot provide assurance that this insurance will be adequate in the event we are found liable in a dram shop case.

In recent years there has been an increase in the use of social media platforms and similar devices that allow individuals’ access to a broad audience of consumers and other interested persons. The availability of information on social media platforms is virtually immediate in its impact. A variety of risks are associated with the use of social media, including the improper disclosure of proprietary information, negative comments about our Company, exposure of personally identifiable information, fraud or outdated information. The inappropriate use of social media platforms by our guests, employees or other individuals could increase our costs, lead to litigation, or result in negative publicity that could damage our reputation, and create an adverse change in the business climate that impairs goodwill. If we are unable to quickly and effectively respond, we may suffer declines in guest traffic, which could materially affect our financial condition and results of operations.

Food safety and foodborne illness concerns could have an adverse effect on our business.

We cannot guarantee that our internal control and training will be fully effective in preventing all food safety issues at our restaurants, including any occurrences of foodborne illnesses such as salmonella, E. coli and hepatitis A. In addition, there is no guarantee that our franchise restaurants will maintain the high levels of internal control and training we require at our company-operated restaurants.

Furthermore, we and our franchisees rely on third-party vendors, making it difficult to monitor food safety compliance and increasing the risk that foodborne illness would affect multiple locations rather than a single restaurant. Some foodborne illness incidents could be caused by third-party vendors and transporters outside of our control. New illnesses resistant to our current precautions may develop in the future, or diseases with long incubation periods could arise, that could give rise to claims or allegations on a retroactive basis. One or more instances of foodborne illness in any of our restaurants or markets or related to food products we sell could negatively affect our restaurant revenue nationwide if highly publicized on national media outlets or through social media.

This risk exists even if it were later determined that the illness was wrongly attributed to us or one of our restaurants. Several other restaurant chains have experienced incidents related to foodborne illnesses that have had a material adverse effect on their operations. The occurrence of a similar incident at one or more of our restaurants, or negative publicity or public speculation about an incident, could have a material adverse effect on our business, financial condition and results of operations.

We operate in the highly competitive restaurant industry. If we are not able to compete effectively, it will have a material adverse effect on our business, financial condition and results of operations.

We face significant competition from restaurants in the fast-casual dining and traditional fast food segments of the restaurant industry. These segments are highly competitive with respect to, among other things, taste, price, food quality and presentation, service, location and the ambience and condition of each restaurant. Our competition includes a variety of locally owned restaurants and national and regional chains offering dine-in, carry-out, delivery and catering services. Many of our competitors have existed longer and have a more established market presence with substantially greater financial, marketing, personnel and other resources than we do. Among our competitors are a number of multi-unit, multi-market, fast casual restaurant concepts, some of which are expanding nationally. As we expand, we will face competition from these restaurant concepts as well as new competitors that strive to compete with our market segments. These competitors may have, among other things, lower operating costs, better locations, better facilities, better management, more effective marketing and more efficient operations. Additionally, we face the risk that new or existing competitors will copy our business model, menu options, presentation or ambience, among other things.

Any inability to successfully compete with the restaurants in our markets and other restaurant segments will place downward pressure on our customer traffic and may prevent us from increasing or sustaining our revenue and profitability. Consumer tastes, nutritional and dietary trends, traffic patterns and the type, number and location of competing restaurants often affect the restaurant business, and our competitors may react more efficiently and effectively to those conditions. Several of our competitors compete by offering menu items that are specifically identified as low in carbohydrates, gluten-free or healthier for consumers. In addition, many of our traditional fast food restaurant competitors offer lower-priced menu options or meal packages or have loyalty programs. Our sales could decline due to changes in popular tastes, “fad” food regimens, such as low carbohydrate diets, and media attention on new restaurants. If we are unable to continue to compete effectively, our traffic, sales and restaurant contribution could decline which would have a material adverse effect on our business, financial condition and results of operations.

Our business could be adversely affected by declines in discretionary spending and may be affected by changes in consumer preferences.

Our success depends, in part, upon the popularity of our food products. Shifts in consumer preferences away from our restaurants or cuisine could harm our business. Also, our success depends to a significant extent on discretionary consumer spending, which is influenced by general economic conditions and the availability of discretionary income. Accordingly, we may experience declines in sales during economic downturns or during periods of uncertainty. A continuing decline in the amount of discretionary spending could have a material adverse effect on our sales, results of operations, and business and financial condition.

Increases in costs, including food, labor and energy prices, will adversely affect our results of operations.

Our profitability is dependent on our ability to anticipate and react to changes in our operating costs, including food, labor, occupancy (including utilities and energy), insurance and supply costs. Various factors beyond our control, including climatic changes and government regulations, may affect food costs. Specifically, our dependence on frequent, timely deliveries of fresh meat and produce subject us to the risks of possible shortages or interruptions in supply caused by adverse weather or other conditions which could adversely affect the availability and cost of any such items. In the past, we have been able to recover some of our higher operating costs through increased menu prices. There have been, and there may be in the future, delays in implementing such menu price increases, and competitive pressures may limit our ability to recover such cost increases in their entirety.

Our ability to maintain consistent price and quality throughout our restaurants depends in part upon our ability to acquire specified food products and supplies in sufficient quantities from third-party vendors, suppliers and distributors at a reasonable cost. We do not control the businesses of our vendors, suppliers and distributors, and our efforts to specify and monitor the standards under which they perform may not be successful. If any of our vendors or other suppliers are unable to fulfill their obligations to our standards, or if we are unable to find replacement providers in the event of a supply or service disruption, we could encounter supply shortages and incur higher costs to secure adequate supplies, which would have a material adverse effect on our business, financial condition and results of operations.

Furthermore, if our current vendors or other suppliers are unable to support our expansion into new markets, or if we are unable to find vendors to meet our supply specifications or service needs as we expand, we could likewise encounter supply shortages and incur higher costs to secure adequate supplies, which could have a material adverse effect on our business, financial condition and results of operations.

Changes in employment laws and minimum wage standards may adversely affect our business.

Labor is a primary component in the cost of operating our restaurants. If we face labor shortages or increased labor costs because of increased competition for employees, higher employee turnover rates, increases in the federal, state or local minimum wage or other employee benefits costs (including costs associated with health insurance coverage), our operating expenses could increase, and our growth could be negatively impacted.

In addition, our success depends in part upon our ability to attract, motivate and retain enough well-qualified restaurant operators and management personnel, as well as a sufficient number of other qualified employees, including customer service and kitchen staff, to keep pace with our expansion schedule. In addition, restaurants have traditionally experienced relatively high employee turnover rates. Although we have not yet experienced significant problems in recruiting or retaining employees, our ability to recruit and retain such individuals may delay the planned openings of new restaurants or result in higher employee turnover in existing restaurants, which could have a material adverse effect on our business, financial condition and results of operations.

Various federal and state employment laws govern the relationship with our employees and impact operating costs. These laws include employee classification as exempt or non-exempt for overtime and other purposes, minimum wage requirements, unemployment tax rates, workers' compensation rates, immigration status and other wage and benefit requirements. Significant additional government-imposed increases in the following areas could have a material adverse effect on our business, financial condition and results of operations:

- Minimum wages;
- Mandatory health benefits;
- Vacation accruals;
- Paid leaves of absence, including paid sick leave; and
- Tax reporting.

We could also become subject to fines, penalties and other costs related to claims that we did not fully comply with all recordkeeping obligations of federal and state immigration compliance laws. These factors could have a material adverse effect on our business, financial condition and results of operations.

We are subject to risks arising under federal and state labor laws.

We are subject to risks under federal and state labor laws, including disputes concerning whether and when a union can be organized, and once unionized, collective bargaining rights, various issues arising from union contracts, and matters relating to a labor strike. Labor laws are complex and differ vastly from state to state.

Our business and the growth of our Company are dependent on the skills and expertise of management and key personnel.

During the upcoming stages of our Company's anticipated growth, we are entirely dependent upon the management skills and expertise of our management and key personnel. We do not have employment agreements with many of our executive officers. The loss of services of our executive officers could dramatically affect our business prospects. Certain of our employees are particularly valuable to us because:

- they have specialized knowledge about our company and operations;
- they have specialized skills that are important to our operations; or
- they would be particularly difficult to replace.

If the services of any key management personnel ceased to be available to us, our growth prospects or future operating results may be adversely impacted.

Our food service business, gaming revenues and the restaurant industry are subject to extensive government regulation.

We are subject to extensive and varied country, federal, state and local government regulation, including regulations relating to public health, gambling, safety and zoning codes. We operate each of our locations in accordance with standards and procedures designed to comply with applicable codes and regulations. However, if we could not obtain or retain food or other licenses, it would adversely affect our operations. Although we have not experienced, and do not anticipate experiencing any significant difficulties, delays or failures in obtaining required licenses, permits or approvals, any such problem could delay or prevent the opening of, or adversely impact the viability of, a particular location or group of restaurants.

We may be subject to significant foreign currency exchange controls in certain countries in which we operate.

Certain foreign economies have experienced shortages in foreign currency reserves and their respective governments have adopted restrictions on the ability to transfer funds out of the country and convert local currencies into U.S. dollars. This may increase our costs and limit our ability to convert local currency into U.S. dollars and transfer funds out of certain countries. Any shortages or restrictions may impede our ability to convert these currencies into U.S. dollars and to transfer funds, including for the payment of dividends or interest or principal on our outstanding debt. If any of our subsidiaries are unable to transfer funds to us due to currency restrictions, we are responsible for any resulting shortfall.

Our foreign operations subject us to risks that could negatively affect our business.

One of our Hooters restaurants and some of our franchisee-owned restaurants operate in foreign countries and territories outside of the U.S. As a result, our business is exposed to risks inherent in foreign operations. These risks, which can vary substantially by market, include political instability, corruption, social and ethnic unrest, changes in economic conditions (including wage and commodity inflation, consumer spending and unemployment levels), the regulatory environment, tax rates and laws and consumer preferences as well as changes in the laws and policies that govern foreign investment in countries where our restaurants are operated.

In addition, our results of operations and the value of our foreign assets are affected by fluctuations in foreign currency exchange rates, which may adversely affect reported earnings. More specifically, an increase in the value of the United States Dollar relative to other currencies, such as the British Pound, could have an adverse effect on our reported earnings. There can be no assurance as to the future effect of any such changes on our results of operations, financial condition or cash flows.

Changing conditions in the global economy and financial markets may materially adversely affect our business, results of operations and ability to raise capital.

Our business and results of operations may be materially affected by conditions in the financial markets and the economy generally. The demand for our products could be adversely affected in an economic downturn and our revenues may decline under such circumstances. In addition, we may find it difficult, or we may not be able, to access the credit or equity markets, or we may experience higher funding costs in the event of adverse market conditions. Future instability in these markets could limit our ability to access the capital we require to fund and grow our business.

Changes to accounting rules or regulations may adversely affect the reporting of our results of operations.

Changes to existing accounting rules or regulations may impact the reporting of our future results of operations or cause the perception that we are more highly leveraged. Other new accounting rules or regulations and varying interpretations of existing accounting rules or regulations have occurred and may occur in the future. For instance, new accounting rules will require lessees to capitalize operating leases in their financial statements in future periods which will require us to record significant right of use assets and lease obligations on our balance sheet. This and other future changes to accounting rules or regulations could have a material adverse effect on the reporting of our business, financial condition and results of operations. In addition, many existing accounting standards require management to make subjective assumptions, such as those required for stock compensation, tax matters, franchise accounting, acquisitions, litigation, and asset impairment calculations. Changes in accounting standards or changes in underlying assumptions, estimates and judgments by our management could significantly change our reported or expected financial performance.

We may incur costs resulting from breaches of security of confidential consumer information related to our electronic processing of credit and debit card transactions.

Most of our restaurant sales are by credit or debit cards. Other restaurants and retailers have experienced security breaches in which credit and debit card information has been stolen. We may in the future become subject to claims for purportedly fraudulent transactions arising out of the actual or alleged theft of credit or debit card information, and we may also be subject to lawsuits or other proceedings relating to these types of incidents. In addition, most states have enacted legislation requiring notification of security breaches involving personal information, including credit and debit card information. Any such claim or proceeding could cause us to incur significant unplanned expenses, which could have a material adverse effect on our business, financial condition and results of operations. Further, adverse publicity resulting from these allegations may have a material adverse effect on our business and results of operations.

We rely heavily on information technology, and any material failure, weakness, interruption or breach of security could prevent us from effectively operating our business.

We rely heavily on information systems, including point-of-sale processing in our restaurants, for management of our supply chain, payment of obligations, collection of cash, credit and debit card transactions and other processes and procedures. Our ability to efficiently and effectively manage our business depends significantly on the reliability and capacity of these systems. Our operations depend upon our ability to protect our computer equipment and systems against damage from physical theft, fire, power loss, telecommunications failure or other catastrophic events, as well as from internal and external security breaches, viruses and other disruptive problems. The failure of these systems to operate effectively, maintenance problems, upgrading or transitioning to new platforms, or a breach in security of these systems could result in delays in customer service and reduce efficiency in our operations. Remediation of such problems could result in significant, unplanned capital investments.

Adverse weather conditions could affect our sales.

Adverse weather conditions, such as regional winter storms, floods, severe thunderstorms and hurricanes, could affect our sales at restaurants in locations that experience these weather conditions, which could materially adversely affect our business, financial condition or results of operations.

The uncertainty surrounding the effect of Brexit may impact our UK operations.

The uncertainty surrounding the effect of Brexit, including the uncertainty in relation to the legal and regulatory framework for the UK and its relationship with the remaining members of the EU (including, in relation to trade) after Brexit was effected in January 2020, has caused increased economic volatility and market uncertainty globally. It is too early to ascertain the long-term effects.

Negative publicity could reduce sales at some or all our restaurants.

We may, from time to time, be faced with negative publicity relating to food quality and integrity, the safety, sanitation and welfare of our restaurant facilities, customer complaints, labor issues, or litigation alleging illness or injury, health inspection scores, integrity of our or our suppliers' food processing and other policies, practices and procedures, employee relationships and welfare or other matters at one or more of our restaurants. Negative publicity may adversely affect us, regardless of whether the allegations are valid or whether we are held to be responsible. The risk of negative publicity is particularly great with respect to our franchised restaurants because we are limited in the manner in which we can regulate them, especially on a real-time basis and negative publicity from our franchised restaurants may also significantly impact company-operated restaurants. A similar risk exists with respect to food service businesses unrelated to us, if customers mistakenly associate such unrelated businesses with our operations. Employee claims against us based on, among other things, wage and hour violations, discrimination, harassment or wrongful termination may also create not only legal and financial liability but negative publicity that could adversely affect us and divert our financial and management resources that would otherwise be used to benefit the future performance of our operations. These types of employee claims could also be asserted against us, on a co-employer theory, by employees of our franchisees. A significant increase in the number of these claims or an increase in the number of successful claims could materially adversely affect our business, financial condition, results of operations and cash flows.

The interests of our franchisees may conflict with ours or yours in the future and we could face liability from our franchisees or related to our relationship with our franchisees.

Franchisees, as independent business operators, may from time to time disagree with us and our strategies regarding the business or our interpretation of our respective rights and obligations under the franchise agreement and the terms and conditions of the franchisee/franchisor relationship or have interests adverse to ours. This may lead to disputes with our franchisees and we expect such disputes to occur from time to time in the future as we continue to offer franchises. Such disputes may result in legal action against us. To the extent we have such disputes, the attention, time and financial resources of our management and our franchisees will be diverted from our restaurants, which could have a material adverse effect on our business, financial condition, results of operations and cash flows even if we have a successful outcome in the dispute.

In addition, various state and federal laws govern our relationship with our franchisees and our potential sale of a franchise. A franchisee and/or a government agency may bring legal action against us based on the franchisee/franchisor relationships that could result in the award of damages to franchisees and/or the imposition of fines or other penalties against us.

GENERAL RISKS RELATED TO OUR COMMON STOCK

Trading volume in our common stock is limited, which could increase price volatility for, and reduced liquidity of, our common stock.

Trading volume in our common stock is limited and an active trading market for our shares of common stock may never develop or be maintained. The absence of an active trading market could increase price volatility and reduces the liquidity of our common stock and as a result, the sale of a significant number of shares of common stock at any particular time could be difficult to achieve at the market prices prevailing immediately before such shares are offered.

We may need additional capital in the future; however, such capital may not be available to us on reasonable terms, if at all, when or as we require additional funding. If we issue additional shares of our common stock or other securities that may be convertible into, or exercisable or exchangeable for, our common stock, our existing stockholders would experience further dilution.

We may need additional capital in the future, however if that need arises, we cannot be certain additional capital will be available to us on acceptable terms when required, or at all. Disruptions in the global equity and credit markets may limit our ability to access capital. To the extent that we raise additional funds by issuing equity securities, our shareholders would experience dilution, which may be significant and could cause the market price of our common stock to decline significantly. Any debt financing, if available, may restrict our operations. If we are unable to raise additional capital when required or on acceptable terms, we may have to significantly delay, scale back or discontinue certain operations. Any of these events could significantly harm our business and prospects and could cause our stock price to decline.

Future financings could adversely affect common stock ownership interest and rights in comparison with those of other security holders.

Our board of directors has the power to issue additional shares of common or preferred stock up to the amounts authorized in our certificate of incorporation without stockholder approval, subject to restrictive covenants contained in our existing financing agreements. If additional funds are raised through the issuance of equity or convertible debt securities, the percentage ownership of our existing stockholders will be reduced, and these newly issued securities may have rights, preferences or privileges senior to those of existing stockholders. If we issue any additional common stock or securities convertible into common stock, such issuance will reduce the proportionate ownership and voting power of each other stockholder. In addition, such stock issuances might result in a reduction of the book value of our common stock. Any increase of the number of authorized shares of common stock or preferred stock would require board and shareholder approval and subsequent amendment to our certificate of incorporation.

If and when a larger trading market for our common stock develops, the market price of our common stock is likely to be highly volatile and subject to wide fluctuations, and you may be unable to resell your shares at or above the price at which you acquired them.

The market price of our common stock is likely to be highly volatile and could be subject to wide fluctuations in response to a number of factors that are beyond our control, including, but not limited to:

- quarterly variations in our revenues and operating expenses;
- developments in the financial markets and worldwide or regional economies;
- announcements of innovations or new products, solutions or services by us or our competitors;
- announcements by the government relating to regulations that govern our industry;
- significant sales of our common stock or other securities in the open market;
- variations in interest rates;
- changes in the market valuations of other comparable companies; and
- changes in accounting principles.

In the past, stockholders have often instituted securities class action litigation after periods of volatility in the market price of a company's securities. If a stockholder were to file any such class action suit against us, we would incur substantial legal fees and our management's attention and resources would be diverted from operating our business to respond to the litigation, which could harm our business.

Recent and future sales of securities by us in equity or debt financings could result in substantial dilution to our existing stockholders and have a material adverse effect on our earnings.

Recent and future sales of common stock or derivative securities by us in private placements or public offerings could result in substantial dilution to our existing stockholders. In addition, our business strategy may include expansion through internal growth by acquiring complementary businesses. In order to do so, or to finance the cost of our other activities, we may issue additional equity securities that could dilute our stockholders' stock ownership. We may also assume additional debt and incur impairment losses related to goodwill and other tangible assets if we acquire another company and this could negatively impact our earnings and results of operations.

Were our common stock to be considered penny stock, and therefore subject to the penny stock rules, U.S. broker-dealers may be discouraged from effecting transactions in shares of our common stock.

The U.S. Securities and Exchange Commission (the "SEC") has adopted a number of rules to regulate "penny stock" that may restrict transactions involving shares of our common stock. Such rules include Rules 3a51-1, 15g-1, 15g-2, 15g-3, 15g-4, 15g-5, 15g-6, 15g-7, and 15g-9 under the Securities and Exchange Act of 1934, as amended. These rules may have the effect of reducing the liquidity of penny stocks. "Penny stocks" generally are equity securities with a price of less than \$5.00 per share (other than securities registered on certain national securities exchanges or quoted on the NASDAQ Stock Market if current price and volume information with respect to transactions in such securities is provided by the exchange or system). Our securities have in the past constituted "penny stock" within the meaning of the rule. Were our common stock to again be considered "penny stock" and therefore become subject to the penny stock rules, the additional sales practice and disclosure requirements imposed upon U.S. broker-dealers may discourage such broker-dealers from effecting transactions in shares of our common stock, which could severely limit the market liquidity of such shares and impede their sale in the secondary market.

A U.S. broker-dealer selling a penny stock to anyone other than an established customer or "accredited investor" (generally, an individual with net worth in excess of \$1,000,000 or an annual income exceeding \$200,000, or \$300,000 together with his or her spouse) must make a special suitability determination for the purchaser and must receive the purchaser's written consent to the transaction prior to sale, unless the broker-dealer or the transaction is otherwise exempt. In addition, the penny stock regulations require the U.S. broker-dealer to deliver, prior to any transaction involving a penny stock, a disclosure schedule prepared in accordance with SEC standards relating to the penny stock market, unless the broker-dealer or the transaction is otherwise exempt. A U.S. broker-dealer is also required to disclose commissions payable to the U.S. broker-dealer and the registered representative and current quotations for the securities. Finally, a U.S. broker-dealer is required to submit monthly statements disclosing recent price information with respect to the penny stock held in a customer's account and information with respect to the limited market in penny stocks.

Stockholders should be aware that, according to SEC, the market for penny stocks has suffered in recent years from patterns of fraud and abuse. Such patterns include (i) control of the market for the security by one or a few broker-dealers that are often related to the promoter or issuer; (ii) manipulation of prices through prearranged matching of purchases and sales and false and misleading press releases; (iii) "boiler room" practices involving high-pressure sales tactics and unrealistic price projections by inexperienced sales persons; (iv) excessive and undisclosed bid-ask differentials and markups by selling broker-dealers; and (v) the wholesale dumping of the same securities by promoters and broker-dealers after prices have been manipulated to a desired level, resulting in investor losses. Our management is aware of the abuses that have occurred historically in the penny stock market. Although we do not expect to be in a position to dictate the behavior of the market or of broker-dealers who participate in the market, management will strive within the confines of practical limitations to prevent the described patterns from being established with respect to our securities in the event our common stock were to again be considered a penny stock and therefore become subject to penny stock rules.

We do not expect to pay dividends for the foreseeable future, and any return on investment may be limited to potential future appreciation on the value of our common stock.

We currently intend to retain any future earnings to support the development and expansion of our business and do not anticipate paying cash dividends in the foreseeable future. We do not pay dividends on our Series 2 Preferred stock. If dividends are declared on common stock, dividends are payable on our outstanding 10% debenture and all of our outstanding warrants to the same extent that the holders would have participated in the dividend if the holders held the number of shares of common stock acquirable upon complete conversion of the debenture and/ or exercise of the warrants (as applicable) without regard to any limitations on exercise thereof, immediately before the date of which a record is taken for such dividend. Our payment of any future dividends will be at the discretion of our board of directors after taking into account various factors, including without limitation, our financial condition, operating results, cash needs, growth plans and the terms of any credit agreements that we may be a party to at the time. To the extent we do not pay dividends, our stock may be less valuable because a return on investment will only occur if and to the extent our stock price appreciates, which may never occur. In addition, investors must rely on sales of their common stock after price appreciation as the only way to realize their investment, and if the price of our stock does not appreciate, then there will be no return on investment. Investors seeking cash dividends should not purchase our common stock.

The rights of the holders of common stock may be impaired by outstanding class of Series 2 Preferred stock and potential issuance of other class(es) of preferred stock in the future.

Our certificate of incorporation gives our board of directors the right to create new series of preferred stock. As a result, the board of directors may, without stockholder approval, issue preferred stock with voting, dividend, conversion, liquidation or other rights which could adversely affect the voting power and equity interest of the holders of common stock. Preferred stock, which could be issued with the right to more than one vote per share, could be utilized as a method of discouraging, delaying or preventing a change of control. The possible impact on takeover attempts could adversely affect the price of our common stock. Although we have no present intention to issue any additional shares of preferred stock or to create any new series of preferred stock, we may issue such shares in the future.

Anti-takeover provisions may limit the ability of another party to acquire us, which could cause our stock price to decline.

We are a Delaware corporation. Delaware law contains provisions that could discourage, delay or prevent a third party from acquiring us, even if doing so may be beneficial to our stockholders, which could cause our stock price to decline. In addition, these provisions could limit the price investors would be willing to pay in the future for shares of our common stock.

Non-U.S. investors may have difficulty effecting service of process against us or enforcing judgments against us in courts of non-U.S. jurisdictions.

We are a company incorporated under the laws of the State of Delaware. All of our directors and officers reside in the United States. It may not be possible for non-U.S. investors to effect service of process within their own jurisdictions upon our company and our directors and officers. In addition, it may not be possible for non-U.S. investors to collect from our company, its directors and officers, judgments obtained in courts in such non-U.S. jurisdictions predicated on non-U.S. legislation.

If securities or industry analysts do not publish or cease publishing research or reports about us, our business or our market, or if they change their recommendations regarding our stock adversely, our stock price and trading volume could decline.

The trading market for our common stock will be influenced by the research and reports that industry or securities analysts may publish about us, our business, our market or our competitors. If any of the analysts who may cover us change their recommendation regarding our stock adversely, or provide more favorable relative recommendations about our competitors, our stock price would likely decline. If any analyst who may cover us were to cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline.

ITEM 2: UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

On April 1, 2020, in connection with and prior to the Merger and Spin-Off, pursuant to a securities purchase agreement between Chanticleer, Amergent, Oz Rey LLC, a Texas limited liability company (“Oz Rey”) and certain other purchasers dated April 1, 2020, Chanticleer was released from all of its obligations under its 8% secured debentures. The 8% debentures were cancelled. In exchange, Amergent (i) issued a 10% secured convertible debenture in principal amount of \$4,037,889 in Amergent to Oz Rey, (iii) issued 10-year warrants to purchase up to 2,462,600 shares of common stock to Oz Rey and other original 8% debenture holders at an exercise price of \$0.125, and (ii) issued a 10-year warrant to purchase 462,600 shares of common stock to Oz Rey at an exercise price of \$0.50 (\$0.50 Warrants”) and (iii) remitted \$2,000,000 of the proceeds of the Merger to Oz Rey (minus \$650,000 previously advanced, plus expenses). The 10% secured convertible debenture was originally convertible, at any time at the option of holder, at the lower of \$0.10 per share and (b) the volume weighted average price for Amergent’s common stock 10 trading days immediately prior to delivery of the conversion notice. The warrants include a cashless exercise provision. The debenture and warrants include standard anti-dilution provisions as well as full-ratchet anti-dilution protection. The obligation is subject to a first priority security interest in substantially all the assets (excluding the segregated account securing the repayment of the guaranteed return on Series 2 Preferred and Spin-Off Entity Warrant) of Amergent and is guaranteed by all Amergent’s subsidiaries.

Further, contingent upon the termination of Series 2 Preferred holders in the Spin-Off Entity Warrant and Oz Rey’s cash exercise of \$0.50 Warrants, Amergent will assign to Oz Rey, from the Spin-Off Entity Warrant, a warrant to purchase up to one share of Sonnet’s common stock for each twenty-six \$.50 Warrants exercised, up to a maximum of 17,792 shares of Sonnet’s common stock.

For as long as Oz Rey holds 10% secured convertible debentures, it has the right, but not the obligation, to appoint two directors (“Appointees”) to Amergent’s board. Amergent agreed that its board or governance committee, if it has one, will re-nominate the Appointees as a directors at annual meetings and recommend that stockholders vote “for” such Appointees at annual meetings. All proxies given to management will also vote in favor of such Appointees. This right to designate the Appointees will be subject to Nasdaq Listing Rules in the event Amergent seeks listing on one of the exchanges of the Nasdaq Stock Market.

On August 17, 2020, the Company and Oz Rey entered into Amendment No. 1 to 10% Secured Convertible Debenture (“Debenture Amendment”) to fix the conversion rate into common stock at \$0.10 per share. Further, Oz Rey agreed not to convert any portion of the debenture that would cause the number of shares on a fully-diluted basis issued after the conversion to exceed the authorized share level. Oz Rey may however, upon reasonably notice to the Company, require the Company to include in its proxy materials, for any annual meeting of shareholders being held by the Company, a proposal to amend the Company’s certificate of incorporation to increase the Company’s authorized shares to a number sufficient to allow for conversion of all shares underlying the debenture, on a fully diluted basis. Oz Rey also agreed that the Company would not be required under any circumstances to require the Company to make a cash payment to settle the conversion feature not exercisable due to the authorized share cap or in an event that the Company was unable to deliver shares under the conversion feature. Oz Rey also agreed to waive any event of default under the debenture that occurred or existed prior to August 17, 2020.

In connection with the Merger and Spin-Off, all outstanding shares of Series 2 Convertible Preferred Stock of Chanticleer were automatically exchanged for substantially identical shares of preferred stock in Amergent (“Series 2 Preferred”). The board of directors approved the certificate of designations rights and preferences of Series 2 Preferred, more fully set forth in a “Certificate of Designations” filed with the Secretary of State of Delaware and authorized the designation and immediate issuance of 787 shares of Series 2 Preferred. In addition, pursuant to Chanticleer’s original agreement with the investors, we issued 5-year warrants to purchase an aggregate of 350,000 shares of Amergent’s common stock to the investors at \$1.25 per share. Each share of Series 2 Preferred has a stated value if \$1,000. In the event that the proceeds received by the investors from the sale of all the shares of common stock issued upon conversion of Series 2 Preferred in both Amergent and its former Parent (“Conversion Shares”) did not equal at least \$1,875,000 by August 10, 2020 (“True-Up Date”), Amergent was required to pay the investor an amount in cash equal to the difference between \$1,875,000 and the proceeds previously realized by the investor from the sale of the Conversion Share, net of brokerage commissions and any other fees incurred by investor in connection with the sale of Conversion Shares. The balance will be paid by Amergent out of either (i) the proceeds from the exercise by Amergent of existing warrants to purchase shares of the common stock of Sonnet or (ii) from a segregated cash account. We were required to deposit \$1,250,000 into a segregated cash account and maintain prescribed amounts in the segregated cash amount until the return is satisfied in full.

The Series 2 Preferred Stock is convertible at the option of holder at the lesser of (i) \$1.00 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like) or (ii) 90% of the five day average volume weighted average price of the common, provided the conversion price has a floor of \$0.50 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like) Conversion is subject to a beneficial ownership limitation of 4.99%. This limitation may be increased by the holder up to 9.99%, with 61 days' notice. No dividends shall be declared or paid on the Series 2 Preferred Stock. Upon any liquidation, dissolution or winding-up of Amergent, the holder shall be entitled to receive out of the assets, whether capital or surplus, an amount equal to 125% of the stated value plus any default interest and any other fees or liquidated damages then due and owing thereon under the Certificate of Designations, for each share of Series 2 Preferred before any distribution or payment shall be made to the holders of Amergent common stock. The holder of Series 2 Preferred will vote together with the holders of common stock as a single class on an as-converted basis on all matters presented to the holders of common stock and shall vote as a separate class on all matters presented to the holders of Series 2 Preferred. In addition, without the approval of the holder, Amergent will not, (i) sell all or substantially all of its assets, merge or consolidate with another entity or voluntarily liquidate or dissolve the corporation, (ii) alter or change the rights, preferences or privileges of the Series 2 Preferred, (iii) authorize or create any class of stock ranking as to dividends, redemption or distribution of assets upon a liquidation senior to, or otherwise pari passu with, the Series 2 Preferred Stock, (iv) amend its certificate of incorporation, as amended, or other charter documents in any manner that adversely affects any rights of the holder, (v) increase the number of authorized shares of Series 2 Preferred Stock, (vi) redeem any shares of capital stock of the company (other than any redemption of securities from officers or employees of the company pursuant to existing contractual arrangements with such officers or employees or in connection with the termination of their employment) or (vii) enter into any agreement with respect to any of the foregoing. Breach of Amergent's obligations and other circumstances set forth in the Certificate of Designation will trigger a redemption event. The Certificate of Designations provides for customary adjustments in the event of dividends or stock splits and anti-dilution protection.

If a registration statement is not available 6 months after the issuance date of the warrants, the warrants may be exercised via cashless exercise. The warrant includes customary anti-dilution protection and exercise is subject to a 9.99% beneficial ownership limitation that may be increased upon 60 days' notice from holder.

Concurrently with the transactions described above, the parties entered into a registration rights agreement for registration of shares of common stock underlying warrants and notes described above as well as shares of common stock underlying the Series 2 Preferred.

On August 17, 2020, Amergent and the holders of Series 2 Preferred entered into a Waiver, Consent and Amendment to Certificate of Designations ("COD Amendment") extending the True-Up Date to December 10, 2020. In exchange, (i) Amergent issued warrants to purchase 134,000 shares of common stock to the holders of Series 2 Preferred, (ii) issued a cash payment of \$66,000 to the holders of Series 2 Preferred agreed to pay expenses of the holders of Series 2 Preferred incurred in connection with the Amendment and (iii) released the holders of Series 2 Preferred from claims related to the Certificate of Designations and the holders' investments in Amergent or its predecessor. Other than the issuance date, the new warrants are identical to the original warrants issued to the Series 2 Preferred investors. An Amended and Restated Certificate of Designations of Series 2 Convertible Preferred Stock ("Amended COD") that provides for the extension of the True-Up Date to December 10, 2020 and provides that the Amergent may not access any portion of funds held in the segregated account until the obligations under Series 2 Preferred are satisfied in full, was filed on August 17, 2020.

On February 16, 2021, the Company and the holders of the Series 2 Preferred Stock entered into a Waiver, Consent and Amendment to the Certificate of Designations (the "Waiver"). Pursuant to the Waiver, the Company filed the Second Amendment and Restated Certificate of Designations of Series 2 Convertible Preferred Stock ("Amended COD") (i) providing for the extension of the True-Up Payment to April 1, 2021, (ii) providing for the deduction of proceeds to the original holders from sales of Series 2 Preferred for the True-Up Payment, with the Delaware Secretary of State and (iii) providing for a reduction in amount required to be held in a segregated cash account from \$1,250,000 to \$850,000.

The transactions discussed above are exempt from registration pursuant to Section 4(a)(2) of the Securities Act, and corresponding provisions of state securities laws or, alternatively, Section 3(a)(9) of the Securities Act and corresponding provisions of state securities laws, on the basis that (i) offers were made to a limited number of existing warrant holders, (ii) each offer was made through direct communication with the offerees by Amergent, (iii) the sophistication of the offerees and financial ability to bear risks (iv) the extensive disclosure provided to the offerees, and (v) no general solicitation and no commission or remuneration was paid for solicitation.

ITEM 1B. UNRESOLVED STAFF COMMENTS

Not applicable.

ITEM 2. PROPERTY

Through our subsidiaries, we lease the land and buildings for 1 restaurant in Nottingham, United Kingdom, and 34 operating restaurant locations in the U.S. The terms for our leases vary from two to twenty years and have options to extend. We lease some of our restaurant facilities under “triple net” leases that require us to pay minimum rent, real estate taxes, maintenance costs and insurance premiums and, in some instances, percentage rent based on sales in excess of specified amounts. Our corporate employees work out of the home offices

Our office and restaurant facilities are suitable and adequate for our business as it is presently conducted.

ITEM 3. LEGAL PROCEEDINGS

Various subsidiaries of Amergent are delinquent in payment of payroll taxes to taxing authorities. As of December 31, 2020, approximately \$3.0 million of employee and employer taxes (including estimated penalties and interest) was accrued but not remitted in years prior to 2019 to certain taxing authorities by certain of these subsidiaries for cash compensation paid. As a result, these subsidiaries are liable for such payroll taxes. These subsidiaries have received warnings and demands from the taxing authorities and management is prioritizing and working with the taxing authorities to make these payments in order to avoid further penalties and interest. Failure to remit these payments promptly could result in increased penalty fees.

Pursuant to the Merger Agreement, related Contribution Agreement and Distribution Agreement, Amergent assumed all liabilities of Chanticleer that were not paid-off at the effective time of the Merger.

Pursuant to the Indemnification Agreement, Amergent agreed to fully indemnify and hold harmless each of Chanticleer and Sonnet, and each of their respective, directors, officers, stockholders and managers who assumes such role upon or following the closing of the Merger against all actual or threatened claims, losses, liabilities, damages, judgments, fines and reasonable fees, costs and expenses, including attorneys’ fees and disbursements, incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, administrative, investigative or otherwise, related to the Spin-Off Business prior to or in connection with its disposition to Amergent. In addition, Amergent acquired the Tail Policy to cover its indemnification obligations to the indemnitees under the Indemnification Agreement. The Tail Policy of up to \$3.0 million was prepaid in full by Amergent, at no cost to the indemnitees, and will be effective for six years following the consummation of the disposition.

As part of the Merger, all of the assets and liabilities of Chanticleer and its subsidiaries were contributed to Amergent.

In connection with the Merger, former executive officer of Chanticleer, Richard Adams, filed a claim for damages against American Roadside Burgers, Inc., Chanticleer’s wholly owned subsidiary for unpaid severance. Mr. Adams received timely notification of non-renewal of his employment agreement, which expired December 31, 2019, but argues he is entitled to severance benefits triggered by the Merger. Amergent has been advised by legal counsel that Mr. Adam’s claim is frivolous and that he has a low probability of success. Mr. Adams complaint alleges damages in an amount over \$25,000.

Amergent is not aware of any other claims arising from the Merger or other assumed claims that it deems as claims outside the ordinary course of business or otherwise, at this time, material.

During 2020 the Company was in arrears on rent due on several of its leases as a result of the COVID-19 pandemic. As a result, the Company has pending litigation related to 11 sites of which 5 have permanently closed. The outcome of this litigation could result in the permanent closure of additional restaurant locations as well as the possibility of the Company being required to pay interest and damages, modify certain leases on unfavorable terms and could result in material impairments to the Company’s assets.

Amergent is not aware of changes to claims previously reported or other claims that it deems as claims outside the ordinary course of business or otherwise, at this time, material.

From time to time, Amergent may be involved in legal proceedings and claims that arise in the ordinary course of business, and may generally be covered by insurance or otherwise determined to be immaterial to the Company’s financial condition, results of operations or cash flows.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

ITEM 5. MARKET FOR COMMON EQUITY AND RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

As of December 31, 2020, we had 14,282,736 shares of our common stock issued and outstanding, respectively, and approximately 254 shareholders of record and approximately 2,500 shareholders. Amergent's common stock is quoted on the OTCQB market of the OTC Markets Group, Inc. under the symbol "AMGH".

We currently have no expectation to pay cash dividends to holders of our common stock in the foreseeable future.

UNREGISTERED SALES OF EQUITY SECURITIES

In April 1, 2020, in connection with and prior to the Merger and Spin-Off, pursuant to a securities purchase agreement between Chanticleer, Amergent, Oz Rey LLC, a Texas limited liability company ("Oz Rey") and certain other purchasers dated April 1, 2020, Chanticleer was released from all of its obligations under its 8% secured debentures. The 8% debentures were cancelled. In exchange, Amergent (i) issued a 10% secured convertible debenture in principal amount of \$4,037,889 in Amergent to Oz Rey, (iii) issued 10-year warrants to purchase up to 2,462,600 shares of common stock to Oz Rey and other original 8% debenture holders at an exercise price of \$0.125, and (ii) issued a 10-year warrant to purchase 462,600 shares of common stock to Oz Rey at an exercise price of \$0.50 (\$0.50 Warrants") and (iii) remitted \$2,000,000 of the proceeds of the Merger to Oz Rey (minus \$650,000 previously advanced, plus expenses). The 10% secured convertible debenture was originally convertible, at any time at the option of holder, at the lower of \$0.10 per share and (b) the volume weighted average price for Amergent's common stock 10 trading days immediately prior to delivery of the conversion notice. The warrants include a cashless exercise provision. The debenture and warrants include standard anti-dilution provisions as well as full-ratchet anti-dilution protection. The obligation is subject to a first priority security interest in substantially all the assets (excluding the segregated account securing the repayment of the guaranteed return on Series 2 Preferred and Spin-Off Entity Warrant) of Amergent and is guaranteed by all Amergent's subsidiaries.

Further, contingent upon the termination of Series 2 Preferred holders in the Spin-Off Entity Warrant and Oz Rey's cash exercise of \$0.50 Warrants, Amergent will assign to Oz Rey, from the Spin-Off Entity Warrant, a warrant to purchase up to one share of Sonnet's common stock for each twenty-six \$.50 Warrants exercised, up to a maximum of 17,792 shares of Sonnet's common stock.

For as long as Oz Rey holds 10% secured convertible debentures, it has the right, but not the obligation, to appoint two directors ("Appointees") to Amergent's board. Amergent agreed that its board or governance committee, if it has one, will re-nominate the Appointees as a directors at annual meetings and recommend that stockholders vote "for" such Appointees at annual meetings. All proxies given to management will also vote in favor of such Appointees. This right to designate the Appointees will be subject to Nasdaq Listing Rules in the event Amergent seeks listing on one of the exchanges of the Nasdaq Stock Market.

On August 17, 2020, the Company and Oz Rey entered into Amendment No. 1 to 10% Secured Convertible Debenture ("Debenture Amendment") to fix the conversion rate into common stock at \$0.10 per share. Further, Oz Rey agreed not to convert any portion of the debenture that would cause the number of shares on a fully-diluted basis issued after the conversion to exceed the authorized share level. Oz Rey may however, upon reasonably notice to the Company, require the Company to include in its proxy materials, for any annual meeting of shareholders being held by the Company, a proposal to amend the Company's certificate of incorporation to increase the Company's authorized shares to a number sufficient to allow for conversion of all shares underlying the debenture, on a fully diluted basis. Oz Rey also agreed that the Company would not be required under any circumstances to require the Company to make a cash payment to settle the conversion feature not exercisable due to the authorized share cap or in an event that the Company was unable to deliver shares under the conversion feature. Oz Rey also agreed to waive any event of default under the debenture that occurred or existed prior to August 17, 2020.

In connection with the Merger and Spin-Off, all outstanding shares of Series 2 Convertible Preferred Stock of Chanticleer were automatically exchanged for substantially identical shares of preferred stock in Amergent ("Series 2 Preferred"). The board of directors approved the certificate of designations rights and preferences of Series 2 Preferred, more fully set forth in a "Certificate of Designations" filed with the Secretary of State of Delaware and authorized the designation and immediate issuance of 787 shares of Series 2 Preferred. In addition, pursuant to Chanticleer's original agreement with the investors, we issued 5-year warrants to purchase an aggregate of 350,000 shares of Amergent's common stock to the investors at \$1.25 per share. Each share of Series 2 Preferred has a stated value of \$1,000. In the event that the proceeds received by the investors from the sale of all the shares of common stock issued upon conversion of Series 2 Preferred in both Amergent and its former Parent ("Conversion Shares") did not equal at least \$1,875,000 by August 10, 2020 ("True-Up Date"), Amergent was required to pay the investor an amount in cash equal to the difference between \$1,875,000 and the proceeds previously realized by the investor from the sale of the Conversion Share, net of brokerage commissions and any other fees incurred by investor in connection with the sale of Conversion Shares. The balance will be paid by Amergent out of either (i) the proceeds from the exercise by Amergent of existing warrants to purchase shares of the common stock of Sonnet or (ii) from a segregated cash account. We were required to deposit \$1,250,000 into a segregated cash account and maintain prescribed amounts in the segregated cash amount until the return is satisfied in full.

The Series 2 Preferred Stock is convertible at the option of holder at the lesser of (i) \$1.00 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like) or (ii) 90% of the five day average volume weighted average price of the common, provided the conversion price has a floor of \$0.50 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like). Conversion is subject to a beneficial ownership limitation of 4.99%. This limitation may be increased by the holder up to 9.99%, with 61 days' notice. No dividends shall be declared or paid on the Series 2 Preferred Stock. Upon any liquidation, dissolution or winding-up of Amergent, the holder shall be entitled to receive out of the assets, whether capital or surplus, an amount equal to 125% of the stated value plus any default interest and any other fees or liquidated damages then due and owing thereon under the Certificate of Designations, for each share of Series 2 Preferred before any distribution or payment shall be made to the holders of Amergent common stock. The holder of Series 2 Preferred will vote together with the holders of common stock as a single class on an as-converted basis on all matters presented to the holders of common stock and shall vote as a separate class on all matters presented to the holders of Series 2 Preferred. In addition, without the approval of the holder, Amergent will not, (i) sell all or substantially all of its assets, merge or consolidate with another entity or voluntarily liquidate or dissolve the corporation, (ii) alter or change the rights, preferences or privileges of the Series 2 Preferred, (iii) authorize or create any class of stock ranking as to dividends, redemption or distribution of assets upon a liquidation senior to, or otherwise pari passu with, the Series 2 Preferred Stock, (iv) amend its certificate of incorporation, as amended, or other charter documents in any manner that adversely affects any rights of the holder, (v) increase the number of authorized shares of Series 2 Preferred Stock, (vi) redeem any shares of capital stock of the company (other than any redemption of securities from officers or employees of the company pursuant to existing contractual arrangements with such officers or employees or in connection with the termination of their employment) or (vii) enter into any agreement with respect to any of the foregoing. Breach of Amergent's obligations and other circumstances set forth in the Certificate of Designation will trigger a redemption event. The Certificate of Designations provides for customary adjustments in the event of dividends or stock splits and anti-dilution protection.

If a registration statement is not available 6 months after the issuance date of the warrants, the warrants may be exercised via cashless exercise. The warrant includes customary anti-dilution protection and exercise is subject to a 9.99% beneficial ownership limitation that may be increased upon 60 days' notice from holder.

Concurrently with the transactions described above, the parties entered into a registration rights agreement for registration of shares of common stock underlying warrants and notes described above as well as shares of common stock underlying the Series 2 Preferred.

On August 17, 2020, Amergent and the holders of Series 2 Preferred entered into a Waiver, Consent and Amendment to Certificate of Designations ("COD Amendment") extending the True-Up Date to December 10, 2020. In exchange, (i) Amergent issued warrants to purchase 134,000 shares of common stock to the holders of Series 2 Preferred, (ii) issued a cash payment of \$66,000 to the holders of Series 2 Preferred agreed to pay expenses of the holders of Series 2 Preferred incurred in connection with the Amendment and (iii) released the holders of Series 2 Preferred from claims related to the Certificate of Designations and the holders' investments in Amergent or its predecessor. Other than the issuance date, the new warrants are identical to the original warrants issued to the Series 2 Preferred investors. An Amended and Restated Certificate of Designations of Series 2 Convertible Preferred Stock ("Amended COD") that provides for the extension of the True-Up Date to December 10, 2020 and provides that the Amergent may not access any portion of funds held in the segregated account until the obligations under Series 2 Preferred are satisfied in full, was filed on August 17, 2020.

On February 16, 2021, the Company and the holders of the Series 2 Preferred Stock entered into a Waiver, Consent and Amendment to the Certificate of Designations (the “Waiver”). Pursuant to the Waiver, the Company filed the Second Amendment and Restated Certificate of Designations of Series 2 Convertible Preferred Stock (“Amended COD”) (i) providing for the extension of the True-Up Payment to April 1, 2021, (ii) providing for the deduction of proceeds to the original holders from sales of Series 2 Preferred for the True-Up Payment, with the Delaware Secretary of State and (iii) providing for a reduction in amount required to be held in a segregated cash account from \$1,250,000 to \$850,000.

The transactions discussed above are exempt from registration pursuant to Section 4(a)(2) of the Securities Act, and corresponding provisions of state securities laws or, alternatively, Section 3(a)(9) of the Securities Act and corresponding provisions of state securities laws, on the basis that (i) offers were made to a limited number of existing warrant holders, (ii) each offer was made through direct communication with the offerees by Amergent, (iii) the sophistication of the offerees and financial ability to bear risks (iv) the extensive disclosure provided to the offerees, and (v) no general solicitation and no commission or remuneration was paid for solicitation.

EQUITY COMPENSATION PLANS

The Company does not have an equity compensation plan as of December 31, 2020.

ITEM 6. SELECTED FINANCIAL DATA

As a smaller reporting company, Amergent is not required to provide the information required by this Item 6.

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

You should read the following discussion of our results of operations and financial condition together with our audited consolidated financial statements as of and for the year ended December 31, 2020 and 2019 including the notes thereto, included in this Report. The discussion below contains forward-looking statements and involves numerous risks and uncertainties, including, but not limited to, those described in Item 1A. “Risk Factors”. Actual results may differ materially from those contained in any forward-looking statements. Forward-looking statements speak only as of the date they are made. We undertake no obligation to update or revise such statements to reflect new circumstances or unanticipated events as they occur, and you are urged to review and consider disclosures that we make in this and other reports that discuss factors germane to our business.

Overview

As of December 31, 2020, we operated and franchised a system-wide total of 35 fast casual restaurants, of which 26 were company-owned and 9 were owned and operated by franchisees under franchise agreements. During the year ended December 31, 2020, we permanently closed 8 restaurants due to the COVID-19 pandemic.

American Burger Company (“ABC”) is a fast-casual dining chain consisting of 3 company-owned locations as of December 31, 2020 in North Carolina and New York. During 2020, ABC permanently closed 2 locations due to the COVID-19 pandemic. ABC is known for its diverse menu featuring fresh salads, customized burgers, milk shakes, sandwiches, and beer and wine.

BGR: The Burger Joint (“BGR”) was acquired in March 2015 and consists of 7 company-owned locations as of December 31, 2020 and 9 franchisee-operated locations in the United States and the Middle East. During 2020, BRG permanently closed 1 location in the United States due to the COVID-19 pandemic.

Little Big Burger (“LBB”) was acquired in September 2015 and consists of 15 company-owned locations in the Portland, Oregon, Seattle, Washington, and Charlotte, North Carolina areas. During 2020, LBB permanently closed 4 locations due to the COVID-19 pandemic. Of the company-owned restaurants, 8 of those locations are operated under partnership agreements with investors where we control the management and operations of the stores and the partner supplied the capital to open the store in exchange for a noncontrolling interest.

As of December 31, 2020, we operated 1 company-owned Hooters full-service restaurant in the United Kingdom. No Hooters locations were operated in the United States as of December 31, 2020 as the Hooters Oregon location was permanently closed in 2020 as a result of COVID-19 pandemic. Hooters restaurants are casual beach-themed establishments featuring music, sports on large flat screens, and a menu that includes seafood, sandwiches, burgers, salads, and of course, Hooters original chicken wings and the “nearly world famous” Hooters Girls. The Company started initially as an investor in corporate owned Hooters and, subsequently, evolved into a franchisee operator. We hold a minority investment stake in Hooters of America.

Recent Developments

Merger

On April 1, 2020, Chanticleer completed its merger transaction with Sonnet BioTherapeutics, Inc. (“Sonnet”), in accordance with the terms of the Agreement and Plan of Merger, dated as of October 10, 2019, among the Company, Sonnet, Biosub Inc. (“Merger Sub”), and Sonnet Sub, as amended by Amendment No. 1 thereto, dated as of February 7, 2020 (as so amended, the “Merger Agreement”), pursuant to which Merger Sub merged with and into Sonnet Sub, with Sonnet Sub surviving as a wholly-owned subsidiary of Chanticleer (the “Merger”). On April 1, 2020, in connection with the Merger, Chanticleer changed its name to “Sonnet BioTherapeutics Holdings, Inc.”

Spin-Off

In connection with and prior to the Merger, Chanticleer contributed and transferred to Amergent Hospitality Group, Inc. (“Amergent”), a newly-formed, wholly-owned subsidiary of Chanticleer, all of the assets and liabilities relating to Chanticleer’s restaurant business. On March 16, 2020, the board of directors of Chanticleer declared a dividend with respect to the shares of Chanticleer’s common stock outstanding at the close of business on March 26, 2020 of one share of the Amergent common stock held by Chanticleer for each outstanding share of Chanticleer common stock. The dividend, which together with the contribution and transfer of Chanticleer’s restaurant business described above, is referred to as the “Spin-Off.” Prior to the Spin-Off, Amergent engaged in no business or operations.

PPP Loan

On March 27, 2020, Congress passed “The Coronavirus Aid, Relief, and Economic Security Act” (CARES Act), which included the “Paycheck Protection Program” (PPP) for small businesses. On April 27, 2020, Amergent received a PPP loan of \$2.1 million. Due to the Spin-Off and Merger, Amergent was not publicly traded at the time of the loan application or funding. The note bears interest at 1% per year, matures in April 2022, and requires monthly interest and principal payments of approximately \$119,000 beginning in November 2020 and through maturity. The currently issued guidelines of the program allow for the loan proceeds to be forgiven if certain requirements are met. Any loan proceeds not forgiven will be repaid in full. The Company applied for forgiveness of the loan and the application is under review by the government agency administering the PPP. No assurance can be given as to the amount, if any, of forgiveness. The application for forgiveness allowed the Company to defer the timing of repayment until the forgiveness assessment is completed.

On February 25, 2021, we received an additional \$2.0 million PPP loan. The note bears interest at 1% per year, matures on February 25, 2026, and requires monthly principal and interest payments of approximately \$44,660 beginning June 25, 2022 through maturity. The loan may be forgiven if certain criteria are met.

EIDL Loan

On August 4, 2020, we obtained two loans under the Economic Injury Disaster Loan (“EIDL”) assistance program from the Small Business Administration (“SBA”) in light of the impact of the COVID-19 pandemic on the Company’s business. The principal amount of the loans is \$299,900, with proceeds to be used for working capital purposes. Interest accrues at the rate of 3.75% per year. Total installment payments, including principal and interest, are due monthly beginning August 4, 2021 in the amount of \$1,762 monthly. The balance of principal and interest is payable over the next thirty years from the date of the promissory note. There are no penalties for prepayment. Based upon guidance issued by the SBA on June 19, 2020, the EIDL loans are not required to be refinanced by the PPP loan.

RESULTS OF OPERATIONS FOR THE YEAR ENDED DECEMBER 31, 2020 COMPARED TO THE YEAR ENDED DECEMBER 31, 2019

Our results of operations are summarized below:

	Twelve Months Ended				
	December 31, 2020		December 31, 2019		
	Amount	% of Revenue*	Amount	% of Revenue*	% Change
Restaurant sales, net	\$ 18,131,097	96.6%	\$ 29,055,521	96.4%	(37.6)%
Gaming income, net	292,011	1.6%	462,507	1.5%	(36.9)%
Franchise income	340,808	1.8%	575,090	1.9%	(40.7)%
Management fee income	—	—%	50,000	0.2%	(100.0)%
Total revenue	18,763,916		30,143,118		
Expenses					
Restaurant cost of sales	5,749,876	31.7%	9,494,777	32.7%	(39.4)%
Restaurant operating expenses	13,194,583	72.8%	19,406,358	66.8%	(32.0)%
Restaurant pre-opening and closing expenses	287,768	1.6%	361,554	1.2%	(20.4)%
General and administrative expenses	4,691,541	25.0%	5,966,447	19.8%	(21.4)%
Asset impairment charge	1,578,464	8.4%	9,149,852	30.4%	(82.7)%
Depreciation and amortization	1,525,367	8.1%	1,842,352	6.1%	(17.2)%
Total expenses	27,027,599	144.0%	46,221,340	153.3%	(41.5)%
Operating loss	(8,263,683)		(16,078,222)		
Other (expense) income:					
Interest expense	(684,315)	(3.6)%	(673,573)	(2.2)%	1.6%
Change in fair value of derivative liabilities	616,200	3.3%	—	—%	—%
Change in the fair value of investment	(1,232,037)	(6.6)%	—	—%	—%
Debt extinguishment expense	(11,808,111)	(62.9)%	—	—%	—%
Gain on extinguishment of lease liability	506,185	2.7%	—	—%	—%
Other income (expense)	281,293	1.5%	(617,837)	(2.0)%	(145.5)%
Total other expense	(12,320,785)		(1,291,410)		
Loss before income taxes	(20,584,468)		(17,369,632)		
Income tax expense	(6,505)	—%	(73,726)	(0.2)%	(91.2)%
Loss from continuing operations	(20,590,973)		(17,443,358)		
Discontinued operations					
Loss from discontinued operations, net of tax	—	—%	(1,021,674)	(3.4)%	(100.0)%
Consolidated net loss	\$ (20,590,973)		\$ (18,465,032)		

* Restaurant cost of sales, operating expenses and closing expense percentages are based on restaurant sales, net. Other percentages are based on total revenue.

Revenue

Total revenue decreased to \$18.8 million for the year ended December 31, 2020 from \$30.1 million for the year ended December 31, 2019.

	Year Ended December 31, 2020	
	Amount	% of Revenue*
Restaurant sales, net	\$ 18,131,097	96.6%
Gaming income, net	292,011	1.6%
Franchise income	340,808	1.8%
Management fee income	—	—%
Total revenue	\$ 18,763,916	100%

	Year Ended December 31, 2019	
	Amount	% of Revenue*
Restaurant sales, net	\$ 29,055,521	96.4%
Gaming income, net	462,507	1.5%
Franchise income	575,090	1.9%
Management fee income	50,000	0.2%
Total revenue	\$ 30,143,118	100%

- Revenue from Restaurant sales decreased 37.6% to \$18.1 million for the year ended December 31, 2020, compared to the year ended December 31, 2019. The primary reason for the decline was due to COVID-19 pandemic restrictions, where a portion of the restaurants were temporarily closed, and the units that remained open were only able to provide take-out and delivery orders for customers due to government restrictions and mandates. Additionally, there was a decline in revenue from the closure of non-performing stores. For the year ended December 31, 2020, the Company permanently closed 8 stores. These permanently closed stores provided revenue of \$0.6 million for the year ended December 31, 2020, versus \$3.6 million for the comparable 2019 period.
- Gaming income decreased 36.9% to \$0.3 million for the year ended December 31, 2020, compared to the year ended December 31, 2019. The primary reason for this decline was due to the affect COVID-19 pandemic had on operations. The gaming location in Portland was totally shut down for 6 weeks in 2020 due to COVID-19 during the months of April and May.
- Franchise Income decreased 40.7% to \$0.3 million for the year ended December 31, 2020, compared to the year ended December 31, 2019. The primary reason for this decline was due to the affect COVID-19 pandemic had on revenue of franchise locations.

Restaurant cost of sales

Restaurant cost of sales decreased to \$5.7 million for the year ended December 31, 2020 from \$9.5 million for the year ended December 31, 2019. The percent of restaurant sales decreased to 31.7% for the year ended December 31, 2020 from 32.7% for the year ended December 31, 2019. The overall decrease in cost of sales was due to the 37.6% decline in restaurant revenue to \$18.1 million for the year ended December 31, 2020 compared to \$29.1 million for the year ended December 31, 2019.

Restaurant operating expenses

Restaurant operating expenses decreased to \$13.2 million for the year ended December 31, 2020 from \$19.4 million for the year ended December 31, 2019. The overall decrease of restaurant operating expenses was driven by the overall decline of revenue as described in the revenue section above, and the corresponding adjustment of labor at the store level and tighter controls of store level operating expenses.

Restaurant pre-opening and closing expenses

Restaurant pre-opening and closing expenses decreased to \$0.3 million for the year ended December 31, 2020 compared with \$0.4 million for the year ended December 31, 2019. The decrease is primarily due to no new restaurants opening in the year ended December 31, 2020, compared to one restaurant that incurred pre-opening expenses in the year ended December 31, 2019.

General and administrative expense ("G&A")

G&A expenses decreased to \$4.7 million for the year ended December 31, 2020, from \$6.0 million for the year ended December 31, 2019. The decreased in G&A was driven by the reduction of Salaries and benefits resulting from the departure of two senior management personnel, a reduction in Advertising, insurance and other resulting from decreased expenditures due to store closures and the COVID-19 pandemic, and a reduction in travel and entertainment due to not having to manage unionization efforts that occurred in 2019, and improvements in management of operations. The decreases were slightly offset by increases in Audit, legal and other professional services resulting from the Company filing its Form-10 in 2020 for the Merger transaction. Significant components of G&A are summarized as follows:

	Year Ended December 31,	
	2020	2019
Audit, legal and other professional services	\$ 2,013,247	\$ 1,887,919
Salary and benefits	1,998,070	2,375,592
Advertising, insurance and other	492,672	1,387,719
Shareholder services and fees	169,325	114,864
Travel and entertainment	18,227	200,353
Total G&A Expenses	<u>\$ 4,691,541</u>	<u>\$ 5,966,447</u>

Asset impairment charges

Asset impairment charges decreased to \$1.6 million for the year ended December 31, 2020, compared to \$9.1 million in the year ended December 31, 2019. During 2019, we recognized impairment charges related to the closure of three BGR locations, a Hooters location, and one American Burger location. We also recognized impairment charges related to our Hooters Nottingham location of approximately \$1.0 million, and an impairment of \$1.0 million related to the Hooters in Portland, Oregon. Due to the adoption of ASC 842 and termination fees from the above-mentioned store closures, the Company recognized another \$5.2 million impairment in the year ended December 31, 2019.

In the 2020 period, the Company recorded an impairment on tradenames/trademarks of approximately \$0.3 million, property and equipment of approximately \$0.8 million and right of use asset of approximately \$0.5 million primarily due to the lower level of cash flow at the store level along with the permanent closures related to the impact of COVID-19 on operations.

Depreciation and amortization

Depreciation and amortization expense was \$1.5 million for the year ended December 31, 2020, compared to \$1.8 million for the year ended December 31, 2019. The Company has curtailed opening new stores in the past several years and in making acquisitions of property and equipment due to its financial condition. Recent impairments of property and equipment and intangible assets have caused a decrease in the gross value of the underlying assets thereby resulting in a decrease in depreciation and amortization expense.

Other (expense) income

Interest expense for the year ended December 31, 2020 of \$0.7 million was comparable to the comparative period in 2019. This is consistent with the Company's debt load at the end of each period of approximately \$6.7 million for the year ended December 31, 2020 and \$6.6 million for the year ended December 31, 2019.

During the year ended December 31, 2020 the change in fair value of derivative liabilities was income of \$0.6 million. The derivative liabilities arise from transactions in 2020 and as such, there was no amount in 2019. The derivative liabilities were marked to market at each quarter end through August 2020. An amendment was entered into on August 17, 2020 (see Note 7 in the financial statements) which eliminated the requirement to continue to mark-to-market these instruments.

In connection with the Merger, the Company obtained warrants to purchase 186,101 shares of Sonnet at \$0.001 per share. The warrants were exercised in a cashless transaction in November 2020 resulting in the Company receiving 185,422 shares of Sonnet. The share price of Sonnet decreased from \$8.76 at April 1, 2020 (the Merger date) to \$2.23 at December 31, 2020 causing a loss on investment of \$1.2 million for the year ended December 31, 2020. The shares will continue to be recorded at fair value until the securities are sold.

On April 1, 2020, the Company exchanged the then existing 8% non-convertible notes for 10% convertible notes. Warrants to purchase common stock were also issued in connection with the issuance of the new notes. The Company recorded a \$11.8 million loss on the extinguishment of the 8% notes based on the difference in the carrying value of the old notes and the fair value of the new notes and warrants issued. See Note 7 to the financial statements for further discussion. There were no similar transactions in the year ended December 31, 2019.

In the year ended 2020, the Company recognized a gain on the extinguishment of lease liabilities of \$0.5 million due to the derecognition of lease liabilities resulting from the Company negotiating the cancellation of its obligations under certain lease agreements. The cancellations resulted from the COVID-19 pandemic. There were no similar transactions in the year ended December 31, 2019.

Other income was \$0.3 million for the year ended December 31, 2020 compared to other expense of (\$0.6) million for the year ended December 31, 2019. During the year ended December 31, 2019 an expense of \$0.4 million was recorded for the write down of an investment in Hooters of America. The item did not re-occur in 2020. During the year ended December 31, 2020, the Company recognized approximately \$0.2 million of income related to the remeasurement of right of use lease liabilities.

STATEMENT OF CASH FLOWS FOR THE YEAR ENDED DECEMBER 31, 2020 COMPARED TO THE YEAR ENDED DECEMBER 31, 2019

	Year Ended December 31,	
	2020	2019
Net cash used in operating activities	\$ (5,616,136)	\$ (4,046,550)
Net cash used in investing activities	(63,751)	678,669
Net cash provided by financing activities	7,107,141	3,343,397
Effect of foreign currency exchange rates	533	1,390
	<u>\$ 1,427,787</u>	<u>\$ (23,094)</u>

Cash used in operating activities was approximately \$5.6 million for the year ended December 31, 2020 compared to cash used in operating activities of approximately \$4.0 million for the year ended December 31, 2019. This use of cash was primarily driven by the net loss of \$21.1 million and \$17.4 million in the years ended December 31, 2020 and 2019, respectively. Losses were also offset by non-cash charges to operations of \$16.2 million and \$13.1 in the years ended December 31, 2020 and 2019, respectively. The balance of the change in cash flows from operating activities was related to net movements in asset and liability accounts.

Cash used in investing activities for the year ended December 31, 2020 was \$0.06 million compared to cash provided of \$0.7 million for the year ended December 31, 2019. Cash used in investing activities in 2020 was for the purchase of property and equipment. The cash provided from investing activities in 2019 was related to \$0.5 million received from the sale of assets, \$0.3 million from tenant improvement allowances offset by \$0.5 million of expenditures for property and equipment.

Cash provided by financing activities for the year ended December 31, 2020 was approximately \$7.1 million compared to cash provided by financing activities of approximately \$3.3 million for the year ended December 31, 2019. The primary drivers of the cash provided by financing activities during 2020 was proceeds from the bridge preferred equity investment, proceeds from the exercise of warrants, and the \$5.4 million of net Merger Consideration received. The primary driver of the cash provided from financing activities in 2019 were proceeds received from a rights offering and contributions received from a non-controlling interest.

LIQUIDITY, CAPITAL RESOURCES AND GOING CONCERN

Liquidity, Capital Resources and Going Concern

As of December 31, 2020, our cash balance was \$1,928,804, of which \$1,250,336 was restricted cash, our working capital deficiency was \$12,281,398 and we had significant near-term commitments and contractual obligations. The level of additional cash needed to fund operations and our ability to conduct business for the next 12 months will be influenced primarily by the following factors:

- our ability to access the capital and debt markets to satisfy current obligations and operate the business;
- our ability to qualify for and access financial stimulus programs available through federal and state government programs;
- our ability to refinance or otherwise extend maturities of current debt obligations;
- our ability to manage our operating expenses and maintain gross margins;
- popularity of and demand for our fast-casual dining concepts; and
- general economic conditions and changes in consumer discretionary income.

We have typically funded our operating costs, acquisition activities, working capital requirements and capital expenditures with proceeds from the issuances of our common stock and other financing arrangements, including convertible debt, lines of credit, notes payable, capital leases, and other forms of external financing.

On March 10, 2020, the World Health Organization characterized the novel COVID-19 virus as a global pandemic. The COVID-19 outbreak in the United States has resulted in a significant impact throughout the hospitality industry. The Company has been impacted due to restrictions placed on them by state and local governments that caused temporary restaurant closures or significantly reduced the Company's ability to operate, restricting the Company's restaurants to take-out only. It is difficult to estimate the length or severity of this outbreak; however, the Company has made operational changes, as needed, to reduce the impact. However, there can be no certainty regarding the length and severity of the outbreak and such its ultimate financial impact on the restaurant operations.

As a result of the Merger discussed in the audited consolidated and combined financial statements, on April 1, 2020, Amergent received gross proceeds of \$6,000,000 in cash and warrants to purchase 186,161 shares of the Company's common stock of Sonnet as well as paid down and refinanced certain debt obligations. Even considering the additional liquidity on April 1, 2020, proceeds from the PPP loan on April 27, 2020 and February 25, 2021, and EIDL loans on April 4, 2020, the Company expects to be required to seek additional debt or equity funding to maintain ongoing operations and there can be no assurances that such funding would be available at commercially reasonable terms, if at all.

As Amergent executes its business plan over the next 12 months, it intends to carefully monitor the impact of its working capital needs and cash balances relative to the availability of cost-effective debt and equity financing. In the event that capital is not available, Amergent may then have to scale back or freeze its operations plans, sell assets on less than favorable terms, reduce expenses, and/or curtail future acquisition plans to manage its liquidity and capital resources.

The Company's current operating losses, combined with its working capital deficit and uncertainties regarding the impact of COVID-19, raise substantial doubt about our ability to continue as a going concern.

In addition, our business is subject to additional risks and uncertainties, including, but not limited to, those described in Item 1A. "Risk Factors".

The consolidated and combined financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts and classification of liabilities that might be necessary should the Company be unable to continue as a going concern.

CRITICAL ACCOUNTING POLICIES

Our reported results of operations and financial position are dependent upon the application of certain accounting policies and estimates that require subjective or complex judgments. Such estimates are inherently uncertain and changes in such estimates could have a significant impact on reported results and balances for the periods presented as well as future periods. The following is a description of what we consider to be our most critical accounting policies.

Leases

We determine if a contract contains a lease at inception. Our material operating leases consist of restaurant locations and office space. Our leases generally have remaining terms of 1-20 years and most include options to extend the leases for additional 5-year periods. Generally, the lease term is the minimum of the noncancelable period of the lease or the lease term inclusive of reasonably certain renewal periods up to a term of 20 years. If the estimate of our reasonably certain lease term was changed, our depreciation and rent expense could differ materially.

Operating lease assets and liabilities are recognized at the lease commencement date. Operating lease liabilities represent the present value of lease payments not yet paid. Operating lease assets represent our right to use an underlying asset and are based upon the operating lease liabilities adjusted for prepayments or accrued lease payments, initial direct costs, lease incentives, and impairment of operating lease assets. To determine the present value of lease payments not yet paid, we estimate incremental borrowing rates corresponding to the reasonably certain lease term. As we have no committed credit facilities, secured or otherwise, we estimate this rate based on prevailing financial market conditions, comparable company and credit analysis, and management judgment. If the estimate of our incremental borrowing rate was changed, our operating lease assets and liabilities could differ materially.

Estimated Lease Termination and Other Closing Costs

Once we have determined that a restaurant location is to be closed, we estimate the expected proceeds to be received from such disposal and impair the carrying value of the net assets of such locations to this estimate and report these net assets as assets held for sale. Our estimate of disposal proceeds is dependent upon multiple assumptions including our ability to identify a buyer as well as the general market for commercial real estate at the expected time of disposal. Actual results could significantly differ from these estimates, which could result in a significant impact to reported operations in future periods. Assets that have been impaired to their estimated disposal proceeds are maintained at the lower of this new carrying value or the most recently developed estimate of eventual proceeds.

Long-Lived Assets

Long-lived assets, such as property and equipment, operating lease assets, and purchased intangible assets subject to depreciation and amortization, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Some of the events or changes in circumstances that would trigger an impairment test include, but are not limited to:

- significant under-performance relative to expected and/or historical results (negative comparable sales growth or operating cash flows for two consecutive years);
- significant negative industry or economic trends;
- knowledge of transactions involving the sale of similar property at amounts below the Company's carrying value; or
- the Company's expectation to dispose of long-lived assets before the end of their estimated useful lives, even though the assets do not meet the criteria to be classified as "Held for Sale."

If circumstances require a long-lived asset or asset group be tested for possible impairment, the Company first compares undiscounted cash flows expected to be generated by that asset or asset group to its carrying value. If the carrying value of the long-lived asset or asset group is not recoverable on an undiscounted cash flow basis, an impairment is recognized to the extent that the carrying value exceeds its fair value. Fair value is determined through various valuation techniques, including discounted cash flow models, quoted market values and third-party independent appraisals, as considered necessary.

Due to the continued impact of this pandemic on the Company's business, management performed an impairment analysis of its long-lived assets at each quarter end in 2020, including December 31, 2020, and determined that the carrying value of the Company's trade name/trademark intangible asset, property and equipment and operating lease assets were impaired for an aggregate amount of \$1.6 million. The determination was based on the best judgment of management for the future of the asset and on information known at the time of the assessment.

Goodwill

Goodwill is not subject to amortization but is tested at least annually or when impairment indicators are present. When evaluating goodwill for impairment, the Company may first perform a qualitative assessment to determine whether it is more likely than not that a reporting unit is impaired. If the Company does not perform a qualitative assessment, or determines that it is not more likely than not that the fair value of the reporting unit exceeds its carrying amount, a quantitative assessment is performed to calculate the estimated fair value of the reporting unit. If the carrying amount of the reporting unit exceeds the estimated fair value, an impairment charge is recorded to reduce the carrying value to the estimated fair value. The Company's decision to perform a qualitative impairment assessment is influenced by a number of factors, including the significance of the excess of the reporting unit's estimated fair value over carrying value at the last quantitative assessment date, the amount of time in between quantitative fair value assessments, and the price of our common stock. Impairment is measured as the excess of carrying value of the goodwill to its estimated fair value. Due to the ongoing impact of the COVID-19 pandemic on the Company's business, management performed an impairment analysis of goodwill as of each quarter end in 2020, including December 31, 2020. No goodwill impairment was required in 2020.

Derivative Liability

Accounting for the derivative liability relating to the Company's true-up payment, warrants and debt conversion feature requires Amergent's management to exercise judgment and make estimates and assumptions regarding fair value. Each derivative liability was initially recorded at fair value upon the date of issuance and is subsequently remeasured to fair value at each reporting date, with changes recognized in the consolidated statement of operations until the liability expires or qualifies for equity classification. See note 11 to the combined consolidated financial statements for a discussion of these liabilities. At December 31, 2020, the only remaining derivative liability was related to a true-up payment. Changes in the fair value of the true-up payment will continue to be recognized until it is settled.

Modification of Debt

When we change the terms of existing notes payable, we evaluate the amendments under ASC 470-50, *Debt Modification and Extinguishment* to determine whether the change should be treated as a modification or as a debt extinguishment. This evaluation includes analyzing whether there are significant and consequential changes to the economic substance of the note. If the change is deemed insignificant then the change is considered a debt modification, whereas if the change is substantial the change is reflected as a debt extinguishment.

Off-Balance Sheet Arrangements

We do not have any relationships with unconsolidated entities or financial partnerships, including entities sometimes referred to as structured finance or special purpose entities that were established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. We do not engage in off-balance sheet financing arrangements. In addition, we do not engage in trading activities involving non-exchange traded contracts. We therefore believe that we are not materially exposed to any financing, liquidity, market or credit risk that could arise if it had engaged in these relationships.

Recently Issued Accounting Pronouncements

A description of recently issued accounting pronouncements that may potentially impact the our financial position and results of operations is disclosed in Note 2 to the consolidated and combined financial statements included elsewhere in this Form 10-K.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

As a smaller reporting company, Amergent is not required to provide the information required by this Item 7A.

ITEM 8. FINANCIAL STATEMENTS

Amergent Hospitality Group, Inc and Subsidiaries
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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
Amergent Hospitality Group Inc. and Subsidiaries
Charlotte, North Carolina

Opinion on the Financial Statements

We have audited the accompanying consolidated and combined balance sheets of Amergent Hospitality Group Inc. and Subsidiaries (the “Company”) as of December 31, 2020 and 2019, the related consolidated and combined statements of operations, comprehensive loss, equity (deficit), and cash flows for the years then ended, and the related notes, (collectively referred to as the “financial statements”). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2020 and 2019, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

Substantial Doubt about the Company’s Ability to Continue as a Going Concern

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company incurred \$20.6 million in losses for the year ended December 31, 2020, that included \$1.6 million in asset impairments, and the Company has a working capital deficit of approximately \$12.3 million as of December 31, 2020. These conditions raise substantial doubt about the Company’s ability to continue as a going concern. Management’s evaluations of the events and conditions and management’s plans regarding those matters are also described in Note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

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

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

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

Critical Audit Matters

The critical audit matters communicated below are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing a separate opinion on the critical audit matters or on the accounts or disclosures to which they relate.

Impairment of Long-Lived Assets and Operating Lease Assets

Critical Audit Matter Description

The Company periodically evaluates the carrying amount of long-lived assets when events and circumstances warrant such a review to ascertain if any assets have been impaired. As a result of the material reduction in net revenues during fiscal 2020, the Company performed its impairment analysis at the store-level, which represents the lowest level for which identifiable cash flows are independent of the cash flows of other assets. The carrying amount of long-lived assets and operating lease assets, is considered impaired when the carrying value of the asset group exceeds the expected future cash flows from the asset group. As of December 31, 2020, long-lived assets aggregated to \$4.5 million and operating lease assets aggregated to \$9.5 million. During fiscal year 2020, the Company recorded impairment charges of \$833,000 and \$486,000 to long-lived assets and operating lease assets, respectively.

Inherent in the impairment analysis of long-lived assets and operating lease assets are certain significant judgments and estimates related to forecasted cash flows and revenues. As disclosed by management, changes in these assumptions can significantly impact the valuation of long-lived assets and operating lease assets, and the impairment charge that is recorded.

How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures related to the forecasted cash flows and sales used in the long-lived asset and operating lease asset impairment analyses included the following:

- We obtained an understanding of the relevant controls related to management's evaluation of long-lived asset impairment analyses.
- We performed procedures including reviewing the sensitivity over the assumptions used in the impairment analysis to assess their impact on the determination of fair value.
- We evaluated the reasonableness of management's cash flow forecasts by comparing the forecasts to historical performance, considering industry-wide trends in current year actual financial performance and management expectations for future performance.
- Testing completeness and accuracy of the assets that were tested for impairment.

Impairment Assessment of Goodwill and Indefinite-Lived Intangible Assets

Critical Audit Matter Description

As described in Note 6 to the consolidated financial statements, the Company had a goodwill balance of \$8.6 million, and an indefinite lived tradename balance of \$2.3 million at December 31, 2020.

- Goodwill and indefinite-lived intangible assets are tested for impairment at least annually at the reporting unit level or more frequently when events occur, or circumstances change. The evaluation requires a comparison of the estimated fair value of the asset to the carrying value of the asset. If the carrying value of the asset exceeds its fair value, an impairment charge is recorded.

The Company utilized a third-party consultant to perform an impairment test on both goodwill and indefinite-lived intangible assets. As the Company has a single reporting unit, management utilized a market capitalization approach in determining the fair value of the entity as part of the impairment assessment of goodwill. The Company utilized a relief from royalty method to estimate the fair value of indefinite-lived tradenames. As disclosed by management, changes in key assumptions in the relief from royalty approach could have a significant impact on the estimate of future cash flows and therefore, on the amount of any impairment charge. The determination of an impairment indicator on goodwill and finite-lived intangible assets requires management judgments and involves significant assumptions.

How the Critical Matter Was Addressed in the Audit

The primary audit procedures we performed to address this critical audit matter included:

- We obtained an understanding of the relevant controls related to management's evaluation of goodwill and other indefinite-lived asset impairment analyses.
- Reviewing and independently corroborating management's estimate of the fair value of the Company, which consists of a single reporting unit, utilizing a market capitalization approach.
- Evaluated management's determination of reporting units and segments
- Reviewing management's inputs, assumptions and projections utilized in the estimation of the fair value of the Company's indefinite-lived tradenames.
- Testing completeness and accuracy of the data used in impairment analyses.
- Performed sensitivity analyses over the Company's annual goodwill and indefinite-lived tradename impairment analyses.

Complex Debt and Equity Transactions

Critical Audit Matter Description

As described in Note 11 of the consolidated financial statements, the Company entered into multiple complex debt and equity transactions during the year ended December 31, 2020. During the first quarter of 2020, the Company issued Preferred Series 2 instruments that included a provision guaranteeing holders to a minimum investment return to be settled in cash, if necessary, at a future date. This provision was determined to be a derivative liability and has been included on the consolidated balance sheet as a liability and reported at fair value each reporting period. During the second quarter of 2020, the Company restructured its non-convertible debt to convertible debt. The restructuring arrangement also resulted in the Company issuing warrants to the debtholder. The restructuring was determined to be an extinguishment of the original debt, resulting in a recognized loss on extinguishment of \$11.8 million on the consolidated statement of operations for the year ended December 31, 2020. Additionally, management determined that the conversion feature and attached warrants associated with the new debt should be recorded as derivative liabilities. These derivative liabilities were carried at fair value on the consolidated balance sheet until the third quarter, when the convertible debt was amended to remedy the conditions that originally gave rise to the derivative liability classification. Management utilized outside valuation specialists to assist them in the development of the fair value of these instruments.

We identified these complex debt and equity instruments as a critical audit matter because of the judgments necessary to determine the periodic fair values of the underlying derivative liability instruments. This required extensive audit effort due to the complexity of the instruments. Additionally, there was considerable judgment on the part of management in determining the initial and subsequent classification of these instruments as liabilities, temporary equity or permanent equity.

How the Critical Audit Matter Was Addressed in the Audit

- We obtained an understanding of the relevant controls related to management's identification and valuation of derivative liabilities.
- With the assistance of fair value specialists, we independently evaluated the reasonableness of the inputs and methodologies utilized to develop the estimated periodic fair values of the underlying derivative instruments.
- We reviewed management's analysis of proper classification of complex instruments and assessed their compliance with relevant accounting guidance.

/s/ Cherry Bekaert LLP

We have served as the Company's auditor since 2015.

Charlotte, North Carolina
April 15, 2021

Amergent Hospitality Group, Inc and Subsidiaries
Consolidated and Combined Balance Sheets

	December 31, 2020	December 31, 2019
ASSETS		
Current assets:		
Cash	\$ 678,468	\$ 500,681
Restricted cash	1,250,336	336
Investments	413,268	—
Accounts and other receivables	314,043	131,887
Inventories	172,695	287,111
Prepaid expenses and other current assets	290,227	249,579
TOTAL CURRENT ASSETS	3,119,037	1,169,594
Property and equipment, net	3,702,894	5,630,490
Operating lease assets	9,529,443	11,668,026
Intangible assets, net	3,043,885	3,656,995
Goodwill	8,591,149	8,567,888
Investments	365,001	381,397
Deposits and other assets	295,930	309,462
Assets of discontinued operations	—	149,000
TOTAL ASSETS	\$ 28,647,339	\$ 31,532,852
LIABILITIES, REDEEMABLE SHARES, AND STOCKHOLDERS' DEFICIT		
Current liabilities:		
Accounts payable and accrued expenses	\$ 8,667,268	\$ 8,165,195
Current maturities of long-term debt and notes payable	2,338,978	6,630,961
Current operating lease liabilities	4,209,389	3,299,309
Derivative liabilities	184,800	—
TOTAL CURRENT LIABILITIES	15,400,435	18,095,465
Redeemable preferred stock Series 1: no par value; 0 and 62,876 shares issued and outstanding, net of discount of \$0 and \$139,131 at December 31, 2020 and December 31, 2019, respectively	—	709,695
Long-term operating lease liabilities	10,677,862	14,382,354
Contract liabilities	794,989	959,445
Deferred tax liabilities	108,809	102,304
Long-term debt and notes payable, net of current maturities	539,734	—
Convertible debt, net of debt discount of \$223,681 at December 31, 2020	3,814,208	—
Liabilities of discontinued operations	—	435,600
TOTAL LIABILITIES	31,336,037	34,684,863
Commitments and contingencies (see Note 12)		
Convertible Preferred Stock: Series 2: \$1,000 stated value; authorized 1,500 and no shares; 787 and no shares issued and outstanding at December 31, 2020 and December 31, 2019, respectively	459,608	—
Stockholders' Deficit:		
Common stock: \$0.0001 par value; authorized 50,000,000 and 45,000,000 shares; 14,282,736 and 10,404,347 shares issued and outstanding at December 31, 2020 and December 31, 2019, respectively	1,428	1,041
Additional paid-in-capital	92,433,344	71,505,989
Accumulated deficit	(94,587,482)	(75,068,385)
Accumulated other comprehensive loss	(25,916)	(46,437)
Total Amergent Hospitality Group, Inc., Stockholders' Deficit	(2,178,626)	(3,607,792)
Non-controlling interests	(969,680)	455,781
TOTAL STOCKHOLDERS' DEFICIT	(3,148,306)	(3,152,011)
TOTAL LIABILITIES, REDEEMABLE SHARES AND STOCKHOLDERS' DEFICIT	\$ 28,647,339	\$ 31,532,852

See accompanying notes to the consolidated and combined financial statements

Amergent Hospitality Group, Inc and Subsidiaries
Consolidated and Combined Statements of Operations

	Year Ended	
	December 31, 2020	December 31, 2019
Revenue:		
Restaurant sales, net	\$ 18,131,097	\$ 29,055,521
Gaming income, net	292,011	462,507
Franchise income	340,808	575,090
Management fee income	—	50,000
Total revenue	18,763,916	30,143,118
Expenses:		
Restaurant cost of sales	5,749,876	9,494,777
Restaurant operating expenses	13,194,583	19,406,358
Restaurant pre-opening and closing expenses	287,768	361,554
General and administrative expenses	4,691,541	5,966,447
Asset impairment charge	1,578,464	9,149,852
Depreciation and amortization	1,525,367	1,842,352
Total expenses	27,027,599	46,221,340
Operating loss	(8,263,683)	(16,078,222)
Other (expense) income:		
Interest expense	(684,315)	(673,573)
Change in fair value of derivative liabilities	616,200	—
Change in the fair value of investment	(1,232,037)	—
Debt extinguishment expense	(11,808,111)	—
Gain on extinguished lease liabilities	506,185	—
Other income (expense)	281,293	(617,837)
Total other expense	(12,320,785)	(1,291,410)
Loss before income taxes	(20,584,468)	(17,369,632)
Income tax expense	(6,505)	(73,726)
Loss from continuing operations	(20,590,973)	(17,443,358)
Discontinued operations		
Loss from discontinued operations, net of tax	—	(1,021,674)
Consolidated net loss	(20,590,973)	(18,465,032)
Less: Net loss attributable to non-controlling interests	619,552	402,386
Less: Net loss attributable to non-controlling interest of discontinued operations	—	336,262
Net loss attributable to Amergent Hospitality Group Inc.	(19,971,421)	(17,726,384)
Dividends on redeemable preferred stock	(28,219)	(112,238)
Net loss attributable to common shareholders of Amergent Hospitality Group Inc.	\$ (19,999,640)	\$ (17,838,622)
Net loss attributable to Amergent Hospitality Group, Inc. per common share, basic and diluted	\$ (1.46)	\$ (2.56)
Net loss attributable to Amergent Hospitality Group, Inc. before discontinued operations per common share, basic and diluted	\$ (1.46)	\$ (2.46)
Weighted average shares outstanding, basic and diluted	13,708,985	6,978,848

See accompanying notes to the consolidated and combined financial statements

Amergent Hospitality Group, Inc and Subsidiaries
Consolidated and Combined Statements of Comprehensive Loss

	Year Ended	
	December 31, 2020	December 31, 2019
Net loss attributable to Amergent Hospitality Group	\$ (19,971,421)	\$ (17,726,384)
Foreign currency translation gain	20,521	155,678
Comprehensive loss	<u>\$ (19,950,900)</u>	<u>\$ (17,570,706)</u>

See accompanying notes to the consolidated and combined financial statements

Amergent Hospitality Group, Inc and Subsidiaries
Consolidated and Combined Statements of Stockholders' Deficit
Year Ended December 31, 2020

	(Temporary equity) Preferred Series 2		Common Stock		Additional Paid-in	Accumulated	Accumulated Other Comprehensive	Non- Controlling	Total
	Shares	Amount	Shares	Amount	Capital	Deficit	Loss	Interest	
Balance, December 31, 2019	—	\$ —	10,404,347	\$ 1,041	\$ 71,505,989	\$ (75,068,385)	\$ (46,437)	\$ 455,781	\$ (3,152,011)
Common stock:									
Preferred unit dividend	—	—	37,518	4	19,519	(28,219)	—	—	(8,696)
Exercise of warrants	—	—	2,414,022	241	1,528,867	(325,366)	—	—	1,203,742
Preferred shares - Series 2:									—
Issuance of shares, net of transaction costs of \$95,000	1,500	1,405,000	—	—	—	—	—	—	—
Bifurcation of derivative liability	—	(529,000)	—	—	—	—	—	—	—
Beneficial conversion feature	—	(729,000)	—	—	729,000	—	—	—	729,000
Preferred stock deemed dividend	—	729,000	—	—	(729,000)	—	—	—	(729,000)
Conversion of Series 2 preferred to common	(713)	(416,392)	1,426,849	142	416,255	—	—	—	416,397
Reclassification of warrants and conversion feature	—	—	—	—	11,894,000	—	—	—	11,894,000
Warrant issued for True-Up Payment extension	—	—	—	—	28,060	—	—	—	28,060
Cash consideration of merger consideration, net of transaction costs of \$588,255	—	—	—	—	5,411,745	—	—	—	5,411,745
Contribution of warrant portion of merger consideration	—	—	—	—	1,628,909	—	—	—	1,628,909
Foreign currency translation	—	—	—	—	—	—	20,521	—	20,521
Reclassification of non- controlling interest	—	—	—	—	—	805,909	—	(805,909)	—
Net loss	—	—	—	—	—	(19,971,421)	—	(619,552)	(20,590,973)
Balance, December 31, 2020	<u>787</u>	<u>\$ 459,608</u>	<u>14,282,736</u>	<u>\$ 1,428</u>	<u>\$ 92,433,344</u>	<u>\$ (94,587,482)</u>	<u>\$ (25,916)</u>	<u>\$ (969,680)</u>	<u>\$ (3,148,306)</u>

See accompanying notes to the consolidated and combined financial statements

Amergent Hospitality Group, Inc and Subsidiaries
Consolidated and Combined Statements of Stockholders' Equity (Deficit)
Year ended December 31, 2019

	(Temporary equity) Preferred Series 2		Common Stock		Additional Paid-in	Accumulated	Accumulated Other Comprehensive	Non- Controlling	
	Shares	Amount	Shares	Amount	Capital	Deficit	Loss	Interest	Total
Balance, December 31, 2018	—	\$ —	3,715,444	\$ 373	\$64,756,903	\$ (57,124,673)	\$ (202,115)	\$ 827,037	\$ 8,257,525
Common stock and warrants issued for:									
Preferred unit dividend	—	—	77,975	7	77,144	(112,238)	—	—	(35,087)
Director fees	—	—	194,475	19	336,940	—	—	—	336,959
Consulting services	—	—	36,765	4	117,087	—	—	—	117,091
Subscriptions pursuant to rights offerings, net	—	—	3,009,733	300	2,614,315	—	—	—	2,614,615
Accrued interest on note payable	—	—	10,400	1	13,839	—	—	—	13,840
Exercise of warrants at reduced price	—	—	239,555	24	258,144	(105,090)	—	—	153,078
Share-based compensation	—	—	45,000	5	126,829	—	—	—	126,834
Stock issued to settle convertible debt and note payable	—	—	3,075,000	308	3,074,692	—	—	—	3,075,000
Foreign currency translation	—	—	—	—	—	—	155,678	—	155,678
Shareholder payment for short swing	—	—	—	—	1,676	—	—	—	1,676
Non-controlling interest contributions	—	—	—	—	—	—	—	575,000	575,000
Non-controlling interest distributions	—	—	—	—	—	—	—	(79,188)	(79,188)
Reclassification of non-controlling interest	—	—	—	—	128,420	—	—	(128,420)	—
Net loss	—	—	—	—	—	(17,726,384)	—	(738,648)	(18,465,032)
Balance, December 31, 2019	<u>—</u>	<u>\$ —</u>	<u>10,404,347</u>	<u>\$ 1,041</u>	<u>\$71,505,989</u>	<u>\$ (75,068,385)</u>	<u>\$ (46,437)</u>	<u>\$ 455,781</u>	<u>\$ (3,152,011)</u>

See accompanying notes to the consolidated and combined financial statements

Amergent Hospitality Group, Inc and Subsidiaries
Consolidated and Combined Statements of Cash Flows

	Year Ended	
	December 31, 2020	December 31, 2019
Cash flows from operating activities:		
Net loss from continuing operations	\$ (20,590,973)	\$ (18,465,032)
Net income from discontinued operations	—	1,021,674
Net loss	(20,590,973)	(17,443,358)
Adjustments to reconcile net loss to net cash flows from continuing operations		
Depreciation and amortization	1,525,367	1,842,352
Amortization of operating lease assets	1,081,052	1,701,962
Asset impairment charges	1,578,466	9,149,852
Gain from extinguished lease liabilities	(506,185)	—
ROU liability remeasurement	(224,317)	—
Warrant issued for True-Up Payment extension	28,060	—
Write down of investment	—	435,000
Common stock and warrants issued for services	—	24,507
Stock-based compensation	—	126,829
Loss on warrant inducement	—	105,089
Loss (gain) on investments	1,232,037	(21,616)
Gain on tax settlements	—	(195,982)
Amortization of debt discount	134,208	—
Loss on extinguishment of redeemable Series 1 Preferred	161,900	—
Loss on debt extinguishment	11,808,111	—
Gain on derivative liabilities revaluation	(616,200)	—
Change in assets and liabilities		
Accounts and other receivables	(33,444)	180,431
Prepaid and other assets	(29,302)	(152,588)
Inventories	107,686	(68,163)
Accounts payable and accrued expenses	377,248	2,134,821
Change in amounts payable to related parties	—	(185,726)
Deferred income taxes	6,505	25,539
Operating lease liabilities	(1,491,899)	(1,793,197)
Contract liabilities	(164,456)	(215,061)
Net cash flows from operating activities	(5,616,136)	(4,349,309)
Net cash used in operating activities from discontinued operations	—	302,759
Net cash used in operations	(5,616,136)	(4,046,550)
Cash flows from investing activities:		
Purchase of property and equipment	(63,751)	(472,882)
Proceeds from tenant improvement allowances	—	335,075
Proceeds from sale of assets	—	525,872
Net cash flows provided by (used in) investing activities	(63,751)	388,065
Net cash used in investing activities from discontinued operations	—	290,604
Net cash provided by (used in) investing activities	(63,751)	678,669
Cash flows from financing activities:		
Proceeds from the sale of common stock and warrants	—	153,055
Proceeds from rights offerings, net	—	2,694,530
Proceeds from Series 2 Preferred	1,405,000	—
Proceeds from warrant exercises	885,046	—
Redemption of Series 1 Preferred	(880,290)	—
Loan proceeds	2,991,676	—
Loan repayments	(2,706,036)	—
Merger consideration, net	5,411,745	—
Distributions to non-controlling interests	—	(79,188)
Contributions from non-controlling interests	—	575,000
Net cash flows provided by financing activities	7,107,141	3,343,397
Net cash used in financing activities from discontinued operations	—	—
Net cash flows provided by financing activities	7,107,141	3,343,397
Effect of exchange rate of cash	533	1,390
Net increase (decrease) in cash and restricted cash	1,427,787	(23,094)
Cash and restricted cash, beginning of year	501,017	524,111
Cash and restricted cash, end of year	\$ 1,928,804	\$ 501,017

See accompanying notes to the consolidated and combined financial statements

Amergent Hospitality Group, Inc and Subsidiaries
Consolidated and Combined Statements of Cash Flows

	Year Ended	
	December 31, 2020	December 31, 2019
Supplemental cash flow information:		
Cash paid for interest and income taxes		
Interest	\$ 471,707	\$ 556,352
Income taxes	\$ 25,956	\$ 110,707
Non-cash investing and financing activities		
Preferred stock dividends paid through issuance of common stock	\$ 19,523	\$ 77,144
Common stock issued for the payment of directors fees	\$ —	\$ 444,119
Convertible debt and notes payable settled through subscriptions in the rights offerings	\$ —	\$ 3,075,000
Fixed asset additions included in accounts payable and accrued expenses at year end	\$ —	\$ 330,771
Conversion of Preferred stock - Series 2 to common stock	\$ 416,392	\$ —
Accrued interest paid through warrant exercise	\$ 318,700	\$ —
Bifurcation of derivative liability from Preferred Stock - Series 2	\$ 529,000	\$ —
Warrant portion of merger consideration	\$ 1,628,909	\$ —
Reclassification of warrants and conversion feature from liability to equity	\$ 11,894,000	\$ —

See accompanying notes to the consolidated and combined financial statements

Amergent Hospitality Group, Inc and Subsidiaries
Notes to the Consolidated and Combined Financial Statements

1. NATURE OF BUSINESS

BASIS OF PRESENTATION

Amergent Hospitality Group, Inc. (“Amergent”) was incorporated on February 18, 2020 as a wholly-owned subsidiary of Chanticleer Holdings, Inc. (“Chanticleer”) for the purpose of conducting the business of Chanticleer and its subsidiaries after completion of the spin-off of Amergent to the shareholders of Chanticleer. The spin-off transaction was completed on April 1, 2020. Amergent is in the business of owning, operating and franchising fast casual dining concepts domestically and internationally.

On March 31, 2020, Chanticleer contributed all its assets and liabilities, including the stock interest in all its subsidiaries (other than Amergent), to Amergent. Based on this being a transaction between entities under common control the carryover basis of accounting was used to record the assets and liabilities contributed to Amergent. Further, as a common control transaction the consolidated and combined financial statements of Amergent reflect the transaction as if the contribution had occurred as of the earliest period presented herein.

As such, the accompanying consolidated and combined financial statements include the accounts of Amergent and its subsidiaries along with Chanticleer and its subsidiaries (collectively “we,” “us,” “our,” or the “Company”). All intercompany and inter-entity balances have been eliminated in consolidation and combination.

ORGANIZATION, MERGER, SPIN-OFF, REVERSE SPLIT

On April 1, 2020, Chanticleer completed its merger transaction with Sonnet BioTherapeutics, Inc. (“Sonnet”), in accordance with the terms of the Agreement and Plan of Merger, dated as of October 10, 2019, among Chanticleer, Sonnet, Biosub Inc. (“Merger Sub”), and Sonnet Sub, as amended by Amendment No. 1 thereto, dated as of February 7, 2020 (as so amended, the “Merger Agreement”), pursuant to which Merger Sub merged with and into Sonnet Sub, with Sonnet Sub surviving as a wholly-owned subsidiary of Chanticleer (the “Merger”). On April 1, 2020, in connection with the Merger, Chanticleer changed its name to “Sonnet BioTherapeutics Holdings, Inc.”

In connection with and prior to the Merger, Chanticleer contributed and transferred to Amergent, a newly-formed, wholly-owned subsidiary of Chanticleer, all of the assets and liabilities relating to Chanticleer’s restaurant business. On March 16, 2020, the board of directors of Chanticleer declared a dividend with respect to the shares of Chanticleer’s common stock outstanding at the close of business on March 26, 2020 of one share of the Amergent common stock held by Chanticleer for each outstanding share of Chanticleer common stock. The dividend, which together with the contribution and transfer of Chanticleer’s restaurant business described above, is referred to as the “Spin-Off.” Prior to the Spin-Off, Amergent engaged in no business or operations.

The Spin-Off of Amergent to the stockholders of record on March 26, 2020 occurred prior to the Merger on April 1, 2020 (“Spin-Off Date”). As a result of the Spin-Off, Amergent emerged as successor to the business, operations, assets and liabilities of pre-merger Chanticleer. Additionally, Amergent’s shareholder base and their holdings (on a pro-rata basis) are substantially identical to that of pre-merger Chanticleer.

In connection with the Merger on April 1, 2020, Amergent received proceeds from Sonnet of \$6,000,000 as well as a warrant to purchase 2% of the outstanding common shares of Sonnet (186,161 shares) for \$0.01 per share (“Merger Consideration”). Amergent simultaneously entered into agreements to refinance a note payable and issue warrants to the note holder. See Note 7 for additional information on the note refinancing.

Amergent Hospitality Group, Inc and Subsidiaries
Notes to the Consolidated and Combined Financial Statements

The consolidated and combined financial statements include the accounts of Amergent and its subsidiaries presented below:

Amergent Hospitality Group, Inc	Jurisdiction of Incorporation	Percent owned
American Roadside Burgers, Inc.	DE, USA	
American Burger Ally, LLC	NC, USA	100%
American Burger Morehead, LLC	NC, USA	100%
American Burger Prosperity, LLC	NC, USA	50%
American Roadside Burgers Smithtown, Inc.	DE, USA	100%
BGR Acquisition, LLC	NC, USA	100%
BGR Franchising, LLC	VA, USA	100%
BGR Operations, LLC	VA, USA	100%
BGR Acquisition 1, LLC	NC, USA	100%
BGR Annapolis, LLC	MD, USA	100%
BGR Arlington, LLC	VA, USA	46%
BGR Columbia, LLC	MD, USA	100%
BGR Michigan Ave, LLC	DC, USA	100%
BGR Mosaic, LLC	VA, USA	100%
BGR Old Keene Mill, LLC	VA, USA	100%
BGR Washingtonian, LLC	MD, USA	46%
Capitol Burger, LLC	MD, USA	100%
BT Burger Acquisition, LLC	NC, USA	100%
BT's Burgerjoint Rivergate LLC	NC, USA	100%
BT's Burgerjoint Sun Valley, LLC	NC, USA	100%
LBB Acquisition, LLC	NC, USA	100%
Cuarto LLC	OR, USA	100%
LBB Acquisition 1 LLC	OR, USA	100%
LBB Hassalo LLC	OR, USA	80%
LBB Platform LLC	OR, USA	80%
LBB Capitol Hill LLC	WA, USA	50%
LBB Franchising LLC	NC, USA	100%
LBB Green Lake LLC	OR, USA	50%
LBB Lake Oswego LLC	OR, USA	100%
LBB Magnolia Plaza LLC	NC, USA	50%
LBB Multnomah Village LLC	OR, USA	50%
LBB Progress Ridge LLC	OR, USA	50%
LBB Rea Farms LLC	NC, USA	50%
LBB Wallingford LLC	WA, USA	50%
LBB Downtown PDX LLC	WA, USA	100%
Noveno LLC	OR, USA	100%
Octavo LLC	OR, USA	100%
Primero LLC	OR, USA	100%
Quinto LLC	OR, USA	100%
Segundo LLC	OR, USA	100%
Septimo LLC	OR, USA	100%
Sexto LLC	OR, USA	100%
Jantzen Beach Wings, LLC	OR, USA	100%
Oregon Owl's Nest, LLC	OR, USA	100%
West End Wings LTD	United Kingdom	100%

Amergent Hospitality Group, Inc and Subsidiaries
Notes to the Consolidated and Combined Financial Statements

LIQUIDITY, CAPITAL RESOURCES AND GOING CONCERN

Liquidity, Capital Resources and Going Concern

As of December 31, 2020, the Company's cash balance was \$1,928,804, of which \$1,250,336 was restricted cash, its working capital deficiency was \$12,281,398 and it had significant near-term commitments and contractual obligations. The level of additional cash needed to fund operations and our ability to conduct business for the next 12 months will be influenced primarily by the following factors:

- our ability to access the capital and debt markets to satisfy current obligations and operate the business;
- our ability to qualify for and access financial stimulus programs available through federal and state government programs;
- our ability to refinance or otherwise extend maturities of current debt obligations;
- our ability to manage our operating expenses and maintain gross margins;
- popularity of and demand for our fast-casual dining concepts; and
- general economic conditions and changes in consumer discretionary income.

We have typically funded our operating costs, acquisition activities, working capital requirements and capital expenditures with proceeds from the issuances of our common stock and other financing arrangements, including convertible debt, lines of credit, notes payable, capital leases, and other forms of external financing.

On February 7, 2020, the Company entered into a Securities Purchase Agreement for the sale (the "Bridge Financing") of up to 1,500 shares of a new series of convertible preferred stock of the Company (the "Series 2 Preferred Stock") with an institutional investor for gross proceeds to the Company of up to \$1,500,000 (the "Preferred Securities Purchase Agreement"). The transaction occurred in two closings, the first of which, for 1,000 shares, occurred in mid-February 2020, and the second of which, for 500 shares, occurred in March 2020. In March 2020, an aggregate of 713 shares of Series 2 Preferred Stock were converted into 1,426,849 shares of common stock. In connection with the Merger, all outstanding shares of the Series 2 Preferred Stock were automatically cancelled and exchanged for substantially similar shares of preferred stock in Amergent. At December 31, 2021, 787 shares of Series 2 Preferred Stock were outstanding.

On March 10, 2020, the World Health Organization characterized the novel COVID-19 virus as a global pandemic. The COVID-19 outbreak in the United States has resulted in a significant impact throughout the hospitality industry. The Company has been impacted due to restrictions placed by state and local governments that caused temporary restaurant closures or significantly reduced the Company's ability to operate, restricting the Company's restaurants to take-out only. It is difficult to estimate the length or severity of this outbreak; however, the Company has made operational changes, as needed, to reduce the impact. However, there can be no certainty regarding the length and severity of the outbreak and as such its ultimate financial impact on the Company's operations.

On March 27, 2020, Congress passed "The Coronavirus Aid, Relief, and Economic Security Act" (CARES Act), which included the "Paycheck Protection Program" (PPP) for small businesses. On April 27, 2020, Amergent received a PPP loan in the amount of \$2.1 million. Due to the Spin-Off and Merger, Amergent was not publicly traded at the time of the loan application or funding. On February 25, 2021, the Company received an additional \$2.0 million PPP loan (see Note 13).

The \$2.1 million note bears interest at 1% per year, matures in April 2022, and requires monthly interest and principal payments of approximately \$119,000 beginning in November 2020 and through maturity. The currently issued guidelines of the program allow for the loan proceeds to be forgiven if certain requirements are met. Any loan proceeds not forgiven will be repaid in full. The Company applied for forgiveness of the loan and the application is under review by the government agency administering the PPP. No assurance can be given as to the amount, if any, of forgiveness. The application for forgiveness allowed the Company to defer the timing of repayment until the forgiveness assessment is completed.

As a result of the Merger on April 1, 2020, Amergent received \$6,000,000 in gross proceeds from Sonnet and a warrant to purchase 186,161 shares of Sonnet's common stock, as well as paid down and refinanced certain debt obligations. On November 17, 2020, the Company exercised its warrant to purchase Sonnet common stock and sold 100 shares in 2020. The remaining shares are held as investments and are carried at fair value at December 31, 2020 (see Note 4).

Amergent Hospitality Group, Inc and Subsidiaries
Notes to the Consolidated and Combined Financial Statements

Even considering the additional liquidity obtained on April 1, 2020 in connection with the Merger and through the PPP loan proceeds received on April 27, 2020 and February 25, 2021, among other financing events, the Company expects to have to seek additional debt or equity funding to support operations and there can be no assurances that such funding would be available at commercially reasonable terms, if at all.

As Amergent executes its business plan over the next 12 months, it intends to carefully monitor its working capital needs and cash balances relative to the availability of cost-effective debt and equity financing. In the event that capital is not available, Amergent may then have to scale back or freeze its growth plans, sell assets on less than favorable terms, reduce expenses, and/or curtail future acquisition plans to manage its liquidity and capital resources.

The Company's current operating losses, combined with its working capital deficit and uncertainties regarding the impact of COVID-19, raise substantial doubt about our ability to continue as a going concern.

The accompanying consolidated and combined financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts and classification of liabilities that might be necessary should the Company be unable to continue as a going concern.

2. SIGNIFICANT ACCOUNTING POLICIES

BASIS OF PRESENTATION

The accompanying consolidated and combined financial statements have been prepared in conformity with U.S. generally accepted accounting principles ("U.S. GAAP"). Any reference in these notes to applicable guidance is meant to refer to U.S. GAAP as found in the Accounting Standards Codification ("ASC") and Accounting Standards Updates ("ASU") promulgated by the Financial Accounting Standards Board ("FASB"). The consolidated and combined financial statements include accounts of the Company and its wholly-owned subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation.

USE OF ESTIMATES

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Significant estimates include valuing derivatives, options and warrants using the Binomial Lattice and Black-Scholes models, and analysis of the recoverability of goodwill and long-lived assets. Actual results could differ from those estimates, particularly given the significant social and economic disruptions and uncertainties associated with the ongoing COVID-19 pandemic and the COVID-19 control responses.

FAIR VALUE OF FINANCIAL INSTRUMENTS

The Company measures and records certain financial assets and liabilities at fair value on a recurring basis. U.S. GAAP provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority, referred to as Level 1, to quoted prices in active markets for identical assets and liabilities. The next priority, referred to as Level 2, is given to quoted prices for similar assets or liabilities in active markets or quoted prices for identical or similar assets or liabilities in markets that are not active; that is, markets in which there are few transactions for the asset or liability. The lowest priority, referred to as Level 3, is given to unobservable inputs. The table below reflects the level of the inputs used in the Company's fair value calculations:

	Quoted Prices in Active Markets (Level 1)	Significant Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total Fair Value
December 31, 2020				
Assets (Note 4)				
Common stock of Sonnet	\$ 413,268		\$ —	\$ 413,268
Liabilities (Note 11)				
True-up provision of Convertible Preferred Series 2	\$ —	\$ —	\$ 184,800	\$ 184,800

Inputs used in the Company's Level 3 calculation of fair value are discussed in Note 11.

Amergent Hospitality Group, Inc and Subsidiaries
Notes to the Consolidated and Combined Financial Statements

There were no assets or liabilities recorded at fair value on a recurring basis at December 31, 2019.

The Company is required to disclose fair value information about financial instruments when it is practicable to estimate that value. The carrying amounts of the Company's cash, accounts receivable, other receivables, accounts payable, other current liabilities, convertible notes payable and notes payable approximate fair value due to the short-term maturities of these financial instruments and/or because related interest rates offered to the Company approximate current rates.

CASH

Cash consists of deposits held at financial institutions and is stated at fair value. The Company limits its credit risk associated with cash by maintaining its bank accounts at major financial institutions.

RESTRICTED CASH

As of December 31, 2020 and 2019, the Company maintained restricted cash of \$1,250,336 and \$336, respectively. The \$1,250,000 of restricted cash held at December 31, 2020 is collateral for the true-up provision discussed in Note 11. The restricted cash is maintained in a segregated bank account.

For purposes of the cash flow statements, the restricted cash is aggregated with cash of \$678,468 and \$500,681 to arrive at total cash and restricted cash of \$1,928,804 and \$501,017 at December 31, 2020 and 2019, respectively.

ACCOUNTS AND OTHER RECEIVABLES

The Company monitors its exposure for credit losses on its receivable balances and the credit worthiness of its receivables on an ongoing basis and records related allowances for doubtful accounts. Allowances are estimated based upon specific customer and other balances where a risk of default has been identified, and also include a provision for non-customer specific defaults based upon historical experience. The majority of the Company's accounts are from customer credit card transactions with minimal historical credit risk. As of December 31, 2020 and 2019, the Company has not recorded an allowance for doubtful accounts. If circumstances related to specific customers change, estimates of the recoverability of receivables could also change.

INVENTORIES

Inventories are recorded at the lower of cost (first-in, first-out method) or net realizable value, and consist primarily of restaurant food items, supplies, beverages and merchandise.

PROPERTY AND EQUIPMENT

Property and equipment are stated at cost, less accumulated depreciation. Depreciation and amortization, which includes amortization of assets held under capital leases, are recorded generally using the straight-line method over the estimated useful lives of the respective assets or, if shorter, the term of the lease for certain assets held under a capital lease. Leasehold improvements are amortized over the lesser of the expected lease term or the estimated useful lives of the related assets using the straight-line method. Maintenance and repairs that do not improve or extend the useful lives of the assets are not considered assets and are charged to expense when incurred.

Amergent Hospitality Group, Inc and Subsidiaries
Notes to the Consolidated and Combined Financial Statements

The estimated useful lives used to compute depreciation and amortization are as follows:

Leasehold improvements	5-15 years
Restaurant furnishings and equipment	3-10 years
Furniture and fixtures	3-10 years
Office and computer equipment	3-7 years

INTANGIBLE ASSETS

Trade Name/Trademark

The fair value of trade name/trademarks are estimated and compared to the carrying value. The Company estimates the fair value of trademarks using the relief-from-royalty method, which requires assumptions related to projected sales from its annual long-range plan; assumed royalty rates that could be payable if the Company did not own the trademarks; and a discount rate. Certain of the Company's trade name/trademarks have been determined to have a definite-lived life and are being amortized on a straight-line basis over estimated useful lives of 10 years. The amortization expense of these definite-lived intangibles is included in depreciation and amortization in the Company's consolidated and combined statements of operations and comprehensive loss. Certain of the Company's trade name/trademarks have been classified as indefinite-lived intangible assets and are not amortized, but instead are reviewed for impairment at least annually or more frequently if indicators of impairment exist.

Franchise Costs

Intangible assets are recorded for the initial franchise fees for our Hooter's restaurants. The Company amortizes these amounts over a 20-year period, which is the life of the franchise agreement. The Company also has intangible assets representing the acquisition date fair value of customer contracts acquired in connection with BGR's franchise business. The Company also amortizes these amounts over its estimated useful life of the related intangible asset and amortizes the related asset over the weighted average life of the underlying franchise agreements.

LONG-LIVED ASSETS

Long-lived assets, such as property and equipment, operating lease assets, and purchased intangible assets subject to depreciation and amortization, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Some of the events or changes in circumstances that would trigger an impairment test include, but are not limited to:

- significant under-performance relative to expected and/or historical results (negative comparable sales growth or operating cash flows for two consecutive years);
- significant negative industry or economic trends;
- knowledge of transactions involving the sale of similar property at amounts below the Company's carrying value; or
- the Company's expectation to dispose of long-lived assets before the end of their estimated useful lives, even though the assets do not meet the criteria to be classified as "Held for Sale."

If circumstances require a long-lived asset or asset group be tested for possible impairment, the Company first compares undiscounted cash flows expected to be generated by that asset or asset group to its carrying value. If the carrying value of the long-lived asset or asset group is not recoverable on an undiscounted cash flow basis, an impairment is recognized to the extent that the carrying value exceeds its fair value. Fair value is determined through various valuation techniques, including discounted cash flow models, quoted market values and third-party independent appraisals, as considered necessary.

Amergent Hospitality Group, Inc and Subsidiaries
Notes to the Consolidated and Combined Financial Statements

During the third quarter of 2019 and continuing in 2020, the Company determined that triggering events occurred some of which were related to the COVID-19 outbreak requiring management to review the certain long-lived assets for impairment. As discussed in Note 1, in March 2020, the World Health Organization declared coronavirus COVID-19 a global pandemic. Due to the continued impact of this pandemic on the Company's business, management has performed an impairment analysis of its long-lived assets at each quarter end in 2020 including December 31, 2020 and determined that the carrying value of the Company's trade name/trademark intangible asset, property and equipment and operating lease assets (see notes 5,6, and 12 for further discussion) were impaired. The determination was based on the best judgment of management for the future of the asset and on information known at the time of the assessment.

GOODWILL

Goodwill, which is not subject to amortization, is evaluated for impairment annually as of the end of the Company's year-end, or more frequently if an event occurs or circumstances change, such as material deterioration in performance or a significant number of store closures, that would indicate an impairment may exist. Goodwill is tested for impairment at a level of reporting referred to as a reporting unit. Management determined that the Company has one reporting unit.

As discussed in Note 1, in March 2020, the World Health Organization declared coronavirus COVID-19 a global pandemic. Due to the continued impact of this pandemic on the Company's business, management has performed an impairment analysis of goodwill as of each quarter end in 2020, including December 31, 2020.

When evaluating goodwill for impairment, the Company may first perform a qualitative assessment to determine whether it is more likely than not that a reporting unit is impaired. If the Company does not perform a qualitative assessment, or determines that it is not more likely than not that the fair value of the reporting unit exceeds its carrying amount, a quantitative assessment is performed to calculate the estimated fair value of the reporting unit. If the carrying amount of the reporting unit exceeds the estimated fair value, an impairment charge is recorded to reduce the carrying value to the estimated fair value. The Company's decision to perform a qualitative impairment assessment is influenced by a number of factors, including the significance of the excess of the reporting unit's estimated fair value over carrying value at the last quantitative assessment date, the amount of time in between quantitative fair value assessments, and the price of our common stock.

Step one of the impairment test is based upon a comparison of the carrying value of net assets, including goodwill balances, to the fair value of net assets. The Company performed a quantitative assessment at each quarter end and determined that goodwill was not impaired due to the excess fair value of the reporting unit over its carrying value based on the best judgement of management for the future of the reporting unit and on information known at the time of the assessment.

FOREIGN CURRENCY TRANSLATION

Assets and liabilities denominated in local currency are translated to U.S. dollars using the exchange rates as in effect at the balance sheet date. Results of operations are translated using average exchange rates prevailing throughout the period. Adjustments resulting from the process of translating foreign currency financial statements from functional currency into U.S. dollars are included in accumulated other comprehensive loss within stockholders' equity. Foreign currency transaction gains and losses are included in current earnings. The Company has determined that local currency is the functional currency for its foreign operations.

REVENUE RECOGNITION

The Company generates revenues from the following sources: (i) restaurant sales; (ii) management fee income; (iii) gaming income; and (iv) franchise revenues, consisting of royalties based on a percentage of sales reported by franchise restaurants and initial signing fees.

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Restaurant Sales, Net

The Company records revenue from restaurant sales at the time of sale, net of discounts, coupons, employee meals, and complimentary meals. Sales tax and value added tax ("VAT") collected from customers and remitted to governmental authorities are presented on a net basis within revenue in our consolidated and combined statements of operations.

Management Fee Income

The Company received revenue from management fees from certain non-affiliated companies in 2019, including from managing its investment in Hooters of America, which are generally earned and recognized over the performance period. No management fee income has been recognized during the year ended December 31, 2020.

Gaming Income

The Company receives revenue from operating a gaming facility adjacent to its Hooters restaurant in Jantzen Beach, Oregon. Revenue from gaming is recognized as earned from gaming activities, net of payouts to customers, taxes and government fees. These fees are recognized as they are earned based on the terms of the agreements.

Franchise Income

The Company grants franchises to operators in exchange for initial franchise license fees and continuing royalty payments. The license granted for each restaurant or area is considered a performance obligation. All other obligations (such as providing assistance during the opening of a restaurant) are combined with the license and were determined to be a single performance obligation. Accordingly, the total transaction price (comprised of the restaurant opening and territory fees) is allocated to each restaurant expected to be opened by the licensee under the contract. There are significant judgments regarding the estimated total transaction price, including the number of stores expected to be opened. We recognize the fee allocated to each restaurant as revenue on a straight-line basis over the restaurant's license term, which generally begins upon the signing of the contract for area development agreements and upon the signing of a store lease for franchise agreements. The payments for these upfront fees are generally received upon contract execution. Continuing fees, which are based upon a percentage of franchisee revenues and are not subject to any constraints, are recognized on the accrual basis as those sales occur. The payments for these continuing fees are generally made on a weekly basis.

Contract Liabilities

Contract liabilities consist of deferred revenue resulting from initial and renewal franchise license fees paid by franchisees, which are generally recognized on a straight-line basis over the term of the underlying franchise agreement, as well as upfront development fees paid by franchisees, which are generally recognized on a straight-line basis over the term of the underlying franchise agreement once it is executed. The recognition of initial and renewal license fees are accelerated if the development agreement is terminated. Approximately \$165,000 and \$215,000 of revenue related to contract liabilities was recognized during the years ended December 31, 2020 and 2019, respectively.

RESTAURANT PRE-OPENING AND CLOSING EXPENSES

Restaurant pre-opening expenses consist of the costs of hiring and training the initial hourly work force for each new restaurant, travel, the cost of food and supplies used in training, grand opening promotional costs, the cost of the initial stocking of operating supplies and other direct costs related to the opening of a restaurant, including rent during the construction and in-restaurant training period. Restaurant opening expenses are expensed as incurred.

Restaurant closing expenses consist of costs related to closing a restaurant location and include, among other things lease termination costs and franchise breakage fees directly related to the closure. Impairment charges associated with closed locations are recorded as a component of asset impairment charges. Restaurant closing costs are expensed as incurred.

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LIQUOR LICENSES

The costs of obtaining non-transferable liquor licenses that are directly issued by local government agencies for nominal fees are expensed as incurred. The costs of purchasing transferable liquor licenses through open markets in jurisdictions with a limited number of authorized liquor licenses are capitalized as indefinite-lived intangible assets and included in other assets. Liquor licenses are reviewed for impairment annually or when events or changes in circumstances indicate that the carrying amount may not be recoverable. Annual liquor license renewal fees are expensed over the renewal term.

ADVERTISING

Advertising costs are expensed as incurred. Advertising expenses which are included in restaurant operating expenses and general and administrative expenses in the accompanying consolidated and combined statements of operations, totaled approximately \$273,000 and \$500,000 for the years ended December 31, 2020 and 2019, respectively.

LEASES

We determine if a contract contains a lease at inception. Our material operating leases consist of restaurant locations and office space. Our leases generally have remaining terms of 1-20 years and most include options to extend the leases for additional 5-year periods. Generally, the lease term is the minimum of the non-cancelable period of the lease or the lease term inclusive of reasonably certain renewal periods up to a term of 20 years. If the estimate of our reasonably certain lease term was changed, our depreciation and rent expense could differ materially.

Operating lease assets and liabilities are recognized at the lease commencement date. Operating lease liabilities represent the present value of lease payments not yet paid. Operating lease assets represent our right to use an underlying asset and are based upon the operating lease liabilities adjusted for prepayments or accrued lease payments, initial direct costs, lease incentives, and impairment of operating lease assets. To determine the present value of lease payments not yet paid, we estimate incremental borrowing rates corresponding to the reasonably certain lease term. We estimated this rate based on prevailing financial market conditions, comparable company and credit analysis, and management judgment. If the estimate of our incremental borrowing rate was changed, our operating lease assets and liabilities could differ materially.

In April 2020, the FASB staff issued a question and answer document ("FASB Q&A") focused on the application of lease accounting guidance to lease concessions provided as a result of the COVID-19 pandemic. Under existing lease guidance, the Company would have to determine, on a lease-by-lease basis, if a lease concession was the result of a new arrangement reached with the tenant or if a lease concession was under the enforceable rights and obligations within the existing lease agreement. The FASB Q&A allows the Company, if certain criteria have been met, to bypass the lease-by-lease analysis, and instead elect to either apply the lease modification accounting framework or not, with such election applied consistently to leases with similar characteristics and similar circumstances. The Company elected to apply such relief and availed itself of the election to avoid performing a lease-by-lease analysis for the lease concessions received as the concessions granted as relief were due to the COVID-19 pandemic and result in the cash flows to the landlord remaining substantially the same or less.

STOCK-BASED COMPENSATION

The compensation cost relating to share-based payment transactions (including the cost of all employee stock options) is required to be recognized in the consolidated and combined financial statements. That cost is measured based on the estimated fair value of the equity or liability instruments issued. A wide range of share-based compensation arrangements including share options, restricted share plans, performance-based awards, share appreciation rights and employee share purchase plans are included.

The Company did not have an active stock-based compensation plan in 2020.

INCOME TAXES

Deferred income taxes are provided on the liability method whereby deferred tax assets are recognized for deductible temporary differences and operating loss and tax credit carryforwards and deferred tax liabilities are recognized for taxable temporary differences. Temporary differences are the differences between the reported amounts of assets and liabilities and their tax basis. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. Deferred tax assets and liabilities are adjusted for the effects of changes in tax laws and rates on the date of enactment.

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In connection with the Merger and Spin-Off, Amergent performed an analysis of the existing net operating loss carryforwards of Chanticleer and, based on the rules of the Internal Revenue Code ("IRC"), has determined that Amergent has approximately \$18,960,000 of net operating loss carryforwards available to the Company as of April 1, 2020 to offset future taxable income of the Company. Approximately \$7,245,000 of the net operating loss carryforwards available will be limited by section 382 of the IRC. There were no other income tax implications to Amergent as a result of the Merger and Spin-off.

The Company has provided a valuation allowance for the full amount of the deferred tax assets in the accompanying consolidated and combined financial statements.

As of December 31, 2020 and 2019, the Company had no accrued interest or penalties relating to any income tax obligations. The Company currently has no federal or state examinations in progress, nor has it had any federal or state tax examinations since its inception. The last three years of the Company's tax years are subject to federal and state tax examination.

LOSS PER COMMON SHARE

The Company computes net loss per share using the weighted-average number of common shares outstanding during the period. Basic and diluted net loss per share are the same because the conversion, exercise or issuance of all potential common stock equivalents, which comprise the entire amount of the Company's outstanding warrants, as described in Note 10, and the potential conversion of the convertible debt, as described in Note 7, would be anti-dilutive.

COMPREHENSIVE INCOME (LOSS)

Standards for reporting and displaying comprehensive income (loss) and its components (revenues, expenses, gains and losses) in a full set of general-purpose financial statements requires that all items that are required to be recognized under accounting standards as components of comprehensive income (loss) be reported in a financial statement that is displayed with the same prominence as other financial statements. We are required to (a) classify items of other comprehensive income (loss) by their nature in financial statements, and (b) display the accumulated balance of other comprehensive income (loss) separately in the equity section of the balance sheet for all periods presented. Other comprehensive income (loss) represents foreign currency translation adjustments.

RECENTLY ADOPTED ACCOUNTING PRONOUNCEMENTS

On January 1, 2019, the Company adopted ASU 2016-02, "Leases (Topic 842)," along with related clarifications and improvements. This pronouncement requires lessees to recognize a liability for lease obligations, which represents the discounted obligation to make future lease payments, and a corresponding right-of-use asset on the balance sheet. The guidance requires disclosure of key information about leasing arrangements that is intended to give financial statement users the ability to assess the amount, timing, and potential uncertainty of cash flows related to leases. The Company elected the optional transition method to apply the standard as of the effective date and therefore, the Company has not applied the standard to the comparative period presented in its condensed consolidated financial statements.

The practical expedients elected in connection with the adoption of Leases Topic 842 were as follows:

	Implications as of January 1, 2019
Practical expedient package	The Company has not reassessed whether any expired or existing contracts are, or contain, leases. The Company has not reassessed the lease classification for any expired or existing leases. The Company has not reassessed initial direct costs for any expired or existing leases.
Hindsight practical expedient	The Company has not elected the hindsight practical expedient, which permits the use of hindsight when determining lease term and impairment of operating lease asset

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Upon adoption of Leases (Topic 842), the Company recorded operating lease right-of-use assets and operating lease liabilities and derecognized deferred rent liabilities (including unamortized tenant improvement allowances) and favorable/unfavorable lease assets and liabilities upon transition. Upon adoption, the Company recorded operating lease liabilities of approximately \$22.1 million based on the present value of the remaining rental payments using discount rates as of the effective date. In addition, the Company recorded corresponding operating lease right-of-use assets of approximately \$19.8 million, calculated as the initial amount of the Company's operating lease liabilities adjusted for deferred rent (including unamortized tenant improvement allowances) and unamortized favorable/unfavorable lease assets and lease liabilities. As of December 31, 2020, the Company maintained an operating lease right-of-use assets of approximately \$9.9 million, and operating lease liabilities (current and long-term) of approximately \$16.2 million.

In June 2016, the Financial Accounting Standards Board "FASB" issued Accounting Standards Update "ASU" 2016-13, Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments ("ASU 2016-13"). ASU 2016-13 requires companies to measure credit losses utilizing a methodology that reflects expected credit losses and requires a consideration of a broader range of reasonable and supportable information to inform credit loss estimates. The adoption of ASU 2016-13 as of January 1, 2020 did not result in a material change to our consolidated and combined financial statements.

In August 2018, the FASB issued ASU 2018-15, "Intangibles—Goodwill and Other—Internal-Use Software (Subtopic 350-40)": Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract ("ASU 2018-15"), which clarifies the accounting for implementation costs in cloud computing arrangements. The adoption of ASU 2018-15 as of January 1, 2020 did not result in a material change to our consolidated and combined financial statements.

In August 2018, the FASB issued ASU No. 2018-13, "Fair Value Measurement (Topic 820) - Disclosure Framework - Changes to the Disclosure Requirements for Fair Value Measurement". The new guidance improves and clarifies the fair value measurement disclosure requirement of ASC 820 ("ASU 2018-13"). ASU 2018-13 provides new disclosure requirements that include the changes in unrealized gains or losses included in other comprehensive income for recurring Level 3 fair value measurement held at the end of the reporting period and the explicit requirement to disclose the range and weighted average used to develop significant unobservable inputs for Level 3 fair value measurements. The other provisions of ASU 2018-13 also include eliminated and modified disclosure requirements. The guidance is effective for fiscal years beginning after December 15, 2019, with early adoption permitted. The adoption of ASU 2018-13 as of January 1, 2020 did not have a material impact on the consolidated and combined financial statements.

In January 2017, the FASB issued ASU No. 2017-04, "Intangibles—Goodwill and Other: Simplifying the Test for Goodwill Impairment (Topic 350)" which provides for the elimination of Step 2 from the goodwill impairment test. If impairment charges are recognized, the amount recorded will be the amount by which the carrying amount exceeds the reporting unit's fair value with certain limitations. The guidance is effective for the Company for fiscal years beginning after December 15, 2022, with early adoption permitted. The adoption of ASU 2017-04 as of January 1, 2020 did not have a material impact on the consolidated and combined financial statements.

RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS

In August 2020, the FASB issued ASU 2020-06, "Debt—Debt with Conversion and Other Options" to address the complexity associated with applying U.S. GAAP to certain financial instruments with characteristics of liabilities and equity. ASU 2020-06 includes amendments to the guidance on convertible instruments and the derivative scope exception for contracts in an entity's own equity and simplifies the accounting for convertible instruments which include beneficial conversion features or cash conversion features by removing certain separation models in Subtopic 470-20. Additionally, ASU 2020-06 will require entities to use the "if-converted" method when calculating diluted earnings per share for convertible instruments. ASU 2020-06 is effective for fiscal years beginning after December 15, 2021 (fiscal year 2022 for the Company), including interim periods within those fiscal years. The Company is currently evaluating the new standard to determine the potential impact on its financial condition, results of operations, cash flows, and financial statement disclosures.

In December 2019, the FASB issued ASU No. 2019-12, "Simplifying the Accounting for Income Taxes (Topic 740)". The objective of the standard is to improve areas of GAAP by removing certain exceptions permitted by ASC 740 and clarifying existing guidance to facilitate consistent application. The standard will become effective for the Company beginning on January 1, 2021. The Company is currently evaluating the new standard but does not expect adoption to have a material impact on its financial condition, results of operations, cash flows, and financial statement disclosures.

We reviewed all other recently issued accounting pronouncements and concluded that they were either not applicable or not expected to have a significant impact to the condensed consolidated and combined financial statements.

3. DISCONTINUED OPERATIONS

In October 2019, the Company entered into a sale of business agreement for three of its South Africa Hooters locations. The total purchase price was approximately \$385,000. The net proceeds received by the Company was approximately \$220,000. In December 2019, the Company entered into a sale of business agreement for its two remaining South Africa Hooters locations. The total purchase price was approximately \$265,000. The net proceeds received by the Company was approximately \$130,000.

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On November 6, 2019, the Company sold Just Fresh through the sale of 100% of the Company membership interest of JF Restaurants, LLC. The purchase price was \$500,000 with \$125,000 due at closing and the remaining \$375,000 in the form of a promissory note to be paid in full by December 31, 2019. The sale agreement included the assumption of trade payables at the closing date. The Company also entered into a Management Services Agreement whereby the Company would continue to act as the manager of JF Restaurants, LLC until the note was repaid in full. As manager, the Company would be entitled to a management fee of 5% of the monthly net cash flow from the operation of the restaurants. As of December 31, 2019, \$149,000 remained outstanding on the note and the Company gave the buyer an extension to pay the remaining balance owed. When the outstanding balance of the note was paid, the Company was to distribute to the non-controlling interest holders their portion of the proceeds. The note was repaid in 2020 and the Company accrued the distribution to the non-controlling interest holders at the time of repayment. That liability of approximately \$20,000 remains outstanding at December 31, 2020.

As noted above, during the year ended December 31, 2019, the Company completed two transactions in which eight Just Fresh franchise restaurants and one Hooters franchised restaurant located in South Africa were sold. Because of the sale, the Company has reclassified the operations of Just Fresh and the South Africa Hooters locations to discontinued operations. As of December 31, 2020, all underlying assets and liabilities of discontinued operations were eliminated and settled.

The carrying amount of major classes of assets and liabilities included as part of discontinued operations are as follows:

	<u>December 31, 2020</u>	<u>December 31, 2019</u>
Other receivable	\$ —	\$ 149,000
Total assets	<u>—</u>	<u>149,000</u>
Accounts payable and accrued expenses	—	435,600
Total liabilities	<u>—</u>	<u>435,600</u>
Net assets of discontinued operations	<u>\$ —</u>	<u>\$ (286,600)</u>

The major line items comprising the loss of discontinued operations are as follows:

	<u>Year Ended</u>	
	<u>December 31, 2020</u>	<u>December 31, 2019</u>
Restaurant revenues	\$ —	\$ 8,203,692
Expenses:		
Administration expenses	—	588,368
Cost of sales	—	3,067,867
Depreciation and amortization	—	252,234
Asset impairment charge	—	857,357
Restaurant operating expenses	—	4,460,078
Other (income) expense	—	(538)
	<u>—</u>	<u>9,225,366</u>
Income (Loss) of discontinued operations	<u>—</u>	<u>\$ (1,021,674)</u>

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Cash flows from discontinued operations is as follows:

	Year Ended	
	December 31, 2020	December 31, 2019
Cash flows provided by (used in) Operations Activities	\$ —	\$ 302,759
Cash flows provided by (used in) Investing Activities	—	290,604
Cash flows provided by (used in) Financing Activities	—	—
Net Cash provided by (used in) Discontinued Operations	\$ —	\$ 593,363

4. INVESTMENTS

Investments consist of the following:

	December 31, 2020	December 31, 2019
Common stock of Sonnet, at fair value	\$ 413,268	\$ —
Chanticleer Investors, LLC, at cost	365,001	381,397
Total	\$ 778,269	\$ 381,397

Common stock of Sonnet

Upon consummation of the Merger discussed in Note 1, the Company received a warrant to purchase 2% of the common stock of Sonnet as part of the Merger Consideration. Amergent could not exercise the warrant until 180 days after the closing of the Merger. On November 17, 2020, the Company exercised the warrant in a cashless exercise and received 185,422 shares of Sonnet common stock.

The estimated fair value of the warrant to purchase 2% of the common stock of Sonnet (186,161 shares) was \$1,628,909 as of April 1, 2020 and was recognized as a capital contribution in accompanying 2020 consolidated and combined statement of stockholders' deficit. The warrant had an exercise price of \$0.01 per share and was exercisable beginning on September 28, 2020 through April 1, 2025. The estimated fair value of the warrant was determined based on the \$8.76 closing stock price of a common share of Sonnet as of April 1, 2020, net of the \$0.01 exercise price multiplied by the 186,161 shares issuable upon exercise of the warrant. This value is also equal to the value under the Black-Scholes option pricing model with the following inputs:

As of April 1, 2020	
Fair value of Sonnet common stock	\$ 8.76
Exercise price	\$ 0.01
Term	5 years
Volatility	103%
Risk-free interest rate	0.37%

On December 4, 2020, the Company sold 100 shares of Sonnet common stock for net proceeds of \$244. As of December 31, 2020, the remaining 185,322 shares of Sonnet common stock held by the Company were marked to market using the Sonnet closing trading price of \$2.23 per share.

Chanticleer Investors LLC

The Company invested \$800,000 during 2011 and 2012 in exchange for a 22% ownership stake in Chanticleer Investors, LLC, which in turn held a 3% interest in Hooters of America, the operator and franchisor of the Hooters Brand worldwide. As a result, the Company's effective economic interest in Hooters of America was approximately 0.6%. Effective June 28, 2019, Hooters of America closed on the sale of a controlling interest in the company. The consideration paid in the sale transaction was a combination of cash proceeds and equity in the newly formed company. The Company netted approximately \$48,000 in cash upon the transaction and retained a non-controlling interest in the equity of the newly-formed company.

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In June 2019, an analysis of the transaction and the value of the cash received and retained non-controlling interest was performed. The Company concluded that its investment was impaired as of June 30, 2019 and recorded a \$435,000 write down of the investment during the year ended December 31, 2019. No further impairment charges were recognized for the year ended December 31, 2020.

5. PROPERTY AND EQUIPMENT, NET

Property and equipment, net consists of the following at December 31, 2020 and 2019:

	December 31, 2020	December 31, 2019
Leasehold improvements	\$ 7,301,908	\$ 7,926,789
Restaurant furniture and equipment	2,132,726	3,032,859
Construction in progress	5,450	650
Office and computer equipment	125,535	62,304
Office furniture and fixtures	59,635	169,034
	<u>9,625,254</u>	<u>11,191,636</u>
Accumulated depreciation and amortization	(5,922,360)	(5,561,146)
	<u>\$ 3,702,894</u>	<u>\$ 5,630,490</u>

As discussed in Note 1, the COVID-19 outbreak in the United States has resulted in a significant impact throughout the hospitality industry. The impact has varied by state/geographical area within the United States at various intervals since the pandemic has been declared. Accordingly, the operating results and cash flows at the store level have varied significantly leading to an analysis of impairment at the store level for each quarter end in 2020, including December 31, 2020. Several stores were permanently or temporarily closed during 2020 while others are operating at reduced capacity. Based on the assessment of recoverability, an impairment charge of \$832,821 for property and equipment was recorded during the year ended December 31, 2020.

During the year ended December 31, 2019, the Company recorded an impairment of property and equipment of \$1,231,282.

Depreciation expense was \$1,158,915 and \$1,468,576 for the years ended December 31, 2020 and 2019, respectively.

6. INTANGIBLE ASSETS, NET

GOODWILL

A roll-forward of goodwill is as follows:

	Year Ended	
	December 31, 2020	December 31, 2019
Beginning balance	\$ 8,567,888	\$ 10,564,353
Impairment	—	(2,025,720)
Foreign currency translation gain (loss)	23,261	29,255
Ending balance	<u>\$ 8,591,149</u>	<u>\$ 8,567,888</u>

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OTHER INTANGIBLE ASSETS

Franchise and trademark/tradename intangible assets consist of the following at December 31, 2020 and 2019:

		December 31, 2020	December 31, 2019
Trademark, Tradenames:			
American Roadside Burger	10 years	1,786,930	\$ 1,786,930
BGR: The Burger Joint	Indefinite	739,245	985,996
Little Big Burger	Indefinite	1,550,000	1,550,000
		<u>4,076,175</u>	<u>4,322,926</u>
Acquired Franchise Rights:			
BGR: The Burger Joint	7 years	827,757	827,757
Franchise License Fees:			
Hooters Pacific NW	20 years	74,507	74,507
Hooters UK	5 years	11,001	12,917
		<u>85,508</u>	<u>87,424</u>
Total intangibles at cost		4,989,440	5,238,107
Accumulated amortization		(1,945,555)	(1,581,112)
Intangible assets, net		<u>\$ 3,043,885</u>	<u>\$ 3,656,995</u>

Based on an analysis of the recoverability of the carrying value at each quarter end during 2020 including December 31, 2020, an impairment charge of approximately \$247,000 was recorded to trademarks/tradenames for BRG: The Burger Joint. No other intangible assets were impaired during the year ended December 31, 2020.

Management also tested its long-lived assets for impairment as of December 31, 2019 comparing each brand's fair value to its carrying value. Based on this analysis, management determined there was a tradename/trademark impairment of BGR: The Burger Joint of approximately \$440,000.

Amortization of intangible assets was \$366,452 and \$373,776 for the year ended December 31, 2020 and 2019, respectively. Amortization expense for the next five years is as follows:

Year ended:	
2021	\$ 361,182
2022	251,720
2023	133,121
2024	3,725
2025	3,725
Thereafter:	<u>1,167</u>
	<u>\$ 754,640</u>

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7. DEBT AND NOTES PAYABLE

Debt and notes payable are summarized as follows at December 31, 2020 and 2019:

	December 31, 2020	December 31, 2019
Notes Payable (a)	\$ —	\$ 6,000,000
Notes Payable TowneBank (b)	—	142,746
Receivables financing facilities (c)	—	23,688
Notes payable (d)	25,850	25,850
Notes payable (e)	27,048	90,408
Contractor note (f)	348,269	348,269
PPP loan (g)	2,109,400	—
UK Bounce Back loan (h)	68,245	—
EIDI loans (i)	299,900	—
Convertible debt (j)	4,037,889	—
Total Debt	6,916,601	6,630,961
Less: discount on convertible debt (j)	(223,681)	—
Total Debt, net of discount	\$ 6,692,920	\$ 6,630,961
Current portion of long-term debt	\$ 2,338,978	\$ 6,630,961
Long-term debt, less current portion	\$ 4,353,942	\$ —

(a) On May 4, 2017, pursuant to a Securities Purchase Agreement, the Company issued 8% non-convertible secured debentures in the principal amount of \$6,000,000 and warrants to purchase 1,199,978 shares of common stock to accredited investors. The debentures bore interest at a rate of 8% per year and were payable in cash quarterly in arrears.

The Company lowered the strike price for several classes of warrants to \$0.50 to allow for warrant holders to exercise their warrants in order to induce the exercise thereof and raise capital for the Company. See Note 10 for further discussion of warrant modification.

In connection with and prior to the Merger and Spin-Off, on April 1, 2020, pursuant to an agreement among Chanticleer, Oz Rey LLC, a Texas limited liability company (“Oz Rey”), the Company and certain other original holders of the 8% non-convertible secured debentures, the Company was released from all of its obligations under the 8% non-convertible secured debentures, and the 8% non-convertible secured debentures were cancelled. In exchange, Amergent (i) issued a 10% convertible secured debenture in principal amount of \$4,037,889 to Oz Rey, (ii) issued warrants to purchase 2,925,200 of shares of common stock of Amergent to Oz Rey and certain of the original holders of the 8% non-convertible secured debentures, and (iii) remitted payment of \$650,000 prior to March 31, 2020 and an additional \$1,350,000 plus reimbursement of certain expenses to the purchasers on April 1, 2020. See further discussion in (i) below.

(b) The Company had one outstanding term loan with TowneBank, all of which was collateralized by all assets of the Company and personally guaranteed by our Chief Executive Officer. In connection with and prior to the Merger and Spin-Off, on April 1, 2020, the Company paid off the outstanding balance owed to TowneBank in full.

(c) During May 2019, the Company agreed to make payments of \$585 per day for 220 days. During January 2020, in consideration for proceeds of \$191,190, the Company agreed to make payments of \$1,180 per day on two separate agreements for 220 days. The Company granted a security interest in the credit card receivables of the specified restaurants in connection with each of the Receivables Financing Agreements. Total outstanding on these advances is \$0 and \$23,688 at December 31, 2020 and 2019, respectively. In connection with and prior to the Merger and Spin-Off, on April 1, 2020, these notes were assumed by Amergent.

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(d) In connection with the assets acquired from the two BGR franchisees, the Company entered into notes payable of \$9,600 and \$187,000 during 2018. The notes bear interest at 4% and were due within 12 months of each acquisition date. Principal and interest payments are due monthly. The total outstanding on these two notes is \$25,850 at both December 31, 2020 and 2019. In connection with and prior to the Merger and Spin-Off, on April 1, 2020, these notes were assumed by Amergent.

(e) During September 2019 and October 2019, the Company entered into two merchant capital advances in the amount of \$46,000 and \$84,700, respectively. The Company agreed to repay these advances through daily payments until those amounts are repaid with the specified interest rate per those agreements. Total outstanding on these advances is \$27,048 and \$90,408 as of December 31, 2020 and 2019, respectively. In connection with and prior to the Merger and Spin-Off, on April 1, 2020, these notes were assumed by Amergent.

(f) The Company entered into a promissory note to repay a contractor for the build-out of a new Little Big Burger location. The note had a balance of \$348,269 as of both December 31, 2020 and 2019, and a stated interest rate of 12% per year. In connection with and prior to the Merger and Spin-Off, on April 1, 2020, this note was assumed by Amergent. The Company is currently in default on this loan and a writ of garnishment was ordered against the Company in 2020 for approximately \$445,000. The additional \$95,000 is included in accounts payable and accrued expenses at December 31, 2020.

(g) On April 27, 2020, Amergent received a PPP loan in the amount of approximately \$2.1 million. Due to the Spin-Off and Merger, Amergent was not publicly traded at the time of the loan application or funding. The note bears interest at 1% per year, matures in April 2022, and requires monthly interest and principal payments of approximately \$119,000 beginning in November 2020 and through maturity. The currently issued guidelines of the program allow for the loan proceeds to be forgiven if certain requirements are met. Any loan proceeds not forgiven will be repaid in full. The Company has currently applied for loan forgiveness in the full amount of the loan, but no assurance can be given as to the amount, if any, of forgiveness. The application for forgiveness allowed the Company to defer the timing of repayment until the forgiveness assessment is completed. See Note 12 for additional information.

(h) On November 24, 2020 Amergent received approximately \$68,200 through the Bounce Back Loan Scheme in the United Kingdom. The loan has a term of six years that can be extended to 10 years. No payments are required and no interest is accrued for the first twelve months after the loan is received. After the first year, the loan accrues interest at 2.5% per year.

(i) On August 4, 2020, the Company obtained two loans under the Economic Injury Disaster Loan ("EIDL") assistance program from the Small Business Administration ("SBA") in light of the impact of the COVID-19 pandemic on the Company's business. The principal amount of the loans is \$299,900, with proceeds to be used for working capital purposes. Interest accrues at the rate of 3.75% per year. Total installment payments, including principal and interest, are due monthly beginning August 4, 2021 in the amount of \$1,762. The balance of principal and interest is payable over the next thirty years from the date of the promissory note (August 2050). There are no penalties for prepayment. Based upon guidance issued by the SBA on June 19, 2020, the EIDL loans are not required to be refinanced by the PPP loan.

(j) In connection with and prior to the Spin-Off and Merger, on April 1, 2020, pursuant to an agreement among Chanticleer, Oz Rey and certain original holders of the 8% non-convertible debentures (see (a) above), the Company issued a 10% secured convertible debenture to Oz Rey in exchange for the 8% non-convertible debentures. The principal amount of the 10% secured convertible debenture is \$4,037,889, payable in full on April 1, 2022, subject to extension by the holders in two-year intervals for up to 10 years from the issuance date upon Amergent meeting certain conditions. Interest is payable quarterly in cash. Prior to August 17, 2020, the 10% secured convertible debenture was convertible at any time by Oz Rey into common stock at the lower of \$0.10 per share and the volume weighted average price on the last 10 trading days immediately prior to conversion. The 10% secured convertible debenture is also subject to adjustment if Amergent sells securities below this price (down round protection), among other triggers. In connection with the exchange of the debentures, Amergent issued warrants to Oz Rey and the original 8% non-convertible debenture holders to purchase 2,925,200 shares of common stock. The exercise price is \$0.125 for 2,462,600 warrants and \$0.50 for 462,500 warrants. The warrants can be exercised on a cashless basis and expire 10 years from the issuance date.

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Through August 16, 2020, Amergent did not have an adequate amount of authorized common stock to cover shares issuable upon exercise of the warrants and conversion of the 10% convertible notes. As such, the warrants were liability classified and the conversion feature was bifurcated from the host debt instrument and accounted for as a derivative and recorded as a liability in the accompanying consolidated and combined balance sheets through August 16, 2020, with the change in the liability for the warrants and the conversion feature from the April 1, 2020 issuance date through August 16, 2020 recorded in the accompanying consolidated and combined statements of operations.

The warrants issued had an estimated fair value of \$935,000 as of April 1, 2020 using a Monte Carlo simulation to determine the value. The fair value of the conversion feature was \$11,231,000 as of April 1, 2020 using a Monte Carlo simulation to determine the value. The estimated carrying value of the 10% convertible secured debentures without the conversion feature was \$3,680,000, and with the conversion feature was \$14,911,000.

On August 17, 2020, the Company and Oz Rey amended the 10% secured convertible debenture to fix the conversion rate into common stock at \$0.10 per share. Further, the amendment provides a limitation on Oz Rey's ability to convert the debenture into common stock so that the conversion would not result in the issuance of common stock exceeding the amount of authorized shares. Oz Rey may; however, upon reasonably notice to the Company, require the Company to include in its proxy materials, for any annual meeting of shareholders being held by the Company, a proposal to amend the Company's certificate of incorporation to increase the Company's authorized shares to a number sufficient to allow for conversion of all shares underlying the debenture, on a fully diluted basis. Oz Rey also agreed that the Company would not be required under any circumstances to make a cash payment to settle the conversion feature not exercisable due to the authorized share cap or in an event that the Company was unable to deliver shares under the conversion feature. Oz Rey also agreed to waive any event of default under the debenture that occurred or existed prior to August 17, 2020. As a result of these modifications, the warrants are no longer liability classified and the conversion feature is no longer required to be bifurcated from the debt host as of the date of the amendment.

Through the date of the amendment, the warrants and the conversion feature were marked to fair value with the change in the liability recorded in the accompanying consolidated and combined statements of operations. The liabilities for the warrants and conversion feature were reclassified into additional paid in-capital at the amendment date. The estimated fair value of the warrants and conversion feature at August 16, 2020 were \$924,000 and \$10,970,000, respectively. The change in value of these instruments from the issuance date through August 16, 2020 of (\$11,000) and (\$261,000) has been recorded as a component of other expense (income) and included in change in fair value of derivative liabilities and warrants in the accompanying consolidated statements of operations for the year ended December 31, 2020. See note 11 for further discussion of determining the estimated fair value of these instruments.

The exchange of the notes has been accounted for as the extinguishment of the 8% non-convertible notes with the difference in the carrying value of the 8% non-convertible notes, \$4,037,889, and the fair value of the 10% convertible notes and warrants, \$15,846,000, at the date of the exchange recorded as a debt extinguishment charge of \$11,808,111 in the accompanying consolidated and combined statements of operations for the year ended December 31, 2020.

The Company recorded a debt discount of approximately \$358,000 for the difference between the face value of the 10% secured convertible debenture and the estimated fair value at the April 1, 2020 issuance date and is amortizing this discount over the two-year period of the notes. Amortization of \$134,208 was recorded as interest expense during the year ended December 31, 2020.

The Company's various loan agreements contain financial and non-financial covenants and provisions providing for cross-default. The evaluation of compliance with these provisions is subject to interpretation and the exercise of judgment. The Company's lender has provided a waiver of certain financial covenants through March 31, 2021.

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8. ACCOUNTS PAYABLE AND ACCRUED EXPENSES

Accounts payable and accrued expenses are summarized as follows:

	December 31, 2020	December 31, 2019
Accounts payable	\$ 3,752,036	\$ 1,265,435
Accrued expenses	1,436,679	2,965,205
Accrued taxes (VAT, Sales, Payroll, etc.)	3,356,496	3,318,022
Accrued interest	122,057	616,533
	<u>\$ 8,667,268</u>	<u>\$ 8,165,195</u>

As of December 31, 2020 and 2019, approximately \$3.0 million and \$2.9 million, respectively, of employee and employer taxes and associated interest and penalties have been accrued but not remitted to certain taxing authorities by the Company. These accruals are for periods prior to 2019 for cash compensation paid and are reflected as a component of the accrued taxes line above. As a result, the Company is liable for such payroll taxes and any related penalties and interest.

9. INCOME TAXES

The income tax expense for the years ended December 31, 2020 and 2019 consists of the following:

	December 31, 2020	December 31, 2019
Foreign		
Current	\$ —	\$ 48,187
Deferred	(36,443)	653,790
Change in valuation allowance	36,443	(652,679)
U.S. Federal		
Current	—	—
Deferred	5,765,837	(4,683,141)
Change in valuation allowance	(5,815,197)	4,662,699
State and local		
Current	—	—
Deferred	(103,357)	(272,656)
Change in valuation allowance	159,222	317,526
	<u>\$ 6,505</u>	<u>\$ 73,726</u>

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The income tax expense using statutory U.S. federal tax rate of 21% is reconciled to the Company's effective tax rate as of December 31, 2020 and 2019 is as follows:

	2020	2019
Computed "expected" income tax benefit	\$ (4,325,270)	\$ (3,647,623)
State income taxes, net of federal benefit	(57,543)	(367,974)
Non-controlling interest	—	185,031
Prior year true-ups other deferred tax balances	24,549	(323,763)
Permanent items	2,500,281	37,480
Foreign tax expense	—	48,187
Rate change	(142,085)	—
Other	(248,955)	59,421
Adjustment to NOLs due to Merger	8,350,360	—
Change in valuation allowance	(6,094,832)	4,082,967
	<u>\$ 6,505</u>	<u>\$ 73,726</u>

Deferred income taxes reflect the net tax effect of temporary differences between the carrying amounts of assets and liabilities for financial reporting and the amounts used for tax purposes. Major components of deferred tax assets at December 31, 2020 and 2019 were:

	2020	2019
Net operating loss carryforwards	\$ 6,802,404	\$ 13,099,412
Capital loss carryforwards	369,447	—
Fixed assets and intangibles	1,118,850	1,058,814
Section 1231 loss carryforwards	39,491	103,230
Charitable contribution carryforwards	12,474	23,731
Section 163(j) limitation	789,007	648,074
Other	—	45,801
Restaurant startup expenses	5,293	—
Accrued expenses	915,177	946,040
Deferred occupancy liabilities	—	37,044
Contract liabilities	226,671	240,333
Total deferred tax assets	<u>10,278,814</u>	<u>16,202,479</u>
Deferred occupancy liabilities	(38,390)	—
Investments	(202,307)	(328,825)
Other	(30,833)	—
Total deferred tax liabilities	<u>(271,530)</u>	<u>(328,825)</u>
Net deferred tax assets	10,007,284	15,873,654
Valuation allowance	(10,116,093)	(15,975,958)
	<u>\$ (108,809)</u>	<u>\$ (102,304)</u>

As of December 31, 2020, Company has U.S. federal and state net operating loss carryovers of approximately \$26,200,000, which will expire at various dates beginning in 2031 through 2036, if not utilized with exception of loss carryovers generated in tax years after 2017. As a result of Tax Cut and Jobs Act of 2017, net operating losses generated in 2018 and beyond have indefinite lives. In accordance with Section 382 of the internal revenue code, deductibility of the Company's U.S. net operating loss carryovers may be subject to an annual limitation in the event of a change of control as defined under the Section 382 regulations.

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Based on prior acquisitions and ownership changes, the Company expects approximately \$7.2 million of net operating loss carryforwards to be limited based on section 382.

In assessing the realization of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Management considers the scheduled reversal of deferred tax liabilities, projected future taxable income and tax planning strategies in making this assessment. After consideration of all of the information available, management believes that significant uncertainty exists with respect to future realization of the deferred tax assets and has therefore established a full valuation allowance. For the years ended December 31, 2020 and December 31, 2019 the change in valuation allowance was approximately \$(5,860,000) and \$4,083,000, respectively.

The Company evaluated the provisions of ASC 740 related to the accounting for uncertainty in income taxes recognized in their financial statements. ASC 740 prescribes a comprehensive model for how a company should recognize, present, and disclose uncertain positions that the company has taken or expects to take in its return. For those benefits to be recognized, a tax position must be more-likely-than- not to be sustained upon examination by taxing authorities. Differences between two positions taken or expected to be taken in a tax return and the benefit recognized and measured pursuant to the interpretation are referred to as “unrecognized benefits”. A liability is recognized for an unrecognized tax benefit because it represents an enterprise’s potential future obligation to the taxing-authority for a tax position that was not recognized as a result of applying the provisions of ASC 740.

Interest related to uncertain tax positions are required to be calculated, if applicable, and would be classified as “interest expense” in the consolidated and combined statements of operations. Penalties would be recognized as a component of “general and administrative expenses”. As of December 31, 2020 and 2019, no interest or penalties were required to be reported.

The Company previously did not record a provision for taxes on undistributed foreign earnings based on an intention and ability to permanently reinvest the earnings of its foreign subsidiaries in those operations. Under the Tax Cuts and Jobs Act, the Company has re-assessed its strategies by evaluating the impact of the Tax Cuts and Jobs Act on its operations. As a result of the Act, the Company analyzed if a liability needed to be recorded for the deemed repatriation of undistributed earnings. It was determined that there is no outstanding liability associated with this based on overall negative undistributed earnings (accumulated deficit) in the consolidated foreign group.

An additional provision of the TJCA is the implementation of the Global Intangible-Low Taxed Income Tax, or “GILTI.” The Company has elected to account for the impact of GILTI in the period in which the tax actually applies to the Company. During fiscal 2019, the Company incurred \$157,000 of additional taxable income as a result of this provision. This increase of taxable income was incorporated into the overall net operating loss and valuation. Due to foreign losses in 2020, the impact of GILTI on taxable income is nil.

10. STOCKHOLDER’S EQUITY

Redeemable Preferred Stock – Series 1

Beginning in December 2016, the Company conducted a rights offering of units, each unit consisting of one share of 9% Redeemable Series 1 Preferred Stock (“Series 1 Preferred”) and one Series 1 Warrant (“Series 1 Warrant”) to purchase 10 shares of common stock. Preferred unit dividends of 37,518 shares and 77,975 shares were paid in 2020 and 2019, respectively. In connection with the Merger, on April 1, 2020, all outstanding Series 1 Preferred units, comprised of shares of Series 1 Preferred and Series 1 Warrants, were redeemed and extinguished for their cash redemption price of \$0.50 per unit. The difference between the carrying value of the Series 1 Preferred and the cash redemption amount of \$161,900 was recognized as a loss on extinguishment and included in other expense during the year ended December 31, 2020.

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2019 Rights Offering

In 2019 the Company conducted a rights offering of units to its stockholders of record to purchase common stock at a subscription price of \$1.00 per share. The rights offering was made pursuant to Chanticleer's effective registration statement on Form S-1 on file with the U.S. Securities and Exchange Commission (the "SEC") and accompanying prospectus filed with the SEC on June 12, 2019.

Upon closing of the rights offering in July 2019, a total of 1,894,311 shares of common stock were issued pursuant to record holders' basic subscription privilege and a total of 4,190,524 shares of common stock were issued pursuant to record holders' over subscription. The Company accepted subscriptions to purchase 6,084,733 shares in the rights offering upon expiration of the rights offering on June 28, 2019. The Company received \$6,009,733 in gross proceeds from the rights offering and \$3,075,000 was subscribed by certain record holders' through the reduction in outstanding debt obligations of the Company. The shares associated with the reduction in outstanding debt obligations were deemed issued at June 30, 2019. The remaining proceeds of approximately \$2.7 million, which is net of fees owed to the dealer-managers and other offering costs, were received in early July 2019 after the closing of the rights offering.

Chardan Capital Markets, LLC and The Oak Ridge Financial Services Group Inc. were the co-dealer-managers on the transaction and the Company agreed to pay the dealer-managers a fee equal to 7% of the gross proceeds of the rights offering (excluding proceeds from the reduction of the debt obligations) and to reimburse the dealer-managers for their expenses up to \$75,000 for an aggregate commission of approximately \$286,000. Additional offering costs were incurred for legal, accounting and transfer agent services.

2020 Bridge Financing

Pursuant to a Securities Purchase Agreement dated February 7, 2020, the Company sold 1,500 shares of a new series of convertible preferred stock of Chanticleer (the "Series 2 Preferred Stock") to an institutional investor for gross proceeds to the Company of \$1,500,000 less transaction costs of \$95,000. In addition, pursuant to the original agreement with the investors, the Company issued 5-year warrants to purchase an aggregate of 350,000 shares of common stock to the investors at \$1.25 per share. Each share of Series 2 Preferred has a stated value of \$1,000. Upon issuance, the Company bifurcated and recorded, as a liability, an embedded derivative (more fully described below and in Note 10) in the amount of \$529,000. The effective conversion price of the Series 2 Preferred Stock after the bifurcation of the derivative resulted a beneficial conversion feature of \$729,000, which was then immediately recorded as a deemed dividend as the preferred stock is immediately convertible. In March 2020, an aggregate of 713 shares of Series 2 Preferred Stock were converted into 1,426,849 shares of common stock. In connection with the Merger, all remaining outstanding shares of the Series 2 Preferred Stock were automatically cancelled and exchanged for substantially similar shares of preferred stock in Amergent, the shareholders of Chanticleer common stock received shares of Amergent on a 1 for 1 basis (spin-off shares) and received 1 share of Sonnet common stock for 26 shares of Chanticleer common stock held at the time of the Merger. At December 31, 2020, 787 shares of Series 2 Preferred Stock were outstanding.

On August 17, 2020, the Company and the holders of the Series 2 Preferred Stock entered into a Waiver, Consent, and Amendment to the Certificate of Designations (the "Extension Agreement") which included provisions for an extension of the true-up payment discussed below from August 7, 2020 to December 10, 2020 and permitted the shares of Amergent obtained by the investor in the Spin-off to be included in the determination of the True-Up Payment discussed below, with the Company paying all expenses incurred by the institutional investor in connection with the Extension Agreement and certain consideration for the institutional investor's willingness to extend the date of the true-up payment. The consideration included \$66,000 of cash and warrants to purchase 134,000 shares of the Company's common stock with a value of \$28,060 (see below).

On February 16, 2021, the Company and the holders of the Series 2 Preferred Stock entered into a Waiver, Consent and Amendment to the Certificate of Designations (the "Waiver"). This Waiver further extended the settlement date to April 1, 2021. See Note 13 for further discussion.

The Series 2 Preferred Stock is classified in the accompanying consolidated and combined balance sheet at December 31, 2020 as temporary equity due to certain contingent redemption features which are outside the control of the Company.

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Designations, rights and preferences of Series 2 Preferred Stock:

Stated value: Each share of Series 2 Preferred Stock had a stated value of \$1,000.

True-Up Payment: Amergent is required to pay the holder an amount in cash equal to the dollar value of 125% of the stated value of the Series 2 Preferred Stock less the proceeds previously realized by the holder from the sale of all conversion and spin-off shares received by holder in Amergent, net of brokerage commissions and any other fees incurred by the holder in connection with the sale of any conversion shares or spin-off shares on December 10, 2020. Subsequent to December 31, 2020, the settlement date has been extended to April 1, 2021 (see Note 13). The True-Up Payment will be paid by Amergent out of (i) the proceeds from the exercise by Amergent of the warrants to purchase shares of Sonnet's common stock held by the Spin-Off Entity after the consummation of the transactions contemplated by the Merger or (ii) the segregated cash account of \$1,250,000. Non-payment of the True-Up Payment when it is due will trigger default interest rate of 18% per year.

The Company determined that the True-Up Payment constituted a "make-whole" provision as defined by U.S. GAAP that is required to be settled in cash and as such, was bifurcated from the host instrument, the Series 2 Preferred Stock, and is accounted for as a derivative liability. The fair value of the derivative was estimated using a Monte Carlo model and a liability of \$529,000 was recorded at the Series 2 Preferred Stock issuance date. The fair value at December 31, 2020 was a liability of \$184,800. The \$344,200 decrease in the liability from the issuance date through December 31, 2020 is recorded as a component of the change in derivative liabilities in the accompanying consolidated statements of operations for the year ended December 31, 2020. See Note 11 for further information.

Redemption: If the Merger was not completed within six months of issuance of the Series 2 Preferred Stock, the Company would have been required to redeem all the outstanding Series 2 Preferred Stock for 125% of the aggregate stated value of the Series 2 Preferred Stock then outstanding plus any default interest and any other fees or liquidated damages then due and owing thereon under the Certificate of Designations. Additionally, there are other triggering events, as defined, that can cause the Series 2 Preferred Stock to be redeemable at the option of the holder of which some are outside of the control of the Company.

Conversion at option of holder/ beneficial ownership limitation The Series 2 Preferred Stock is convertible at the option of holder at the lesser of (i) \$1.00 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like) or (ii) 90% of the five day average volume weighted average price of the common, provided the conversion price has a floor of \$0.50 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like). Conversion is subject to a beneficial ownership limitation of 4.99%. This limitation was increased by the holder to 9.99% prior to the Merger.

Forced conversion: The Company had the right to require the holder to convert up to 1,400 shares of Series 2 Preferred Stock upon delivery of notice three days prior to the Merger, subject to the beneficial ownership limitation and applicable Nasdaq rules. Unconverted shares of Series 2 Preferred Stock automatically were exchanged for an equal number of shares of Series 2 Preferred Stock in Amergent on substantially the same terms.

Liquidation preference Upon any liquidation, dissolution or winding-up of the Company, the holder is entitled to receive out of the assets, whether capital or surplus, an amount equal to 125% of the stated value plus any default interest and any other fees or liquidated damages then due and owing thereon under the Certificate of Designations, for each share of Series 2 Preferred Stock before any distribution or payment to the holders of common stock.

Voting rights: The holder of Series 2 Preferred Stock has the right to vote together with the holders of common stock as a single class on an as-converted basis on all matters presented to the holders of common stock and shall vote as a separate class on all matters presented to the holders of Series 2 Preferred Stock. In addition, without the approval of the holder, the Company is required to obtain the approval of Series 2 Preferred Stock, as is customary, for certain events and transactions not contemplated by the Merger.

Triggering Events: Breach of Company's obligations will trigger a redemption event.

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Anti-Dilution: Customary adjustments in the event of dividends or stock splits and anti-dilution protection. Concurrently with the Preferred Securities Purchase Agreement, the parties entered into a registration rights agreement (the “Preferred Registration Rights Agreement”). Pursuant to the Preferred Registration Rights Agreement, the Company was required to file a registration statement registering the conversion shares no later than 15 days from the closing of this transaction.

2020 Merger Transaction

As a result of the Merger, the following reflects the net equity contribution of Merger Consideration to the Company which reflects the gross proceeds received, offset of the direct costs incurred for the transaction, the difference between the redemption payment and carrying value of the Redeemable Preferred Stock - Series 1, and redemption of certain warrants.

Contributed cash portion of Merger Consideration	\$	6,000,000
Contribution of Sonnet warrant portion of Merger Consideration		1,628,909
Transaction cost incurred		(588,255)
	<u>\$</u>	<u>7,040,654</u>

Options and Warrants

The Company’s shareholders approved the Chanticleer Holdings, Inc. 2014 Stock Incentive Plan (the “2014 Plan”) authorizing the issuance of options, stock appreciation rights, restricted stock awards and units, performance shares and units, phantom stock and other stock-based and dividend equivalent awards. Pursuant to the approved 2014 Plan, 400,010 were approved for grant. This Plan did not survive the Merger. Amergent intends to adopt a new equity incentive plan subject to shareholder approval in the near future.

As of and in connection with the Merger and Spin-Off, all restricted and unrestricted stock options were cancelled and no awards have been granted since that date.

In March 2020, the Company lowered the strike price for certain warrants from within several classes of warrants to \$0.50 as an inducement to incentivize the warrant holders to exercise their warrants. The Company accounted for the warrant inducement as a deemed dividend based on the difference in the Black-Scholes value of the warrants immediately before and immediately after the inducement. The significant assumptions used by the Company included common stock volatility of between 88% - 95%, risk free rate between 1.7% and 0.84%, a weighted average term between 6.5 and 8 years and the stock price of the Company as of the date of inducement. Based on the Black-Scholes values calculated the Company recorded a deemed dividend to additional paid in capital and retained earnings on the inducement of approximately \$325,000 and received proceeds from the warrants exercised of approximately \$1.2 million.

In connection with the Merger and Spin-Off on April 1, 2020, 261,050 warrants were redeemed by the Company for \$66,900 and 525,554 warrants remained with the Company. Additionally, 3,275,200 warrants were issued of which 2,925,200 warrants were issued with an exercise price ranging between \$.125 and \$.50 in connection with the issuance of the Company’s 10% convertible note agreement and 350,000 warrants with an exercise price of \$1.25 were issued to the Company’s bridge financing investor.

On August 17, 2020, warrants for 134,000 shares of common stock were issued in connection with the extension of the True-Up Payment provision. See Note 11. The warrants are immediately exercisable at \$1.25 per share and expire in August 2025. The value of these warrants was \$28,060.

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A summary of the warrant activity during the year ended December 31, 2020 is presented below:

	Number of Warrants	Weighted Average Exercise Price	Weighted Average Remaining Life
Outstanding at December 31, 2019	3,306,238	\$ 6.00	6.8
Granted	3,409,200	0.34	8.8
Exercised	(2,414,022)	0.50	—
Forfeited/Other Adjustments	(892,216)	—	—
Outstanding at December 31, 2020	<u>3,409,200</u>	<u>\$ 0.34</u>	<u>8.6</u>
Exercisable December 31, 2020	<u>3,409,200</u>	<u>\$ 0.34</u>	<u>8.6</u>

11. DERIVATIVE LIABILITIES

The derivative liabilities at December 31, 2020 consist of a True-Up Payment provision of the Series 2 Preferred Stock (See Note 10). There were no derivative liabilities at December 31, 2019.

As discussed in Note 7(j), warrants were issued in connection with the 10% convertible note. The Company did not have an adequate amount of authorized common shares issuable upon exercise of the warrants and conversion of the 10% convertible note. As such, the warrants were liability classified and the conversion feature was bifurcated from the host debt instrument and both instruments were accounted for as derivatives. As a result of the amendment to the note discussed in Note 7(i), the warrant and conversion feature no longer required liability classification and were reclassified to equity.

The table presented below is a summary of changes in the fair market value of the Company's Level 3 valuations for the year ended December 31, 2020.

	True-Up Payment	Warrants	Debt Conversion Feature	Total
Balance at December 31, 2019	\$ —	\$ —	\$ —	\$ —
Inception of the instrument	529,000	935,000	11,231,000	12,695,000
Change in fair value during the period	(344,200)	(11,000)	(261,000)	(616,200)
Instruments no longer meeting liability classification	\$ —	\$ (924,000)	\$ (10,970,000)	\$ (11,894,000)
Balance at December 31, 2020	<u>\$ 184,800</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 184,800</u>

Assumptions used in calculating the fair value of the warrants at the issuance date and as of August 16, 2020 include the following:

As of April 1, 2020	
Stock price per share	\$ 0.34
Term	10.0 years
Expected volatility	102%
Dividend yield	—%
Risk-free interest rate	0.62%

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As of August 16, 2020

Stock price per share	\$	0.34
Term		9.63 years
Expected volatility		102%
Dividend yield		—%
Risk-free interest rate		0.51%

The Company also considered the probability, timing and amount of future capital raises.

Assumptions used in calculating the fair value of the convertible notes at the issuance date and as of August 16, 2020 include the following:

As of April 1, 2020

Face value	\$	4,037,889
Term		2.0 years
Expected volatility		120%
Risk-free interest rate		0.23%
Coupon		10.00%
Conversion price	\$	0.10
Credit spread		15.0%

As of August 16, 2020

Face value	\$	4,037,889
Term		1.63 years
Expected volatility		127%
Risk-free interest rate		0.23%
Coupon		10.00%
Conversion price	\$	0.10
Credit spread		15.0%

The Company also considered the probability, timing and amount of future capital raises.

Assumptions used in calculating the fair value of the True-Up Payment provision at the issuance date and as of December 31, 2020 include the following:

Issuance Date

Term		.5 years
Expected volatility		83%
Dividend yield		—%
Risk-free interest rate		1.56%

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December 31, 2020

Term	.25 years
Expected volatility	89%
Dividend yield	—%
Risk-free interest rate	0.09%

12. COMMITMENTS AND CONTINGENCIES

Legal proceedings

South Africa matter

On March 26, 2013, our South African operations received Notice of Motion filed in the Kwazulu-Natal High Court, Durban, Republic of South Africa, filed against Rolalor (PTY) LTD (“Rolalor”) and Labyrinth Trading 18 (PTY) LTD (“Labyrinth”) by Jennifer Catherine Mary Shaw (“Shaw”). It was requested that the Respondents, Rolalor and Labyrinth, be wound up in satisfaction of an alleged debt owed in the total amount of R4,082,636 (approximately \$480,000). The outcome of the case resulted in the proposed liquidation of Rolalor in which the Company did not object as the entity has no assets. The Company does not expect there to be a material impact as a result of the proceedings, as the South African entities were sold and the buyers retained any and all liabilities.

Employee matter

In connection with the Merger, a former executive officer filed a claim for damages against a wholly owned subsidiary of the Company for unpaid severance. The former executive received timely notification of non-renewal of his employment agreement, which expired December 31, 2019, but argues he is entitled to severance benefits triggered by the Merger. Amergent has been advised by legal counsel that there is a low probability that the claim will result in any damages payable by the Company.

Indemnification agreement and tail policy

On March 25, 2020, pursuant to the requirements of the Merger Agreement, Chanticleer, Sonnet and Amergent entered into an indemnification agreement (“Indemnification Agreement”) providing that Amergent will fully indemnify and hold harmless each of Chanticleer and Sonnet, and each of their respective, directors, officers, stockholders and managers who assumes such role upon or following the closing of the merger against all actual or threatened claims, losses, liabilities, damages, judgments, fines and reasonable fees, costs and expenses, including attorneys’ fees and disbursements, incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, administrative, investigative or otherwise, related to the Spin-Off Business prior to or in connection with its disposition to Amergent.

In addition, pursuant to Merger Agreement, prior to closing of the Merger, the Spin-Off Entity acquired a tail insurance policy in a coverage amount of \$3.0 million, prepaid in full by the Spin-Off Entity, at no cost to the indemnitees, and effective for at least six years following the consummation of the disposition, covering the Spin-Off Entity’s indemnification obligations to the indemnitees (referred to herein as the “Tail Policy”). The Company does not anticipate that any potential liability would exceed the insured amount.

Litigation related to leased properties

During 2020 the Company was in arrears on rent due on several of its leases as a result of the COVID-19 pandemic. As a result, the Company has pending litigation related to 11 sites of which 5 have permanently closed. The outcome of this litigation could result in the permanent closure of additional restaurant locations as well as the possibility of the Company being required to pay interest and damages, modify certain leases on unfavorable terms and could result in material impairments to the Company’s assets.

No amounts have been accrued as of December 31, 2020 and December 31, 2019 in the accompanying condensed consolidated and combined balance sheets as management does not believe the outcome will result in additional liabilities to the Company; however, there can be no guarantees.

From time to time, the Company may be involved in other legal proceedings and claims that have arisen in the ordinary course of business are generally covered by insurance. As of December 31, 2020, the Company does not expect the amount of ultimate liability with respect to these matters to be material to the Company’s financial condition, results of operations or cash flows.

Leases

The Company’s leases typically contain rent escalations over the lease term. The Company recognizes expense for these leases on a straight-line basis over the lease term. Additionally, tenant incentives used to fund leasehold improvements are recognized when earned and reduce our right-of-use asset related to the lease. These are amortized through the right-of-use asset as reductions of expense over the lease term.

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Some of the Company's leases include rent escalations based on inflation indexes and fair market value adjustments. Certain leases contain contingent rental provisions that include a fixed base rent plus an additional percentage of the restaurant's sales in excess of stipulated amounts. Operating lease liabilities are calculated using the prevailing index or rate at lease commencement. Subsequent escalations in the index or rate and contingent rental payments are recognized as variable lease expenses. The Company's lease agreements do not contain any material residual value guarantees or material restrictive covenants. As part of the lease agreements, the Company is also responsible for payments regarding non-lease components (common area maintenance, operating expenses, etc.) and percentage rent payments based on monthly or annual restaurant sales amounts which are considered variable costs and are not included as part of the lease liabilities.

Related to the adoption of Leases Topic 842, our policy elections were as follows:

Separation of lease and non-lease components

The Company elected this expedient to account for lease and non-lease components as a single component for the entire population of operating lease assets.

Short-term policy

The Company has elected the short-term lease recognition exemption for all applicable classes of underlying assets. Leases with an initial term of 12 months or less, that do not include an option to purchase the underlying asset that we are reasonably certain to exercise, are not recorded on the balance sheet.

Supplemental balance sheet information related to leases was as follows:

Operating Leases	Classification	December 31, 2020	December 31, 2019
Right-of-use assets	Operating lease assets	\$ 9,529,443	\$ 11,668,026
Current lease liabilities	Current operating lease liabilities	4,209,389	3,299,309
Non-current lease liabilities	Long-term operating lease liabilities	10,667,862	14,382,354
		<u>\$ 14,877,251</u>	<u>\$ 17,681,663</u>

Lease term and discount rate were as follows:

	December 31, 2020	December 31, 2019
Weighted average remaining lease term (years)	7.7	8.19
Weighted average discount rate	10%	10%

As discussed in Note 5, COVID-19 has negatively impacted operating results and cash flows at significantly varying amounts at the store level. Several stores were permanently closed during the year ended December 31, 2020 while others operated at a reduced capacity. Based on an assessment of the recoverability of the right-of-use asset as of December 31, 2020 an impairment charge of \$486,000 was recorded for the year then ended.

During 2020, \$506,185 of lease liabilities were derecognized due to modifications resulting from the COVID-19 pandemic. The Company had lease liabilities of \$3,136,223 related to abandoned leases. These lease liabilities are presented as part of current operating lease liabilities.

Rent expense of approximately \$2.5 million was incurred in the year ended December 31, 2020, of which approximately \$0.1 million was variable. Rent expense of approximately \$4.5 million was recognized the year ended December 31, 2019, of which approximately \$0.7 was variable.

PPP Loan

The Company received a PPP loan for an amount of \$2.1 million, which was established under the CARES Act and administered by the Small Business Administration ("SBA"). The application for the PPP loan requires the Company to, in good faith, certify that the current economic uncertainty made the loan request necessary to support the ongoing operation of the Company. This certification further requires the Company to take into account current business activity and the Company's ability to access other sources of liquidity sufficient to support the ongoing operations in a manner that is not significantly detrimental to the business. The receipt of funds from the PPP loans and forgiveness of the PPP loans is dependent on the Company having initially qualified for the PPP loans and qualifying for the forgiveness of such PPP loans based on funds being used for certain expenditures such as payroll costs and rent, as required by the terms of the PPP loans. There is no assurance that the Company's obligation under the PPP loans will be forgiven. If the PPP loans are not forgiven, the Company will need to repay the PPP loans over the applicable deferral period.

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Presently, the SBA and other governmental communications have indicated that all loans in excess of \$2.0 million will be subject to audit and that those audits could take up to seven years to complete. If the SBA determines that the PPP loan was not properly obtained and/or expenditures supporting forgiveness were not appropriate, the Company would need to repay some or all of the PPP loan and record additional expense which could have a material adverse impact on the business, financial condition and results of operations in a future period.

13. SUBSEQUENT EVENTS

The Company has evaluated subsequent events from the balance sheet date through the date at which the consolidated and combined financial statements were available to be issued, and there are no other items requiring disclosure except the following:

PPP Loan

On February 25, 2021, the Company received a second loan of \$2,000,000 under the Paycheck Protection Program PPP discussed in Note 7(g). The note bears interest at 1% per year, matures on February 25, 2026, and requires monthly principal and interest payments of approximately \$44,660 beginning June 25, 2022 through maturity. The loan may be forgiven if certain criteria are met.

True-up payment

On February 16, 2021, the Company and the holders of the Series 2 Preferred Stock entered into a Waiver, Consent and Amendment to the Certificate of Designations (the "Waiver"). Pursuant to the Waiver, the Company filed the Second Amendment and Restated Certificate of Designations of Series 2 Convertible Preferred Stock ("Amended COD") (i) providing for the extension of the True-Up Payment to April 1, 2021, (ii) providing for the deduction of proceeds to the original holders from sales of Series 2 Preferred for the True-Up Payment, with the Delaware Secretary of State and (iii) providing for a reduction in amount required to be held in a segregated cash account as discussed in Note 10 from \$1,250,000 to \$850,000. The Company is in negotiations with investors to purchase the Series 2 Preferred Stock from the original holders and convert the Series 2 Preferred Stock to Common Stock. These negotiations are ongoing and may or may not conclude in a favourable manner for the Company.

Subsequent Settlement of Delinquent Leases

After December 31, 2020, the Company has reached agreements to be released from one lease contracts for stores that have been closed due to the Covid-19 pandemic. The Company has agreed to pay approximately \$26,250 to the landlords in the agreements to be released from making future lease payments.

14. RESTATEMENTS OF PREVIOUSLY ISSUED INTERIM FINANCIAL STATEMENTS (UNAUDITED)

The Company, while undergoing the audit of its consolidated and combined financial statements as of December 31, 2020 and for the year then ended, re-evaluated the lease term for three restaurants that were permanently closed in 2020 due to the pandemic and determined that the lease terms should no longer have included periods subject to renewal options. Impairment charges had been recorded for these restaurants during the respective quarter that the restaurants were closed, but the 2020 interim unaudited financial statements did not reflect the revised lease terms. This impacted the previously reported amounts for operating lease assets, operating lease liabilities, and rent expense, among other line items in the condensed consolidated and combined interim financial statements.

In addition to the above, in the third quarter of 2020 the Company and the holders of the Series 2 Preferred Stock entered into the Extension Agreement (see Note 10). This agreement provided for the extension of the True-Up Payment date and for the inclusion of certain "spin-off" shares obtained by the holder of the Series 2 Preferred Stock in the settlement of the Series 2 Preferred for the True-Up Payment. The derivative liability recorded as of September 30, 2020 did not reflect this change in calculation of the True-Up Payment resulting in an overstatement of the derivative liability by approximately \$695,000 and the associated change in fair value of derivative liabilities for the three months ended September 30, 2020.

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The following tables sets forth the effects of the adjustments on affected items within the Company's previously reported Condensed Consolidated and Combined Interim Balance Sheets as of March 31, 2020, June 30, 2020, and September 30, 2020, had the adjustments been made in the corresponding quarters:

	March 31, 2020		
	As reported	Adjustment	As restated
Operating lease assets	\$ 11,256,497	\$ (216,681)	\$ 11,039,816
Long-term operating lease liabilities	\$ 14,064,517	\$ (440,998)	\$ 13,623,519
Accumulated deficit	\$ (77,343,539)	\$ 149,955	\$ (77,193,584)
Non-controlling interests	\$ 584,824	\$ 74,362	\$ 659,186

	June 30, 2020		
	As reported	Adjustment	As restated
Operating lease assets	\$ 11,007,038	\$ (98,944)	\$ 10,908,094
Long-term operating lease liabilities	\$ 13,832,826	\$ (458,154)	\$ 13,374,672
Accumulated deficit	\$ (85,658,825)	\$ 284,848	\$ (85,373,977)
Non-controlling interests	\$ (310,801)	\$ 74,362	\$ (236,439)

	September 30, 2020		
	As reported	Adjustment	As restated
Operating lease assets	\$ 10,117,900	\$ -	\$ 10,117,900
Derivative liabilities	\$ 1,195,724	\$ (694,724)	\$ 501,000
Long-term operating lease liabilities	\$ 15,115,651	\$ (479,855)	\$ 14,635,796
Accumulated deficit	\$ (95,208,526)	\$ 1,048,450	\$ (94,160,076)
Non-controlling interests	\$ (764,097)	\$ 126,129	\$ (637,968)

The following tables sets forth the effects of the adjustments on affected items within the Company's previously reported Condensed Consolidated and Combined Interim Statements of Operations for the three months ended March 31, 2020, June 30, 2020, and September 30, 2020:

	Three Months Ended March 31, 2020		
	As reported	Adjustment	As restated
Restaurant operating expenses	\$ 3,625,844	\$ -	\$ 3,625,844
Asset impairment charge	\$ -	\$ -	\$ -
Operating loss	\$ (1,354,090)	\$ -	\$ (1,354,090)
Other income (expense)	\$ 17,876	\$ 224,317	\$ 242,193
Consolidated and combined net loss	\$ (1,792,526)	\$ 224,317	\$ (1,568,209)
Net income attributable to non-controlling interests	\$ (129,043)	\$ (74,362)	\$ (203,405)
Net loss attributable to Amergent Hospitality Group Inc	\$ (1,921,569)	\$ 149,955	\$ (1,771,614)
Net loss per common share, basic and diluted	\$ (0.16)	\$ 0.01	\$ (0.15)

	Three Months Ended June 30, 2020		
	As reported	Adjustment	As restated
Restaurant operating expenses	\$ 3,261,393	\$ (13,436)	\$ 3,247,957
Asset impairment charge	\$ 273,927	\$ (121,457)	\$ 152,470
Operating loss	\$ (2,655,587)	\$ 134,893	\$ (2,520,694)
Other income (expense)	\$ (70,748)	\$ -	\$ (70,748)
Consolidated and combined net loss	\$ (9,210,911)	\$ 134,893	\$ (9,076,018)
Net loss attributable to non-controlling interests	\$ 89,716	\$ -	\$ 89,716
Net loss attributable to Amergent Hospitality Group Inc	\$ (9,121,195)	\$ 134,893	\$ (8,986,302)
Net loss per common share, basic and diluted	\$ (0.64)	\$ 0.01	\$ (0.63)

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Three Months Ended September 30, 2020			
	As reported	Adjustment	As restated
Restaurant operating expenses	\$ 3,462,279	\$ (13,436)	\$ 3,448,843
Asset impairment charge	\$ 1,231,352	\$ (95,223)	\$ 1,136,129
Operating loss	\$ (3,024,319)	\$ 108,659	\$ (2,915,660)
Change in fair value of derivative liabilities	\$ (199,154)	\$ 694,724	\$ 495,570
Other income (expense)	\$ (37,390)	\$ 11,986	\$ (25,404)
Consolidated and combined net loss	\$ (10,002,997)	\$ 815,369	\$ (9,187,628)
Net loss attributable to non-controlling interests	\$ 453,296	\$ (51,767)	\$ 401,529
Net loss attributable to Amergent Hospitality Group Inc	\$ (9,549,701)	\$ 763,602	\$ (8,786,099)
Net loss per common share, basic and diluted	\$ (0.67)	\$ 0.05	\$ (0.62)

The following tables sets forth the effects of the adjustments on affected items within the Company's previously reported Condensed Consolidated and Combined Interim Statements of Operations for the six months ended June 30, 2020 and nine months ended September 30, 2020:

Six Months Ended June 30, 2020			
	As reported	Adjustment	As restated
Restaurant operating expenses	\$ 6,887,237	\$ (13,436)	\$ 6,873,801
Asset impairment charge	\$ 273,927	\$ (121,457)	\$ 152,470
Operating loss	\$ (4,009,677)	\$ 134,893	\$ (3,874,784)
Other income (expense)	\$ (48,009)	\$ 224,317	\$ 176,308
Consolidated and combined net loss	\$ (11,003,437)	\$ 359,210	\$ (10,644,227)
Net income attributable to non-controlling interests	\$ (39,327)	\$ (74,362)	\$ (113,689)
Net loss attributable to Amergent Hospitality Group Inc	\$ (11,042,764)	\$ 284,848	\$ (10,757,916)
Net loss per common share, basic and diluted	\$ (0.85)	\$ 0.03	\$ (0.82)

Nine Months Ended September 30, 2020			
	As reported	Adjustment	As restated
Restaurant operating expenses	\$ 10,349,516	\$ (26,872)	\$ 10,322,644
Asset impairment charge	\$ 1,505,279	\$ (216,680)	\$ 1,288,599
Operating loss	\$ (7,033,996)	\$ 243,552	\$ (6,790,444)
Change in fair value of derivative liabilities	\$ (1,152,185)	\$ 694,724	\$ (457,461)
Other income (expense)	\$ (85,399)	\$ 236,303	\$ 150,904
Consolidated and combined net loss	\$ (21,006,434)	\$ 1,174,579	\$ (19,831,855)
Net loss attributable to non-controlling interests	\$ 413,969	\$ (126,129)	\$ 287,840
Net loss attributable to Amergent Hospitality Group Inc	\$ (20,592,465)	\$ 1,048,450	\$ (19,544,015)
Net loss per common share, basic and diluted	\$ (1.53)	\$ 0.08	\$ (1.45)

There was no impact to the Company's cash flows from operating, investing, or financing activities for the periods ended March 31, 2020, June 30, 2020, or September 30, 2020 as a result of these restatements.

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

There are not and have not been any disagreements between us and our accountant on any matter of accounting principles, practices or financial statement disclosure.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We evaluated, under the supervision and with the participation of the principal executive officer and principal financial officer, the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities and Exchange Act of 1934, as amended (“Exchange Act”)) as of December 31, 2020, the end of the period covered by this Report. Based on this evaluation, our Chairman, President and Chief Executive Officer (principal executive officer) and our Chief Financial Officer (principal financial officer) have concluded that our disclosure controls and procedures were not effective at the reasonable assurance level at December 31, 2020 because of the material weakness in the Company’s internal control over financial reporting that existed at December 31, 2019 that has not been fully remediated by the end of this period.

Disclosure controls and procedures are designed to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act (i) is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms, and (ii) is accumulated and communicated to management, including the principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosures. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. Due to the inherent limitations of control systems, not all misstatements may be detected. These inherent limitations include the realities that judgments in decision-making can be faulty and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. Controls and procedures can only provide reasonable, not absolute, assurance that the above objectives have been met.

Changes in Internal Control over Financial Reporting

Other than the material weakness and remediation activities discussed below, there were no changes in our internal control over financial reporting during the quarter ended December 31, 2020 that have materially affected, or are reasonably likely to materially affect, the Company’s internal control over financial reporting.

Material Weakness in Internal Control over Financial Reporting

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

Management identified the following deficiency in its internal control over financial reporting:

- We identified a deficiency related to our financial close process including maintaining a sufficient compliment of personnel commensurate with our accounting and financial reporting requirements, as well as development and extension of controls over the recording of journal entries and proper cutoff of accounts payable and accrued expenses at period end and in assessing agreements and the accounting treatment required to record the agreements correctly in the financial records.

Management determined that the deficiency could potentially result in a material misstatement of the consolidated and combined financial statements in a future annual or interim period that would not be prevented or detected. Therefore, the deficiency constitutes a material weakness in internal control.

Remediation Plans

We initiated several steps to evaluate and implement measures designed to improve our internal control over financial reporting in order to remediate the control deficiencies noted above, including recruitment of an accounting consultant and seeking outside advice from other third party consultants to assist in improving the Company's internal control, simplify its reporting processes and reduced the risk of undetected errors. In June, 2020, the Company hired an accounting consultant that has appropriate expertise in accounting and reporting under U.S. GAAP and SEC regulations and has allowed the Company to be better aligned with segregation of duties. With the hiring of this consultant, the Company will be instituting monthly and quarterly meetings to identify significant, infrequent and unusual transactions as well as ensure timely reporting. Additionally, in September, 2020 the Company engaged a third party accounting and advisory firm to assist with, among other areas, the analysis of complex, infrequent and unusual transactions as well as provide valuation services to the Company.

The Chief Financial Officer has initiated a preliminary assessment of management's internal control over financial reporting in accordance with the 2013 integrated framework, as prescribed by the Committee of Sponsoring Organizations of the Treadway Commission, or COSO.

Inherent Limitations on Effectiveness of Controls

An effective internal control system, no matter how well designed, has inherent limitations, including the possibility of human error or overriding of controls, and, therefore, can provide only reasonable assurance with respect to reliable financial reporting. Because of its inherent limitations, our internal control over financial reporting may not prevent or detect all misstatements, including the possibility of human error, the circumvention or overriding of controls, or fraud. Effective internal control can provide only reasonable assurance with respect to the preparation and fair presentation of financial statements.

Item 9B. Other Information

None.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS, AND CORPORATE GOVERNANCE.

The following section sets forth the names, ages and current positions with the Company held by our directors and executive officers, together with certain biographical information. There is no immediate family relationship between or among any of our directors and our executive officers, and the Company is not aware of any arrangement or understanding between any director or executive officer and any other person pursuant to which he was elected to his current position.

Each director and executive officer will serve until he or she resigns or is removed or otherwise disqualified to serve or until his or her successor is elected. Each director was appointed to the board of Amergent concurrently with the Merger and Spin-Off.

Our bylaws give the board authority to expand or reduce the number of available board seats between five and nine, provided reduction may not be implemented below number of occupied seats. For as long as Oz Rey, LLC holds 10% debentures, it has the right, but not the obligation, to appoint two directors ("Appointees") to Amergent's board. Amergent agreed that its board or governance committee, if it has one, will re-nominate the Appointees as a directors at annual meetings, and recommend that stockholders vote "for" such Appointees at annual meetings. All proxies given to management will also vote in favor of such Appointees. This right to designate the Appointees will be subject to Nasdaq Listing Rules in the event Amergent seeks listing on one of the exchanges of the Nasdaq Stock Market. Oz Rey, LLC has not yet submitted any Appointees to Amergent.

DIRECTORS

Name	Age	Position
Frederick L. Glick	54	President, Director
Keith J. Johnson	61	Independent Director
Neil G. Kiefer	67	Independent Director
Michael D. Pruitt	58	Chairman and Chief Executive Officer
J. Eric Wagoner	68	Independent Director

Frederick L. Glick was appointed to serve as President of Chanticleer on November 16, 2018 and subsequently appointed as director effective May 10, 2019. Mr. Glick was the Vice President of Brewery Restaurants for the Karl Strauss Brewing Company brand in San Diego, California from 2013 to the present. Prior, from 2008 to 2013, Mr. Glick was the VP of Operations for Phil's BBQ in San Diego, California. From 1991 to 2008, Mr. Glick was the President, CEO, Operating Partner of Hootwine, Inc., a Hooters franchise, in Oceanside, California. Mr. Glick graduated with a B.S. in Business Administration from Lehigh University in 1986. Each year, Mr. Glick volunteers with local service and charitable organizations and serves on the state board of directors of the California Restaurant Association and CRAF (California Restaurant Association Foundation).

Keith J. Johnson is the Chief Financial Officer of Watertech Equipment & Sales. He served as the Manager of Business Development for Hudson Technologies from November 2012 through September 2013. From August 2010 through November 2012, Mr. Johnson was President of Efficiency Technologies, Inc., the wholly owned operating subsidiary of Efftec International, Inc. He was the President and Chief Executive Officer of YRT² (Your Residential Technology Team) in Charlotte, North Carolina since 2004. Mr. Johnson has a BS in Accounting from Fairfield University in Fairfield, Connecticut. Mr. Johnson served on the board of directors of Chanticleer from April 2007 through March 31, 2020 and also served as the Chairman of its Audit Committee and a member of its Compensation Committee. Mr. Johnson was asked to serve as director based in part on his financial expertise and general proven success in business.

Neil G. Kiefer is the Chief Executive Officer of Hooters Management Corporation, Hooters, Inc., and all its affiliated companies, a position he has held since May 1992. In 1994, Mr. Kiefer was appointed to the boards of those entities, and he continues to serve on those boards. He was also Chief Executive Officer of the Hooters Casino Hotel in Las Vegas, Nevada from 2006 to 2012. Mr. Kiefer received his bachelor's degree from Bethany College in Bethany, West Virginia and received his law degree from Hofstra University in Hempstead, New York. He was admitted to the Florida Bar in 1979. Mr. Kiefer served on the board of Chanticleer from January 2017 through March 31, 2020 and was a member of its compensation committee. He possesses extensive knowledge of the casual dining industry and is an experienced having served on the boards of numerous companies.

Michael D. Pruitt founded Avenel Financial Group, a boutique financial services firm concentrating on emerging technology company investments, in 1999. In 2001, he formed Avenel Ventures, a technology investment and private venture capital firm. In February 2005, Mr. Pruitt formed Chanticleer Holdings, Inc., which commenced operations in June 2005 with him as Chairman and Chief Executive Officer, roles he continued to serve through the Merger and Spin-Off. In January 2011, Mr. Pruitt became a director of the board of Hooters of America, LLC. Mr. Pruitt received a Bachelor of Arts degree from Coastal Carolina University in Conway, South Carolina, where he sits on the Board of Visitors of the E. Craig Wall Sr. College of Business Administration, the Coastal Education Foundation Board, and the Athletic Committee of the Board of Trustees.

J. Eric Wagoner has served as a Managing Director and Head of the High-Yield & Distressed Securities division of Source Capital Group since 1995. Mr. Wagoner has over 35 years of investment securities experience and has developed specialized expertise in high yield and distressed debt instruments. He serves as a member of the board of directors of Argus Research Group, a leading independent equity research firm, and is a member of the Board of Visitors at Wake Forest University. Mr. Wagoner is a graduate of the University of North Carolina and received his MBA from the Babcock Graduate School of Management at Wake Forest University. Mr. Wagoner holds NASD Series 7, 24 and 63 licenses. Mr. Wagoner served on Chanticleer's board of directors from March 2018 through the Merger and Spin-Off and was a member of its audit committee and compensation committee. He was asked to serve as director based in part on his extensive securities knowledge and general proven success in business.

EXECUTIVE OFFICERS

Name	Age	Position
Michael D. Pruitt	58	Chairman and Chief Executive Officer
Frederick L. Glick	54	President
Steven J. Hoelscher	62	Chief Financial Officer

Biographies for Mr. Pruitt and Mr. Glick are included with the director profiles above. Mr. Pruitt and Mr. Glick were appointed to their respective positions concurrently with the Merger and Spin-Off.

Steven J. Hoelscher was appointed Chief Financial Officer on January 19, 2021. Mr. Hoelscher is a Certified Public Accountant and has 40 years of accounting and auditing experience. Prior to joining the Company, Mr. Hoelscher was and continues to be the Chief Financial Officer for Mastodon Ventures, Inc., a strategic restaurant advisory firm in Austin, Texas since June 2000. Mr. Hoelscher oversaw investments in a number of companies owning a variety of restaurant assets including over 100 KFC restaurants, and various other fast casual, casual, fine dining, franchisee and franchisor concepts. Mr. Hoelscher previously occupied the roles Chief Financial Officer and Chief Accounting Officer at two public companies, serving as Chief Financial Officer and a member of the Board of Directors of Anpath Group Inc., from 2006 to 2015, and as Chief Financial Officer on part-time basis for Enxnet Inc., from 2004 to 2019. Mr. Hoelscher also served as controller and Chief Accounting Officer for Aperian from 1996 to 2000. Mr. Hoelscher serves on several board of directors for non-profit organizations. He received a Bachelor of Business Administration Degree from West Texas A&M University.

Mr. Hoelscher's engagement with Amergent is on a part-time basis. Mr. Hoelscher serves as an officer of entities affiliated with Oz Rey, LLC (a related party and Amergent's largest beneficial owner, which entity beneficially owns in excess 71% of Amergent's outstanding common stock). Oz Rey, LLC holds a first priority secured note with a principal balance of \$4,037,889, guaranteed by all of Amergent's subsidiaries. Mr. Hoelscher serves as (a) a Manager and also the Chief Financial Officer of Oz Rey, LLC; (b) Chief Financial Officer of Mastodon Ventures, Inc., an affiliate of Oz Rey, LLC; and (c) as Manager and Chief Financial Officer of MV Amanth LLC and its subsidiaries, also affiliates of Oz Rey, LLC. Mr. Hoelscher may engage in other positions and pursuits from time to time during his employment; provided however, Mr. Hoelscher will notify the Company in advance of accepting new positions or embarking on new pursuits.

Legal Proceedings

To the best of our knowledge, none of our executive officers or directors are parties to any material proceedings adverse to Amergent, have any material interest adverse to Amergent or have, during the past ten years been subject to legal or regulatory proceedings required to be disclosed hereunder.

Family Relationships

There are no family relationships between any of our executive officers and directors.

Corporate Governance

Audit Committee of the Board

The Audit Committee was formed on July 6, 2020. The board has determined that each member of our Audit Committee is an "independent director" as defined by Rule 5605(a)(2) of The NASDAQ Stock Market Rules and that members of the Audit Committee are independent under the additional requirements of Rule 10A-3(b)(1) under the Securities Exchange Act of 1934 (the "Exchange Act"). The board has determined J. Eric Wagoner meets SEC requirements of an "audit committee financial expert" within the meaning of the Sarbanes Oxley Act of 2002, Section 407(b). In addition, the board determined that (i) none of the Audit Committee members have participated in the preparation of the financial statements of the company at any time during the past three years and (2) Audit Committee members are able to read and understand fundamental financial statements. Additionally, we intend to continue to have at least one member of the Audit Committee whose experience or background results in the individual's financial sophistication. The Audit Committee charter is posted on our website at www.amergenthg.com.

Code of Ethics

Our Chief Executive Officer and all senior financial officers, including the Chief Financial Officer, are bound by a Code of Ethics that complies with Item 406 of Regulation S-B of the Exchange Act. Our Code of Ethics is posted on our website at www.amergenthg.com.

Compliance with Section 16(a) of the Exchange Act

Section 16(a) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) requires our directors and executive officers and beneficial holders of more than 10% of our common stock to file with the SEC initial reports of ownership and reports of changes in ownership of our equity securities.

To our knowledge, based solely upon a review of Forms 3 and 4 and amendments thereto furnished to Amergent under 17 CFR 240.16a-3(e) during our fiscal year ended December 31, 2020 none of our officers or directors filed late Forms 3 or 4. None of our officers or directors filed Form 5.

Stockholder Director Nomination Procedures

There have not been any material changes to the procedures by which stockholders may recommend nominees to our board of directors.

ITEM 11. EXECUTIVE COMPENSATION**Overview of Compensation Practices**

Our executive compensation program will be administered by the board of directors until the compensation committee is formed.

Generally, we intend to compensate our executive officers with a compensation package that is designed to drive Company performance to maximize stockholder value while meeting our needs and the needs of our executives. The following are objectives we consider:

- Alignment — to align the interests of executives and stockholders through equity-based compensation awards;
- Retention — to attract, retain and motivate highly qualified, high performing executives to lead our growth and success; and
- Performance — to provide, when appropriate, compensation that is dependent upon the executive's achievements and the Company's performance.

In order to achieve the above objectives, our executive compensation philosophy is guided by the following principles:

- Rewards under incentive plans are based upon our short-term and longer-term financial results and increasing stockholder value;
- Executive pay is set at sufficiently competitive levels to attract, retain and motivate highly talented individuals who are necessary for us to achieve our goals, objectives and overall financial success;
- Compensation of an executive is based on such individual's role, responsibilities, performance and experience; and
- Annual performance of the Company and the executive are taken into account in determining annual bonuses with the goal of fostering a pay-for-performance culture.

Compensation Elements

We intend to compensate our executives through a variety of components, which may include a base salary, annual performance-based incentive bonuses, equity incentives, and benefits and perquisites, in order to provide our executives with a competitive overall compensation package. The mix and value of these components are impacted by a variety of factors, such as responsibility level, individual negotiations and performance and market practice.

Accounting and Tax Considerations

We consider the accounting and tax implications of all aspects of our executive compensation strategy and, so long as doing so does not conflict with our general performance objectives described above, we strive to achieve the most favorable accounting and tax treatment possible to the Company and our executive officers.

Process for Setting Executive Compensation; Factors Considered

When making pay determinations for named executive officers, the board will consider a variety of factors including, among others: (1) actual Company performance as compared to pre-established goals, (2) individual executive performance and expected contribution to our future success, (3) changes in economic conditions and the external marketplace, (4) prior years' bonuses and long-term incentive awards, and (5) in the case of executive officers, other than Chief Executive Officer, the recommendation of our Chief Executive Officer, and in the case of our Chief Executive Officer, his negotiations with our board. No specific weighting is assigned to these factors nor are particular targets set for any particular factor. Ultimately, the board will use its judgment and discretion when determining how much to pay our executive officers and will set the pay for such executives by element (including cash versus non-cash compensation) and in the aggregate, at levels that it believes are competitive and necessary to attract and retain talented executives capable of achieving the Company's long-term objectives.

Summary Compensation Table

The information included in the Summary Compensation Table below reflects compensation earned from Amergent during the fiscal years ended December 31, 2020 and 2019 by each person serving in capacities of a named executive officer.

Name and Principal Position	Year	Salary	Bonus	Stock Awards	All Other Compensation	Total
Michael D. Pruitt (1) Chief Executive Officer	2020	\$ 287,003	-	-	-	\$ 287,003
	2019	\$ 264,997	-	-	-	\$ 264,997
Frederick L. Glick (2) President	2020	\$ 260,291	-	-	-	\$ 260,291
	2019	\$ 247,554	-	-	-	\$ 247,554
Patrick Harkleroad (3) Chief Financial Officer	2020	\$ 160,961	-	-	-	\$ 160,961
	2019	\$ 152,462	-	-	-	\$ 152,462

- (1) Mr. Pruitt sat on the Hooters of America, LLC board of directors until July 2019. The Company received annual payments of \$100,000 from Hooters of America, LLC while Mr. Pruitt served on its board.
- (2) Mr. Glick was appointed to serve as President effective November 16, 2018.
- (3) Mr. Harkleroad was appointed to serve as Chief Financial Officer effective January 21, 2019 and resigned effective December 31, 2020.

Employment Agreements

Frederick L. Glick, President

Mr. Glick's at-will employment agreement continues through December 31, 2020, at which point it renews automatically for additional one-year terms unless terminated by either Amergent or Mr. Glick with or without notice, and with or without cause, pursuant to the terms of the agreement. Pursuant to the agreement, Mr. Glick receives a base salary at the rate of \$250,000 per year. The agreement contains confidentiality, invention assignment and non-solicitation covenants. Mr. Glick is also entitled to participate in customary benefits that the Company offers to its executive officers. If Mr. Glick is terminated without cause or resigns with good reason, he will be entitled to 12 months of severance benefits. If Mr. Glick is terminated or resigns within 12 months of a "Change of Control", he will be entitled to 12 months of severance benefits.

Steven J. Hoelscher, Chief Financial Officer

On February 4, 2021 we entered into an at will employment agreement and non-solicitation and confidentiality agreement with Steven J. Hoelscher, which agreements govern the terms of the engagement of Mr. Hoelscher as Amergent's new Chief Financial Officer. Either party may terminate the employment agreement with or without cause and with or without advance notice, at any time. Mr. Hoelscher receives a base salary of \$120,000 and has the opportunity to earn an annual bonus of \$30,000 based on metrics to be determined by the board of directors of Amergent. The non-solicitation and confidentiality agreement contains customary restrictions on the use of confidential information, protecting Amergent's trade secrets, as well as protective covenants governing non-solicitation of customers and employees and restricting interference with Amergent's business.

Patrick Harkleroad, Former Chief Financial Officer

Mr. Harkleroad's at-will employment agreement was terminated December 31, 2020.

Under his employment agreement, Mr. Harkleroad received a base salary at a rate of \$155,000 per year. The agreement contained confidentiality, invention assignment and non-solicitation covenants. Mr. Harkleroad was also be entitled to participate in customary benefits that the Company offers to its executive officers.

On March 26, 2021, we entered into a separation and release agreement with Mr. Harkleroad. Pursuant to the Agreement, Mr. Harkleroad will be paid \$15,000 for transition services through March 31, 2021. Amergent reaffirmed its indemnification obligations to Mr. Harkleroad in the Agreement, pursuant to the terms of that certain Indemnification Agreement by and between the parties dated July 10, 2020. The Agreement also contains customary general releases by the parties as well as confidentiality, non-disparagement and cooperation provisions.

Change-in-Control Provisions

Except as described above concerning Frederick L. Glick's employment agreement, no other officers have agreements with change-in-control provisions.

Director Compensation Table

The following table reflects compensation earned for services performed in 2020 by members of Amergent's board who were not employees; provided however Amergent has agreed to assume any accrued and unpaid fees. Any director who is also an employee, such as Mr. Pruitt, does not receive any compensation for service as a director. The compensation received by Mr. Pruitt as an employee is shown above in the Summary Compensation Table. Amergent reimbursed all directors for expenses incurred in their capacity as directors.

Name	Director Fees Earned or Paid in Cash (1)	Stock Awards	Option Awards	Total
Keith J. Johnson	\$ 28,000	-	-	\$ 28,000
Neil G. Kiefer	\$ 28,000	-	-	\$ 28,000
J. Eric Wagoner	\$ 28,000	-	-	\$ 28,000

(1) Director fees earned in 2020 are accrued and unpaid.

Outstanding Equity Awards at Year-End

None.

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

Security ownership of certain beneficial owners and management

To our knowledge, the following table sets forth information with respect to beneficial ownership of outstanding common stock as of March 17, 2020 by:

- each person known by the Company to beneficially own more than 5% of the outstanding shares of the common stock;
- each of our Named Executive Officers;
- each of our directors; and
- all of our directors and executive officers as a group.

Beneficial ownership is determined in accordance with the rules of the SEC and includes voting or investment power with respect to the securities as well as securities which the individual or group has the right to acquire within 60 days of the determination date. Unless otherwise indicated, the address for those listed below is c/o Amergent Hospitality Group, Inc., PO Box 460695 Charlotte, NC 28247. Except as indicated by footnote, and subject to applicable community property laws, the persons named in the table have sole voting and investment power with respect to all shares of common stock shown as beneficially owned by them. The number of shares of the common stock outstanding used in calculating the percentage for each listed person includes the shares of common stock underlying warrants, options or other convertible securities held by such persons that are exercisable within 60 days of March 17, 2021 but excludes shares of common stock underlying warrants, options or other convertible securities held by any other person. The number of shares of common stock issued and outstanding as of March 17, 2021 was 14,541,120. Except as noted otherwise, the amounts reflected below are based upon information provided to the Company and filings with the SEC.

Name of Beneficial Owner	Number of Shares Beneficially Owned	Percent of Class
Michael D. Pruitt ⁽¹⁾	74,717	*
Frederick L. Glick ⁽²⁾	50,764	*
Stephen J. Hoelscher	0	*
Keith J. Johnson	45,569	*
Neil G. Kiefer ⁽³⁾	40,091	*
J. Eric Wagoner ⁽⁴⁾	41,336	*
Directors and Executive Officers as a Group (6 persons)	252,477	1.74%
Oz Rey, LLC ⁽⁵⁾	41,941,490	74.30%
Arena Origination Co., LLC ⁽⁶⁾	1,020,437	6.56%**
Arena Special Opportunities Fund, LP ⁽⁷⁾	670,713	4.41%**

* less than 1%

**contractual beneficial ownership limitation of 9.99% for Arena Origination Co., LLC, Arena Special Opportunities Fund, LP and their affiliates, *collectively*.

(1) Includes 20,429 shares held directly by Mr. Pruitt's individual IRA account; 19,326 shares held directly, and 34,962 shares held directly by Avenel Financial Group. Mr. Pruitt exercises voting and dispositive control over these shares.

(2) Includes 20,769 shares held directly by Mr. Glick's individual IRA account. Mr. Glick exercises voting and dispositive control over these shares.

(3) Includes 2,000 shares held directly by Mr. Kiefer's individual IRA account. Mr. Kiefer exercises voting and dispositive control over these shares.

(4) Includes 10,690 shares held directly by Mr. Wagoner's individual IRA account. Mr. Wagoner exercises voting and dispositive control over these shares.

(5) Includes 40,378,890 shares issuable upon conversion of outstanding 10% debenture and 1,562,600 shares issuable upon exercise of currently exercisable warrants.

(6) Includes up to 800,000 shares issuable upon conversion of 400 shares of Series 2 Preferred and up to 220,437 shares underlying currently exercisable warrants. Arena Investors, LP is the investment adviser of, and may be deemed to beneficially own securities owned by, Arena Origination Co., LLC, or "Originating Fund". Westaim Origination Holdings, Inc is the managing member of, and may be deemed to beneficially own securities owned by, Originating Fund. Arena Investors GP, LLC is the general partner of, and may be deemed to beneficially own securities owned by, Arena Investors, LP. Each of Arena Investors, LP and Westaim Origination Holdings, Inc. or, together, Arena, shares voting and disposal power over the shares held by Originating Fund. Each of the persons set forth above other than Originating Fund disclaims beneficial ownership of the shares beneficially owned by Originating Fund and this prospectus shall not be construed as an admission that any such person or entity is the beneficial owner of any such securities. The address for Originating Fund is c/o Arena Investors LP, 405 Lexington Avenue, 59th Floor, New York, New York 10174.

(7) Includes up to 524,000 shares issuable upon conversion of 262 shares of Series 2 Preferred and 146,713 shares underlying currently exercisable warrants. Arena Investors, LP is the investment adviser of, and may be deemed to beneficially own securities owned by Arena Special Opportunities Fund, LP, Arena Special Opportunities Fund (Onshore) GP, LLC is the general partner of, and may be deemed to beneficially own securities owned by, Opportunities Fund. Arena Investors GP, LLC is the general partner of, and may be deemed to beneficially own securities owned by, Arena Investors, LP. Each of Arena Investors, LP and Arena Special Opportunities Fund (Onshore) GP, LLC, or, together, Arena, shares voting and disposal power over the shares held by Opportunities Fund. Each of the persons set forth above other than Opportunities Fund disclaims beneficial ownership of the shares beneficially owned by Opportunities Fund and this prospectus shall not be construed as an admission that any such person or entity is the beneficial owner of any such securities. The address for Opportunities Fund is c/o Arena Investors LP, 405 Lexington Avenue, 59th Floor, New York, New York 10174.

Securities Authorized for Issuance under Equity Compensation Plans

The Company does not have active equity compensation plans and no options or other equity awards outstanding.

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

RELATED PERSON TRANSACTIONS

Due to Related Parties

As of December 31, 2020 and December 31, 2019 the Company owed amounts pursuant to non-interest-bearing loans from Chanticleer Investors, LLC. The amounts owed by the Company are as follows:

	<u>December 31, 2020</u>	<u>December 31, 2019</u>
Chanticleer Investors, LLC	\$ 0	\$ 16,000
Total	<u><u>\$ 0</u></u>	<u><u>\$ 16,000</u></u>

The amount from Chanticleer Investors, LLC is related to cash distributions received from Chanticleer Investors, LLC's interest in Hooters of America which is payable to the Company's co-investors in that investment.

Steven J. Hoelscher

Steven J. Hoelscher was appointed Chief Financial Officer on January 19, 2021. Mr. Hoelscher's engagement with Amergent is on a part-time basis. Mr. Hoelscher serves as an officer of entities affiliated with Oz Rey, LLC (a related party and Amergent's largest beneficial owner, which entity beneficially owning in excess 71% of Amergent's outstanding common stock). Oz Rey, LLC holds a first priority secured note with a principal balance of \$4,037,889, guaranteed by all of Amergent's subsidiaries. Mr. Hoelscher serves as (a) a Manager and also the Chief Financial Officer of Oz Rey, LLC; (b) Chief Financial Officer of Mastodon Ventures, Inc., an affiliate of Oz Rey, LLC; and (c) as Manager and Chief Financial Officer of MV Amanth LLC and its subsidiaries, also affiliates of Oz Rey, LLC. Mr. Hoelscher may engage in other positions and pursuits from time to time during his employment; provided however, Mr. Hoelscher will notify the Company in advance of accepting new positions or embarking on new pursuits.

DIRECTOR INDEPENDENCE

Our board determined that Messrs. Johnson, Kiefer and Wagoner are “independent directors” as defined under NASDAQ rules.

As of the date of this Annual Report, our board has five directors and the following three standing committees: an Audit Committee, a Compensation Committee, and a Governance Committee. The board determined through 2020, each of that Messrs. Johnson, Kiefer and Wagoner is an “independent director” as defined by Rule 5605(a)(2) of The NASDAQ Stock Market Rules (the “NASDAQ Rules”). Independence of board members is re-evaluated by the board annually.

Our board of directors has adopted written policies and procedures for the review of any transaction, arrangement or relationship between Amergent and one of our executive officers, directors, director nominees or 5% or greater stockholders (or their immediate family members), each of whom we refer to as a “related person,” in which such related person has a direct or indirect material interest. If a related person proposes to enter into such a transaction, arrangement or relationship, defined as a “related party transaction,” the related party must report the proposed related party transaction to our Chief Financial Officer. The policy calls for the proposed related party transaction to be reviewed and, if deemed appropriate, approved by the Governance Committee. Our Governance Committee is comprised of Neil Kiefer and J. Eric Wagoner. Mr. Wagoner serves as Chairman. The board of directors has determined all of the members of the Governance Committee are independent under the rules of the Nasdaq Stock Market, LLC. If practicable, the reporting, review and approval will occur prior to entry into the transaction. If advance review and approval is not practicable, the Governance Committee will review, and, in its discretion, may ratify the related party transaction. Any related party transactions that are ongoing in nature will be reviewed annually at a minimum.

Item 14. Principal Accounting Fees and Services.

The following table summarizes the fees for professional services rendered by Cherry Bekaert LLP, the Company’s (and Chanticleer’s prior to the Merger) independent registered public accounting firms, for each of the respective last two fiscal years:

Fee Category	2020	2019
Audit Fees	\$ 512,033	\$ 292,905
Audit-Related Fees	67,650	69,300
Tax Fees	0	11,500
Total Fees	<u>\$ 578,683</u>	<u>\$ 373,705</u>

Audit Fees

Represents fees for professional services provided in connection with the audit of the Company’s annual consolidated financial statements and reviews of the Company’s quarterly interim consolidated and combined financial statements.

Audit-Related Fees

Fees related to review of registration statements and statutory audits.

Tax Fees

Tax fees are associated with advice.

Audit Committee Pre-Approval Policies and Procedures

The Audit Committee is responsible for appointing, setting compensation and overseeing the work of the independent auditors. The Audit Committee is required to review and approve the proposed retention of independent auditors to perform any proposed auditing and non-auditing services as outlined in its charter. The Audit Committee has not established policies and procedures separate from its charter concerning the pre-approval of auditing and non-auditing related services. As required by Section 10A of the Exchange Act, our Audit Committee has authorized all auditing and non-auditing services provided by Cherry Bekaert LLP during 2020 and 2019 and the fees paid for such services. However, the pre-approval requirement may be waived with respect to the provision of non-audit services for the Company if the “de minimis” provisions of Section 10A(i)(1)(B) of the Exchange Act are satisfied.

The Audit Committee has considered whether the provision of Audit-Related Fees, Tax Fees, and all other fees as described above is compatible with maintaining Cherry Bekaert LLP’s independence and has determined that such services for fiscal years 2020 and 2019 were compatible. All such services were approved by the Audit Committee pursuant to Rule 2-01 of Regulation S-X under the Exchange Act to the extent that rule was applicable.

The Audit Committee is responsible for reviewing and discussing the audited consolidated financial statements with management, discussing with the independent registered public accountants the matters required by Public Company Accounting Oversight Board Auditing Standard No. 1301 *Communications with Audit Committees*, receiving written disclosures from the independent registered public accountants required by the applicable requirements of the Public Company Accounting Oversight Board regarding the independent registered public accountants’ communications with the Audit Committee concerning independence and discussing with the independent registered public accountants their independence, and recommending to the Board that the audited consolidated financial statements be included in the Company’s Annual Report on Form 10-K.

There were no hours expended on the principal accountant’s engagement to audit the registrant’s financial statements for the most recent fiscal year that were attributed to work performed by persons other than the principal accountant’s full-time, permanent employees.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENTS

(a) 1. Financial Statements

See Index to Financial Statements in Item 8 of this Annual Report on Form 10-K, which is incorporated herein by reference.

2. Financial Statement Schedules

All other financial statement schedules have been omitted because they are either not applicable or the required information is shown in the financial statements or notes thereto.

3. Exhibits

See the Exhibit Index, which follows the signature page of this Annual Report on Form 10-K, which is incorporated herein by reference.

(b) Exhibits

See Item 15(a) (3) above.

(c) Financial Statement Schedules

See Item 15(a) (2) above.

ITEM 16. FORM 10K SUMMARY

Not applicable.

SIGNATURES

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

Date: April 15, 2021

AMERGENT HOSPITALITY GROUP INC.

a Delaware corporation

By: /s/ Michael D. Pruitt

Michael D. Pruitt
Chief Executive Officer

In accordance with the Exchange Act, this Report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ Michael D. Pruitt.</u> Michael D. Pruitt	Chief Executive Officer, (Principal Executive Officer), Director	April 15, 2021
<u>/s/ Steven J. Hoelscher</u> Steven J. Hoelscher	Chief Financial Officer (Principal Financial Officer)	April 15, 2021
<u>/s/ Keith J Johnson</u> Keith J. Johnson	Chairman of the Board	April 15, 2021
<u>/s/ Frederick L. Glick</u> Frederick L. Glick	President, Director	April, 15, 2021
<u>/s/ J. Eric Wagoner</u> J. Eric Wagoner	Director	April 15, 2021
<u>/s/ Neil J. Kiefer</u> Neil J. Kiefer	Director	April 15, 2021

EXHIBIT INDEX

Exhibit Number	Exhibit Description
2.1	<u>Distribution Agreement by and between Chanticleer and Amergent dated March 25, 2020, incorporated by reference to Exhibit 2.1 to Form 10-12G/A, filed July 2, 2020</u>
2.2	<u>Contribution Agreement by and between Chanticleer and Amergent dated March 31, 2020, incorporated by reference to Exhibit 2.2 to Form 10-12G/A, filed July 2, 2020</u>
2.3#	<u>Agreement and Plan of Merger, by and among Chanticleer, Sonnet, and Merger-Sub, dated October 10, 2019, incorporated by reference to Exhibit 2.3 to Form 10-12G/A, filed July 2, 2020</u>
2.4	<u>Amendment No. 1 to Agreement and Plan of Merger, by and among Chanticleer, Sonnet and Merger-Sub dated February 7, incorporated by reference to Exhibit 2.4 to Form 10-12G/A, filed July 2, 2020</u>
3.1	<u>Certificate of Incorporation of Registrant filed February 18, 2020 with the Delaware Secretary of State, incorporated by reference to Exhibit 3.1 to Form 10-12G/A, filed July 2, 2020</u>
3.2	<u>Certificate of Designations of Series 2 Convertible Preferred Stock filed April 1, 2020 with the Delaware Secretary of State, incorporated by reference to Exhibit 3.2 to Form 10-12G/A, filed July 2, 2020</u>
3.3	<u>Amended and Restated Certificate of Designations of Series 2 Convertible Preferred Stock dated August 16, 2020, incorporated by reference to exhibit 3.1 tom Form 10Q, as filed August 19, 2020</u>
3.4	<u>Second Amended and Restated Certificate of Designations of Series 2 Convertible Preferred Stock dated February 16, 2021, filed herewith</u>
3.5	<u>Form of Bylaws, incorporated by reference to Exhibit 3.3 to Form 10-12G/A, filed July 2, 2020</u>
4.1	<u>Specimen Stock Certificate, incorporated by reference to Exhibit 4.1 to Form 10-12G/A, filed July 2, 2020</u>
4.2	<u>Specimen Preferred Stock Certificate, incorporated by reference to Exhibit 4.2 to Form 10-12G/A, filed July 2, 2020</u>
4.3	<u>Spin-Off Entity Warrant, incorporated by reference to Exhibit 4.3 to Form 10-12G/A, filed July 2, 2020</u>
4.4	<u>Form of Warrant issued to Oz Rey, LLC on April 1, 2020, incorporated by reference to Exhibit 4.4 to Form 10-12G/A, filed July 2, 2020</u>
4.5	<u>Form of Warrant issued to certain holders of Series 2 Convertible Preferred dated April 1, 2020, incorporated by reference to Exhibit 4.5 to Form 10-12G/A, filed July 2, 2020</u>
4 (vi)	<u>Description of Registrant's Common Stock, filed herewith</u>
10.1	<u>Securities Purchase Agreement by and among Amergent, Oz Rey, LLC and certain other purchasers dated April 1, 2020, incorporated by reference to Exhibit 10.1 to Form 10-12G/A, filed July 2, 2020</u>
10.2	<u>Form of Secured Convertible Debenture of Amergent in favor of Oz Rey, LLC issued April 1, 2020, incorporated by reference to Exhibit 10.2 to Form 10-12G/A, filed July 2, 2020</u>
10.3	<u>Registration Rights Agreement by and among Amergent, Oz Rey, LLC and certain holders of registrable securities, incorporated by reference to Exhibit 10.3 to Form 10-12G/A, filed July 2, 2020</u>
10.4	<u>Subsidiary Guarantee in favor of Oz Rey, LLC dated April 1, 2020, incorporated by reference to Exhibit 10.4 to Form 10-12G/A, filed July 2, 2020</u>
10.5	<u>Security Agreement in favor of Oz Rey, LLC dated April 1, 2020, incorporated by reference to Exhibit 10.5 to Form 10-12G/A, filed July 2, 2020</u>
10.6**	<u>Employment Agreement by and between Patrick Harkleroad and Chanticleer, dated January 7, 2019 as assigned to Amergent, incorporated by reference to Exhibit 10.6 to Form 10-12G/A, filed July 2, 2020</u>
10.7**	<u>Employment Agreement by and between Chanticleer and Frederick L. Glick dated November 16, 2018 as assigned to Amergent, incorporated by reference to Exhibit 10.7 to Form 10-12G/A, filed July 2, 2020</u>

- 10.8 [Form of Franchise Agreement between Chanticleer and Hooters of America, LLC, incorporated by reference to Exhibit 10.8 to Form 10-12G/A, filed July 2, 2020](#)
- 10.9 [Lease Agreement between Redus NC Commercial, LLC and Chanticleer, incorporated by reference to Exhibit 10.9 to Form 10-12G/A, filed July 2, 2020](#)
- 10.10 [Gaming Assignment dated July 1, 2014, incorporated by reference to Exhibit 10.10 to Form 10-12G/A, filed July 2, 2020](#)
- 10.11 [Form of Indemnification Agreement, incorporated by reference to Exhibit 10.11 to Form 10-12G/A, filed July 2, 2020](#)
- 10.12 [Securities Purchase Agreement, dated as of February 7, 2020, by and among Chanticleer and the investors party thereto, incorporated by reference to Exhibit 10.12 to Form 10-12G/A, filed July 2, 2020](#)
- 10.13 [Note in favor of TowneBank in amount of \\$2,000,000 dated February 25, 2021 filed herewith](#)
- 10.14 [RESERVED]
- 10.15** [Separation and Release Agreement by and between Amergent and Patrick Harkleroad, dated March 26, 2021, filed herewith](#)
- 10.16 [Waiver, Consent and Amendment to Certificate of Designations by and between Amergent and holders of Series 2 Convertible Preferred Stock dated August 17, 2020, filed herewith](#)
- 10.17 [Waiver, Consent and Amendment to Certificate of Designations by and between Amergent and holders of Series 2 Convertible Preferred Stock dated February 16, 2021, filed herewith](#)
- 10.18** [Employment Agreement by and between Amergent and Steve J. Hoelscher dated February 4, 2021, filed herewith](#)
- 10.19** [Non-Solicitation and Confidentiality Agreement by and between Amergent and Steve J. Hoelscher dated February 4, 2021, filed herewith](#)
- 14.1 [Code of Ethics, filed herewith](#)
- 21 [Subsidiaries of Amergent Hospitality Group Inc., filed herewith](#)
- 22(ii) [Affiliate Guarantor, filed herewith](#)
- 31.1 [Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, filed herewith](#)
- 31.2 [Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, filed herewith](#)
- 32.1 [Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 filed herewith](#)
- 32.2 [Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 filed herewith](#)
- 101.INS XBRL Instance Document
- 101.SCH XBRL Taxonomy Extension Schema Document
- 101.CAL XBRL Taxonomy Extension Calculation Linkbase Document
- 101.DEF XBRL Taxonomy Extension Label Linkbase Document
- 101.LAB XBRL Taxonomy Extension Presentation Linkbase Document
- 101.PRE XBRL Taxonomy Extension Label Linkbase Document

** Management Compensatory Contract or Arrangement

The schedules and exhibits to this agreement have been omitted pursuant to Item 601(b)(2) of Regulation S-K. A copy of any omitted schedule and/or exhibit will be furnished to the Securities and Exchange Commission upon request.

State of Delaware
Secretary of State
Division of Corporations
Delivered 06:51 PM 02/16/2021
FILED 06:51 PM 02/16/2021
SR 20210483758 - FileNumber 7858114

AMERGENT HOSPITALITY GROUP INC.

**SECOND AMENDED AND RESTATED CERTIFICATE OF DESIGNATION OF
SERIES 2 CONVERTIBLE PREFERRED STOCK, SETTING FORTH THE POWERS, PREFERENCES, RIGHTS, QUALIFICATIONS, LIMITATIONS
AND RESTRICTIONS OF SUCH SERIES OF PREFERRED STOCK**

Pursuant to Section **151** of the Delaware General Corporation Law (“DGCL”), Amergent Hospitality Group Inc., a Delaware corporation (the “Corporation”), DOES HEREBY CERTIFY:

The Certificate of Incorporation of the Corporation (the “Certificate of Incorporation”) confers upon the Board of Directors of the Corporation (the “Board of Directors”) the authority to provide for the issuance of shares of preferred stock in series and to establish the number of shares to be included in each such series and to fix the powers, preferences, rights, qualifications, limitations and restrictions of the shares of each such series and any qualifications, limitations or restrictions thereof. The Board of Directors previously adopted a resolution creating a series of preferred stock designated as the Series 2 Convertible Preferred Stock (“Series 2 Preferred Stock”), and the Certificate of Designations for the Series 2 Preferred Stock was filed with the Secretary of State of the State of Delaware on April 1, 2020 and amended on August **14**, 2020. On February 16, 2021, the Board of Directors approved and adopted the following resolution (this “**Certificate of Designations**” or this “**Certificate**”) for purposes of amending certain provisions of the Series 2 Preferred Stock. On February 16, 2021, the holders of 100% of the shares of Series 2 Preferred Stock then outstanding (the “**Requisite Series 2 Holders**”), voting separately as a class, approved the following resolution to amend the Certificate of Designations for the Series 2 Preferred Stock:

RESOLVED that, pursuant to the authority vested in the Board of Directors in accordance with the provisions of the Certificate of Incorporation, and in accordance with the provisions of the Certificate of Incorporation and the DGCL, the Certificate of Designations for the Series 2 Preferred Stock shall, subject to approval of the Requisite Series 2 Holders, be amended and the designation and amount thereof and the voting powers, preferences and relative, participating, optional and otherspecial rights of the shares of such series and thequalifications, limitations or restrictions thereofare as follows:

Section I. Definitions. For the purposes hereof, the following terms shall have the following meanings:

“Affiliate” means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act.

“Alternate Consideration” shall have the meaning set forth in Section 7(e).

“Bankruptcy Event” means any of the following events: (a) the Corporation or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation **S-X**) thereof commences a case or other proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction relating to the Corporation or any Significant Subsidiary thereof, (b) there is commenced against the Corporation or any Significant Subsidiary thereof any such case or proceeding that is not dismissed within 60 days after commencement, (c) the Corporation or any Significant Subsidiary thereof is adjudicated insolvent or bankrupt or any order of relief or other order approving any such case or proceeding is entered, (d) the Corporation or any Significant Subsidiary thereof suffers any appointment of any custodian or the like for it or any substantial part of its property that is not discharged or stayed within 60 calendar days after such appointment, (e) the Corporation or any Significant Subsidiary thereof makes a general assignment for the benefit of creditors, (f) the Corporation or any Significant Subsidiary thereof calls a meeting of its creditors with a view to arranging a composition, adjustment or restructuring of its debts, or (g) the Corporation or any Significant Subsidiary thereof, by any act or failure to act, expressly indicates its consent to, approval of or acquiescence in any of the foregoing or takes any corporate or other action for the purpose of effecting any of the foregoing.

“Base Conversion Price” shall have the meaning set forth in Section 7(b).

“Beneficial Ownership Limitation” shall have the meaning set forth in Section 6(d).

“Business Day” means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“Buy-In” shall have the meaning set forth in Section 6(c)(iv).

“Change of Control Transaction” means the occurrence after the date hereof of any of (a) an acquisition after the date hereof by an individual or legal entity or “group” (as described in Rule 13d5(b)(1) promulgated under the Exchange Act) of effective control (whether through legal or beneficial ownership of capital stock of the Corporation, by contract or otherwise) of in excess of 33% of the voting securities of the Corporation (other than by means of conversion or exercise of Preferred Stock and the Securities issued together with the Preferred Stock), (b) the Corporation merges into or consolidates with any other Person, or any Person merges into or consolidates with the Corporation and, after giving effect to such transaction, the stockholders of the Corporation immediately prior to such transaction own less than 66% of the aggregate voting power of the Corporation or the successor entity of such transaction, (c) the Corporation sells or transfers all or substantially all of its assets to another Person and the stockholders of the Corporation immediately prior to such transaction own less than 66% of the aggregate voting power of the acquiring entity immediately after the transaction, (d) a replacement at one time or within a one year period of more than one-half of the members of the Board of Directors which is not approved by a majority of those individuals who are members of the Board of Directors on the Original Issue Date (or by those individuals who are serving as members of the Board of Directors on any date whose nomination to the Board of Directors was approved by a majority of the members of the Board of Directors who are members on the Original Issue Date), or (e) the execution by the Corporation of an agreement to which the Corporation is a party or by which it is bound, providing for any of the events set forth in clauses (a) through (d) above.

“Chanticleer Conversion Shares” means any shares of Chanticleer Holdings Inc. held by the Original Holders as of the date of the Original Closing Date.

“Closing Date” means February 7, 2020.

“Closing Price” means on any particular date (a) the last reported closing bid price per share of Common Stock on such date on the Trading Market (as reported by Bloomberg L.P. at 4:15 p.m. (New York City time)), (b) if there is no such price on such date, then the closing bid price on the Trading Market on the date nearest preceding such date (as reported by Bloomberg L.P. at 4:15 p.m. (New York City time)), (c) if the Common Stock is not then listed or quoted on a Trading Market and if prices for the Common Stock are then reported in the “pink sheets” published by Pink OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) if the shares of Common Stock are not then publicly traded the fair market value as of such date of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the shares then outstanding and reasonably acceptable to the Corporation, the fees and expenses of which shall be paid by the Corporation. “Commission” means the United States Securities and Exchange Commission.

“Common Stock” means the Corporation’s common stock, par value \$0.0001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed.

“Common Stock Equivalents” means any securities of the Corporation or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“Conversion Amount” means the sum of the Stated Value at issue.

“Conversion Date” shall have the meaning set forth in Section 6(a).

“Conversion Price” shall have the meaning set forth in Section 6(b).

“Conversion Shares” means, collectively, the shares of Common Stock issuable upon conversion of the shares of Preferred Stock in accordance with the terms hereof.

“Dilutive Issuance” shall have the meaning set forth in Section 7(b).

“Dilutive Issuance Notice” shall have the meaning set forth in Section 7(b).

“Equity Conditions” means, during the period in question, (a) the Corporation shall have duly honored all conversions scheduled to occur or occurring by virtue of one or more Notices of Conversion of the applicable Holder on or prior to the dates so requested or required, if any, (b) the Corporation shall have paid all liquidated damages and other amounts owing to the applicable Holder in respect of the Preferred Stock, (c)(i) there is an effective registration statement pursuant to which either (A) the Corporation may issue Conversion Shares or (B) the Original Holders are permitted to utilize the prospectus thereunder to resell all of the shares of Common Stock issuable pursuant to the Transaction Documents (and the Corporation believes, in good faith, that such effectiveness will continue uninterrupted for the foreseeable future) or (ii) all of the Conversion Shares issuable pursuant to the Transaction Documents (and shares issuable in lieu of cash payments of dividends) may be resold pursuant to Rule 144 without volume or manner-of-sale restrictions or current public information requirements as determined by the counsel to the Corporation as set forth in a written opinion letter to such effect, addressed and acceptable to the Transfer Agent and the affected Holders or (iii) all of the Conversion Shares may be issued to the Holder pursuant to Section 3(a)(9) of the Securities Act and immediately resold without restriction, (d) the Common Stock is trading on a Trading Market and all of the shares issuable pursuant to the Transaction Documents are listed or quoted for trading on such Trading Market (and the Corporation believes, in good faith, that trading of the Common Stock on a Trading Market will continue uninterrupted for the foreseeable future), (e) there is a sufficient number of authorized, but unissued and otherwise unreserved, shares of Common Stock for the issuance of all of the shares then issuable pursuant to the Transaction Documents, (f) there is no existing Triggering Event and no existing event which, with the passage of time or the giving of notice, would constitute a Triggering Event, (g) the issuance of the shares in question (or, in the case of a redemption, the shares issuable upon conversion in full of the redemption amount) to the applicable Holder would not violate the limitations set forth in Section 6(d) and Section 6(e) herein, (h) there has been no public announcement of a pending or proposed Fundamental Transaction or Change of Control Transaction that has not been consummated, (i) the applicable Holder is not in possession of any information provided by the Corporation, any of its Subsidiaries, or any of their officers, directors, employees, agents or Affiliates, that constitutes, or may constitute, material non-public information.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Exempt Issuance” means the issuance of (a) shares of Common Stock or options to employees, officers or directors of the Corporation pursuant to any stock or option plan duly adopted by a majority of the non-employee members of the Board of Directors of the Corporation or a majority of the members of a committee of non-employee directors established for such purpose and (b) securities upon the exercise or exchange of or conversion of any securities issued to the Holders and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the Original Issue Date, provided that such securities have not been amended since the Original Issue Date to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of any such securities. “Fundamental Transaction” shall have the meaning set forth in Section 7(e).

“GAAP” means United States generally accepted accounting principles.

“Holder” shall have the meaning given such term in Section 2.

“Indebtedness” means (a) any liabilities for borrowed money or amounts owed in excess of \$50,000 (other than trade accounts payable incurred in the ordinary course of business), (b) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Corporation’s balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business, and (c) the present value of any lease payments in excess of \$50,000 due under leases required to be capitalized in accordance with GAAP.

“Issuable Maximum” shall have the meaning set forth in Section 6(e).

“Junior Securities” means the Common Stock and all other Common Stock Equivalents of the Corporation other than those securities which are explicitly senior or pari passu to the Preferred Stock in dividend rights or liquidation preference.

“Liens” means a lien, charge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

“Liquidation” shall have the meaning set forth in Section 5.

“Material Adverse Effect” means a material adverse effect on (a) the business, assets, property, operations, or condition (financial or otherwise) of the Corporation, (b) the validity or enforceability of this Certificate of Designations or any of the other Transaction Documents or (c) the rights or remedies of the Holder hereunder.

“New York Courts” shall have the meaning set forth in Section 11(d).

“Notice of Conversion” shall have the meaning set forth in Section 6(a).

“Original Holders” means the Holders of the Preferred Stock as of the Second Amendment Filing Date”

“Original Issue Date” means March 31, 2020.

Permitted Indebtedness” means the Indebtedness existing on the Original Issue Date and related to the restructuring of the Corporation’s outstanding secured 8% debentures in the aggregate principal amount of \$6,000,000.

Permitted Lien” means the individual and collective reference to the following: (a) Liens for taxes, assessments and other governmental charges or levies not yet due or Liens for taxes, assessments and other governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves (in the good faith judgment of the management of the Corporation) have been established in accordance with GAAP, (b) Liens imposed by law which were incurred in the ordinary course of the Corporation’s business, such as carriers’, warehousemen’s and mechanics’ Liens, statutory landlords’ Liens, and other similar Liens arising in the ordinary course of the Corporation’s business, and which (x) do not individually or in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of the Corporation and its consolidated Subsidiaries or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing for the foreseeable future the forfeiture or sale of the property or asset subject to such Lien, and (c) Liens incurred in connection with Permitted Indebtedness under clause (a) thereunder.

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Preferred Stock” shall have the meaning set forth in Section 2.

“Registration Rights Agreement” means the Registration Rights Agreement dated March 31, 2020 by and among the Company, the Original Holders and certain other holders of securities of the company.

“Registration Statement” means a registration statement meeting the requirements set forth in the Registration Rights Agreement and covering the resale of the Conversion Shares issuable upon conversion of the Preferred Stock as provided for in the Registration Rights Agreement.

“Securities” means the Preferred Stock and the Underlying Shares.

“Second Amendment Filing Date” means date this Second Amended and Restated Certificate of Designations is filed with the Delaware Secretary of State.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Segregated Cash Account” means \$850,000.00 of cash proceeds which is held in a segregated control account for the Original Holders that is bankruptcy remote and not subject to any security interest of the Company.

“Share Delivery Date” shall have the meaning set forth in Section 6(c)

“Stated Value” shall have the meaning set forth in Section 2, as the same may be increased pursuant to Section 3.

“Subsidiary” means any direct or indirect subsidiary of the Corporation formed or acquired after the date of the Closing Date.

“Successor Entity” shall have the meaning set forth in Section 7(e).

“Trading Day” means a day on which the principal Trading Market is open for business.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE MKT, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, OTCQB or OTCQX (or any successors to any of the foregoing).

“Transaction Documents” means this Certificate of Designation, the Registration Rights Agreement with the Original Holders, all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions consummated on the Original Issue Date.

“Triggering Event” shall have the meaning set forth in Section I 0(a).

“Triggering Redemption Amount” means, for each share of Preferred Stock, 125% of the Stated Value.

“Triggering Redemption Payment Date” shall have the meaning set forth in Section I0(b).

Underlying Shares” means the shares of Common Stock issued and issuable upon conversion or redemption of the Preferred Stock in accordance with the terms of this Certificate of Designation.

“Variable Rate Transaction” means a transaction in which the Company (i) issues or sells any debt or equity securities that are convertible into, exchangeable or exercisable for, or include the right to receive additional shares of Common Stock either (A) at a conversion price, exercise price or exchange rate or other price that is based upon and/or varies with the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such debt or equity securities, or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such debt or equity security or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock or (ii) enters into, or effects a transaction under, any agreement, including, but not limited to, an equity line of credit, whereby the Company may issue securities at a future determined price. Any Purchaser shall be entitled to obtain injunctive relief against the Company to preclude any such issuance, which remedy shall be in addition to any right to collect damages.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported in the “Pink Sheets” published by OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Securities then outstanding and reasonably acceptable to the Corporation, the fees and expenses of which shall be paid by the Corporation.

Section 2. Designation, Amount and Par Value. The series of preferred stock shall be designated as its Series 2 Convertible Preferred Stock (the “Preferred Stock”) and the number of shares so designated shall be up to 787 (which shall not be subject to increase without the written consent of all of the holders of the Preferred Stock (each, a “Holder” and collectively, the “Holders”)). Each share of Preferred Stock shall have \$0.0001 per share and a stated value equal to \$1,000, subject to increase set forth in Section 3 below (the “Stated Value”).

Section 3. Dividends. Except as otherwise required by law, no dividends shall be declared or paid on the Preferred Stock. So long as any Preferred Stock shall remain outstanding, neither the Corporation nor any Subsidiary thereof shall redeem, purchase or otherwise acquire directly or indirectly any Junior Securities except as expressly permitted by Section 10. So long as any Preferred Stock shall remain outstanding, neither the Corporation nor any Subsidiary thereof shall directly or indirectly pay or declare any dividend or make any distribution upon nor shall any distribution be made in respect of, any Junior Securities as long as any dividends due on the Preferred Stock remain unpaid, nor shall any monies be set aside for or applied to the purchase or redemption (through a sinking fund or otherwise) of any Junior Securities or shares pari passu with the Preferred Stock.

Section 4. Voting Rights. Except as otherwise provided herein or as otherwise required by law, the Preferred Stock shall have no voting rights. However, as long as any shares of Preferred Stock are outstanding, the Corporation shall not, without the approval of the Holder, the Corporation will not, among other things, (i) sell all or substantially all of its assets, merge or consolidate with another entity or voluntarily liquidate or dissolve the Corporation, (ii) alter or change the rights, preferences or privileges of the Preferred Stock, (iii) authorize or create any class of stock ranking as to dividends, redemption or distribution of assets upon a Liquidation (as defined in Section 5) senior to, or otherwise pari passu with, the Preferred Stock, (iv) amend its certificate of incorporation or other charter documents in any manner that adversely affects any rights of the Holder, (v) increase the number of authorized shares of Preferred Stock, (vi) redeem any shares of capital stock of the Corporation (other than any redemption of securities from officers or employees of the Corporation pursuant to existing contractual arrangements with such officers or employees or in connection with the termination of their employment) or (vii) enter into any agreement with respect to any of the foregoing.

Section 5. Liquidation. Upon any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary (a “Liquidation”), the Holders shall be entitled to receive out of the assets, whether capital or surplus, of the Corporation an amount equal to the sum of (a) 125% of the aggregate Stated Value of the Preferred Stock then outstanding (b) all liquidated damages and other amounts due in respect of the Preferred Stock and (iii) any Default Interest and any other fees or liquidated damages then due and owing thereon under this Certificate of Designation, for each share of Preferred Stock before any distribution or payment shall be made to the holders of any Junior Securities, and if the assets of the Corporation shall be insufficient to pay in full such amounts, then the entire assets to be distributed to the Holders shall be ratably distributed among the Holders in accordance with the respective amounts that would be payable on such shares if all amounts payable thereon were paid in full. The Corporation shall mail written notice of any such Liquidation, not less than 45 days prior to the payment date stated therein, to each Holder.

Section 6. Conversion.

a) Conversions at Option of Holder. Each share of Preferred Stock shall be convertible, at any time and from time to time from and after the Original Issue Date at the option of the Holder thereof, into that number of shares of Common Stock (subject to the limitations set forth in Section 6(d) and Section 6(e)) determined by dividing the Stated Value of such share of Preferred Stock by the Conversion Price. Holders shall effect conversions by providing the Corporation with the form of conversion notice attached hereto as Annex A (a "Notice of Conversion"). Each Notice of Conversion shall specify the number of shares of Preferred Stock to be converted, the number of shares of Preferred Stock owned prior to the conversion at issue, the number of shares of Preferred Stock owned subsequent to the conversion at issue and the date on which such conversion is to be effected, which date may not be prior to the date the applicable Holder delivers by facsimile such Notice of Conversion to the Corporation (such date, the "Conversion Date"). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion to the Corporation is deemed delivered hereunder. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. To effect conversions of shares of Preferred Stock, a Holder shall not be required to surrender the certificate(s) representing the shares of Preferred Stock to the Corporation unless all of the shares of Preferred Stock represented thereby are so converted, in which case such Holder shall deliver the certificate representing such shares of Preferred Stock promptly following the Conversion Date at issue. Shares of Preferred Stock converted into Common Stock or redeemed in accordance with the terms hereof shall be canceled and shall not be reissued.

b) Conversion Price. The conversion price for the Preferred Stock shall equal the lesser of (i) \$1.00 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like) or (ii) 90% of the five day average VWAP of the Common Stock (which period ends on the Trading Day prior to the Conversion Date), subject to adjustment herein (the "Conversion Price"); *provided*, that if the amount calculated pursuant to the foregoing clause (ii) is less than \$0.50 per share (subject to adjustment for forward and reverse stock splits, recapitalizations and the like), then the Conversion Price shall be \$0.50 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like). Notwithstanding the foregoing, no adjustment pursuant to this Certificate of Designations shall cause the Conversion Price of the Preferred Stock to be less than \$0.50 per share (subject to adjustment for forward and reverse stock splits, recapitalizations and the like).

c) Mechanics of Conversion

i. Delivery of Conversion Shares Upon Conversion. Not later than two (2) Trading Days after each Conversion Date (the “Share Delivery Date”), the Corporation shall deliver, or cause to be delivered, to the converting Holder the number of Conversion Shares being acquired upon the conversion of the Preferred Stock, which Conversion Shares shall be free of restrictive legends and trading restrictions. The Corporation shall deliver the Conversion Shares electronically through the Depository Trust Company or another established clearing corporation performing similar functions.

ii. Failure to Deliver Conversion Shares. If, in the case of any Notice of Conversion, such Conversion Shares are not delivered to or as directed by the applicable Holder by the Share Delivery Date, the Holder shall be entitled to elect by written notice to the Corporation at any time on or before its receipt of such Conversion Shares, to rescind such Conversion, in which event the Corporation shall promptly return to the Holder any original Preferred Stock certificate delivered to the Corporation and the Holder shall promptly return to the Corporation the Conversion Shares issued to such Holder pursuant to the rescinded Conversion Notice.

111. Obligation Absolute: Partial Liquidated Damages. The Corporation’s obligation to issue and deliver the Conversion Shares upon conversion of Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by such Holder or any other person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to such Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Corporation of any such action that the Corporation may have against such Holder. In the event a Holder shall elect to convert any or all of the Stated Value of its Preferred Stock, the Corporation may not refuse conversion based on any claim that such Holder or any one associated or affiliated with such Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to Holder, restraining and/or enjoining conversion of all or part of the Preferred Stock of such Holder shall have been sought and obtained, and the Corporation posts a surety bond for the benefit of such Holder in the amount of 150% of the Stated Value of Preferred Stock which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to such Holder to the extent it obtains judgment. In the absence of such injunction, the Corporation shall issue Conversion Shares and, if applicable, cash, upon a properly noticed conversion. If the Corporation fails to deliver to a Holder such Conversion Shares pursuant to Section 6(c)(i) by the Share Delivery Date applicable to such conversion, the Corporation shall pay to such Holder, in cash, as liquidated damages and not as a penalty, for each \$5,000 of Stated Value of Preferred Stock being converted, \$50 per Trading Day (increasing to \$100 per Trading Day on the third Trading Day and increasing to \$200 per Trading Day on the sixth Trading Day after such damages begin to accrue) for each Trading Day after the Share Delivery Date until such Conversion Shares are delivered or Holder rescinds such conversion. Nothing herein shall limit a Holder’s right to pursue actual damages or declare a Triggering Event pursuant to Section 10 hereof for the Corporation’s failure to deliver Conversion Shares within the period specified herein and such Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit a Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

iv. Compensation for Buy-In on Failure to Timely Deliver Conversion Shares Upon Conversion. In addition to any other rights available to the Holder, if the Corporation fails for any reason to deliver to a Holder the applicable Conversion Shares by the Share Delivery Date pursuant to Section 6(c)(i), and if after such Share Delivery Date such Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by such Holder of the Conversion Shares which such Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "Buy-In"), then the Corporation shall (A) pay in cash to such Holder (in addition to any other remedies available to or elected by such Holder) the amount, if any, by which (x) such Holder's total purchase price (including any brokerage commissions) for the Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that such Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) at the option of such Holder, either reissue (if surrendered) the shares of Preferred Stock equal to the number of shares of Preferred Stock submitted for conversion (in which case, such conversion shall be deemed rescinded) or deliver to such Holder the number of shares of Common Stock that would have been issued if the Corporation had timely complied with its delivery requirements under Section 6(c)(i). For example, if a Holder purchases shares of Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted conversion of shares of Preferred Stock with respect to which the actual sale price of the Conversion Shares (including any brokerage commissions) giving rise to such purchase obligation was a total of \$10,000 under clause (A) of the immediately preceding sentence, the Corporation shall be required to pay such Holder \$1,000. The Holder shall provide the Corporation written notice indicating the amounts payable to such Holder in respect of the Buy-In and, upon request of the Corporation, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to timely deliver the Conversion Shares upon conversion of the shares of Preferred Stock as required pursuant to the terms hereof.

v. Reservation of Shares Issuable Upon Conversion. The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Preferred Stock and payment of dividends on the Preferred Stock, each as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and the other holders of the Preferred Stock), not less than such aggregate number of shares of the Common Stock as shall be issuable (taking into account the adjustments and restrictions of Section 7) upon the conversion of the then outstanding shares of Preferred Stock and payment of dividends hereunder. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable.

vi. Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Preferred Stock. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such conversion, the Corporation shall at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Conversion Price or round up to the next whole share.

vii. Transfer Taxes and Expenses. The issuance of Conversion Shares on conversion of this Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holders of such shares of Preferred Stock and the Corporation shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid. The Corporation shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Conversion Shares.

d) Beneficial Ownership Limitation. The Corporation shall not effect any conversion of the Preferred Stock, and a Holder shall not have the right to convert any portion of the Preferred Stock, to the extent that, after giving effect to the conversion set forth on the applicable Notice of Conversion, such Holder (together with such Holder's Affiliates, and any Persons acting as a group together with such Holder or any of such Holder's Affiliates (such Persons, "Attribution Parties")) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon conversion of the Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Stated Value of Preferred Stock beneficially owned by such Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Corporation subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by such Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 6(d), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. To the extent that the limitation contained in this Section 6(d) applies, the determination of whether the Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and of how many shares of Preferred Stock are convertible shall be in the sole discretion of such Holder, and the submission of a Notice of Conversion shall be deemed to be such Holder's determination of whether the shares of Preferred Stock may be converted (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and how many shares of the Preferred Stock are convertible, in each case subject to the Beneficial Ownership Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Corporation each time it delivers a Notice of Conversion that such Notice of Conversion has not violated the restrictions set forth in this paragraph and the Corporation shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 6(d), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Corporation's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Corporation or (iii) a more recent written notice by the Corporation or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Corporation shall within two Trading Days confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Corporation, including the Preferred Stock, by such Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of Preferred Stock held by the applicable Holder. A Holder, upon notice to the Corporation, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 6(d) applicable to its Preferred Stock provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon conversion of this Preferred Stock held by the Holder and the provisions of this Section 6(d) shall continue to apply. Any such increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Corporation and shall only apply to such Holder and no other Holder. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 6(d) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation contained herein or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of Preferred Stock.

Section 7. Certain Adjustments.

a) Stock Dividends and Stock Splits. If the Corporation, at any time while this Preferred Stock is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Corporation upon conversion of, or payment of a dividend on, this Preferred Stock), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 7(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Subsequent Equity Sales. If, at any time while this Preferred Stock is outstanding, the Corporation or any Subsidiary, as applicable sells or grants any option to purchase or sells or grants any right to reprice, or otherwise disposes of or issues (or announces any sale, grant or any option to purchase or other disposition), any Common Stock or Common Stock Equivalents entitling any Person to acquire shares of Common Stock at an effective price per share that is lower than the then Conversion Price (such lower price, the “Base Conversion Price” and such issuances, collectively, a “Dilutive Issuance”), (if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive shares of Common Stock at an effective price per share that is lower than the Conversion Price, such issuance shall be deemed to have occurred for less than the Conversion Price on such date of the Dilutive Issuance), then the Conversion Price shall be reduced to equal the Base Conversion Price and only reduced to equal the Base Share Price and the number of Conversion Shares issuable hereunder shall be increased such that the aggregate Conversion Price payable hereunder, after taking into account the decrease in the Conversion Price, shall be equal to the aggregate Conversion Price prior to such adjustment. Such adjustment shall be made whenever such Common Stock or Common Stock Equivalents are issued. Notwithstanding the foregoing, no adjustment will be made under this Section 7(b) in respect of an Exempt Issuance. If the Corporation enters into a Variable Rate Transaction, despite the prohibition set forth herein, the Corporation shall be deemed to have issued Common Stock or Common Stock Equivalents at the lowest possible conversion price at which such securities may be converted or exercised. The Corporation shall notify the Holders in writing, no later than the Trading Day following the issuance of any Common Stock or Common Stock Equivalents subject to this Section 7(b), indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the “Dilutive Issuance Notice”). For purposes of clarification, whether or not the Corporation provides a Dilutive Issuance Notice pursuant to this Section 5(b), upon the occurrence of any Dilutive Issuance, the Holder is entitled to receive a number of Conversion Shares based upon the Base Conversion Price on or after the date of such Dilutive Issuance, regardless of whether the Holder accurately refers to the Base Conversion Price in the Notice of Conversion.

c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 7(a) above, if at any time the Corporation grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder of will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of such Holder's Preferred Stock (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

d) Pro Rata Distributions. During such time as this Preferred Stock is outstanding, if the Corporation shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Preferred Stock, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Preferred Stock (without regard to any limitations on conversion hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

e) Fundamental Transaction. If, at any time while this Preferred Stock is outstanding, (i) the Corporation, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Corporation with or into another Person, (ii) the Corporation, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Corporation, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Corporation, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a “Fundamental Transaction”), then, upon any subsequent conversion of this Preferred Stock, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction (without regard to any limitation in Section 6(d) and Section 6(e) on the conversion of this Preferred Stock), the number of shares of Common Stock of the successor or acquiring corporation or of the Corporation, if it is the surviving corporation, and any additional consideration (the “Alternate Consideration”) receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Preferred Stock is convertible immediately prior to such Fundamental Transaction (without regard to any limitation in Section 6(d) and Section 6(e) on the conversion of this Preferred Stock). For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders’ right to convert such preferred stock into Alternate Consideration. The Corporation shall cause any successor entity in a Fundamental Transaction in which the Corporation is not the survivor (the “Successor Entity”) to assume in writing all of the obligations of the Corporation under this Certificate of Designation and the other Transaction Documents in accordance with the provisions of this Section 7(e) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the holder of this Preferred Stock, deliver to the Holder in exchange for this Preferred Stock a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Preferred Stock which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Preferred Stock (without regard to any limitations on the conversion of this Preferred Stock) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of this Preferred Stock immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designation and the other Transaction Documents referring to the “Corporation” shall refer instead to the Successor Entity), and may exercise every right and power of the Corporation and shall assume all of the obligations of the Corporation under this Certificate of Designation and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Corporation herein.

t) Calculations. All calculations under this Section 7 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 7, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

g) Notice to the Holders.

i. Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 7, the Corporation shall promptly deliver to each Holder by facsimile or email a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Conversion by Holder. If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, then, in each case, the Corporation shall cause to be filed at each office or agency maintained for the purpose of conversion of this Preferred Stock, and shall cause to be delivered by facsimile or email to each Holder at its last facsimile number or email address as it shall appear upon the stock books of the Corporation, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non- public information regarding the Corporation or any of the Subsidiaries, the Corporation shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to convert the Conversion Amount of this Preferred Stock (or any part hereof) during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 8. Intentionally Omitted.

Section 9. Negative Covenants. As long as any shares of Preferred Stock are outstanding, unless the holders of the then outstanding shares of Preferred Stock shall have otherwise given prior written consent, the Corporation shall not, and shall not permit any of the Subsidiaries to, directly or indirectly:

- a) other than Permitted Indebtedness, enter into, create, incur, assume, guarantee or suffer to exist any indebtedness for borrowed money of any kind, including but not limited to, a guarantee, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;
- b) other than Permitted Liens, enter into, create, incur, assume or suffer to exist any Liens of any kind, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;
- c) amend its charter documents, including, without limitation, its certificate of incorporation and bylaws, in any manner that materially and adversely affects any rights of the Holder;
- d) repay, repurchase or offer to repay, repurchase or otherwise acquire more than a de minimis number of shares of its Common Stock, Common Stock Equivalents or Junior Securities, other than as to (i) the Conversion Shares and (ii) repurchases of Common Stock or Common Stock Equivalents of departing officers and directors of the Corporation, provided that such repurchases shall not exceed an aggregate of \$100,000 for all officers and directors for so long as the Preferred Stock is outstanding;
- e) pay cash dividends or distributions on Junior Securities of the Corporation;
- f) enter into any transaction with any Affiliate of the Corporation which would be required to be disclosed in any public filing with the Commission, unless such transaction is made on an arm's-length basis and expressly approved by a majority of the disinterested directors of the Corporation (even if less than a quorum otherwise required for board approval); or
- g) enter into any agreement with respect to any of the foregoing.

Section 10. Redemption Upon Triggering Events.

- a) "Triggering Event" means, wherever used herein any of the following events (whatever the reason for such event and whether such event shall be voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court, or any order, rule or regulation of any administrative or governmental body):

i. if the Corporation fails to provide at all times after the effective date the Registration Statement or usable prospectus that permits the Corporation to issue the Conversion Shares or which allows the Original Holder to sell the Conversion Shares pursuant thereto, subject to a grace period of 20 calendar days in the aggregate in any 365-day period or the Corporation cannot issue the Conversion Shares pursuant to Section 3(a)(9) of the Securities Act;

ii. the Corporation shall fail to deliver Conversion Shares issuable upon a conversion hereunder that comply with the provisions hereof prior to the fifth Trading Day after such shares are required to be delivered hereunder, or the Corporation shall provide written notice to any Holder, including by way of public announcement, at any time, of its intention not to comply with requests for conversion of any shares of Preferred Stock in accordance with the terms hereof;

iii. the Corporation shall fail for any reason to pay in full the amount of cash due pursuant to a Buy-In within five calendar days after notice therefor is delivered hereunder;

iv. the Corporation shall fail to have available a sufficient number of authorized and unreserved shares of Common Stock to issue to such Holder upon a conversion hereunder;

v. unless specifically addressed elsewhere in this Certificate of Designation as a Triggering Event, the Corporation shall fail to observe or perform any other covenant, agreement or warranty contained in, or otherwise commit any breach of the Transaction Documents, and such failure or breach shall not, if subject to the possibility of a cure by the Corporation, have been cured within 30 calendar days after the date on which written notice of such failure or breach shall have been delivered;

vi. the Corporation shall redeem more than a de minimis number of Junior Securities other than as to repurchases of Common Stock or Common Stock Equivalents from departing officers and directors, provided that, while any of the Preferred Stock remains outstanding, such repurchases shall not exceed an aggregate of \$100,000 from all officers and directors;

vii. the Corporation shall be party to a Change of Control Transaction; viii. there shall have occurred a Bankruptcy Event;

ix. the Corporation experiences a Material Adverse Effect;

x. the Common Stock shall fail to be listed or quoted for trading on a Trading Market for more than five Trading Days, which need not be consecutive Trading Days;

xi. any monetary judgment, writ or similar final process shall be entered or filed against the Corporation, any subsidiary or any of their respective property or other assets for more than \$100,000, and such judgment, writ or similar final process shall remain unvacated, unbonded or unstayed for a period of 45 calendar days;

xii. any representation or warranty made in this Certificate of Designations,, any other Transaction Documents, any written statement pursuant hereto or thereto or any other report, financial statement or certificate made or delivered to the Holder or any other Holder shall be untrue or incorrect in any material respect as of the date when made or deemed made;

xiii. the electronic transfer by the Corporation of shares of Common Stock through the Depository Trust Company or another established clearing corporation is no longer available or is subject to a “chill”;

xiv. the Corporation fails to file with the Commission any required reports under Section 13 or 15(d) of the Exchange Act such that it is not in compliance with Rule 144(c)(1) (or Rule 144(i)(2), if applicable);

xv. the occurrence of any levy upon or seizure or attachment of, or any uninsured loss of or damage to, any property of the Corporation or any Subsidiary having an aggregate fair value or repair cost (as the case may be) in excess of \$100,000 individually or in the aggregate, and any such levy, seizure or attachment shall not be set aside, bonded or discharged within forty-five (45) days after the date thereof;

xvi. enter into a Variable Rate Transaction;

xvii. any attempt by the Borrower or its officers, directors, and/or affiliates to transmit, convey, disclose, or any actual transmittal, conveyance, or disclosure by the Borrower or its officers, directors, and/or affiliates of, material non-public information concerning the Borrower, to the Holder or its successors and assigns, which is not immediately cured by Borrower’s filing of a Form 8-K pursuant to Regulation FD on that same date;

xviii. If, at any time on or after the date which is six (6) months after the Original Issue Date, the Holder is unable to (i) obtain a standard “144 legal opinion letter” from an attorney reasonably acceptable to the Holder, the Holder’s brokerage firm (and respective clearing firm), and the Borrower’s transfer agent in order to facilitate the Holder’s conversion of any portion of the Note into free trading shares of the Borrower’s Common Stock pursuant to Rule 144, and/or (ii) thereupon deposit such shares into the Holder’s brokerage account;

xix. if either (a) the effectiveness of the Registration Statement lapses for any reason or (b) the Holder shall not be permitted to resell Registrable Securities (as defined in the Registration Rights Agreement) under the Registration Statement for a period of more than 20 consecutive Trading Days or 30 non-consecutive Trading Days during any 12 month period: provided, however, that if the Corporation is negotiating a merger, consolidation, acquisition or sale of all or substantially all of its assets or a similar transaction and, in the written opinion of counsel to the Corporation, the Registration Statement would be required to be amended to include information concerning such pending transaction(s) or the parties thereto which information is not available or may not be publicly disclosed at the time, the Corporation shall be permitted an additional 10 consecutive Trading Days during any 12 month period pursuant to this Section;

xxi. the Corporation fails to pay the True Up Amount when due;

b) Upon the occurrence of a Triggering Event, the Holder shall (in addition to all other rights it may have hereunder or under applicable law) have the right, exercisable at the sole option of such Holder, to require the Corporation to redeem all of the Preferred Stock then held by such Holder for a redemption price, equal the Triggering Redemption Amount. The Triggering Redemption Amount, shall be due and payable within three Trading Days of the date on which the notice for the payment therefor is provided by a Holder (the "Triggering Redemption Payment Date"). If the Company shall fail for any reason to pay in full the Triggering Redemption Amount hereunder on the date such amount is due in accordance with this Section then, in addition to Holder's other available remedies, the Company shall pay to the Holder, in cash, as partial liquidated damages and not as a penalty, by reason of any such delay in or reduction of its ability to, among other things, sell the Securities, an amount in cash equal to ten percent (10.0%) of the aggregate Stated Value of such Holder's Preferred Stock on the first Business Day after the Triggering Redemption Payment Date and on every thirtieth (30th) day (pro rated for periods totaling less than thirty days) thereafter until the earlier of (a) the date such Triggering Redemption Amount, plus all such interest thereon, is paid in full. In addition, if the Corporation fails to pay in full the Triggering Redemption Amount and all other amounts set forth in this Section hereunder on the date such amount is due in accordance with this Section, the Corporation will pay interest thereon at a rate equal to the lesser of 18% per annum or the maximum rate permitted by applicable law, accruing daily from such date until the Triggering Redemption Amount, plus all such interest and liquidated damages thereon, is paid in full. For purposes of this Section, a share of Preferred Stock is outstanding until such date as the applicable Holder shall have received Conversion Shares upon a conversion (or attempted conversion) thereof that meets the requirements hereof or has been paid the Triggering Redemption Amount in cash.

Section 11. Miscellaneous.

a) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Conversion, shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service, addressed to the Corporation, at the address set forth above **Attention:** Chief Financial Officer, facsimile number 704- 366-2463, or such other facsimile number or address as the Corporation may specify for such purposes by notice to the Holders delivered in accordance with this Section 11. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number or address of such Holder appearing on the books of the Corporation, or if no such facsimile number or address appears on the books of the Corporation, at the principal place of business of such Holder. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

b) Absolute Obligation. Except as expressly provided herein, no provision of this Certificate of Designation shall alter or impair the obligation of the Corporation, which is absolute and unconditional, to pay liquidated damages, accrued dividends and accrued interest, as applicable, on the shares of Preferred Stock at the time, place, and rate, and in the coin or currency, herein prescribed.

c) Lost or Mutilated Preferred Stock Certificate. If a Holder's Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership hereof reasonably satisfactory to the Corporation.

d) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Certificate of Designation shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by any of the Transaction Documents (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the "New York Courts"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such New York Courts, or such New York Courts are improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Certificate of Designation and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Certificate of Designation or the transactions contemplated hereby. If any party shall commence an action or proceeding to enforce any provisions of this Certificate of Designation, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

e) Waiver. Any waiver by the Corporation, an Original Holder or a Holder (if not an Original Holder) of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation or a waiver by any other Holders. The failure of the Corporation, the Original Holders or a Holder (if not an Original Holder) to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation on any other occasion. Any waiver by the Corporation, the Original Holders or a Holder (if not an Original Holder) must be in writing.

f) Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

g) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

h) Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

i) Status of Converted or Redeemed Preferred Stock. If any shares of Preferred Stock shall be converted, redeemed or reacquired by the Corporation, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Class 2 Preferred Stock.

j) True-Up.

i. In the event that the proceeds received by the Original Holders from the sale of all the Preferred Stock, Conversion Shares, shares of the Common Stock of the Corporation received by the Original Holders in connection with the spinoff of the Corporation from Sonnet Biotherapeutics Holdings, Inc. (f/k/a Chanticleer Holdings, Inc.) (the "Spinoff Shares") and the proceeds of the Chanticleer Conversion Shares do not equal at least \$1,875,000 on April 1, 2021 (the "True-Up Payment Date"), the Corporation shall pay the Holder an amount in cash (the "True-Up Payment") equal to \$1,875,000 less the proceeds previously realized by the Original Holders from the sale of the Preferred Stock, the Conversion Shares, the Spinoff Shares and Chanticleer Conversion Shares, net of brokerage commissions and any other fees incurred by Holder in connection with the sale of any Conversion Shares ("Net Proceeds"). For purposes of clarity, Net Proceeds shall not include any proceeds received by the Original Holders upon the receipt of any shares of Common Stock of the Corporation issued upon exercise of warrants of the Corporation held by the Original Holders or any shares of Common Stock of the Corporation held or acquired by Original Holders which are not Spinoff Shares.

ii. The True-Up Payment will be paid by Corporation out of either (i) the proceeds from the exercise by Corporation of existing warrants to purchase shares of the common stock of Sonnet Biotherapeutics Holdings, Inc. (f/k/a Chanticleer Holdings, Inc.) held by Corporation or (ii) the Segregated Cash Account. If any portion of the True-Up Payment has not been paid by Corporation, on the True-Up Payment Date, interest shall accrue on such unpaid amount until such amount is paid in full at a rate equal to the lesser of (i) 18% per annum or (ii) the maximum rate permitted by applicable law. Upon payment in full of the True-Up Payment and all unpaid liquidated damages and other amounts due in respect of the Preferred Stock, any portion of the Segregated Cash Account not used to pay the True-Up Payment will be transferred to the Corporation and any remaining outstanding shares of Preferred Stock held by the Original Holders will be cancelled with no further obligations of the Corporation to the Original Holders thereunder, without any further action on behalf of the Corporation, Original Holders or the Holders.

iii. The Segregated Cash Account will be maintained until the True-Up Payment is paid in full.

IN WITNESS WHEREOF, the undersigned has executed this Certificate on February 16, 2021.

AMERGENT HOSPITALITY GROUP INC.

r--DocuSigned by:

By: /s/ Michael D. Pruitt

Name: Michael D. Pruitt

Title: Chief Executive Officer

ANNEXA

NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT SHARES OF PREFERRED STOCK)

The undersigned hereby elects to convert the number of shares of Series 2 Convertible Preferred Stock indicated below into shares of common stock, par value \$0.0001 per share (the "Common Stock"), of Amergent Hospitality Group Inc., a Delaware corporation (the "Corporation"), according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and opinions as may be required under applicable laws. No fee will be charged to the Holders for any conversion, except for any such transfer taxes.

Conversion calculations:

Date to Effect Conversion: _____

Number of shares of Preferred Stock owned prior to Conversion: _____

Number of shares of Preferred Stock to be Converted: _____

Stated Value of shares of Preferred Stock to be Converted: _____

Number of shares of Common Stock to be Issued: _____

Applicable Conversion Price: _____

Number of shares of Preferred Stock subsequent to Conversion: _____

Address for Delivery: _____ =or DWAC

Instructions:

Broker no: _____

Account no: _____

HOLDER

By: _____
Name: _____
Title: _____

AMERGENT HOSPITALITY GROUP INC.

DESCRIPTION OF COMMON STOCK

The following is a summary of the material terms of our common stock. This summary does not purport to be exhaustive and is qualified in its entirety by reference to our amended and restated certificate of incorporation, amended and restated bylaws and to the applicable provisions of Delaware law.

We are authorized to issue 50,000,000 shares of common stock, \$0.0001 par value. Holders of common stock are each entitled to cast one vote for each share held of record on all matters presented to shareholders. Cumulative voting is authorized; the holders of a majority of our outstanding shares of common stock may elect all directors. Holders of common stock are entitled to receive such dividends as may be declared by our board out of funds legally available and, in the event of liquidation, to share pro rata in any distribution of our assets after payment of liabilities. Our directors are not obligated to declare a dividend. It is not anticipated that dividends will be paid in the foreseeable future. Holders of common stock do not have preemptive rights to subscribe to any additional shares we may issue in the future. There are no conversion, redemption, sinking fund or similar provisions regarding the common stock. All outstanding shares of common stock are fully paid and nonassessable.

As of March 31, 2020, we had 14,282,736 shares of common stock issued and outstanding.

Anti-Takeover Effects of Certain Provisions of Delaware Law and Our Certificate of Incorporation and Bylaws

We are subject to the provisions of Section 203 of the Delaware General Corporation Law (the “DGCL”), an anti-takeover law. Subject to certain exceptions, the statute prohibits a publicly held Delaware corporation from engaging in a “business combination” with an “interested stockholder” for a period of three years after the date of the transaction in which the person became an interested stockholder unless:

- prior to such date, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding those shares owned (1) by persons who are directors and also officers and (2) by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or after such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock that is not owned by the interested stockholder.

For purposes of Section 203, a “business combination” includes a merger, asset sale or other transaction resulting in a financial benefit to the interested stockholder, and an “interested stockholder” is a person who, together with affiliates and associates, owns, or within three years prior to the date of determination whether the person is an “Interested Stockholder” did own, 15% or more of the corporation’s voting stock. In addition, our authorized but unissued shares of common stock are available for our board to issue without stockholder approval. We may use these additional shares for a variety of corporate purposes, including future public or private offerings to raise additional capital, corporate acquisitions and employee benefit plans. The existence of our authorized but unissued shares of common stock could render more difficult or discourage an attempt to obtain control of our company by means of a proxy contest, tender offer, merger or other transaction. Our authorized but unissued shares may be used to delay, defer or prevent a tender offer or takeover attempt that a stockholder might consider in its best interest, including those attempts that might result in a premium over the market price for the shares held by our stockholders. The board of directors is also authorized to adopt, amend or repeal our bylaws, which could delay, defer or prevent a change in control.

SEPARATION AND RELEASE AGREEMENT

This Separation and Release Agreement (this "Agreement") is by and between Patrick Harkleroad ("Individual"), and Amergent Hospitality Group, Inc., a Delaware corporation (the "Company").

RECITALS

WHEREAS, Individual has been employed by the Company as the position of Chief Financial Officer, and in that capacity, has provided services to the Company.

WHEREAS, the initial term of the Individual's Employment Contract, dated January 7, 2019, ended December 31, 2020 ("Employment Contract").

WHEREAS, Individual provided written Resignation Notice to the Board of the Company on November 24, 2020. As stated in this Resignation notice, though Individual did not provide the required 90-day notice period under his Employment Contract, Individual provided the Company the option to retain his services for a period of up to six months upon mutually agreeable terms between the Company and the Individual after December 31, 2020.

WHEREAS, the Company's board of directors waived the 90-day notice of non-renewal required pursuant to the Employment Contract, at Individual's request, and accepted Individual's resignation of employment effective December 31, 2020.

WHEREAS, Individual provided a transition list of items to the Company via email on November 24, 2020 to help define what duties need to be transitioned to a new Chief Financial Officer and Controller for the Company ("Transition List");

WHEREAS, the parties desire to enter into this Agreement to reflect their mutual undertakings, promises, and agreements concerning the post-termination services Individual will provide to the Company and the separation benefits to be provided to Individual upon or by reason of such separation from employment.

NOW, THEREFORE, in exchange for the valuable consideration paid or given under this Agreement and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the parties knowingly and voluntarily agree to the following terms:

TERMS

1. Separation Date and Effect of Separation. The parties hereby agree that Individual's employment with the Company terminated effective December 31, 2020 ("the Separation Date"), which was the end date of the Individual's Employment Contract (provided notice of non-renewal was timely provided by Individual to the Company). Effective as of the Separation Date, Individual does hereby accept such termination, from all corporate, board, and other offices and positions he held with the Company and all of its affiliates.

2. Final Pay and Benefits. Individual acknowledges he has received the following payments in accordance with the ending of his employment with the Company:
- a. Final Pay. Individual acknowledges and agrees that he has received payment of his regular base salary, minus applicable taxes and withholdings, through the Separation Date and that such payment was received on or within six days after the Separation Date. Individual shall not receive from the Company or its affiliates any other base salary, wages, commissions, bonuses, or other forms of remuneration or compensation relating to employment after the Separation Date other than as provided for in this Agreement.
 - b. Reimbursement of Business Expenses. Individual acknowledges and agrees that he has received reimbursement of all reasonable business expenses properly incurred by him in accordance with Company policy before the Separation Date.
3. Separation Benefits. Contingent upon Individual's timely execution and return to the Company of this Agreement and its non-revocation, the Company shall provide Individual, or cause Individual to receive, the separation benefits set forth below in this paragraph (the "Separation Pay").
- Severance Pay. The Company has paid Individual "Separation Pay" in the amount of (i.) \$6,236.29 (less applicable withholding) on January 15th, and (ii) \$6,238.29 on January 29th, represents a sum equal to the Individual's regular pay through and including, January 24th 2021, plus the Company shall pay Individual (ii) the sum of twenty two thousand five hundred dollars (\$22,500.00) (less applicable withholding), payable in equal installments consistent with the Company's regular payroll periods, beginning with the payroll period ending on or about February 12th through and including the April 9th payroll period. In addition, and provided Individual has supplied the Transition Services (as defined below) to the Company's reasonable satisfaction and has signed after April 1, 2021 and left unrevoked the Supplemental Release attached hereto as Exhibit A, The Company will pay Individual an additional fifteen thousand dollars (\$15,000.00) on May 15th. Unless the Company provides written notification to the Individual that the Individual has not provided the Transition Services to the reasonable satisfaction of the Company with specifics as to what issues need to be addressed, with the ability for the Individual to cure said issues within a reasonable timeframe, the above Severance Payments will be paid.
4. Transition Services. As Individual provided in his Transition List to the Company on November 24, 2020, Individual agrees that, during the period beginning with the execution of this Agreement and through March 31, 2021, Individual will, as an independent contractor and in consideration for the Severance Pay, provide the following "Transition Services" to the Company upon reasonable request from the Company:
- A. Assist the Company with transitioning current bank accounts and setting up new bank accounts
 - B. Assist the Company with transitioning all ACH payments to the new bank accounts
 - C. Assist the Company, its CFO and third-party advisors with the preparation and filing of the IOK due by 3/31/21, with applicable extensions as required by the Company

- D. Assist the Company, its CFO and third-party advisors with the preparation and filing of the IOQ due by 5/15/21, with applicable extensions as required by the Company
 - E. Assist the Company and its CFO and third-party advisors with the preparation and filing of the 2020 tax return, with applicable extensions as required by the Company
 - F. Assist the Company and its CFO and third party advisors with the preparation of the 2020 Audit, with applicable extensions as required by the Company
 - G. Assist the Company and its new Controller and third party advisors with transition services for the preparation of the 13 week rolling cash flow forecast
 - H. Assist the Company and its new Controller with the process of reviewing from Provident Hospitality weekly check runs, which includes being available on check cutting day, which is typically Thursday
 - I. Assist the company with issues relating to franchisee, franchisor, and lease agreements, and other material agreements as requested
 - J. Assist the company and its new Controller with the transition of Provident Hospitality monthly reporting, with Provident's assistance, as the monthly reporting is currently being completed by Provident
 - K. Process including the reconciliation of bank balances with assistance of Provident, who handles this task for the Company currently
 - L. Assist the company with the resolution of its historical pay roll tax issues
 - M. Assist the company with its preparation application and processing of PPP (1 and 2) and EIDL loans including the application for forgiveness of both
 - N. All other services reasonably requested by company to continue its operations and financial reporting
5. Return of Property and Information. On or before April 1, 2021, Individual shall return to the Company or the Company Parties any and all items of its or their property, including without limitation keys, all copies of work product, or business records, badge/access card, laptop and other computers, software, cellular telephones and personal digital assistants, equipment, credit cards, forms, files, manuals, correspondence, business records, personnel data, lists of employees, salary and benefits information, customer files, lists of suppliers and vendors, price lists, contracts, contract information, marketing plans, brochures, catalogs, training materials, computer tapes and diskettes or other portable media, computer-readable files and data stored on any hard drive or other installed device, and data processing reports, and any and all other documents or property belonging to them which he has had possession of or control over during his employment with the Company.

By signing below, Individual hereby certifies that Individual has migrated all work product to the Company's server and has not retained any copies on Individual's devices or laptop computer.

By signing below, Individual represents and warrants that he has provided the Company with a list of all passwords related to Company related accounts and/or password protected information.

6. General Release by Individual. Individual agrees to and does hereby, for himself and his heirs, executors, administrators, successors and assigns, forever release and discharge the Company and its subsidiaries, related companies, parents, successors and assigns, and each of their officers, directors, agents, employees and former employees, including without limitation each and every subsidiary and affiliate of the Company (herein collectively, "Released Parties"), from any and all claims, debts, promises, agreements, demands, causes of action, attorneys' fees, losses and expenses of every nature whatsoever, known or unknown, suspected or unsuspected, filed or unfiled, arising prior to the Effective Date of this Agreement or arising out of or in connection with Individual's employment and termination of employment from the Company or any affiliate of the Company. This total release to the extent permitted by law includes, but is not limited to, all claims arising directly or indirectly from Individual's employment with the Company and the termination of that employment; all claims for unpaid wages, including overtime wages, claims or demands related to salary, bonuses, commissions, stock, stock options, claims under any severance or change in control plan, any stock or stock option or other equity or phantom equity grant, agreement or plan, vacation pay, fringe benefits and expense reimbursements pursuant to any federal, North Carolina state or other state or local law or cause of action, including, but not limited to, breach of contract, breach of the implied covenant of good faith and fair dealing, infliction of emotional harm, wrongful discharge, violation of public policy, defamation and impairment of economic opportunity and any claims for violation of the Age Discrimination in Employment Act, the Civil Rights Act of 1866, Title VII of the Civil Rights Act of 1964, the Employee Retirement Income Security Act, the Equal Pay Act, the Fair Labor Standards Act, the Rehabilitation Act of 1974, and the Americans With Disabilities Act of 1990.
7. General Release by Company. Company agrees to and does hereby forever release and discharge the Individual and his heirs and assigns, from any and all claims, debts, promises, agreements, demands, causes of action, attorneys' fees, losses and expenses of every nature whatsoever, known or unknown, suspected or unsuspected, filed or unfiled, arising prior to the Effective Date of this Agreement or arising out of or in connection with Individual's employment and termination of employment from the Company or any affiliate of the Company. This total release to the extent permitted by law includes, but is not limited to, all claims or liability arising directly or indirectly from Individual's employment with the Company, service as an officer of the Company and the termination of that employment and from payroll tax deficiencies and penalties that the IRS may impose on any "Responsible Party" in his individual capacity.

The parties acknowledge and agree that it was the responsibility of previous CFO, Eric Lederer, to process payroll prior to his termination Individual was not given full access to process the Company's payroll until after Eric Lederer's termination date.

8. Permitted Activities. Notwithstanding any other provision of this Agreement but subject to Individual's waiver in subparagraph 10(a) below, nothing in this Agreement is intended to, or does, preclude Individual from (i) contacting, reporting to, responding to an inquiry from, filing a charge or complaint with, communicating with, or otherwise participating in an investigation conducted by, the Equal Employment Opportunity Commission, the Department of Labor, the National Labor Relations Board, the Occupational Safety and Health Administration, or any other federal, state, or local governmental agency, commission, or regulatory body; (ii) giving truthful testimony or making statements under oath in response to a subpoena or other valid legal process or in any legal proceeding; (iii) otherwise making truthful statements as required by law or valid legal process; (iv) engaging in any concerted or other legally protected activities; or (v) disclosing a trade secret in confidence to a governmental official, directly or indirectly, or to an attorney, if the disclosure is made solely for the purpose of reporting or investigating a suspected violation of law. Accordingly, Individual understands that he will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that (i) is made (A) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and (B) solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in sworn testimony, a lawsuit or complaint, or document filed in a lawsuit or other proceeding, if such filing is made under seal. Individual likewise understands that, if he files a lawsuit for retaliation by the Company for reporting a suspected violation of law, he may disclose the Company's trade secret(s) to his attorney and use the trade secret information in the court proceeding, if he (i) files any document containing the trade secret under seal; and (ii) does not disclose the trade secret, except pursuant to court order.
9. Confidentiality, Cooperation, Non-Prosecution, and Non-Disparagement.
- a. Confidentiality. Except as requested by the Company, as permitted above, as permitted by law that supersedes the terms of this Agreement, or as compelled by valid legal process, the Company and the Individual shall treat as confidential the fact and terms of this Agreement and circumstances surrounding his separation from employment and shall not disclose such information to any party other than to his spouse or any attorney, accountant, or tax advisor of Individual, if such persons have agreed to keep such information confidential.
- b. Cooperation. Individual shall cooperate fully and completely with the Company or any of the other Released Parties or their successors, at their request and at reasonable times and without unreasonable interference to Individual's personal or professional endeavors, in all pending and future litigation, investigations, arbitrations, and/or other fact-finding or adjudicative proceedings, public or private, involving the Company or any of the other Released Parties. This obligation includes without limitation Individual promptly meeting with counsel for the Company or the other Released Parties at reasonable times upon their request, and providing testimony in court, before an arbitrator or other convening authority, or upon deposition that is truthful, accurate, and complete, according to information known to him. If Individual appears as a witness in any pending or future litigation, arbitration, or other fact-finding or adjudicative proceeding at the request of the Company or any of the other Released Parties, the Company or the other Released Parties shall reimburse him, upon submission of substantiating documentation, for necessary and reasonable expenses (other than attorneys' fees) incurred by him as a result of testifying.

- c. Non-Prosecution. Except as requested by the Company, as permitted above, as permitted by law that supersedes the terms of this Agreement, or as compelled by valid legal process, Individual shall not (i) assist, cooperate with, or supply information of any kind to any individual or private-party litigant or their agents or attorneys concerning (A) the employment, terms and conditions, or ending of Individual's or any other employee's employment with the Company or any of the other Released Parties or the employment practices of any of the Released Parties; or (B) the business or operations of any of the Released Parties; or (ii) initiate or assist any other person in connection with any investigation, inquiry, or any other action of any kind with respect to any of the Released Parties' employment practices, businesses, or operations.
- d. Non-Disparagement and Waiver of Related Rights. Except as requested by the Company, as permitted above or by applicable law that may supersede the terms of this Agreement, or as compelled by valid legal process, Individual shall not make to any other party any statement (whether oral, written, electronic, anonymous, on the Internet, or otherwise), which directly or indirectly impugns the quality or integrity of the Company's or any of the other Released Parties' business or employment practices, or any other disparaging or derogatory remarks about them. In executing this Agreement, Individual acknowledges and agrees that he has knowingly, voluntarily, and intelligently waived any (i) free speech, free association, free press, or First Amendment to the United States Constitution (including, without limitation, any counterpart or similar provision or right under any State Constitution) rights to disclose, communicate, or publish any statements prohibited by this subparagraph and (ii) right to file a motion to dismiss or pursue any other relief under the North Carolina Citizens Participation Act or similar state law in connection with any Claim filed against him by the Company or any of the other Released Parties, including without limitation any Claim arising from any alleged breach of this Agreement.

Individual agrees that the confidentiality and non-disparagement provision in this Agreement prevent him from discussing matters related to the Company with vendors, press, or others and he shall direct all inquiries to Mike Pruitt for response.

10. Waiver of Certain Rights.

- a. Right to Relief Not Provided in this Agreement. Individual waives any right to monetary recovery from the Company or the other Released Parties, whether sought directly by him or in the event any administrative agency or other public authority, individual, or group of individuals should pursue any Claim on his behalf; and he shall not request or accept from the Company or the other Released Parties, as compensation or damages related to his employment or the ending of his employment with the Company or the employment practices of any of the other Released Parties, anything of monetary value that is not provided for in this Agreement.

- b. Right to Class- or Collective-Action Initiation or Participation. Individual waives the right to initiate or participate in any class or collective action with respect to any Claim against the Company or the other Released Parties, including without limitation any Claim arising from the formation, continuation, or ending of his employment relationship with the Company or the employment practices of any of the other Released Parties.
11. No Violations. Individual represents and warrants that he has no knowledge that the Company or any of the other Released Parties has committed or is suspected of committing any act which is or may be in violation of any federal or state law or regulation or has acted in a manner which requires corrective action of any kind. Individual further represents and warrants that he has not informed the Company or any of the other Released Parties of, and that he is unaware of, any alleged violations of their standards of business conduct or personnel policies, of their integrity or ethics policies (or similar policies), or other misconduct by the Company or any of the other Released Parties, that have not been resolved satisfactorily by the Company or the other Released Parties.
12. Non-Use and Non-Disclosure of Confidential Information. Except as permitted above, Individual shall not at any time use or disclose to any third party any confidential or proprietary information. If it appears Individual will be compelled by law or judicial process to disclose any Confidential Information following the Separation Date, he shall notify Mike Pruitt in writing or email timely upon receipt of a subpoena or other legal process or otherwise act to protect the Confidential Information to the greatest extent reasonably possible. The obligations of Individual under this paragraph shall supplement, rather than supplant, Individual's obligations concerning Confidential Information under the common law.
13. Nonadmission of Liability or Wrongdoing. Individual and the Company acknowledge that
- (a) this Agreement shall not in any manner constitute an admission of liability or wrongdoing on the part of Individual, the Company or any of the other Released Parties;
- (b) Individual and the Company and the other Released Parties expressly deny any such liability or wrongdoing; and, (c) except to the extent necessary to enforce this Agreement, neither this Agreement nor any part of it may be construed, used, or admitted into evidence in any judicial, administrative, or arbitral proceedings as an admission of any kind by Individual, the Company or any of the other Released Parties.
14. Jury Trial Waiver. THE RELEASING PARTIES HEREBY WAIVE THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM AGAINST ANY RELEASED PARTY, INCLUDING WITHOUT LIMITATION ANY CLAIM FOR BREACH OR ENFORCEMENT OF THIS AGREEMENT.
15. Authority to Execute. Individual and the Company represent and warrant that they have the authority to execute this Agreement on behalf of all the Releasing Parties.

16. Governing Law; Forum; Venue; Severability; Interpretation. This Agreement and the rights and duties of the parties under it shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to any conflicts of laws principles. The parties consent to the exclusive jurisdiction of the state and federal courts in the State of North Carolina and agree that the exclusive forum for any dispute arising out of or relating in any way to this Agreement or to Individual's employment or services to the Company shall be in the courts of the State of North Carolina. The parties agree that this Agreement is performable in Travis County, North Carolina and agree any dispute arising out of or relating in any way to this Agreement or to Individual's employment or services to the Company shall be brought and maintained only in a court of competent jurisdiction in Travis County, North Carolina. If any provision of this Agreement is held by any court of competent jurisdiction to be unenforceable, such provision shall be considered separate, distinct, and severable from the other remaining provisions of this Agreement, and shall not affect the validity or enforceability of such other remaining provisions; and in all other respects, this Agreement shall remain in full force and effect. If any provision of this Agreement is held by any court of competent jurisdiction to be unenforceable as written but may be made to be enforceable by limitation, then such provision shall be enforceable to the maximum extent permitted by applicable law. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties.
17. Assignment. The obligations, rights, and benefits of Individual and under this Agreement are personal to him and shall not be assigned to any person or entity, including without limitation his spouse, without written permission from the Company's Board of Directors. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors, and permitted assigns. The Company may assign its obligations, rights and benefits under this Agreement.
18. Nonassignment of Claims and Indemnification. Individual and the Company represent and warrant that they have not assigned or transferred any part of the Claims or rights covered by this Agreement to anyone, including without limitation to Individual's spouse.
19. Effective Date. This Agreement shall become effective and enforceable upon the date that Individual signs it (the "Effective Date"), provided that he signs this Agreement on or before the Expiration Date.
20. Knowing and Voluntary Agreement; Right to Consult an Attorney. Individual acknowledges that (a) he has been advised of his right, and encouraged by this paragraph, to consult with an attorney of his choice before signing this Agreement; (b) he has had a reasonable period in which to consider whether to sign this Agreement; (c) he fully understands the meaning and effect of signing this Agreement; and (d) his signing of this Agreement is knowing and voluntary.
21. Time To Consider. Individual has twenty-one (21) days to consider whether to sign this Agreement. If Individual signs this Agreement, Individual may revoke the agreement anytime within seven (7) days of signing the agreement by providing written notice of such revocation to Mike Pruitt. If Individual signs this Agreement, this Agreement becomes effective after the end of the seven-day revocation period ("Effective Date"). In the event that the Individual does not sign this Agreement with 21 one days, or revokes this Agreement within 7 days of signing, The individual will immediately refund any amounts paid to him pursuant to this Agreement.

22. Intended Third-Party Beneficiaries; Definition of Affiliate The Company and each and every subsidiary or affiliate of these entities and the Company are intended to be third-party beneficiaries of this Agreement. For purposes of this Agreement, "affiliate" means, with respect to the person or entity at issue, any person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such person or entity.
23. Entire Agreement. This Agreement contains and represents the entire agreement of the parties with respect to its subject matters, and supersedes all prior agreements and understandings, written and oral, between the parties with respect to its subject matters. The Releasing Parties agree that neither Individual, the Company, nor any of the other Released Parties or their representatives has made any promise or representation concerning this Agreement not expressed in this Agreement, and that, in signing this Agreement, they are not relying on any prior oral or written statement or representation by the Releasing Parties, or any of the other Released Parties or their representatives outside of this Agreement and the Company Documents but is instead relying solely on his own judgment and his legal and tax advisors, if any. Notwithstanding anything to the contrary contained herein, the Indemnification Agreement by and between the parties dated July 10, 2020 remains in full force and effect in accordance with its terms.
24. Modification; Waiver. No provision of this Agreement shall be amended, modified, or waived unless such amendment, modification, or waiver is agreed to in writing and signed by Individual and a duly authorized representative of the Company.
25. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same agreement. The delivery of this Agreement in the form of a clearly legible facsimile or electronically scanned version by e-mail shall have the same force and effect as delivery of the originally executed document.

[Signature Page Follows]

AGREED as of the Effective Date:

COMPANY:

Amergent Hospitality Group, Inc.

By: Michael D. Pruitt

Name: Michael D. Pruitt

Title: CEO

Date: March 26, 2021

INDIVIDUAL:

A handwritten signature in black ink, appearing to read "Patrick Harkleroad", written over a horizontal line.

Patrick Harkleroad

Date:

Exhibit A (This is to Be Signed ON OR AFTER 4/1/2021

SUPPLEMENTAL RELEASE AGREEMENT

This Supplemental Release Agreement (this "Agreement") is by and between Patrick Harkleroad ("Individual"), and Amergent Hospitality Group, Inc., a Delaware corporation (the "Company").

RECITALS

WHEREAS, Individual was employed by the Company as the position of Chief Financial Officer, and in that capacity, has provided services to the Company.

WHEREAS, the parties then entered into a Separation and Release Agreement to reflect their mutual undertakings, promises, and agreements concerning the post-termination services Individual will provide to the Company and the separation benefits to be provided to Individual upon or by reason of such separation from employment.

NOW, THEREFORE, the post-termination services having concluded, and in consideration for payment to Individual of fifteen thousand dollars (\$15,000.00), and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, Individual hereby agrees as follows:

TERMS

1. Individual agrees to and does hereby, for himself and his heirs, executors, administrators, successors and assigns, forever release and discharge the Company and its subsidiaries, related companies, parents, successors and assigns, and each of their officers, directors, agents, employees and former employees, including without limitation Amergent Hospitality and its Board of Directors (herein collectively, "Released Parties"), from any and all claims, debts, promises, agreements, demands, causes of action, attorneys' fees, losses and expenses of every nature whatsoever, known or unknown, suspected or unsuspected, filed or unfilled, arising after the date of the Separation and Release Agreement and prior to the Effective Date of this Agreement or arising out of or in connection with Individual's post separation services to the Company. This total release to the extent permitted by law includes, but is not limited to, all claims arising directly or indirectly from Individual's post-separation services with the Company and the termination of those services; all claims for unpaid wages, including overtime wages, claims or demands related to salary, bonuses, commissions, stock, stock options, claims under any severance or change in control plan, any stock or stock option or other equity or phantom equity grant, agreement or plan, vacation pay, fringe benefits and expense reimbursements pursuant to any federal, North Carolina state or other state or local law or cause of action, including, but not limited to, breach of contract, breach of the implied covenant of good faith and fair dealing, infliction of emotional harm, wrongful discharge, violation of public policy, defamation and impairment of economic opportunity and any claims for violation of the Age Discrimination in Employment Act, the Civil Rights Act of 1866, Title VII of the Civil Rights Act of 1964, the Employee Retirement Income Security Act, the Equal Pay Act, the Fair Labor Standards Act, the Rehabilitation Act of 1974, and the Americans With Disabilities Act of 1990.

Notwithstanding any other provision of this Agreement but subject to Individual's waiver in subparagraph 2(a) below, nothing in this Agreement is intended to, or does, preclude Individual from (i) contacting, reporting to, responding to an inquiry from, filing a charge or complaint with, communicating with, or otherwise participating in an investigation conducted by, the Equal Employment Opportunity Commission, the Department of Labor, the National Labor Relations Board, the Occupational Safety and Health Administration, or any other federal, state, or local governmental agency, commission, or regulatory body; (ii) giving truthful testimony or making statements under oath in response to a subpoena or other valid legal process or in any legal proceeding; (iii) otherwise making truthful statements as required by law or valid legal process; (iv) engaging in any concerted or other legally protected activities; or (v) disclosing a trade secret in confidence to a governmental official, directly or indirectly, or to an attorney, if the disclosure is made solely for the purpose of reporting or investigating a suspected violation of law. Accordingly, Individual understands that he will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that (i) is made (A) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and (B) solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in sworn testimony, a lawsuit or complaint, or document filed in a lawsuit or other proceeding, if such filing is made under seal. Individual likewise understands that, if he files a lawsuit for retaliation by the Company for reporting a suspected violation of law, he may disclose the Company's trade secret(s) to his attorney and use the trade secret information in the court proceeding, if he (i) files any document containing the trade secret under seal; and (ii) does not disclose the trade secret, except pursuant to court order.

2. Waiver of Certain Rights.

- a. Right to Relief Not Provided in this Agreement. Individual waives any right to monetary recovery from the Company or the other Released Parties, whether sought directly by him or in the event any administrative agency or other public authority, individual, or group of individuals should pursue any Claim on his behalf; and he shall not request or accept from the Company or the other Released Parties, as compensation or damages related to his post-separation services or the ending of his post-separation services with the Company or the employment practices of any of the other Released Parties, anything of monetary value that is not provided for in this Agreement.
- b. Right to Class- or Collective-Action Initiation or Participation. Individual waives the right to initiate or participate in any class or collective action with respect to any Claim against the Company or the other Released Parties, including without limitation any Claim arising from the formation, continuation, or ending of his post separation services and relationship with the Company or the employment practices of any of the other Released Parties.

3. No Violations. Individual represents and warrants that he has no knowledge that the Company or any of the other Released Parties has committed or is suspected of committing any act which is or may be in violation of any federal or state law or regulation or has acted in a manner which requires corrective action of any kind. Individual further represents and warrants that he has not informed the Company or any of the other Released Parties of, and that he is unaware of, any alleged violations of their standards of business conduct or personnel policies, of their integrity or ethics policies (or similar policies), or other misconduct by the Company or any of the other Released Parties, that have not been resolved satisfactorily by the Company or the other Released Parties.
4. Jury Trial Waiver. THE RELEASING PARTIES HEREBY WAIVE THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM AGAINST ANY RELEASED PARTY, INCLUDING WITHOUT LIMITATION ANY CLAIM FOR BREACH OR ENFORCEMENT OF THIS AGREEMENT.
5. Authority to Execute. Individual and the Company represent and warrant that they have the authority to execute this Agreement on behalf of all the Releasing Parties.
6. Governing Law; Forum; Venue; Severability; Interpretation. This Agreement and the rights and duties of the parties under it shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to any conflicts of laws principles. The parties consent to the exclusive jurisdiction of the state and federal courts in the State of North Carolina and agree that the exclusive forum for any dispute arising out of or relating in any way to this Agreement or to Individual's employment or services to the Company shall be in the courts of the State of North Carolina. The parties agree that this Agreement is performable in Travis County, North Carolina and agree any dispute arising out of or relating in any way to this Agreement or to Individual's employment or services to the Company shall be brought and maintained only in a court of competent jurisdiction in Travis County, North Carolina. If any provision of this Agreement is held by any court of competent jurisdiction to be unenforceable, such provision shall be considered separate, distinct, and severable from the other remaining provisions of this Agreement, and shall not affect the validity or enforceability of such other remaining provisions; and in all other respects, this Agreement shall remain in full force and effect. If any provision of this Agreement is held by any court of competent jurisdiction to be unenforceable as written but may be made to be enforceable by limitation, then such provision shall be enforceable to the maximum extent permitted by applicable law. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties.
7. Assignment. The obligations, rights, and benefits of Individual and under this Agreement are personal to him and shall not be assigned to any person or entity, including without limitation his spouse, without written permission from the Company's Board of Directors. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors, and permitted assigns. The Company may assign its obligations, rights and benefits under this Agreement.

8. Effective Date. This Agreement shall become effective and enforceable upon the date that Individual signs it (the "Effective Date"), provided that he signs this Agreement on or before the Expiration Date.
9. Knowing and Voluntary Agreement; Right to Consult an Attorney. Individual acknowledges that (a) he has been advised of his right, and encouraged by this paragraph, to consult with an attorney of his choice before signing this Agreement; (b) he has had a reasonable period in which to consider whether to sign this Agreement; (c) he fully understands the meaning and effect of signing this Agreement; and (d) his signing of this Agreement is knowing and voluntary.
10. Time To Consider. Individual has twenty-one (21) days to consider whether to sign this Agreement. If Individual signs this Agreement, Individual may revoke the agreement anytime within seven (7) days of signing the agreement by providing written notice of such revocation to Michael D. Pruitt, the Company's CEO. If Individual signs this Agreement, this Agreement becomes effective after the end of the seven-day revocation period ("Effective Date").
11. This Agreement Supplements the Severance and Release Agreement. This Agreement supplements but does not supersede or amend or extinguish that certain Severance and Release Agreement between the parties. Notwithstanding anything to the contrary contained herein, the Indemnification Agreement by and between the parties dated July 10, 2020 remains in full force and effect in accordance with its terms.
12. Modification; Waiver. No provision of this Agreement shall be amended, modified, or waived unless such amendment, modification, or waiver is agreed to in writing and signed by Individual and a duly authorized representative of the Company.
13. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same agreement. The delivery of this Agreement in the form of a clearly legible facsimile or electronically scanned version by e-mail shall have the same force **and** effect as delivery of the originally executed document.

[Signature Page Follows]

AGREED as of the Effective Date:

WAIVER, CONSENT AND AMENDMENT TO CERTIFICATE OF DESIGNATIONS

This WAIVER, CONSENT AND AMENDMENT TO CERTIFICATE OF DESIGNATIONS (this "Amendment") is entered into as of August 17, 2020 (the "Effective Date"), by and among the following: (a) Amergent Hospitality Group, Inc. a Delaware corporation (the "Company"); (b) Arena Special Opportunities Fund, LP, a Delaware limited partnership ("Opportunities Fund"); and (c) Arena Origination Co., LLC, a Delaware limited liability company ("Origination Co." and collectively with "Opportunities Fund," the "Arena Entities").

RECITALS:

A. The Arena Entities are holders of 100% of the Company's Series 2 Convertible Preferred Stock (the "Preferred Stock") issued pursuant to the terms of that certain certificate of designation setting forth the powers, preference, rights, qualifications, limitations and restrictions of such Preferred Stock as filed with the Delaware Secretary of State on April 1, 2020 (as the same may from time to time be amended, restated or otherwise modified, the "Certificate of Designations").

B. In accordance with Section 11(j) of the Certificate of Designations, the Company is required to make a true-up payment to the Arena Entities on August 10, 2020.

C. The Company has requested that the Arena Entities agree to amend the Certificate of Designations to extend the requirement for the true-up payment until December 10, 2020;

D. The Arena Entities and the Company desire to amend the Certificate of Designations to modify certain provisions thereof in accordance with, and subject to, the terms and conditions set forth herein.

AGREEMENT:

In consideration of the premises and mutual covenants herein and for other valuable consideration, the Company and the Arena Entities agree as follows:

Section 1. Definitions. Unless otherwise defined herein, each capitalized term used in this Amendment and not defined herein shall be defined in accordance with the Certificate of Designations.

Section 2. Amendments.

2.1 Amendment to Section 11(j). Section 11(j) of the Certificate of Designations is hereby amended and restated to read in its entirety as follows:

j) True-Up.

i. In the event that the proceeds received by the Holder from the sale of all the Conversion Shares, shares of the Common Stock of the Corporation received by the Holder in connection with the spinoff of the Corporation from Sonnet Biotherapeutics Holdings, Inc. (f/k/a Chanticleer Holdings, Inc.) (the "Spinoff Shares") and the proceeds of the Chanticleer Conversion Shares do not equal at least \$1,875,000 on December 10, 2020 (the "True-Up Payment Date"), the Corporation shall pay the Holder an amount in cash (the "True-Up Payment") equal to \$1,875,000 less the proceeds previously realized by the Holder from the sale of the Conversion Shares, the Spinoff Shares and Chanticleer Conversion Shares, net of brokerage commissions and any other fees incurred by Holder in connection with the sale of any Conversion Shares ("Net Proceeds"). For purposes of clarity, Net Proceeds shall not include any proceeds received by the Holder upon the receipt of any shares of Common Stock of the Corporation issued upon exercise of warrants of the Corporation held by the Holder or any shares of Common Stock of the Corporation held or acquired by a Holder which are not Spinoff Shares.

ii. The True-Up Payment will be paid by Corporation out of either (i) the proceeds from the exercise by Corporation of existing warrants to purchase shares of the common stock of Sonnet Biotherapeutics Holdings, Inc. (f/k/a Chanticleer Holdings, Inc.) held by Corporation or (ii) the Segregated Cash Account. If any portion of the True-Up Payment has not been paid by Corporation, on the True-Up Payment Date, interest shall accrue on such unpaid amount until such amount is paid in full at a rate equal to the lesser of (i) 18% per annum or (ii) the maximum rate permitted by applicable law. Upon payment in full of the True-Up Payment and all unpaid liquidated damages and other amounts due in respect of the Preferred Stock, any portion of the Segregated Cash Account not used to pay the True-Up Payment will be transferred to the Corporation and any remaining outstanding shares of Preferred Stock will be cancelled with no further obligations of the Corporation to the Holders thereunder, without any further action on behalf of the Corporation or the Holders.

iii. The Segregated Cash Account will be maintained until the True-Up Payment is paid in full.

Section 3. Expenses. The Company agrees to pay on demand all expenses of the Arena Entities (including, without limitation, the fees and out-of-pocket expenses of Sheppard, Mullin, Richter & Hampton LLP, counsel to the Arena Entities) incurred in connection with the negotiation, preparation, execution and delivery of this Amendment.

Section 4. Consent. Subject to the satisfactions of the conditions set forth in Section 5 below, the Arena Entities hereby consent to the amendments to the Certificate of Designations set forth in this Amendment and the filing of an amendment as set forth in Section 5(ii) below.

Section 5. Effectiveness. This Amendment shall be effective upon the satisfaction of the following conditions:

(i) Amendment Executed. This Amendment shall have been executed by the Company and the Arena Entities.

(ii) Filing of an Amendment to the Certificate of Designations. The Company shall have filed an amendment to the Certificate of Designations with the Delaware Secretary of State.

(iii) Segregated Cash Account. The Arena Entities shall receive written confirmation that the amount set forth in the Segregated Cash Account is equal to \$1,250,000.

(iv) Amendment Fee. In consideration of the Arena Entities willingness to enter into this Amendment, the Company shall have provided the following to the Arena Entities: (i) a cash fee of \$66,000, to such accounts as designated in writing by the Arena Entities and (ii) issued to the Arena Entities five-year warrants to purchase 134,000 shares of the Company's common stock on the same terms and conditions as the warrants issued to the Arena Entities on April 1, 2020 except the termination date of such warrants shall be five years from the date of this Amendment. The amounts set forth above shall be issued to each Arena Entity pro rata based on their initial investment in Sonnet Biotherapeutics Holdings, Inc. (f/k/a Chanticleer Holdings, Inc.).

Section 6. Miscellaneous.

6.1 Representations and Warranties. The Company, by signing below, hereby represents and warrants to each Arena Entity that:

- (i) the Company has the legal power and authority to execute and deliver this Amendment;
- (ii) the officer executing this Amendment on behalf of the Company has been duly authorized to execute and deliver the same and bind the Company with respect to the provisions hereof;
- (iii) the execution and delivery hereof by the Company and the performance and observance by the Company of the provisions hereof do not violate or conflict with the organizational documents of the Company or any law applicable to the Company or result in a breach of any provision of or constitute a default under any other agreement, instrument or document binding upon or enforceable against the Company;
- (iv) no Triggering Event exists under the Certificate of Designations, nor will any occur immediately after the execution and delivery of this Amendment or by the performance or observance of any provision hereof;
- (v) the Segregated Cash Account is currently held in the name of Chanticleer SPE, LLC, a wholly owned subsidiary of the Company, is segregated from all other assets of the Company free and clear of any liens, charges or encumbrances of the Company and has a balance of \$1,250,000 as of the date hereof; and
- (vi) this Amendment constitutes a valid and binding obligation of the Company in every respect, enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors' rights or by general principles of equity limiting the availability of equitable remedies.

6.2 Certificate of Designations Unaffected. Each reference to the Certificate of Designations shall hereafter be construed as a reference to the Certificate of Designations as amended hereby. Except as herein otherwise specifically provided, all provisions of the Certificate of Designations shall remain in full force and effect and be unaffected hereby.

6.3 No Implied Amendment or Waiver. Except as expressly set forth in this Amendment, this Amendment shall not, by implication or otherwise, limit, impair, constitute a waiver of or otherwise affect any rights or remedies of the Arena Entities under the Certificate of Designations, or alter, modify, amend or in any way affect any of the terms, obligations or covenants contained in the Certificate of Designations, which shall continue in full force and effect. Nothing in this Amendment shall be construed to imply any willingness on the part of the Arena Entities to agree to or grant any similar or future amendment, consent or waiver of any of the terms and conditions of the Certificate of Designations.

6.4 Entire Agreement. This Amendment, together with the Certificate of Designations integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral representations and negotiations and prior writings with respect to the subject matter hereof.

6.5 Counterparts. This Amendment may be executed in any number of counterparts, by different parties hereto in separate counterparts and by facsimile signature, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement. Delivery of an executed counterpart of a signature page of this Amendment by e-mail (e.g., "pdf" or "tiff") or fax transmission shall be effective as delivery of a manually executed counterpart of this Amendment.

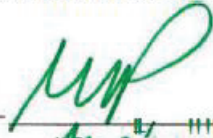
6.6 Release of Claims. To induce the Arena Entities to agree to the terms of this Amendment, the Company hereby (i) represents and warrants that as of the date of this Amendment there are no claims or offsets against or defenses or counterclaims to its obligations under the Certificate of Designations and waives any and all such claims, offsets, defenses, or counterclaims, whether known or unknown, arising prior to the date of this Agreement and (ii) releases and forever discharges each Arena Entity, together with their respective partners, managers, parents, subsidiaries, affiliates, employees, agents, attorneys, officers, and directors (all of the foregoing hereinafter called the "Released Parties"), from any and all actions and causes of action, judgments, executions, suits, debts, claims, demands, liabilities, obligations, damages and expenses of any and every character, known or unknown, direct or indirect, at law or in equity, of whatsoever kind or nature, *whether heretofore or hereafter accruing, for or because of any matter or things done, omitted or suffered to be done by any of the Released Parties prior to and including the date hereof to the extent in any way directly or indirectly arising out of or in any way connected to the Certificate of Designations or the Arena Entities investment in the Company or its predecessor*, (all of the foregoing hereinafter called the "Released Matters"). The Company acknowledges that the agreements in this Section are intended to cover and be in full satisfaction for all or any alleged injuries or damages arising in connection with the Released Matters herein compromised and settled. The Company understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release. The Company agrees that no fact, event, circumstance, evidence or transaction that could now be asserted or that may hereafter be discovered shall affect in any manner the final, absolute and unconditional nature of the release set forth above.

6.7 Governing Law. THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF DELAWARE WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES.

[Signature pages follow.]

IN WITNESS WHEREOF, this Amendment has been duly executed and delivered as of the date first above written.

AMERGENT HOSPITALITY GROUP, INC.

By: 
Name: Mr. J. Paul H.
Title: CEO

SIGNATURE PAGE TO CONSENT, WAIVER AND AMENDMENT TO CERTIFICATE OF DESIGNATIONS AMERGENT HOSPITALITY GROUP, INC.
(AUGUST 2020)

ARENA SPECIAL OPPORTUNITIES FUND, LP

By:



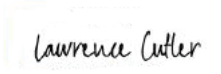
Lawrence Cutler

Name: Lawrence Cutler

Title: Authorized Signatory

ARENA ORIGINATING CO., LLC

By:



Lawrence Cutler

Name: Lawrence Cutler

Title: Authorized Signatory

SIGNATURE PAGE TO CONSENT, WAIVER AND AMENDMENT TO CERTIFICATE OF DESIGNATIONS AMERGENT HOSPITALITY GROUP, INC.
(AUGUST 2020)

WAIVER, CONSENT AND AMENDMENT TO CERTIFICATE OF DESIGNATIONS

This WAIVER, CONSENT AND AMENDMENT TO CERTIFICATE OF DESIGNATIONS (this "Amendment") is entered into as of February 16th, 2021 (the "Effective Date"), by and among the following:

(a) Amergent Hospitality Group, Inc. a Delaware corporation (the "Company"); (b) Arena Special Opportunities Fund, LP, a Delaware limited partnership ("Opportunities Fund"); and (c) Arena Origination Co., LLC, a Delaware limited liability company ("Origination Co." and collectively with "Opportunities Fund," the "Arena Entities").

RECITALS:

A. The Arena Entities are holders of 100% of the Company's Series 2 Convertible Preferred Stock (the "Preferred Stock") issued pursuant to the terms of that certain certificate of designation setting forth the powers, preference, rights, qualifications, limitations and restrictions of such Preferred Stock as filed with the Delaware Secretary of State on April 1, 2020 and amended on August 14, 2020 (as the same may from time to time be amended, restated or otherwise modified, the "Certificate of Designations").

B. In accordance with Section 11(j) of the Certificate of Designations, the Company was required to make a true-up payment to the Arena Entities on December 10, 2020.

C. The Arena Entities orally agreed to waive the true-up payment date in anticipation of entering into this Amendment.

D. The Company has requested that the Arena Entities agree to amend the Certificate of Designations to extend the requirement for the true-up payment until April 1, 2021.

E. The Arena Entities and the Company desire to amend the Certificate of Designations to modify certain provisions thereof in accordance with, and subject to, the terms and conditions set forth herein.

AGREEMENT:

In consideration of the premises and mutual covenants herein and for other valuable consideration, the Company and the Arena Entities agree as follows:

Section 1. Definitions. Unless otherwise defined herein, each capitalized term used in this Amendment and not defined herein shall be defined in accordance with the Certificate of Designations.

Section 2. Amendment. The Certificate of Designations is hereby amended and restated to read in its entirety as set forth on Appendix 1, attached hereto and incorporated herein by this reference.

Section 3. Expenses. The Company agrees to pay on demand all expenses of the Arena Entities (including, without limitation, the fees and out-of-pocket expenses of Sheppard, Mullin, Richter & Hampton LLP, counsel to the Arena Entities) incurred in connection with the negotiation, preparation, execution and delivery of this Amendment.

Section 4. Consent. Subject to the satisfactions of the conditions set forth in Section 5 below, the Arena Entities hereby consent to the amendments to the Certificate of Designations set forth in this Amendment and the filing of an amendment as set forth in Section 5(ii) below.

Section 5. Effectiveness. This Amendment shall be effective upon the satisfaction of the following conditions:

(i) Amendment Executed. This Amendment shall have been executed by the Company and the Arena Entities.

(ii) Filing of an Amendment to the Certificate of Designations. The Company shall have filed an amendment to the Certificate of Designations with the Delaware Secretary of State.

(iii) Segregated Cash Account. The Arena Entities shall receive written confirmation that the amount set forth in the Segregated Cash Account is equal to \$850,000.00.

Section 6. Miscellaneous.

6.1 Representations and Warranties. The Company, by signing below, hereby represents and warrants to each Arena Entity that:

(i) the Company has the legal power and authority to execute and deliver this Amendment;

(ii) the officer executing this Amendment on behalf of the Company has been duly authorized to execute and deliver the same and bind the Company with respect to the provisions hereof;

(iii) the execution and delivery hereof by the Company and the performance and observance by the Company of the provisions hereof do not violate or conflict with the organizational documents of the Company or any law applicable to the Company or result in a breach of any provision of or constitute a default under any other agreement, instrument or document binding upon or enforceable against the Company;

(iv) no Triggering Event exists under the Certificate of Designations, nor will any occur immediately after the execution and delivery of this Amendment or by the performance or observance of any provision hereof;

(v) the Segregated Cash Account is currently held in the name of Chanticleer SPE, LLC, a wholly owned subsidiary of the Company, is segregated from all other assets of the Company free and clear of any liens, charges or encumbrances of the Company and has a balance of \$850,000.00 as of the date hereof; and

(vi) this Amendment constitutes a valid and binding obligation of the Company in every respect, enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors' rights or by general principles of equity limiting the availability of equitable remedies.

6.2 Certificate of Designations Unaffected. Each reference to the Certificate of Designations shall hereafter be construed as a reference to the Certificate of Designations as amended hereby. Except as herein otherwise specifically provided, all provisions of the Certificate of Designations shall remain in full force and effect and be unaffected hereby.

6.3 No Implied Amendment or Waiver. Except as expressly set forth in this Amendment, this Amendment shall not, by implication or otherwise, limit, impair, constitute a waiver of or otherwise affect any rights or remedies of the Arena Entities under the Certificate of Designations, or alter, modify, amend or in any way affect any of the terms, obligations or covenants contained in the Certificate of Designations, which shall continue in full force and effect. Nothing in this Amendment shall be construed to imply any willingness on the part of the Arena Entities to agree to or grant any similar or future amendment, consent or waiver of any of the terms and conditions of the Certificate of Designations.

6.4 Entire Agreement. This Amendment, together with the Certificate of Designations integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral representations and negotiations and prior writings with respect to the subject matter hereof.

6.5 Counterparts. This Amendment may be executed in any number of counterparts, by different parties hereto in separate counterparts and by facsimile signature, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement. Delivery of an executed counterpart of a signature page of this Amendment by e-mail (e.g., "pdf" or "tiff") or fax transmission shall be effective as delivery of a manually executed counterpart of this Amendment.

6.6 Release of Claims. To induce the Arena Entities to agree to the terms of this Amendment, the Company hereby (i) represents and warrants that as of the date of this Amendment there are no claims or offsets against or defenses or counterclaims to its obligations under the Certificate of Designations and waives any and all such claims, offsets, defenses, or counterclaims, whether known or unknown, arising prior to the date of this Agreement and (ii) releases and forever discharges each Arena Entity, together with their respective partners, managers, parents, subsidiaries, affiliates, employees, agents, attorneys, officers, and directors (all of the foregoing hereinafter called the "Released Parties"), from any and all actions and causes of action, judgments, executions, suits, debts, claims, demands, liabilities, obligations, damages and expenses of any and every character, known or unknown, direct or indirect, at law or in equity, of whatsoever kind or nature, *whether heretofore or hereafter accruing, for or because of any matter or things done, omitted or suffered to be done by any of the Released Parties prior to and including the date hereof to the extent in any way directly or indirectly arising out of or in any way connected to the Certificate of Designations or the Arena Entities investment in the Company or its predecessor*, (all of the foregoing hereinafter called the "Released Matters"). The Company acknowledges that the agreements in this Section are intended to cover and be in full satisfaction for all or any alleged injuries or damages arising in connection with the Released Matters herein compromised and settled. The Company understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release. The Company agrees that no fact, event, circumstance, evidence or transaction that could now be asserted or that may hereafter be discovered shall affect in any manner the final, absolute and unconditional nature of the release set forth above.

6.7 Governing Law. THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF DELAWARE WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES.

[Signature pages follow.]

IN WITNESS WHEREOF, this Amendment has been duly executed and delivered as of the date first above written.

AMERGENT HOSPITALITY GROUP, INC.

By: Michael D. Pruitt

Name: Michael D. Pruitt

Title: February 16, 2021

SIGNATURE PAGE TO CONSENT, WAIVER AND AMENDMENT TO CERTIFICATE OF DESIGNATIONS
AMERGENT HOSPITALITY GROUP, INC.
(February 2021)

ARENA SPECIAL OPPORTUNITIES FUND, LP

By: Lawrence Cutler

Name: Lawrence Cutler

Title: Authorized Signatory

ARENA ORIGINATING CO., LLC

By: Lawrence Cutler

Name: Lawrence Cutler

Title: Authorized Signatory

AMERGENT HOSPITALITY GROUP, INC.

**SECOND AMENDED AND RESTATED CERTIFICATE OF DESIGNATION OF
SERIES 2 CONVERTIBLE PREFERRED STOCK, SETTING FORTH THE POWERS, PREFERENCES, RIGHTS, QUALIFICATIONS, LIMITATIONS AND
RESTRICTIONS OF SUCH SERIES OF PREFERRED STOCK**

Pursuant to Section 151 of the Delaware General Corporation Law (“DGCL”), Amergent Hospitality Group, Inc., a Delaware corporation (the “Corporation”), DOES HEREBY CERTIFY:

The Certificate of Incorporation of the Corporation (the “Certificate of Incorporation”) confers upon the Board of Directors of the Corporation (the “Board of Directors”) the authority to provide for the issuance of shares of preferred stock in series and to establish the number of shares to be included in each such series and to fix the powers, preferences, rights, qualifications, limitations and restrictions of the shares of each such series and any qualifications, limitations or restrictions thereof. The Board of Directors previously adopted a resolution creating a series of preferred stock designated as the Series 2 Convertible Preferred Stock (“Series 2 Preferred Stock”), and the Certificate of Designations for the Series 2 Preferred Stock was filed with the Secretary of State of the State of Delaware on April 1, 2020 and amended on August 14, 2020. On February [], 2021, the Board of Directors approved and adopted the following resolution (this “**Certificate of Designations**” or this “**Certificate**”) for purposes of amending certain provisions of the Series 2 Preferred Stock. On February [], 2021, the holders of 100% of the shares of Series 2 Preferred Stock then outstanding (the “**Requisite Series 2 Holders**”), voting separately as a class, approved the following resolution to amend the Certificate of Designations for the Series 2 Preferred Stock:

RESOLVED that, pursuant to the authority vested in the Board of Directors in accordance with the provisions of the Certificate of Incorporation, and in accordance with the provisions of the Certificate of Incorporation and the DGCL, the Certificate of Designations for the Series 2 Preferred Stock shall, subject to approval of the Requisite Series 2 Holders, be amended and the designation and amount thereof and the voting powers, preferences and relative, participating, optional and other special rights of the shares of such series and the qualifications, limitations or restrictions thereof are as follows:

Section 1. Definitions. For the purposes hereof, the following terms shall have the following meanings:

“Affiliate” means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act.

“Alternate Consideration” shall have the meaning set forth in Section 7(e).

“Bankruptcy Event” means any of the following events: (a) the Corporation or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation S-X) thereof commences a case or other proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction relating to the Corporation or any Significant Subsidiary thereof, (b) there is commenced against the Corporation or any Significant Subsidiary thereof any such case or proceeding that is not dismissed within 60 days after commencement, (c) the Corporation or any Significant Subsidiary thereof is adjudicated insolvent or bankrupt or any order of relief or other order approving any such case or proceeding is entered, (d) the Corporation or any Significant Subsidiary thereof suffers any appointment of any custodian or the like for it or any substantial part of its property that is not discharged or stayed within 60 calendar days after such appointment, (e) the Corporation or any Significant Subsidiary thereof makes a general assignment for the benefit of creditors, (f) the Corporation or any Significant Subsidiary thereof calls a meeting of its creditors with a view to arranging a composition, adjustment or restructuring of its debts, or (g) the Corporation or any Significant Subsidiary thereof, by any act or failure to act, expressly indicates its consent to, approval of or acquiescence in any of the foregoing or takes any corporate or other action for the purpose of effecting any of the foregoing.

“Base Conversion Price” shall have the meaning set forth in Section 7(b).

“Beneficial Ownership Limitation” shall have the meaning set forth in Section 6(d).

“Business Day” means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“Buy-In” shall have the meaning set forth in Section 6(c)(iv).

“Change of Control Transaction” means the occurrence after the date hereof of any of (a) an acquisition after the date hereof by an individual or legal entity or “group” (as described in Rule 13d5(b)(1) promulgated under the Exchange Act) of effective control (whether through legal or beneficial ownership of capital stock of the Corporation, by contract or otherwise) of in excess of 33% of the voting securities of the Corporation (other than by means of conversion or exercise of Preferred Stock and the Securities issued together with the Preferred Stock), (b) the Corporation merges into or consolidates with any other Person, or any Person merges into or consolidates with the Corporation and, after giving effect to such transaction, the stockholders of the Corporation immediately prior to such transaction own less than 66% of the aggregate voting power of the Corporation or the successor entity of such transaction, (c) the Corporation sells or transfers all or substantially all of its assets to another Person and the stockholders of the Corporation immediately prior to such transaction own less than 66% of the aggregate voting power of the acquiring entity immediately after the transaction, (d) a replacement at one time or within a one year period of more than one-half of the members of the Board of Directors which is not approved by a majority of those individuals who are members of the Board of Directors on the Original Issue Date (or by those individuals who are serving as members of the Board of Directors on any date whose nomination to the Board of Directors was approved by a majority of the members of the Board of Directors who are members on the Original Issue Date), or (e) the execution by the Corporation of an agreement to which the Corporation is a party or by which it is bound, providing for any of the events set forth in clauses (a) through (d) above.

“Chanticleer Conversion Shares” means any shares of Chanticleer Holdings Inc. held by the Original Holders as of the date of the Original Closing Date.

“Closing Date” means February 7, 2020.

“Closing Price” means on any particular date (a) the last reported closing bid price per share of Common Stock on such date on the Trading Market (as reported by Bloomberg L.P. at 4:15 p.m. (New York City time)), (b) if there is no such price on such date, then the closing bid price on the Trading Market on the date nearest preceding such date (as reported by Bloomberg L.P. at 4:15 p.m. (New York City time)), (c) if the Common Stock is not then listed or quoted on a Trading Market and if prices for the Common Stock are then reported in the “pink sheets” published by Pink OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) if the shares of Common Stock are not then publicly traded the fair market value as of such date of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the shares then outstanding and reasonably acceptable to the Corporation, the fees and expenses of which shall be paid by the Corporation. “Commission” means the United States Securities and Exchange Commission.

“Common Stock” means the Corporation’s common stock, par value \$0.0001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed.

“Common Stock Equivalents” means any securities of the Corporation or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“Conversion Amount” means the sum of the Stated Value at issue.

“Conversion Date” shall have the meaning set forth in Section 6(a).

“Conversion Price” shall have the meaning set forth in Section 6(b).

“Conversion Shares” means, collectively, the shares of Common Stock issuable upon conversion of the shares of Preferred Stock in accordance with the terms hereof.

“Dilutive Issuance” shall have the meaning set forth in Section 7(b).

“Dilutive Issuance Notice” shall have the meaning set forth in Section 7(b).

“Equity Conditions” means, during the period in question, (a) the Corporation shall have duly honored all conversions scheduled to occur or occurring by virtue of one or more Notices of Conversion of the applicable Holder on or prior to the dates so requested or required, if any, (b) the Corporation shall have paid all liquidated damages and other amounts owing to the applicable Holder in respect of the Preferred Stock, (c)(i) there is an effective registration statement pursuant to which either (A) the Corporation may issue Conversion Shares or (B) the Original Holders are permitted to utilize the prospectus thereunder to resell all of the shares of Common Stock issuable pursuant to the Transaction Documents (and the Corporation believes, in good faith, that such effectiveness will continue uninterrupted for the foreseeable future) or (ii) all of the Conversion Shares issuable pursuant to the Transaction Documents (and shares issuable in lieu of cash payments of dividends) may be resold pursuant to Rule 144 without volume or manner-of-sale restrictions or current public information requirements as determined by the counsel to the Corporation as set forth in a written opinion letter to such effect, addressed and acceptable to the Transfer Agent and the affected Holders or (iii) all of the Conversion Shares may be issued to the Holder pursuant to Section 3(a)(9) of the Securities Act and immediately resold without restriction, (d) the Common Stock is trading on a Trading Market and all of the shares issuable pursuant to the Transaction Documents are listed or quoted for trading on such Trading Market (and the Corporation believes, in good faith, that trading of the Common Stock on a Trading Market will continue uninterrupted for the foreseeable future), (e) there is a sufficient number of authorized, but unissued and otherwise unreserved, shares of Common Stock for the issuance of all of the shares then issuable pursuant to the Transaction Documents, (f) there is no existing Triggering Event and no existing event which, with the passage of time or the giving of notice, would constitute a Triggering Event, (g) the issuance of the shares in question (or, in the case of a redemption, the shares issuable upon conversion in full of the redemption amount) to the applicable Holder would not violate the limitations set forth in Section 6(d) and Section 6(e) herein, (h) there has been no public announcement of a pending or proposed Fundamental Transaction or Change of Control Transaction that has not been consummated, (i) the applicable Holder is not in possession of any information provided by the Corporation, any of its Subsidiaries, or any of their officers, directors, employees, agents or Affiliates, that constitutes, or may constitute, material non-public information.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Exempt Issuance” means the issuance of (a) shares of Common Stock or options to employees, officers or directors of the Corporation pursuant to any stock or option plan duly adopted by a majority of the non-employee members of the Board of Directors of the Corporation or a majority of the members of a committee of non-employee directors established for such purpose and (b) securities upon the exercise or exchange of or conversion of any securities issued to the Holders and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the Original Issue Date, provided that such securities have not been amended since the Original Issue Date to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of any such securities. “Fundamental Transaction” shall have the meaning set forth in Section 7(e).

“GAAP” means United States generally accepted accounting principles.

“Holder” shall have the meaning given such term in Section 2.

“Indebtedness” means (a) any liabilities for borrowed money or amounts owed in excess of \$50,000 (other than trade accounts payable incurred in the ordinary course of business), (b) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Corporation’s balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business, and (c) the present value of any lease payments in excess of \$50,000 due under leases required to be capitalized in accordance with GAAP.

“Issuable Maximum” shall have the meaning set forth in Section 6(e).

“Junior Securities” means the Common Stock and all other Common Stock Equivalents of the Corporation other than those securities which are explicitly senior or pari passu to the Preferred Stock in dividend rights or liquidation preference.

“Liens” means a lien, charge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

“Liquidation” shall have the meaning set forth in Section 5.

“Material Adverse Effect” means a material adverse effect on (a) the business, assets, property, operations, or condition (financial or otherwise) of the Corporation, (b) the validity or enforceability of this Certificate of Designations or any of the other Transaction Documents or (c) the rights or remedies of the Holder hereunder.

“New York Courts” shall have the meaning set forth in Section 11(d).

“Notice of Conversion” shall have the meaning set forth in Section 6(a).

“Original Holders” means the Holders of the Preferred Stock as of the Second Amendment Filing Date”

“Original Issue Date” means March 31, 2020.

“Permitted Indebtedness” means the Indebtedness existing on the Original Issue Date and related to the restructuring of the Corporation’s outstanding secured 8% debentures in the aggregate principal amount of \$6,000,000.

“Permitted Lien” means the individual and collective reference to the following: (a) Liens for taxes, assessments and other governmental charges or levies not yet due or Liens for taxes, assessments and other governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves (in the good faith judgment of the management of the Corporation) have been established in accordance with GAAP, (b) Liens imposed by law which were incurred in the ordinary course of the Corporation’s business, such as carriers’, warehousemen’s and mechanics’ Liens, statutory landlords’ Liens, and other similar Liens arising in the ordinary course of the Corporation’s business, and which (x) do not individually or in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of the Corporation and its consolidated Subsidiaries or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing for the foreseeable future the forfeiture or sale of the property or asset subject to such Lien, and (c) Liens incurred in connection with Permitted Indebtedness under clause (a) thereunder.

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Preferred Stock” shall have the meaning set forth in Section 2.

“Registration Rights Agreement” means the Registration Rights Agreement dated March 31, 2020 by and among the Company, the Original Holders and certain other holders of securities of the company.

“Registration Statement” means a registration statement meeting the requirements set forth in the Registration Rights Agreement and covering the resale of the Conversion Shares issuable upon conversion of the Preferred Stock as provided for in the Registration Rights Agreement.

“Securities” means the Preferred Stock and the Underlying Shares.

“Second Amendment Filing Date” means date this Second Amended and Restated Certificate of Designations is filed with the Delaware Secretary of State.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Segregated Cash Account” means \$850,000.00 of cash proceeds which is held in a segregated control account for the Original Holders that is bankruptcy remote and not subject to any security interest of the Company.

“Share Delivery Date” shall have the meaning set forth in Section 6(c)

“Stated Value” shall have the meaning set forth in Section 2, as the same may be increased pursuant to Section 3.

“Subsidiary” means any direct or indirect subsidiary of the Corporation formed or acquired after the date of the Closing Date.

“Successor Entity” shall have the meaning set forth in Section 7(e).

“Trading Day” means a day on which the principal Trading Market is open for business.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE MKT, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, OTCQB or OTCQX (or any successors to any of the foregoing).

“Transaction Documents” means this Certificate of Designation, the Registration Rights Agreement with the Original Holders, all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions consummated on the Original Issue Date.

“Triggering Event” shall have the meaning set forth in Section 10(a).

“Triggering Redemption Amount” means, for each share of Preferred Stock, 125% of the Stated Value.

“Triggering Redemption Payment Date” shall have the meaning set forth in Section 10(b).

“Underlying Shares” means the shares of Common Stock issued and issuable upon conversion or redemption of the Preferred Stock in accordance with the terms of this Certificate of Designation.

“Variable Rate Transaction” means a transaction in which the Company (i) issues or sells any debt or equity securities that are convertible into, exchangeable or exercisable for, or include the right to receive additional shares of Common Stock either (A) at a conversion price, exercise price or exchange rate or other price that is based upon and/or varies with the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such debt or equity securities, or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such debt or equity security or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock or (ii) enters into, or effects a transaction under, any agreement, including, but not limited to, an equity line of credit, whereby the Company may issue securities at a future determined price. Any Purchaser shall be entitled to obtain injunctive relief against the Company to preclude any such issuance, which remedy shall be in addition to any right to collect damages.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported in the “Pink Sheets” published by OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Securities then outstanding and reasonably acceptable to the Corporation, the fees and expenses of which shall be paid by the Corporation.

Section 2. Designation, Amount and Par Value. The series of preferred stock shall be designated as its Series 2 Convertible Preferred Stock (the “Preferred Stock”) and the number of shares so designated shall be up to 787 (which shall not be subject to increase without the written consent of all of the holders of the Preferred Stock (each, a “Holder” and collectively, the “Holders”)). Each share of Preferred Stock shall have \$0.0001 per share and a stated value equal to \$1,000, subject to increase set forth in Section 3 below (the “Stated Value”).

Section 3. Dividends. Except as otherwise required by law, no dividends shall be declared or paid on the Preferred Stock. So long as any Preferred Stock shall remain outstanding, neither the Corporation nor any Subsidiary thereof shall redeem, purchase or otherwise acquire directly or indirectly any Junior Securities except as expressly permitted by Section 10. So long as any Preferred Stock shall remain outstanding, neither the Corporation nor any Subsidiary thereof shall directly or indirectly pay or declare any dividend or make any distribution upon nor shall any distribution be made in respect of, any Junior Securities as long as any dividends due on the Preferred Stock remain unpaid, nor shall any monies be set aside for or applied to the purchase or redemption (through a sinking fund or otherwise) of any Junior Securities or shares pari passu with the Preferred Stock.

Section 4. Voting Rights. Except as otherwise provided herein or as otherwise required by law, the Preferred Stock shall have no voting rights. However, as long as any shares of Preferred Stock are outstanding, the Corporation shall not, without the approval of the Holder, the Corporation will not, among other things, (i) sell all or substantially all of its assets, merge or consolidate with another entity or voluntarily liquidate or dissolve the Corporation, (ii) alter or change the rights, preferences or privileges of the Preferred Stock, (iii) authorize or create any class of stock ranking as to dividends, redemption or distribution of assets upon a Liquidation (as defined in Section 5) senior to, or otherwise pari passu with, the Preferred Stock, (iv) amend its certificate of incorporation or other charter documents in any manner that adversely affects any rights of the Holder, (v) increase the number of authorized shares of Preferred Stock, (vi) redeem any shares of capital stock of the Corporation (other than any redemption of securities from officers or employees of the Corporation pursuant to existing contractual arrangements with such officers or employees or in connection with the termination of their employment) or (vii) enter into any agreement with respect to any of the foregoing.

Section 5. Liquidation. Upon any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary (a "Liquidation"), the Holders shall be entitled to receive out of the assets, whether capital or surplus, of the Corporation an amount equal to the sum of (a) 125% of the aggregate Stated Value of the Preferred Stock then outstanding (b) all liquidated damages and other amounts due in respect of the Preferred Stock and (iii) any Default Interest and any other fees or liquidated damages then due and owing thereon under this Certificate of Designation, for each share of Preferred Stock before any distribution or payment shall be made to the holders of any Junior Securities, and if the assets of the Corporation shall be insufficient to pay in full such amounts, then the entire assets to be distributed to the Holders shall be ratably distributed among the Holders in accordance with the respective amounts that would be payable on such shares if all amounts payable thereon were paid in full. The Corporation shall mail written notice of any such Liquidation, not less than 45 days prior to the payment date stated therein, to each Holder.

Section 6. Conversion.

a) Conversions at Option of Holder. Each share of Preferred Stock shall be convertible, at any time and from time to time from and after the Original Issue Date at the option of the Holder thereof, into that number of shares of Common Stock (subject to the limitations set forth in Section 6(d) and Section 6(e)) determined by dividing the Stated Value of such share of Preferred Stock by the Conversion Price. Holders shall effect conversions by providing the Corporation with the form of conversion notice attached hereto as Annex A (a "Notice of Conversion"). Each Notice of Conversion shall specify the number of shares of Preferred Stock to be converted, the number of shares of Preferred Stock owned prior to the conversion at issue, the number of shares of Preferred Stock owned subsequent to the conversion at issue and the date on which such conversion is to be effected, which date may not be prior to the date the applicable Holder delivers by facsimile such Notice of Conversion to the Corporation (such date, the "Conversion Date"). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion to the Corporation is deemed delivered hereunder. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. To effect conversions of shares of Preferred Stock, a Holder shall not be required to surrender the certificate(s) representing the shares of Preferred Stock to the Corporation unless all of the shares of Preferred Stock represented thereby are so converted, in which case such Holder shall deliver the certificate representing such shares of Preferred Stock promptly following the Conversion Date at issue. Shares of Preferred Stock converted into Common Stock or redeemed in accordance with the terms hereof shall be canceled and shall not be reissued.

b) Conversion Price. The conversion price for the Preferred Stock shall equal the lesser of (i) \$1.00 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like) or (ii) 90% of the five day average VWAP of the Common Stock (which period ends on the Trading Day prior to the Conversion Date), subject to adjustment herein (the "Conversion Price"); *provided*, that if the amount calculated pursuant to the foregoing clause (ii) is less than \$0.50 per share (subject to adjustment for forward and reverse stock splits, recapitalizations and the like), then the Conversion Price shall be \$0.50 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like). Notwithstanding the foregoing, no adjustment pursuant to this Certificate of Designations shall cause the Conversion Price of the Preferred Stock to be less than \$0.50 per share (subject to adjustment for forward and reverse stock splits, recapitalizations and the like).

c) Mechanics of Conversion

i. Delivery of Conversion Shares Upon Conversion. Not later than two (2) Trading Days after each Conversion Date (the “Share Delivery Date”), the Corporation shall deliver, or cause to be delivered, to the converting Holder the number of Conversion Shares being acquired upon the conversion of the Preferred Stock, which Conversion Shares shall be free of restrictive legends and trading restrictions. The Corporation shall deliver the Conversion Shares electronically through the Depository Trust Company or another established clearing corporation performing similar functions.

ii. Failure to Deliver Conversion Shares. If, in the case of any Notice of Conversion, such Conversion Shares are not delivered to or as directed by the applicable Holder by the Share Delivery Date, the Holder shall be entitled to elect by written notice to the Corporation at any time on or before its receipt of such Conversion Shares, to rescind such Conversion, in which event the Corporation shall promptly return to the Holder any original Preferred Stock certificate delivered to the Corporation and the Holder shall promptly return to the Corporation the Conversion Shares issued to such Holder pursuant to the rescinded Conversion Notice.

iii. Obligation Absolute; Partial Liquidated Damages. The Corporation’s obligation to issue and deliver the Conversion Shares upon conversion of Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by such Holder or any other person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to such Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Corporation of any such action that the Corporation may have against such Holder. In the event a Holder shall elect to convert any or all of the Stated Value of its Preferred Stock, the Corporation may not refuse conversion based on any claim that such Holder or any one associated or affiliated with such Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to Holder, restraining and/or enjoining conversion of all or part of the Preferred Stock of such Holder shall have been sought and obtained, and the Corporation posts a surety bond for the benefit of such Holder in the amount of 150% of the Stated Value of Preferred Stock which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to such Holder to the extent it obtains judgment. In the absence of such injunction, the Corporation shall issue Conversion Shares and, if applicable, cash, upon a properly noticed conversion. If the Corporation fails to deliver to a Holder such Conversion Shares pursuant to Section 6(c)(i) by the Share Delivery Date applicable to such conversion, the Corporation shall pay to such Holder, in cash, as liquidated damages and not as a penalty, for each \$5,000 of Stated Value of Preferred Stock being converted, \$50 per Trading Day (increasing to \$100 per Trading Day on the third Trading Day and increasing to \$200 per Trading Day on the sixth Trading Day after such damages begin to accrue) for each Trading Day after the Share Delivery Date until such Conversion Shares are delivered or Holder rescinds such conversion. Nothing herein shall limit a Holder’s right to pursue actual damages or declare a Triggering Event pursuant to Section 10 hereof for the Corporation’s failure to deliver Conversion Shares within the period specified herein and such Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit a Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

iv. Compensation for Buy-In on Failure to Timely Deliver Conversion Shares Upon Conversion. In addition to any other rights available to the Holder, if the Corporation fails for any reason to deliver to a Holder the applicable Conversion Shares by the Share Delivery Date pursuant to Section 6(c)(i), and if after such Share Delivery Date such Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by such Holder of the Conversion Shares which such Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "Buy-In"), then the Corporation shall (A) pay in cash to such Holder (in addition to any other remedies available to or elected by such Holder) the amount, if any, by which (x) such Holder's total purchase price (including any brokerage commissions) for the Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that such Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) at the option of such Holder, either reissue (if surrendered) the shares of Preferred Stock equal to the number of shares of Preferred Stock submitted for conversion (in which case, such conversion shall be deemed rescinded) or deliver to such Holder the number of shares of Common Stock that would have been issued if the Corporation had timely complied with its delivery requirements under Section 6(c)(i). For example, if a Holder purchases shares of Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted conversion of shares of Preferred Stock with respect to which the actual sale price of the Conversion Shares (including any brokerage commissions) giving rise to such purchase obligation was a total of \$10,000 under clause (A) of the immediately preceding sentence, the Corporation shall be required to pay such Holder \$1,000. The Holder shall provide the Corporation written notice indicating the amounts payable to such Holder in respect of the Buy-In and, upon request of the Corporation, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to timely deliver the Conversion Shares upon conversion of the shares of Preferred Stock as required pursuant to the terms hereof.

v. Reservation of Shares Issuable Upon Conversion. The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Preferred Stock and payment of dividends on the Preferred Stock, each as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and the other holders of the Preferred Stock), not less than such aggregate number of shares of the Common Stock as shall be issuable (taking into account the adjustments and restrictions of Section 7) upon the conversion of the then outstanding shares of Preferred Stock and payment of dividends hereunder. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable.

vi. Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Preferred Stock. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such conversion, the Corporation shall at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Conversion Price or round up to the next whole share.

vii. Transfer Taxes and Expenses. The issuance of Conversion Shares on conversion of this Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holders of such shares of Preferred Stock and the Corporation shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid. The Corporation shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Conversion Shares.

d) Beneficial Ownership Limitation. The Corporation shall not effect any conversion of the Preferred Stock, and a Holder shall not have the right to convert any portion of the Preferred Stock, to the extent that, after giving effect to the conversion set forth on the applicable Notice of Conversion, such Holder (together with such Holder's Affiliates, and any Persons acting as a group together with such Holder or any of such Holder's Affiliates (such Persons, "Attribution Parties")) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon conversion of the Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Stated Value of Preferred Stock beneficially owned by such Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Corporation subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by such Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 6(d), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. To the extent that the limitation contained in this Section 6(d) applies, the determination of whether the Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and of how many shares of Preferred Stock are convertible shall be in the sole discretion of such Holder, and the submission of a Notice of Conversion shall be deemed to be such Holder's determination of whether the shares of Preferred Stock may be converted (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and how many shares of the Preferred Stock are convertible, in each case subject to the Beneficial Ownership Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Corporation each time it delivers a Notice of Conversion that such Notice of Conversion has not violated the restrictions set forth in this paragraph and the Corporation shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 6(d), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Corporation's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Corporation or (iii) a more recent written notice by the Corporation or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Corporation shall within two Trading Days confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Corporation, including the Preferred Stock, by such Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of Preferred Stock held by the applicable Holder. A Holder, upon notice to the Corporation, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 6(d) applicable to its Preferred Stock provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon conversion of this Preferred Stock held by the Holder and the provisions of this Section 6(d) shall continue to apply. Any such increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Corporation and shall only apply to such Holder and no other Holder. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 6(d) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation contained herein or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of Preferred Stock.

Section 7. Certain Adjustments.

a) Stock Dividends and Stock Splits. If the Corporation, at any time while this Preferred Stock is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Corporation upon conversion of, or payment of a dividend on, this Preferred Stock), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 7(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Subsequent Equity Sales. If, at any time while this Preferred Stock is outstanding, the Corporation or any Subsidiary, as applicable sells or grants any option to purchase or sells or grants any right to reprice, or otherwise disposes of or issues (or announces any sale, grant or any option to purchase or other disposition), any Common Stock or Common Stock Equivalents entitling any Person to acquire shares of Common Stock at an effective price per share that is lower than the then Conversion Price (such lower price, the “Base Conversion Price” and such issuances, collectively, a “Dilutive Issuance”) (if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive shares of Common Stock at an effective price per share that is lower than the Conversion Price, such issuance shall be deemed to have occurred for less than the Conversion Price on such date of the Dilutive Issuance), then the Conversion Price shall be reduced to equal the Base Conversion Price and only reduced to equal the Base Share Price and the number of Conversion Shares issuable hereunder shall be increased such that the aggregate Conversion Price payable hereunder, after taking into account the decrease in the Conversion Price, shall be equal to the aggregate Conversion Price prior to such adjustment. Such adjustment shall be made whenever such Common Stock or Common Stock Equivalents are issued. Notwithstanding the foregoing, no adjustment will be made under this Section 7(b) in respect of an Exempt Issuance. If the Corporation enters into a Variable Rate Transaction, despite the prohibition set forth herein, the Corporation shall be deemed to have issued Common Stock or Common Stock Equivalents at the lowest possible conversion price at which such securities may be converted or exercised. The Corporation shall notify the Holders in writing, no later than the Trading Day following the issuance of any Common Stock or Common Stock Equivalents subject to this Section 7(b), indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the “Dilutive Issuance Notice”). For purposes of clarification, whether or not the Corporation provides a Dilutive Issuance Notice pursuant to this Section 5(b), upon the occurrence of any Dilutive Issuance, the Holder is entitled to receive a number of Conversion Shares based upon the Base Conversion Price on or after the date of such Dilutive Issuance, regardless of whether the Holder accurately refers to the Base Conversion Price in the Notice of Conversion.

c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 7(a) above, if at any time the Corporation grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder of will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of such Holder's Preferred Stock (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

d) Pro Rata Distributions. During such time as this Preferred Stock is outstanding, if the Corporation shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Preferred Stock, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Preferred Stock (without regard to any limitations on conversion hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

e) Fundamental Transaction. If, at any time while this Preferred Stock is outstanding, (i) the Corporation, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Corporation with or into another Person, (ii) the Corporation, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Corporation, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Corporation, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a “Fundamental Transaction”), then, upon any subsequent conversion of this Preferred Stock, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction (without regard to any limitation in Section 6(d) and Section 6(e) on the conversion of this Preferred Stock), the number of shares of Common Stock of the successor or acquiring corporation or of the Corporation, if it is the surviving corporation, and any additional consideration (the “Alternate Consideration”) receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Preferred Stock is convertible immediately prior to such Fundamental Transaction (without regard to any limitation in Section 6(d) and Section 6(e) on the conversion of this Preferred Stock). For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders’ right to convert such preferred stock into Alternate Consideration. The Corporation shall cause any successor entity in a Fundamental Transaction in which the Corporation is not the survivor (the “Successor Entity”) to assume in writing all of the obligations of the Corporation under this Certificate of Designation and the other Transaction Documents in accordance with the provisions of this Section 7(e) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the holder of this Preferred Stock, deliver to the Holder in exchange for this Preferred Stock a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Preferred Stock which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Preferred Stock (without regard to any limitations on the conversion of this Preferred Stock) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of this Preferred Stock immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designation and the other Transaction Documents referring to the “Corporation” shall refer instead to the Successor Entity), and may exercise every right and power of the Corporation and shall assume all of the obligations of the Corporation under this Certificate of Designation and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Corporation herein.

f) Calculations. All calculations under this Section 7 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 7, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

g) Notice to the Holders.

i. Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 7, the Corporation shall promptly deliver to each Holder by facsimile or email a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Conversion by Holder. If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, then, in each case, the Corporation shall cause to be filed at each office or agency maintained for the purpose of conversion of this Preferred Stock, and shall cause to be delivered by facsimile or email to each Holder at its last facsimile number or email address as it shall appear upon the stock books of the Corporation, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non- public information regarding the Corporation or any of the Subsidiaries, the Corporation shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to convert the Conversion Amount of this Preferred Stock (or any part hereof) during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 8. Intentionally Omitted.

Section 9. Negative Covenants. As long as any shares of Preferred Stock are outstanding, unless the holders of the then outstanding shares of Preferred Stock shall have otherwise given prior written consent, the Corporation shall not, and shall not permit any of the Subsidiaries to, directly or indirectly:

a) other than Permitted Indebtedness, enter into, create, incur, assume, guarantee or suffer to exist any indebtedness for borrowed money of any kind, including but not limited to, a guarantee, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

b) other than Permitted Liens, enter into, create, incur, assume or suffer to exist any Liens of any kind, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

c) amend its charter documents, including, without limitation, its certificate of incorporation and bylaws, in any manner that materially and adversely affects any rights of the Holder;

d) repay, repurchase or offer to repay, repurchase or otherwise acquire more than a de minimis number of shares of its Common Stock, Common Stock Equivalents or Junior Securities, other than as to (i) the Conversion Shares and (ii) repurchases of Common Stock or Common Stock Equivalents of departing officers and directors of the Corporation, provided that such repurchases shall not exceed an aggregate of \$100,000 for all officers and directors for so long as the Preferred Stock is outstanding;

e) pay cash dividends or distributions on Junior Securities of the Corporation;

f) enter into any transaction with any Affiliate of the Corporation which would be required to be disclosed in any public filing with the Commission, unless such transaction is made on an arm's-length basis and expressly approved by a majority of the disinterested directors of the Corporation (even if less than a quorum otherwise required for board approval); or

g) enter into any agreement with respect to any of the foregoing.

Section 10. Redemption Upon Triggering Events.

a) “Triggering Event” means, wherever used herein any of the following events (whatever the reason for such event and whether such event shall be voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court, or any order, rule or regulation of any administrative or governmental body):

i. if the Corporation fails to provide at all times after the effective date the Registration Statement or usable prospectus that permits the Corporation to issue the Conversion Shares or which allows the Original Holder to sell the Conversion Shares pursuant thereto, subject to a grace period of 20 calendar days in the aggregate in any 365-day period or the Corporation cannot issue the Conversion Shares pursuant to Section 3(a)(9) of the Securities Act;

ii. the Corporation shall fail to deliver Conversion Shares issuable upon a conversion hereunder that comply with the provisions hereof prior to the fifth Trading Day after such shares are required to be delivered hereunder, or the Corporation shall provide written notice to any Holder, including by way of public announcement, at any time, of its intention not to comply with requests for conversion of any shares of Preferred Stock in accordance with the terms hereof;

iii. the Corporation shall fail for any reason to pay in full the amount of cash due pursuant to a Buy-In within five calendar days after notice therefor is delivered hereunder;

iv. the Corporation shall fail to have available a sufficient number of authorized and unreserved shares of Common Stock to issue to such Holder upon a conversion hereunder;

v. unless specifically addressed elsewhere in this Certificate of Designation as a Triggering Event, the Corporation shall fail to observe or perform any other covenant, agreement or warranty contained in, or otherwise commit any breach of the Transaction Documents, and such failure or breach shall not, if subject to the possibility of a cure by the Corporation, have been cured within 30 calendar days after the date on which written notice of such failure or breach shall have been delivered;

vi. the Corporation shall redeem more than a de minimis number of Junior Securities other than as to repurchases of Common Stock or Common Stock Equivalents from departing officers and directors, provided that, while any of the Preferred Stock remains outstanding, such repurchases shall not exceed an aggregate of \$100,000 from all officers and directors;

vii. the Corporation shall be party to a Change of Control Transaction;

viii. there shall have occurred a Bankruptcy Event;

ix. the Corporation experiences a Material Adverse Effect;

x. the Common Stock shall fail to be listed or quoted for trading on a Trading Market for more than five Trading Days, which need not be consecutive Trading Days;

xi. any monetary judgment, writ or similar final process shall be entered or filed against the Corporation, any subsidiary or any of their respective property or other assets for more than \$100,000, and such judgment, writ or similar final process shall remain unvacated, unbonded or unstayed for a period of 45 calendar days;

xii. any representation or warranty made in this Certificate of Designations,, any other Transaction Documents, any written statement pursuant hereto or thereto or any other report, financial statement or certificate made or delivered to the Holder or any other Holder shall be untrue or incorrect in any material respect as of the date when made or deemed made;

xiii. the electronic transfer by the Corporation of shares of Common Stock through the Depository Trust Company or another established clearing corporation is no longer available or is subject to a “chill”;

xiv. the Corporation fails to file with the Commission any required reports under Section 13 or 15(d) of the Exchange Act such that it is not in compliance with Rule 144(c)(1) (or Rule 144(i)(2), if applicable);

xv. the occurrence of any levy upon or seizure or attachment of, or any uninsured loss of or damage to, any property of the Corporation or any Subsidiary having an aggregate fair value or repair cost (as the case may be) in excess of \$100,000 individually or in the aggregate, and any such levy, seizure or attachment shall not be set aside, bonded or discharged within forty-five (45) days after the date thereof;

xvi. enter into a Variable Rate Transaction;

xvii. any attempt by the Borrower or its officers, directors, and/or affiliates to transmit, convey, disclose, or any actual transmittal, conveyance, or disclosure by the Borrower or its officers, directors, and/or affiliates of, material non-public information concerning the Borrower, to the Holder or its successors and assigns, which is not immediately cured by Borrower’s filing of a Form 8-K pursuant to Regulation FD on that same date;

xviii. If, at any time on or after the date which is six (6) months after the Original Issue Date, the Holder is unable to (i) obtain a standard “144 legal opinion letter” from an attorney reasonably acceptable to the Holder, the Holder’s brokerage firm (and respective clearing firm), and the Borrower’s transfer agent in order to facilitate the Holder’s conversion of any portion of the Note into free trading shares of the Borrower’s Common Stock pursuant to Rule 144, and/or (ii) thereupon deposit such shares into the Holder’s brokerage account;

xix. if either (a) the effectiveness of the Registration Statement lapses for any reason or (b) the Holder shall not be permitted to resell Registrable Securities (as defined in the Registration Rights Agreement) under the Registration Statement for a period of more than 20 consecutive Trading Days or 30 non-consecutive Trading Days during any 12 month period; provided, however, that if the Corporation is negotiating a merger, consolidation, acquisition or sale of all or substantially all of its assets or a similar transaction and, in the written opinion of counsel to the Corporation, the Registration Statement would be required to be amended to include information concerning such pending transaction(s) or the parties thereto which information is not available or may not be publicly disclosed at the time, the Corporation shall be permitted an additional 10 consecutive Trading Days during any 12 month period pursuant to this Section;

xxi. the Corporation fails to pay the True Up Amount when due;

b) Upon the occurrence of a Triggering Event, the Holder shall (in addition to all other rights it may have hereunder or under applicable law) have the right, exercisable at the sole option of such Holder, to require the Corporation to redeem all of the Preferred Stock then held by such Holder for a redemption price, equal the Triggering Redemption Amount. The Triggering Redemption Amount, shall be due and payable within three Trading Days of the date on which the notice for the payment therefor is provided by a Holder (the "Triggering Redemption Payment Date"). If the Company shall fail for any reason to pay in full the Triggering Redemption Amount hereunder on the date such amount is due in accordance with this Section then, in addition to Holder's other available remedies, the Company shall pay to the Holder, in cash, as partial liquidated damages and not as a penalty, by reason of any such delay in or reduction of its ability to, among other things, sell the Securities, an amount in cash equal to ten percent (10.0%) of the aggregate Stated Value of such Holder's Preferred Stock on the first Business Day after the Triggering Redemption Payment Date and on every thirtieth (30th) day (pro rated for periods totaling less than thirty days) thereafter until the earlier of (a) the date such Triggering Redemption Amount, plus all such interest thereon, is paid in full. In addition, if the Corporation fails to pay in full the Triggering Redemption Amount and all other amounts set forth in this Section hereunder on the date such amount is due in accordance with this Section, the Corporation will pay interest thereon at a rate equal to the lesser of 18% per annum or the maximum rate permitted by applicable law, accruing daily from such date until the Triggering Redemption Amount, plus all such interest and liquidated damages thereon, is paid in full. For purposes of this Section, a share of Preferred Stock is outstanding until such date as the applicable Holder shall have received Conversion Shares upon a conversion (or attempted conversion) thereof that meets the requirements hereof or has been paid the Triggering Redemption Amount in cash.

Section 11. Miscellaneous.

a) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Conversion, shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service, addressed to the Corporation, at the address set forth above **Attention:** Chief Financial Officer, facsimile number 704- 366-2463, or such other facsimile number or address as the Corporation may specify for such purposes by notice to the Holders delivered in accordance with this Section 11. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number or address of such Holder appearing on the books of the Corporation, or if no such facsimile number or address appears on the books of the Corporation, at the principal place of business of such Holder. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

b) Absolute Obligation. Except as expressly provided herein, no provision of this Certificate of Designation shall alter or impair the obligation of the Corporation, which is absolute and unconditional, to pay liquidated damages, accrued dividends and accrued interest, as applicable, on the shares of Preferred Stock at the time, place, and rate, and in the coin or currency, herein prescribed.

c) Lost or Mutilated Preferred Stock Certificate. If a Holder's Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership hereof reasonably satisfactory to the Corporation.

d) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Certificate of Designation shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by any of the Transaction Documents (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the "New York Courts"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such New York Courts, or such New York Courts are improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Certificate of Designation and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Certificate of Designation or the transactions contemplated hereby. If any party shall commence an action or proceeding to enforce any provisions of this Certificate of Designation, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

e) Waiver. Any waiver by the Corporation, an Original Holder or a Holder (if not an Original Holder) of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation or a waiver by any other Holders. The failure of the Corporation, the Original Holders or a Holder (if not an Original Holder) to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation on any other occasion. Any waiver by the Corporation, the Original Holders or a Holder (if not an Original Holder) must be in writing.

f) Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

g) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

h) Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

i) Status of Converted or Redeemed Preferred Stock. If any shares of Preferred Stock shall be converted, redeemed or reacquired by the Corporation, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Class 2 Preferred Stock.

j) True-Up.

i. In the event that the proceeds received by the Original Holders from the sale of all the Preferred Stock, Conversion Shares, shares of the Common Stock of the Corporation received by the Original Holders in connection with the spinoff of the Corporation from Sonnet Biotherapeutics Holdings, Inc. (f/k/a Chanticleer Holdings, Inc.) (the "Spinoff Shares") and the proceeds of the Chanticleer Conversion Shares do not equal at least \$1,875,000 on April 1, 2021 (the "True-Up Payment Date"), the Corporation shall pay the Holder an amount in cash (the "True-Up Payment") equal to \$1,875,000 less the proceeds previously realized by the Original Holders from the sale of the Preferred Stock, the Conversion Shares, the Spinoff Shares and Chanticleer Conversion Shares, net of brokerage commissions and any other fees incurred by Holder in connection with the sale of any Conversion Shares ("Net Proceeds"). For purposes of clarity, Net Proceeds shall not include any proceeds received by the Original Holders upon the receipt of any shares of Common Stock of the Corporation issued upon exercise of warrants of the Corporation held by the Original Holders or any shares of Common Stock of the Corporation held or acquired by Original Holders which are not Spinoff Shares.

ii. The True-Up Payment will be paid by Corporation out of either (i) the proceeds from the exercise by Corporation of existing warrants to purchase shares of the common stock of Sonnet Biotherapeutics Holdings, Inc. (f/k/a Chanticleer Holdings, Inc.) held by Corporation or (ii) the Segregated Cash Account. If any portion of the True-Up Payment has not been paid by Corporation, on the True-Up Payment Date, interest shall accrue on such unpaid amount until such amount is paid in full at a rate equal to the lesser of (i) 18% per annum or (ii) the maximum rate permitted by applicable law. Upon payment in full of the True-Up Payment and all unpaid liquidated damages and other amounts due in respect of the Preferred Stock, any portion of the Segregated Cash Account not used to pay the True-Up Payment will be transferred to the Corporation and any remaining outstanding shares of Preferred Stock held by the Original Holders will be cancelled with no further obligations of the Corporation to the Original Holders thereunder, without any further action on behalf of the Corporation, Original Holders or the Holders.

iii. The Segregated Cash Account will be maintained until the True-Up Payment is paid in full.

IN WITNESS WHEREOF, the undersigned has executed this Certificate on February [], 2021.

AMERGENT HOSPITALITY GROUP, INC.

By:

Name: Michael D. Pruitt

Title: Chief Executive Officer

ANNEX A

NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT SHARES OF PREFERRED STOCK)

The undersigned hereby elects to convert the number of shares of Series 2 Convertible Preferred Stock indicated below into shares of common stock, par value \$0.0001 per share (the "Common Stock"), of Amergent Hospitality Group Inc., a Delaware corporation (the "Corporation"), according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and opinions as may be required under applicable laws. No fee will be charged to the Holders for any conversion, except for any such transfer taxes.

Conversion calculations:

Date to Effect Conversion: _____

Number of shares of Preferred Stock owned prior to Conversion: _____

Number of shares of Preferred Stock to be Converted: _____

Stated Value of shares of Preferred Stock to be Converted: _____

Number of shares of Common Stock to be Issued: _____

Applicable Conversion Price: _____

Number of shares of Preferred Stock subsequent to Conversion: _____

Address for Delivery: _____

or

DWAC Instructions: _____

Broker no: _____

Account no: _____

HOLDER

By: _____

Name:

Title:

OFFER AND EMPLOYMENT AGREEMENT

This Offer and Employment Agreement ("Agreement") is made this 4th day of February 2021, by and between **Amergent Hospitality Group, Inc.** (hereinafter called "Amergent") and **Stephen Hoelscher** (hereinafter called "Hoelscher").

RECITALS:

WHEREAS, Amergent desires to employ Hoelscher as Chief Financial Officer and Hoelscher desires to accept Amergent's offer of employment; and

WHEREAS, Hoelscher and Amergent desire for Hoelscher's employment to be terminable at-will; and

WHEREAS Amergent understands and acknowledges that Hoelscher has served and will continue during his employment with Amergent to serve as an employee, officer, member, and/or manager of other companies, including without limitation Mastodon Ventures, Inc., and Oz Rey, LLC, which is a lender and creditor and warrant holder of Amergent; and

WHEREAS Amergent and Hoelscher to commemorate the terms under which Hoelscher will accept at-will employment with Amergent.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. **Employment.** Amergent has employed Hoelscher as its Chief Financial Officer effective January 19, 2021.
 2. **At-Will Employment.** This Agreement does not constitute a contract of employment for any specific period of time Hoelscher's employment with Amergent is terminable at-will, meaning that either Hoelscher or Amergent may terminate Hoelscher's employment at any time with or without cause and with or without advance notice.
 3. **Compensation and Benefits.** Amergent agrees to pay Hoelscher at a salary rate of \$120,000.00 (one hundred twenty thousand and xx/100 dollars) per year. In addition, Amergent agrees to offer Hoelscher participation in any stock option, restricted stock or other equity or incentive compensation programs on terms reasonable comparable to other similarly-situation executive officers of Amergent, either in existence currently or that may hereafter be instituted. In addition, Hoelscher shall be provided with the opportunity to elect such health, dental, insurance and other benefits as are made available to executive officers.
 4. **Bonus.** For each calendar year during which Hoelscher is employed by Amergent, including partial calendar year 2021, Amergent agrees to provide Hoelscher with an
-

opportunity to earn a bonus of \$30,000.00 (thirty thousand and xx/100 dollars) based on metrics reasonably established by Amergent's Board of Directors.

5. **Other Employment and Activities.** Amergent acknowledges that Hoelscher currently serves in a variety of capacities for companies other than Amergent. Amergent and Hoelscher represent and acknowledge that Hoelscher intends to continue to serve in those capacities and similar capacities during Hoelscher's employment with Amergent. For example, and not by way of limitation, the parties acknowledge and agree that Hoelscher currently serves and intends to continue serving for entities whose majority principal is Robert Hersch (a related party) including as (a) A Manager and also the Chief Financial Officer of Oz Rey, LLC, which is a creditor of Amergent and holds common stock and warrants in Amergent; (b) as Chief Financial Officer in Mastodon Ventures, Inc.; and (c) as Manager and Chief Financial Officer of MV Amanth LLC and its subsidiaries. Amergent acknowledges and agrees that Hoelscher will continue to engage in these positions with related parties. Hoelscher may engage in other similar positions and pursuits from time to time during his employment; provided however, Hoelscher will notify the Company in advance of accepting new positions or embarking on new pursuits.
 6. **Only Agreement / No Modification.** Other than the Amergent Hospitality Group, Inc. Indemnification Agreement and the Non-Solicitation and Confidentiality Agreement by and between the parties, which remain in full force and effect, this Agreement is the only agreement between the parties. No provision of this Agreement may be amended or waived unless such amendment or waiver is in writing and signed by the parties. No amendment or waiver of any provision of this Agreement may be implied from any course of dealing between the parties or from the failure of either party to assert its rights under this Agreement on any occasion or series of occasions
 7. **Texas Law. Texas Forum. Travis County, Texas Venue.** This Agreement shall be deemed to have been made under, and shall be governed by and construed and enforced in accordance with, the laws of the State of Texas. The parties agree that any dispute arising out of or relating in any way to this Agreement or to Hoelscher's employment with Amergent shall be filed and maintained only in a court of competent jurisdiction in the State of Texas, and both parties hereby consent to the jurisdiction of the courts in the State of Texas for any such dispute. This Agreement is performable in Travis County, Texas, and the parties agree that any dispute arising out of or relating in any way to this Agreement or to Hoelscher's employment with Amergent will be brought only in a court in Travis County, Texas.
 8. **Executive Representations.** By accepting this Agreement, Hoelscher acknowledges and represents and warrants that he is not a party to or bound by any agreement with a third party that would or could reasonably be interpreted to prohibit or restrict him from being employed by Amergent or from performing any of his duties in the contemplated position. Hoelscher also agrees to provide Amergent with copies of all agreements relating to employment with a third party under which you he has an ongoing obligation of confidentiality, non-competition, non-solicitation, or similar restrictive covenants of whatever kind.
-

AGREED:



Stephen Hoelscher

Amergent Hospitality Group Inc.

Date 2/4/2021

February 4, 2021
Date _____

By: Michael D. Pruitt

Name: Michael D. Pruitt
Its: Chief Executive Officer

NON-SOLICITATION AND CONFIDENTIALITY AGREEMENT

This Non-Solicitation and Confidentiality Agreement ("Agreement"), effective as of February 4, 2021, is made by and between Amergent Hospitality Group Inc., a Delaware corporation ("Company"), and Stephen Hoelscher ("Employee"). In consideration of Employee's employment with the Company and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Employee agrees as follows:

1. **Background.** The Company is engaged in the business of owning, operating and franchising fast casual dining concepts domestically and internationally ("Business"). The Company owns controls and has exclusive access to Confidential and Proprietary Information (as defined in Section 2 below) concerning its operations, methods and accumulated experience incidental to the operations and development of its Business. Employee acknowledges that by executing this Agreement and by reason of Employee's employment by the Company, Employee will receive specialized training with respect to the Business and come into possession of, have knowledge of and contribute to Confidential and Proprietary Information and may establish substantial goodwill on behalf of the Company. Employee further acknowledges and agrees that the Company's Confidential and Proprietary Information is valuable, is not known to others in the relevant industry and gives the Company a substantial competitive advantage. Employee represents and acknowledges that the consideration received and to be received, is sufficient to compensate Employee for the restrictions imposed under this Agreement.
2. **Definition of "Confidential and Proprietary Information."** The term "Confidential and Proprietary Information" shall mean any and all confidential and/or proprietary knowledge, data or information of the Company. By way of illustration but not limitation, Confidential and Proprietary Information includes tangible and intangible information relating to formulations, products, processes, know-how, designs, formulas, methods, developmental or experimental work, data, drawings, worksheets, blueprints, concepts, samples, inventions, improvements, discoveries, research, marketing plans, business plans, budgets and unpublished financial statements, licenses, prices, and suppliers and customers and personnel. All Confidential and Proprietary Information owned, developed, or acquired by the Company shall remain the sole and exclusive property of the Company. Confidential and Proprietary Information also includes any information described above that the Company obtains from its clients or any other third party and that the Company treats as confidential, whether or not owned or developed by the Company.
3. **Non-Disclosure of Confidential and Proprietary Information.**
 - (a) **Non-Disclosure.** At all times during and after Employee's employment, Employee will hold in strictest confidence and will not disclose, use, lecture upon or publish any of the Company's Confidential and Proprietary Information (defined in Section 2 above), except as such disclosure, use, or publication may be required in connection with Employee's work for the Company, unless recipient is party to a non-disclosure agreement with the Company or unless the Chief Executive Officer of the Company expressly authorizes such in writing (electronic mail authorization deemed sufficient).

Employee will obtain Company's written approval before publishing or submitting for publication any material (written, verbal, or otherwise) that relates to Employee's work at the Company and/or incorporates any Confidential and Proprietary Information. Employee hereby assigns to the Company any rights Employee may have or acquire in such Confidential and Proprietary Information and recognizes that all Confidential and Proprietary Information is and shall be the sole property of the Company and its assigns.

- (b) **No Improper Use of Information of Prior Employers and Others.** During Employee's employment by the Company, Employee will not improperly use or disclose any confidential information or trade secrets, if any, of any former employer or any other person to whom Employee has an obligation of confidentiality, and Employee will not bring onto the premises of the Company any unpublished documents or any property belonging to any former employer or any other person to whom Employee has an obligation of confidentiality unless consented to in writing by that former employer or person. Employee will use in the performance of Employee's duties only information that is generally known and used by persons with training and experience comparable to Employee, that is common knowledge in the industry or otherwise legally in the public domain, or that is otherwise provided or developed by the Company.
- (c) **Return of Company Documents.** Upon termination of Employee's employment with the Company, or upon the Company's earlier request, Employee will promptly (1) deliver to the Company any and all drawings, notes, memoranda, specifications, devices, formulas, and documents, together with all copies thereof, and any other material (whether in hard copy, digitally stored, or in any other format or medium) containing or disclosing any Confidential and Proprietary Information of the Company (and will cooperate with the Company to ensure that no electronic copies thereof have been retained in or are retrievable from any personal property not belonging to the Company), and (2) return all Company property issued to Employee or otherwise in Employee's possession or control, including, without limitation, computers and computer equipment, phones and other mobile devices, and digital storage devices. Employee further agrees that any property situated on the Company's premises and owned by the Company, including, but not limited to, disks and other storage media, filing cabinets or other work areas, is subject to inspection by the Company personnel at any time with or without notice. Prior to leaving, Employee will cooperate with the Company in completing and signing a termination statement.
- (d) **No Interference with NLRA or Reporting Rights.** This Section 3, and all other provisions in this Agreement, are not intended to interfere with or restrain employee communications regarding wages, hours, or other terms and conditions of employment or to otherwise interfere with any rights Employee has under the National Labor Relations Act. This Section 3, and all other provisions in this Agreement, do not prohibit Employee from reporting possible legal violations to the government or from making other disclosures to the government that are protected under federal or state whistleblower provisions.
- (e) **Defend Trade Secrets Act.** Employee is advised that pursuant to the Defend Trade Secrets Act an individual will not be held criminally or civilly liable under any federal

or state trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and (ii) solely for the purpose of reporting or investigating a suspected violation of law, or (B) is made in a complaint or other document filed in a lawsuit or other proceeding if such filing is made under seal. Further, an individual who files a lawsuit alleging retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the individual's attorney and use the trade secret information in the court proceeding if the individual (1) files any document containing the trade secret under seal and (2) does not otherwise disclose the trade secret, except pursuant to court order. Employee understands that any disclosure by Employee of the Company's trade secrets not done in good faith consistent with the above may subject Employee to substantial damages, including punitive damages and attorneys fees.

- (f) **Legally Compelled Disclosure.** Nothing in this Agreement is intended to prohibit disclosure by Employee of information that is required to be disclosed pursuant to any applicable law, court order, or other governmental body or administrative or other agency. Employee agrees to notify the Company as promptly as reasonably practicable after Employee receives a request for any such disclosure of Confidential and Proprietary Information and agrees, upon request by the Company, to reasonably cooperate (at the Company's expense) with the Company's lawful efforts to challenge or limit such disclosure.
4. **Non-Solicitation.** Employee agrees to the following non-solicitation covenants during Employees employment with the Company and for one year after employment is terminated for any reason by either party:
- (a) **Customer Non-Solicitation.** Employee shall not, whether directly or indirectly, solicit, communicate with or otherwise contact any of the Company's customers with whom Employee had material contact during Employee's employment with the Company, for the purpose of conducting any business with them which is substantially similar to the business conducted or anticipated to be conducted by the Company during Employee's employment with the Company. "Material contact" means (a) actual contact with customers—such as through the provision of services or sales visits or calls—(b) coming to know confidential information about a Company customer—such as by obtaining pricing and sales information, or (c) directing or coordinating other employees in calling, servicing, or soliciting customers.
 - (b) **Employee Non-Solicitation.** Employee shall not, directly or indirectly, solicit or induce—or encourage another entity or person to solicit or induce—any person employed by the Company or any person retained by the Company as an independent contractor with the Company to terminate an employment relationship or contract with the Company.
 - (c) **Interference with Business.** Employee shall not, whether directly or indirectly, undertake any act with the intent to disrupt, impair or interfere with the business of the Company in any way, whether by way of interfering with or disrupting its relationships with customers, agents, representatives, contractors, or suppliers, or otherwise.

- (d) **Confidential Information and Trade Secret Protection.** Employee warrants that the restrictions in 4 will not prevent Employee from earning a living, and that they are necessary to protect the confidential information and/or trade secrets of the Company, as Employee's solicitation would necessarily involve Employee's use of the Company's confidential information and/or trade secrets.
5. **Protectable Interests.** Employee acknowledges and agrees that (1) complying with the restrictions contained in this Agreement will not prevent Employee from earning a living, and (2) such restrictions are necessary and reasonable (including, without limitation, with respect to geographic scope and duration) to protect the Company's valid interests (including, without limitation, relationships with customers, goodwill, the protection trade secrets and other of Confidential and Proprietary Information, protection from unfair competition, and other protectable interests).
6. **No Conflicting Obligation.** Employee represents that Employee's performance of all the terms of this Agreement and as an employee of the Company does not and will not breach any agreement to keep in confidence information acquired by Employee in confidence or in trust prior to Employee's employment by the Company. Employee represents and agrees that Employee has not entered into, and will not enter into, any agreement either written or oral in conflict herewith.
7. **Legal and Equitable Remedies.** Employee hereby agrees and acknowledges that any breach or threatened breach of this Agreement by Employee will result in irreparable harm to the Company for which there will be no adequate remedy at law. Consequently, in the event of such breach or attempted breach, the Company shall be entitled to receive an injunction, without bond and without proof of actual damages, to prevent any further breach of this Agreement by Employee and/or obtain other specific performance or equitable relief necessary to enforce the Company's rights under this Agreement, to the fullest extent permissible under applicable law, in addition to all other remedies available in law or at equity.
8. **General Provisions.**
- (a) **Governing Law.** The validity, interpretation, construction and performance of this Agreement, is governed by the laws of Texas. Employee hereby expressly consents to the personal jurisdiction of the state and federal courts located in Travis County, Texas for any lawsuit filed there against Employee by the Company arising from or related to this Agreement.
- (b) **Waiver.** A failure to enforce any provision of this Agreement shall not be deemed a waiver of that provision or any other provision. No waiver by either party at any time of any breach of this Agreement by the other party will be deemed a waiver of any preceding or succeeding breach nor shall it be construed as a waiver of any other provisions or conditions of this Agreement. No waiver of any provision of this Agreement shall be effective unless made in writing signed by Employee and, on behalf of the Company, by the Chief Executive Officer, and such waiver shall be

effective only in the specific instance and for the specific purpose stated in the writing. The Company shall not be required to give notice to enforce strict adherence to all terms of this Agreement.

- (c) **Entire Agreement.** This Agreement sets forth the final, entire, and exclusive understanding of the parties with respect to the subject matter hereof and supersedes and merges all prior agreements of the parties, whether oral or written. No provision of this Agreement may be amended, modified, waived or discharged unless such amendment, modification, waiver or discharge is agreed to in writing, and is signed by Employee and, on behalf of the Company, by its Chief Executive Officer.
- (d) **Severability; Modification.** If any provision, term, covenant or obligation of this Agreement, or its application, is held invalid, unenforceable, or unlawful, such invalidity, unenforceability or unlawfulness, shall not affect the other provisions, terms, covenants or obligations of this Agreement, or their application, which all shall remain valid and enforceable in full force and effect to the extent permitted by law. Further, if a court or other adjudicative body finds any covenant of this Agreement to be unenforceable with respect to a jurisdiction, the parties agree that the court shall amend such obligations for the protection of Company's business to the minimum extent necessary to render the provision enforceable and that the Agreement shall be enforced within such jurisdiction as so amended.
- (e) **No Right to Employment.** Nothing in this Agreement shall be interpreted to confer to Employee any right to be employed by the Company or otherwise interfere in any way with Employee's or Company's right to terminate Employee's employment for any reason or no reason, with or without cause, in accordance with any applicable agreement and governing law.
- (f) **Tolling.** If Employee violates the Agreement, the period of restriction as set forth above in 4 and **Error! Reference source not found.**, is tolled during any period of Employee's violation and all restrictions shall automatically be extended by a period of time equal to the period of time the Employee is in violation of any such restrictions, if the Company seeks enforcement after learning of Employee's violation.
- (g) **Successors and Assigns.** This Agreement will be binding upon Employee's heirs, executors, administrators, and other legal representatives and will be for the benefit of the Company, its successors, and its assigns.
- (h) **Survival.** The provisions of this Agreement shall survive the assignment of this Agreement by the Company to any successor in interest or other assignee.
- (i) **Section Headings.** The section headings appearing in this Agreement have been inserted for the purpose of convenience and reference only and shall not limit or affect the meaning or interpretation of this Agreement in any way whatsoever.
- (j) **Notices.** Any notices required or permitted hereunder shall be given to the appropriate party at the address specified below (or at such other address as the party shall specify in writing by notice delivered in accordance with this Section (j)). Such notice shall be deemed given upon personal delivery to the appropriate address or, if sent by certified or registered mail, 5 days after the date of mailing.

- (k) **Notification of New Employer.** In the event that Employee leaves the employ of the Company, to the extent permitted by law, Employee hereby consents to the notification of Employee's new employer of Employee's rights and obligations under this Agreement and acknowledges that Company may send a copy or a redacted copy of this Agreement to Employee's new employer. Employee has carefully read the Agreement and understands and accepts all of its terms.

The parties have duly executed this Agreement effective as of the Effective Date.

ACCEPTED AND AGREED TO:



Stephen Hoelscher

Dated: 2/4/2021

ACCEPTED AND AGREED TO:

Amergent Hospitality Group Inc., a Delaware corporation

By: Michael D. Pruitt
Name: Michael D. Pruitt
Its: Chief Executive Officer

Dated: February 4, 2021

PRINCIPAL EXECUTIVE AND SENIOR FINANCIAL OFFICERS CODE OF ETHICS

1. Covered Officers/Purpose of the Code. This Code of Ethics (the “Code”) for AMERGENT HOSPITALITY GROUP INC. (the “Company”) applies to the Chief Executive Officer, Chief Financial Officer and Chief Accounting Officer (the “Covered Officers”) and those performing similar functions, for the purpose of promoting:

- honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
- full, fair, accurate, timely and understandable disclosure in reports and documents that the Company files with, or submits to, the Securities and Exchange Commission (“SEC”), and in other public communications made by the Company;
- compliance with applicable laws and governmental rules and regulations;
- prompt internal reporting of violations of the Code to an appropriate person or persons identified in the Code; and
- accountability for adherence to the Code.

Each Covered Officer should adhere to a high standard of business ethics and should be sensitive to situations that may give rise to actual as well as apparent conflicts of interest.

2. Administration of the Code. The Code shall be administered by the Chief Financial Officer (the “Code Officer”). In the absence of the Code Officer, his or her designee shall serve as the Code Officer, but only on a temporary basis.

3. Actual and Apparent Conflicts of Interest. Overview. A “conflict of interest” occurs when a Covered Officer’s private interest interferes with the interests of, or his/her service to, the Company. For example, a conflict of interest would arise if a Covered Officer, or a family member, receives improper personal benefits as a result of the Covered Officer’s position with the Company.

The following list provides examples of conflicts of interest under the Code, but these examples are not exhaustive. The overarching principle is that the personal interest of a Covered Officer should not be placed improperly before the interest of the Company.

Each Covered Officer must:

- not use personal influence or personal relationships improperly to influence investment decisions or financial reporting by the Company particularly where the Covered Officer or a family member would benefit personally to the detriment of the Company;
- not cause the Company to take action, or fail to take action, for the personal benefit of the Covered Officer or a family member rather than the benefit of the Company;

- not retaliate against any other Officer or any employee of the Company or their affiliated persons for reports of potential violations that are made in good faith; and
- not use material non-public knowledge of portfolio transactions made or contemplated by the Company to trade personally or cause others to trade personally in contemplation of the market effect of such transactions.

There are some potential conflict of interest situations that must be approved by the Code Officer, after consultation with legal counsel. Those situations include, but are not limited to:

- service as director on the board of any public for-profit company; and
- any ownership interest in, or any consulting or employment relationship with, any supplier, vendor or customer of the Company.

There are some potential conflict of interest situations that should be discussed with the Code Officer, if material. Those situations include, but are not limited to:

- receipt of any gift of more than nominal value, a cash payment in any amount, a preferred personal investment opportunity, or other thing of more than de minimis value from any person or entity that does business, or is seeking to do business with the Company; and
- receipt of any entertainment from any company with which the Company has current or prospective business dealings, unless such entertainment is business-related, reasonable in cost, appropriate as to time and place, and not so frequent as to raise any question of impropriety.

It is not the intent of this Code to prohibit the ordinary courtesies of business life, such as token gifts or modest entertainment incidental to a business relationship.

4. Disclosure and Compliance. Each Covered Officer should:

- be familiar with the laws and regulations generally applicable to the Company;
- not knowingly misrepresent, or cause others to misrepresent, facts about the Company to others, whether within or outside the Company, including to the directors and auditors, whether internal or external, and to governmental regulators and self-regulatory organizations;
- to the extent appropriate within his/her area of responsibility, consult with other officers and employees of the Company with the goal of promoting full, fair, accurate, timely and understandable disclosure in the reports and documents filed with, or submitted to, the SEC or other governmental authorities and in other public communications made by the Company; and
- promote compliance with the standards and restrictions imposed by applicable laws, rules and regulations.

5. Reporting and Accountability. Each Covered Officer must:

- upon adoption of the Code (or after becoming a Covered Officer), affirm in writing to the Board that he/she has received, read and understands the Code;
- annually thereafter affirm to the Board compliance with the requirements of the Code;
- notify the Code Officer promptly if he/she knows of any violation of this Code; and
- respond to the director and officer questionnaires circulated periodically in connection with the preparation of disclosure documents for the Company.

The Code Officer shall maintain records of all activities related to this Code.

The Company will follow these procedures in investigating and enforcing this Code:

- The Code Officer will take all appropriate action to investigate any potential violations reported to him/her;
- If, after such investigation, the Code Officer believes that no violation has occurred, no further action is required;
- Any matter that the Code Officer believes is a violation will be reported to the Audit Committee;
- If the Audit Committee concurs that a violation has occurred, it will inform and make a recommendation to the Board, which will consider appropriate action, which may include review of, and appropriate modifications to, applicable policies and procedures; notification to the Chief Executive Officer; or a recommendation to dismiss the Covered Officer;
- The Audit Committee will be responsible for approving waivers in its sole discretion; and
- Any changes to or waivers of this Code will, to the extent required, be disclosed as provided by SEC rules.

6. Other Procedures. This Code shall be the sole code of ethics adopted by the Company for the purposes of Section 406 of the Sarbanes-Oxley Act and the rules and forms applicable to companies subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act of 1934 thereunder. Insofar as other policies or procedures govern or purport to govern the behavior or activities of the Covered Officers who are subject to this Code, they are superseded by this Code to the extent that they overlap or conflict with the provisions of this Code.

7. Amendments. Any amendment to this Code must be approved or ratified by the Board.

8. Confidentiality. All reports and records prepared or maintained pursuant to this Code will be considered confidential and shall be maintained and protected accordingly. Except as otherwise required by law or this Code, such matters shall not be disclosed to anyone other than the Board, the Covered Officers, the Code Officer, outside audit firms and legal.

Name	Jurisdiction of Incorporation	Percent Owned
AMERGENT HOSPITALITY GROUP, INC.	DE, USA	
American Roadside Burgers, Inc.	DE, USA	100%
American Burger Ally, LLC	NC, USA	100%
American Burger Morehead, LLC	NC, USA	100%
American Burger Prosperity, LLC	NC, USA	50%
American Roadside Burgers Smithtown, Inc.	DE, USA	100%
BGR Acquisition, LLC	NC, USA	100%
BGR Franchising, LLC	VA, USA	100%
BGR Operations, LLC	VA, USA	100%
BGR Acquisition 1, LLC	NC, USA	100%
BGR Annapolis, LLC	MD, USA	100%
BGR Arlington, LLC	VA, USA	46%
BGR Columbia, LLC	MD, USA	100%
BGR Michigan Ave, LLC	DC, USA	100%
BGR Mosaic, LLC	VA, USA	100%
BGR Old Keene Mill, LLC	VA, USA	100%
BGR Washingtonian, LLC	MD, USA	46%
Capitol Burger, LLC	MD, USA	100%
BT Burger Acquisition, LLC	NC, USA	100%
BT's Burgerjoint Rivergate LLC	NC, USA	100%
BT's Burgerjoint Sun Valley, LLC	NC, USA	100%
LBB Acquisition, LLC	NC, USA	100%
Cuarto LLC	OR, USA	100%
LBB Acquisition 1 LLC	OR, USA	100%
LBB Hassalo LLC	OR, USA	80%
LBB Platform LLC	OR, USA	80%
LBB Capitol Hill LLC	WA, USA	50%
LBB Franchising LLC	NC, USA	100%
LBB Green Lake LLC	OR, USA	50%
LBB Lake Oswego LLC	OR, USA	100%
LBB Magnolia Plaza LLC	NC, USA	50%
LBB Multnomah Village LLC	OR, USA	50%
LBB Progress Ridge LLC	OR, USA	50%
LBB Rea Farms LLC	NC, USA	50%
LBB Wallingford LLC	WA, USA	50%
LBB Downtown PDX LLC	OR, USA	100%
Noveno LLC	OR, USA	100%
Octavo LLC	OR, USA	100%
Primero LLC	OR, USA	100%
Quinto LLC	OR, USA	100%
Segundo LLC	OR, USA	100%
Septimo LLC	OR, USA	100%
Sexto LLC	OR, USA	100%
Jantzen Beach Wings, LLC	OR, USA	100%
Oregon Owl's Nest, LLC	OR, USA	100%
West End Wings LTD	United Kingdom	100%

Name	Jurisdiction of Incorporation	Percent Owned
<i>Inactive or Sold Entities</i>		
American Roadside Cross Hill, LLC	NC, USA	100%
American Roadside McBee, LLC	NC, USA	100%
American Roadside Southpark LLC	NC, USA	100%
Avenel Financial Services, LLC	NV, USA	100%
Avenel Ventures, LLC	NV, USA	100%
BGR Cascades, LLC	VA, USA	100%
BGR Chevy Chase, LLC	MD, USA	100%
BGR Dupont, LLC	DC, USA	100%
BGR Old Town, LLC	VA, USA	100%
BGR Potomac, LLC	MD, USA	100%
BGR Springfield Mall, LLC	VA, USA	100%
BGR Tysons, LLC	VA, USA	100%
BT's Burgerjoint Biltmore, LLC	NC, USA	100%
BT's Burgerjoint Promenade, LLC	NC, USA	100%
Chanticleer Advisors, LLC	NV, USA	100%
Chanticleer Finance UK (No. 1) Plc	United Kingdom	100%
Chanticleer Investment Partners, LLC	NC, USA	100%
Dallas Spoon Beverage, LLC	TX, USA	100%
Dallas Spoon, LLC	TX, USA	100%
DineOut SA Ltd.	England	89%
Hooters Brazil	Brazil	100%
Tacoma Wings, LLC	WA, USA	100%
Chanticleer r South Africa (Pty) Ltd.	South Africa	100%
Hooters Emperors Palace (Pty.) Ltd.	South Africa	88%
Hooters On The Buzz (Pty) Ltd	South Africa	95%
Hooters PE (Pty) Ltd	South Africa	100%
Hooters Ruimsig (Pty) Ltd.	South Africa	100%
Hooters SA (Pty) Ltd	South Africa	78%
Hooters Umhlanga (Pty.) Ltd.	South Africa	90%
Hooters Willows Crossing (Pty) Ltd	South Africa	100%
JF Franchising Systems, LLC	NC, USA	56%
JF Restaurants, LLC	NC, USA	56%

AMERGENT HOSOPITALITY GROUP INC.

AFFILIATE GUARANTEES

Oz Rey, LLC holds a first priority secured note with a principal balance of \$4,037,889, guaranteed by all of Amergent's subsidiaries. Oz Rey's security interest is subordinate only to certain interests of holders of Series 2 Preferred stock.

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002**

I, Michael D. Pruitt, certify that:

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

Date: April 15, 2021

/s/ Michael D. Pruitt

Michael D. Pruitt
Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002**

I, Steven Hoelscher, certify that:

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

Date: April 15, 2021

/s/ Steven Hoelscher

Steven Hoelscher
Chief Financial Officer
(Principal Financial Officer)

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of Amergent Hospitality Group Inc., a Delaware corporation (the “Company”) for the year ended December 31, 2020, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), Michael D. Pruitt, Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge and belief:

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

AMERGENT HOSPITALITY GROUP INC.

Date: April 15, 2021

By: /s/ Michael D. Pruitt
Michael D. Pruitt
Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of Amergent Hospitality Group Inc., a Delaware corporation (the “Company”) for the year ended December 31, 2020, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), Steven Hoelscher, Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge and belief, that:

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

AMERGENT HOSPITALITY GROUP INC.

Date: April 15, 2021

By: /s/ Steven Hoelscher
Steven Hoelscher
Chief Financial Officer
(Principal Financial Officer)

UNAUDITED FINANCIAL STATEMENTS

THESE FINANCIAL STATEMENTS HAVE BEEN PREPARED WITHOUT AN AUDIT. PROSPECTIVE FRANCHISEES OR SELLERS OF FRANCHISES SHOULD BE ADVISED THAT NO CERTIFIED PUBLIC ACCOUNTANT HAS AUDITED THESE FIGURES OR EXPRESSED AN OPINION WITH REGARD TO THEIR CONTENT OR FORM.

Submission Data File

General Information	
Form Type*	10-Q
Contact Name	M2 Compliance
Contact Phone	754-243-5120
Filer Accelerated Status*	Non-Accelerated Filer
Filer File Number	
Filer CIK*	0001805024
Filer CCC*	*****
Filer is Shell Company*	N
Filer is Smaller Reporting Company	Yes
Confirming Copy	No
Notify via Website only	No
Return Copy	Yes
SROS*	NONE
Period*	03-31-2022
Emerging Growth Company	No
Elected not to use extended transition period	No
(End General Information)	

Document Information	
File Count*	5
Document Name 1*	form10-q.htm
Document Type 1*	10-Q
Document Description 1	
Document Name 2*	ex31-1.htm
Document Type 2*	EX-31.1
Document Description 2	
Document Name 3*	ex31-2.htm
Document Type 3*	EX-31.2
Document Description 3	
Document Name 4*	ex32-1.htm
Document Type 4*	EX-32.1
Document Description 4	
Document Name 5*	ex32-2.htm
Document Type 5*	EX-32.2
Document Description 5	
(End Document Information)	

Notifications	
Notify via Website only	No
E-mail 1	filing@m2compliance.com
(End Notifications)	

**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 March 31, 2022

☐ 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: 000-56145

AMERGENT HOSPITALITY GROUP INC.

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

84-4842958
(IRS Employer
Identification Number)

7529 Red Oak Lane
Charlotte, NC
(Address of Principal Executive Offices)

28226
(Zip Code)

(704) 366-5122
(Registrant's Telephone Number, Including Area Code)

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

Securities registered under Section 12(b) of the Act: **None**

Indicate by check mark whether the issuer (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 has for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

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

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

Large accelerated filer ☐

Accelerated filer ☐

Non-accelerated filer ☒

Smaller reporting company ☒

Emerging growth company ☐

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

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

The number of shares outstanding of the registrant's \$0.0001 par value common stock as of May [13], 2022, was 15,706,736 shares.

Amergent Hospitality Group Inc. and Subsidiaries

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q (the “Report”) contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements are identified by terms and phrases such as “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “predict,” “project,” “should,” and “will” and similar expressions and include references to assumptions and relate to our future prospects, developments and business strategies. There are a number of important factors that could cause the actual results to differ materially from those expressed in any forward-looking statement made by us. These factors include, but are not limited to:

- We have a history of operating losses. Our estimates regarding the sufficiency of our cash resource and capital requirements and needs for additional financing raises substantial doubt about our ability to continue as a going concern.
- We may not be able to extend or repay our indebtedness owed to our secured lenders, which would have a material adverse effect on our financial condition and ability to continue as a going concern.
- We require additional financing to support our working capital and execute our operating plans for fiscal 2022, which may not be available or may be costly and dilutive;
- Decline in global financial markets, inflation and economic downturn;
- Continuing impact of business interruptions resulting from the coronavirus COVID-19 global pandemic;
- Our ability to remediate weaknesses we identified in our disclosure controls and procedures and our internal control over financial reporting in a timely enough manner to eliminate the risks posed by such material weaknesses in future periods;
- The risks associated with leasing space subject to long-term non-cancelable leases;
- Breaches of security of confidential consumer information related to our electronic processing of credit and debit card transactions;
- Whether or not we will receive forgiveness of our Paycheck Protection Program loans;
- We may be unable to reach agreements with various taxing authorities on payment plans to pay off back taxes;
- Difficulties as acquired restaurants are integrated into our operations and failure to realize anticipated synergies;
- Our debt financing agreements expose us to interest rate risks, contain obligations that may limit the flexibility of our operations, and may limit our ability to raise additional capital; and
- Sale of common stock or derivative securities by us in private placements or public offerings as well as the conversion of existing debt securities could result in substantial dilution to our existing stockholders.

We undertake no obligation to update or revise the forward-looking statements included in this Report, whether as a result of new information, future events or otherwise, after the date of this Report. Our actual results, performance or achievements could differ materially from the results expressed in, or implied by, these forward-looking statements. Factors that could cause or contribute to such differences are discussed in the section entitled “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included herein.

Unless otherwise noted, references in this Report to the “Registrant,” “Company,” “Amergent,” “Spin-Off Entity,” “we,” “our” or “us” means Amergent Hospitality Group Inc., a Delaware corporation and our subsidiaries.

PART I

ITEM 1: FINANCIAL STATEMENTS

Amergent Hospitality Group Inc. and Subsidiaries
Table of Contents (Unaudited)

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Amergent Hospitality Group Inc. and Subsidiaries
Condensed Consolidated Balance Sheets

(in thousands except share and per share data)	<u>March 31, 2022</u>	<u>December 31, 2021</u>
	(Unaudited)	(Note 1)
ASSETS		
Current assets:		
Cash	\$ 2,528	\$ 646
Restricted cash	623	1,672
Investments	46	50
Accounts and other receivables	271	865
Inventories	184	182
Prepaid expenses and other current assets	258	360
TOTAL CURRENT ASSETS	3,910	3,775
Property and equipment, net	3,041	3,115
Operating lease asset	8,336	8,021
Intangible assets, net	3,038	3,129
Goodwill	7,810	7,810
Investments	16	16
Deposits and other assets	353	352
TOTAL ASSETS	\$ 26,504	\$ 26,218
LIABILITIES, REDEEMABLE SHARES AND STOCKHOLDERS' DEFICIT		
Current liabilities:		
Accounts payable and accrued expenses	\$ 6,799	\$ 6,844
Current maturities of long-term debt and notes payable	3,651	3,264
Current operating lease liabilities	4,425	4,599
Deferred grant income	997	1,545
TOTAL CURRENT LIABILITIES	15,872	16,252
Long-term operating lease liabilities	8,897	8,644
Contract liabilities	82	757
Deferred tax liabilities	150	150
Long-term debt and notes payable (includes debt measured at fair value of \$483 and \$599 at March 31, 2022 and December 31, 2021, respectively)	7,440	6,593
TOTAL LIABILITIES	32,441	32,396
Commitments and contingencies (see Note 10)		
Convertible Preferred Stock: Series 2: \$1,000 stated value; authorized 1,500 shares; 100 issued and outstanding at both March 31, 2022 and December 31, 2021	58	58
Stockholders' Deficit:		
Common stock: \$0.0001 par value; authorized 50,000,000 shares; 15,706,736 shares issued and outstanding at both March 31, 2022 and December 31, 2021	2	2
Additional paid-in-capital	93,151	92,882
Accumulated deficit	(97,990)	(97,963)
Total Amergent Hospitality Group Inc. Stockholders' Deficit	(4,837)	(5,079)
Non-controlling interests	(1,158)	(1,157)
TOTAL STOCKHOLDERS' DEFICIT	(5,995)	(6,236)
TOTAL LIABILITIES, REDEEMABLE SHARES AND STOCKHOLDERS' DEFICIT	\$ 26,504	\$ 26,218

See accompanying notes to the condensed consolidated financial statements

Amergent Hospitality Group Inc. and Subsidiaries
Condensed Consolidated Statements of Operations (Unaudited)

	Three months ended	
	March 31, 2022	March 31, 2021 (Restated)
(in thousands except share and per share data)		
Revenue:		
Restaurant sales, net	\$ 4,758	\$ 4,444
Gaming income, net	103	57
Franchise income	789	92
Total revenue	5,650	4,593
Expenses:		
Restaurant cost of sales	1,492	1,316
Restaurant operating expenses	3,479	3,245
General and administrative expenses	1,336	1,166
Asset impairment charges	—	1,288
Depreciation and amortization	222	232
Grant income	(548)	—
Total expenses	5,981	7,247
Operating loss	(331)	(2,654)
Other income (expense):		
Interest expense	(187)	(157)
Change in fair value of derivative liabilities	—	185
Change in fair value of investment	(4)	4
Change in fair value of convertible promissory note	116	—
Gain on extinguished lease liabilities	—	43
Gain on extinguished trade payable	161	—
Other income	219	2
Total other income	305	77
Loss before income taxes	(26)	(2,577)
Income tax expense	(2)	—
Consolidated net loss	(28)	(2,577)
Less: Net loss attributable to non-controlling interests	1	165
Net loss attributable to Amergent Hospitality Group Inc.	\$ (27)	\$ (2,412)
Net loss attributable to Amergent Hospitality Group Inc. per common share, basic and diluted	\$ (0.00)	\$ (0.17)
Weighted average shares outstanding, basic and diluted	15,706,736	14,482,736

See accompanying notes to the condensed consolidated financial statements

Amergent Hospitality Group Inc. and Subsidiaries
Condensed Consolidated Statements of Comprehensive Loss (Unaudited)

	Three months ended	
	March 31, 2022	March 31, 2021
(in thousands)		(Restated)
Net loss attributable to Amergent Hospitality Group Inc.	\$ (27)	\$ (2,412)
Foreign currency translation gain	—	9
Comprehensive loss	<u>\$ (27)</u>	<u>\$ (2,403)</u>

See accompanying notes to the condensed consolidated financial statements

Amergent Hospitality Group Inc. and Subsidiaries
Condensed Consolidated Statements of Stockholders' Deficit
Three Months Ended March 31, 2022 and 2021 (Unaudited)

	(Temporary equity) Preferred Series 2		Common Stock		Additional Paid-in	Accumulated	Accumulated Other Comprehensive	Non- Controlling	Total
	Shares	Amount	Shares	Amount	Capital	Deficit	Loss	Interest	
(in thousands except share data)									
Balance, January 1, 2022	100	\$ 58	15,706,736	\$ 2	\$ 92,882	\$ (97,963)	\$ —	\$ (1,157)	<u><u>\$ (6,236)</u></u>
Share-based compensation expense	—	—	—	—	6	—	—	—	6
Issuance of warrants	—	—	—	—	263	—	—	—	263
Net loss	—	—	—	—	—	(27)	—	(1)	(28)
Balance, March 31, 2022	100	\$ 58	15,706,736	\$ 2	\$ 93,151	\$ (97,990)	\$ —	\$ (1,158)	<u><u>\$ (5,995)</u></u>

	(Temporary equity) Preferred Series 2		Common Stock		Additional Paid-in	Accumulated	Accumulated Other Comprehensive	Non- Controlling	Total
	Shares	Amount	Shares	Amount	Capital	Deficit	Loss	Interest	
(in thousands except share data, restated)									
Balance, January 1, 2021	787	\$ 460	14,282,736	\$ 1	\$ 92,433	\$ (94,587)	\$ (26)	\$ (970)	<u><u>\$ (3,149)</u></u>
Conversion of preferred stock into common stock	(125)	(73)	250,000	—	73	—	—	—	73
Foreign currency translation	—	—	—	—	—	—	9	—	9
Net loss	—	—	—	—	—	(2,412)	—	(165)	(2,577)
Balance, March 31, 2021	662	\$ 387	14,532,736	\$ 1	\$ 92,506	\$ (96,999)	\$ (17)	\$ (1,135)	<u><u>\$ (5,644)</u></u>

See accompanying notes to the condensed consolidated financial statements

Amergent Hospitality Group Inc. and Subsidiaries
Condensed Consolidated Statements of Cash Flows (Unaudited)

	Three months ended	
	March 31, 2022	March 31, 2021 (Restated)
(in thousands)		
Cash flows from operating activities:		
Net loss	\$ (28)	\$ (2,577)
Adjustments to reconcile net loss to net cash flows used in operating activities:		
Depreciation and amortization	222	232
Amortization of operating lease assets	330	226
Asset impairment charges	—	1,288
Gain on extinguished lease liabilities	—	(43)
Share-based compensation	6	—
Change in fair value of investment	4	(4)
Change in fair value of convertible promissory note	(116)	—
Amortization of debt discount	43	45
Change in fair value of derivative liabilities	—	(185)
Change in operating assets and liabilities:		
Accounts and other receivables	594	221
Inventories	(2)	3
Prepaid expenses and other assets	101	182
Accounts payable and accrued expenses	(72)	328
Deferred grant income	(548)	—
Operating lease liabilities	(566)	(382)
Contract liabilities	(675)	(18)
Net cash flows used in operating activities	<u>(707)</u>	<u>(684)</u>
Cash flows from investing activities:		
Purchase of property and equipment	(57)	(2)
Net cash flows used in investing activities	<u>(57)</u>	<u>(2)</u>
Cash flows from financing activities:		
Proceeds from long-term debt and notes payable	1,647	2,000
Payments of long-term debt and notes payable	(41)	(45)
Payment of financing costs	(9)	—
Net cash flows provided by financing activities	<u>1,597</u>	<u>1,955</u>
Effect of exchange rate on cash	<u>—</u>	<u>7</u>
Net increase in cash and restricted cash	<u>833</u>	<u>1,276</u>
Cash and restricted cash, beginning of period	<u>2,318</u>	<u>1,929</u>
Cash and restricted cash, end of period	<u>\$ 3,151</u>	<u>\$ 3,205</u>
Supplemental cash flow information:		
Cash paid for interest and income taxes		
Interest	\$ 127	\$ 204
Income taxes	\$ 2	\$ 3
Non-cash investing and financing activities:		
Conversion of Preferred Series 2 stock to common stock	\$ —	\$ 73
Change in operating lease assets and liabilities due to amended leases	\$ 645	\$ —
Issuance of warrants in connection with convertible promissory notes	\$ 263	\$ —
Financing costs included in accounts payable and accrued expenses	\$ 27	\$ —

See accompanying notes to the condensed consolidated financial statements

Amergent Hospitality Group Inc. and Subsidiaries
Notes to the Condensed Consolidated Financial Statements (Unaudited)

1. NATURE OF BUSINESS

BASIS OF PRESENTATION

Amergent Hospitality Group Inc. (“Amergent”) was incorporated on February 18, 2020 as a wholly-owned subsidiary of Chanticleer Holdings, Inc. (“Chanticleer”) for the purpose of conducting the business of Chanticleer and its subsidiaries after completion of the spin-off of Amergent to the shareholders of Chanticleer (Spin-Off). The Spin-Off transaction was completed on April 1, 2020 in connection with Chanticleer’s completion of its merger transaction (the “Merger”) with Sonnet BioTherapeutics, Inc. (“Sonnet”). Amergent is in the business of owning, operating and franchising fast casual dining concepts.

The accompanying condensed consolidated financial statements include the accounts of Amergent and its subsidiaries (collectively “we,” “us,” “our,” or the “Company”). All intercompany and inter-entity balances have been eliminated in consolidation.

GENERAL

The accompanying condensed consolidated financial statements included in this Report have been prepared by the Company pursuant to the rules and regulations of the U.S. Securities and Exchange Commission (“SEC”) for interim reporting and include all adjustments (consisting only of normal recurring adjustments) that are, in the opinion of management, necessary for a fair presentation. These condensed consolidated financial statements have not been audited. The condensed consolidated balance sheet as of December 31, 2021 has been derived from the audited consolidated financial statements as of December 31, 2021 and for the year then ended included in Amergent’s annual report filed with the SEC on April 15, 2022. The results of operations for the three-month period ended March 31, 2022 are not necessarily indicative of the operating results for the full year ending December 31, 2022.

Certain information and footnote disclosures normally included in unaudited condensed consolidated financial statements prepared in accordance with generally accepted accounting principles of the United States (“U.S. GAAP”) have been condensed or omitted pursuant to such rules and regulations for interim reporting. The Company believes that the disclosures contained herein are adequate to make the information presented not misleading. However, these financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto included in Amergent’s Annual Report on Form 10-K for the year ended December 31, 2021 previously filed with the SEC.

LIQUIDITY, CAPITAL RESOURCES AND GOING CONCERN

As of March 31, 2022, the Company’s cash balance was \$3.1 million, of which \$0.6 million was restricted cash, its working capital deficiency was \$12.0 million and it had significant near-term commitments and contractual obligations. The level of additional cash needed to fund operations and our ability to conduct business for the next 12 months will be influenced primarily by the following factors:

- our ability to access the capital and debt markets to satisfy current obligations and operate the business;
- our ability to qualify for and access financial stimulus programs available through federal and state government programs;
- our ability to refinance or otherwise extend maturities of current debt obligations;
- our ability to manage our operating expenses and maintain gross margins;
- popularity of and demand for our fast-casual dining concepts; and
- general economic conditions and changes in consumer discretionary income.

We have typically funded our operating costs, acquisition activities, working capital requirements and capital expenditures with proceeds from the issuances of our common stock and other financing arrangements, including convertible debt, lines of credit, notes payable, capital leases, government stimulus funds and other forms of external financing.

The Company expects to have to seek additional debt or equity funding to support operations and there can be no assurances that such funding would be available at commercially reasonable terms, if at all.

As Amergent executes its business plan over the next 12 months, it intends to carefully monitor its working capital needs and cash balances relative to the availability of cost-effective debt and equity financing. In the event that capital is not available, Amergent may then have to scale back or freeze its growth plans, sell assets on less than favorable terms, reduce expenses, and/or curtail future acquisition plans to manage its liquidity and capital resources.

In early March 2020, the COVID-19 pandemic was declared to be a National Public Health Emergency, and the Centers for Disease Control and Prevention, as well as state and local legislative bodies and health departments, began issuing orders related to social distancing requirements, reduced restaurant seating capacity and other restrictions which resulted in a significant reduction in traffic at the Company's restaurants. As of mid-March 2020, the ordinances tightened, and dine-in capacity was eliminated or severely restricted. By April 2020, at the request of most state and local legislative bodies, the Company closed all of its dining rooms and began to operate in a take-out and delivery only capacity. In early May 2020, states began allowing the re-opening of dining rooms in a limited capacity and by the end of June 2020, the Company had re-opened dining rooms in approximately 95% of its restaurants while adhering to social distancing restrictions, which limited the number of guests it could serve in its restaurants at one time. During November 2020, rising case rates resulted in certain jurisdictions implementing restrictions that again reduced dining room capacity or mandated the closure of dining rooms. As a result, the Company began fiscal 2021 with significant limitations on its operations which, over the course of the fiscal year, varied widely from time to time, state to state and city to city; however, nonetheless negatively impacted its sales. Once COVID-19 vaccines were approved and moved into wider distribution in the United States in early to mid-2021, public health conditions improved and almost all of the COVID-19 restrictions on businesses eased.

While cases continue to decline and staffing continues to improve, overall consumer and business activity remains muted in certain markets as consumer behaviors have changed due to the COVID-19 pandemic and some businesses have yet to bring employees back into their offices. The Company's restaurant operations have been, and could again in the future, be disrupted by team member staffing issues because of illness, exclusion, fear of contracting COVID-19 or caring for family members due to COVID-19, legal requirements for employee vaccinations or COVID testing, lack of labor supply, competitive labor pressures, or for other reasons. Furthermore, inflation has been and is elevated across the Company's business, including food costs, due in part to the supply chain impacts of the pandemic. The Company remains in regular contact with its major suppliers and while, to date, it has not experienced significant disruptions in its supply chain due to the COVID-19 pandemic, the Company could see significant future disruptions should the impacts of the pandemic continue. Currently, national, state and local jurisdictions have removed their capacity restrictions on businesses and, therefore, the Company's restaurants are serving customers in its dining rooms without social distancing requirements. However, it is possible additional outbreaks could lead to restrictive measures that could impact the Company's guest demand and dining room capacity.

The Company's current operating losses, combined with its working capital deficit and uncertainties regarding the impact of COVID-19, raise substantial doubt about its ability to continue as a going concern. The accompanying condensed consolidated financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts and classification of liabilities that might be necessary should the Company be unable to continue as a going concern.

2. SIGNIFICANT ACCOUNTING POLICIES

There have been no changes to our significant accounting policies described in our Annual Report on Form 10-K for the year ended December 31, 2021 filed with the SEC on April 15, 2022, that would have had a significant impact on these unaudited condensed consolidated financial statements and related notes.

BASIS OF PRESENTATION

The accompanying condensed consolidated financial statements have been prepared in conformity with U.S. GAAP. Any reference in these notes to applicable guidance is meant to refer to U.S. GAAP as found in the Accounting Standards Codification (“ASC”) and Accounting Standards Updates (“ASU”) promulgated by the Financial Accounting Standards Board (“FASB”).

Certain prior year amounts have been updated to conform to the current period presentation. The Company has opted to present the financial information on the condensed consolidated balance sheets and condensed consolidated statements of operations, comprehensive loss, stockholders’ deficit and cash flows in thousands.

USE OF ESTIMATES

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Significant estimates include valuing options, warrants and convertible notes payable using Black-Scholes and Monte Carlo models, and analysis of the recoverability of goodwill and long-lived assets. Actual results could differ from those estimates, particularly given the significant social and economic disruptions and uncertainties associated with the ongoing COVID-19 pandemic and the COVID-19 control responses.

FAIR VALUE OF FINANCIAL INSTRUMENTS

The Company measures and records certain financial assets and liabilities at fair value on a recurring basis. U.S. GAAP provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority, referred to as Level 1, to quoted prices in active markets for identical assets and liabilities. The next priority, referred to as Level 2, is given to quoted prices for similar assets or liabilities in active markets or quoted prices for identical or similar assets or liabilities in markets that are not active; that is, markets in which there are few transactions for the asset or liability. The lowest priority, referred to as Level 3, is given to unobservable inputs. The table below reflects the level of the inputs used in the Company’s fair value calculations:

(in thousands)	Quoted Prices in Active Markets (Level 1)	Significant Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total Fair Value
March 31, 2022				
Assets (Note 4)				
Common stock of Sonnet	\$ 46	\$ —	\$ —	\$ 46
Liabilities (Note 3)				
Convertible note payable	\$ —	\$ —	\$ 983	\$ 983
(in thousands)	Quoted Prices in Active Markets (Level 1)	Significant Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total Fair Value
December 31, 2021				
Assets (Note 4)				
Common stock of Sonnet	\$ 50	\$ —	\$ —	\$ 50
Liabilities (Note 3)				
Convertible note payable	\$ —	\$ —	\$ 1,099	\$ 1,099

Inputs used in the Company’s Level 3 calculation of fair value for the convertible note payable are discussed in Note 3.

The Company is required to disclose fair value information about financial instruments when it is practicable to estimate that value. The carrying amounts of the Company's cash, restricted cash, accounts receivable, other receivables, accounts payable, other current liabilities, convertible notes payable (other than the convertible note payable discussed above) and notes payable approximate fair value due to the short-term maturities of these financial instruments and/or because related interest rates offered to the Company approximate current rates.

SEGMENTS

Operating segments are defined as components of an enterprise about which separate discrete information is available for evaluation by the chief operating decision maker, or decision-making group, in deciding how to allocate resources and in assessing performance. The Company operates under four brands but views its operations and manages its business in one segment – fast casual dining.

CASH

Cash consists of deposits held at financial institutions and is stated at fair value. The Company limits its credit risk associated with cash by maintaining its bank accounts at major financial institutions.

RESTRICTED CASH

As of March 31, 2022 and December 31, 2021, the Company maintained restricted cash of \$0.6 million and \$1.7 million, respectively. The restricted cash balance relates to the unused proceeds from the Restaurant Revitalization Fund grant received by Pie Squared Holdings discussed below in the *restaurant revitalization fund* section.

For purposes of the condensed consolidated cash flow statements, the restricted cash is aggregated with cash of \$2.5 million and \$2.4 million to arrive at total cash and restricted cash of \$3.1 million and \$3.2 million at March 31, 2022 and 2021, respectively.

PROPERTY AND EQUIPMENT

Property and equipment are stated at cost, less accumulated depreciation. Depreciation and amortization are recorded generally using the straight-line method over the estimated useful lives of the respective assets. Leasehold improvements are amortized over the lesser of the expected lease term or the estimated useful lives of the related assets using the straight-line method. Maintenance and repairs that do not improve or extend the useful lives of the assets are not considered assets and are charged to expense when incurred.

The estimated useful lives used to compute depreciation and amortization are as follows:

Leasehold improvements	5-15 years
Restaurant furnishings and equipment	3-10 years
Furniture and fixtures	3-10 years
Office and computer equipment	3-7 years

INTANGIBLE ASSETS

Trademark/Tradenames

Certain of the Company's trademark/tradenames have been determined to have a definite life and are being amortized on a straight-line basis over estimated useful lives of 3-10 years. The amortization expense of these definite-lived intangibles is included in depreciation and amortization in the Company's condensed consolidated statements of operations and comprehensive loss. Certain of the Company's trademark/tradenames have been classified as indefinite-lived intangible assets and are not amortized. Definite-lived intangible assets are assessed for impairment using the methods discussed below in the *long-lived assets* section. The Company's indefinite-lived intangible assets are tested for impairment at least annually by estimating their fair values and comparing them to the assets' carrying values. The Company estimates the fair value of trademarks using the relief-from-royalty method, which requires assumptions related to projected sales from its annual long-range plan; assumed royalty rates that could be payable if the Company did not own the trademarks; and a discount rate.

LONG-LIVED ASSETS

Long-lived assets, such as property and equipment, operating lease assets, and purchased intangible assets subject to depreciation and amortization, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Some of the events or changes in circumstances that would trigger an impairment test include, but are not limited to:

- significant under-performance relative to expected and/or historical results (negative comparable sales growth or operating cash flows for two consecutive years);

- significant negative industry or economic trends;
- knowledge of transactions involving the sale of similar property at amounts below the Company's carrying value; or
- the Company's expectation to dispose of long-lived assets before the end of their estimated useful lives, even though the assets do not meet the criteria to be classified as "Held for Sale."

If circumstances require a long-lived asset or asset group be tested for possible impairment, the Company first compares undiscounted cash flows expected to be generated by that asset or asset group to its carrying value. If the carrying value of the long-lived asset or asset group is not recoverable on an undiscounted cash flow basis, an impairment is recognized to the extent that the carrying value exceeds its fair value. Fair value is determined through various valuation techniques, including discounted cash flow models, quoted market values and third-party independent appraisals, as considered necessary.

During 2021, the Company determined that events occurred, some of which were related to the COVID-19 pandemic, requiring management to review certain long-lived assets for impairment. Refer to Notes 5, 6 and 10 for further discussion. There were no such indicators of impairment of long-lived assets during the three months ended March 31, 2022.

GOODWILL

Goodwill, which is not subject to amortization, is evaluated for impairment annually as of the end of the Company's year-end, or more frequently if an event occurs or circumstances change, such as material deterioration in performance or a significant number of store closures, that would indicate an impairment may exist. Goodwill is tested for impairment at a level of reporting referred to as a reporting unit. Management determined that the Company has one reporting unit.

When evaluating goodwill for impairment, the Company may first perform a qualitative assessment to determine whether it is more likely than not that a reporting unit is impaired. If the Company does not perform a qualitative assessment or determines that it is not more likely than not that the fair value of the reporting unit exceeds its carrying amount, a quantitative assessment is performed to calculate the estimated fair value of the reporting unit. If the carrying amount of the reporting unit exceeds the estimated fair value, an impairment charge is recorded to reduce the carrying value to the estimated fair value.

The Company performed a qualitative assessment at March 31, 2022 based on the best judgment of management for the future of the reporting unit and on information known at the time of the assessment, and determined that it was more likely than not that the fair value of its reporting unit exceeded the carrying amount and, therefore, goodwill was not impaired.

CONVERTIBLE NOTES PAYABLE

The Company analyzes its convertible debt instruments for embedded attributes that may require bifurcation from the host and accounting as derivatives. At the inception of each instrument, the Company performs an analysis of the embedded features requiring bifurcation and may elect, if eligible, to account for the entire instrument at fair value. If the fair value option were to be elected, any changes in fair value would be recognized in the accompanying condensed consolidated statements of operations until the instrument is settled. The Company elected to account for its convertible note payable issued in August 2021 in connection with the Pie Squared Holdings acquisition (see Note 7) at fair value and, as such, has recognized the change in fair value in the condensed consolidated statement of operations and comprehensive loss for the three months ended March 31, 2022. For the convertible notes payable issued in March 2022, the Company performed an analysis of embedded features and did not identify any features that require bifurcation. However, as those convertible notes payable were issued with warrants, the net proceeds received were allocated to the convertible notes payable and the warrants based on their respective fair values at the issuance date.

CONTRACT LIABILITIES

Contract liabilities consist of deferred revenue resulting from initial and renewal franchise license fees paid by franchisees, which are generally recognized on a straight-line basis over the term of the underlying franchise agreement, as well as upfront development fees paid by franchisees, which are generally recognized on a straight-line basis over the term of the underlying franchise agreement once it is executed. The recognition of initial and renewal license fees is accelerated if the franchise or development agreement is terminated. During the three months ended March 31, 2022, the Company recognized \$0.7 million of franchise income as a result of the cancellation of its international Master Franchise Agreement. There were no franchise or development agreement terminations during the three months ended March 31, 2021.

FOREIGN CURRENCY TRANSLATION

Assets and liabilities denominated in local currency are translated to U.S. dollars using the exchange rates as in effect at the balance sheet date. Results of operations are translated using average exchange rates prevailing throughout the period. Adjustments resulting from the process of translating foreign currency financial statements from functional currency into U.S. dollars are included in accumulated other comprehensive loss within stockholders' equity. Foreign currency transaction gains and losses are included in current earnings. The Company has determined that local currency is the functional currency for its foreign operations. The foreign subsidiary was sold in 2021 and there are no foreign assets held at March 31, 2022 or December 31, 2021.

LEASES

We determine if a contract contains a lease at inception. Our material operating leases consist of restaurant locations. Our leases generally have remaining terms of 1-20 years and most include options to extend the leases for additional 5-year periods. Generally, the lease term is the minimum of the non-cancelable period of the lease or the lease term inclusive of reasonably certain renewal periods up to a term of 20 years. If the estimate of our reasonably certain lease term was changed, our depreciation and rent expense could differ materially.

Operating lease assets and liabilities are recognized at the lease commencement date. Operating lease liabilities represent the present value of lease payments not yet paid. Operating lease assets represent our right to use an underlying asset and are based upon the operating lease liabilities adjusted for prepayments or accrued lease payments, initial direct costs, lease incentives, and impairment of operating lease assets. To determine the present value of lease payments not yet paid, we estimate incremental borrowing rates corresponding to the reasonably certain lease term. We estimated this rate based on prevailing financial market conditions, comparable company and credit analysis, and management judgment. If the estimate of our incremental borrowing rate was changed, our operating lease assets and liabilities could differ materially.

Assumptions made at the lease commencement date are re-evaluated upon the occurrence of certain events, such as a change in the likelihood that the Company will exercise a renewal option or a change in the estimated use of a lease incentive. Changes in assumptions are accounted for as lease modifications, and operating lease assets and liabilities are remeasured at the modification date.

EMPLOYEE RETENTION CREDIT

The Employee Retention Credit ("ERC") under the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") is a refundable tax credit which encouraged businesses to keep employees on the payroll during the COVID-19 pandemic. The program ended on January 1, 2022. Approximately \$0.1 million and \$0.8 million of ERC is included in accounts and other receivables in the condensed consolidated balance sheets as of March 31, 2022 and December 31, 2021.

RESTAURANT REVITALIZATION FUND

The American Rescue Plan Act established the Restaurant Revitalization Fund ("RRF") to provide funding to help restaurants and other eligible businesses keep their doors open. This program provided restaurants with funding equal to their pandemic-related revenue loss up to \$10.0 million per business and no more than \$5.0 million per physical location. Recipients are not required to repay the funding as long as funds are used for eligible uses no later than March 11, 2023. In 2021 and prior to its acquisition by the Company in August 2021, Pie Squared Holdings received a grant under the U.S. Small Business Administration's ("U.S. SBA") RRF for approximately \$10.0 million. The proceeds received were mainly used to repay existing debt and to also pay operating expenses. The unused funds received under the RRF at closing of the acquisition were \$2.0 million, and these funds were placed into escrow for the benefit of the Company for working capital to be used solely in the operations of the acquired business. Restricted cash and a deferred grant income liability have been recorded for the unused proceeds from the RRF, and grant income is being recognized as the Company expends the funds on eligible costs incurred under the RRF post acquisition. The Company recognized \$0.5 million related to the RRF as a contra-expense in grant income in the condensed consolidated statement of operations for the three months ended March 31, 2022.

The Company periodically submits to the escrow agent for the acquisition the planned uses of these funds, and the sellers have the right to review the planned uses to determine whether, in the sellers' opinion, the planned uses meet the criteria of "eligible uses" under the RRF. If determined to not meet such criteria, then the escrow agent will not distribute that portion of the request. Any unused funds on March 11, 2023, or if applicable, the awardee permanently closed before using all funds on authorized purposes, are repayable to the U.S. SBA. As the Company acquired all the outstanding membership interests in Pie Squared Holdings, the Company is now responsible that the grant proceeds were, in fact, properly obtained and disbursed for "eligible uses." If it is determined that Pie Squared Holdings obtained the grant improperly or that disbursements of such grant monies were not "eligible uses," then the Company would be responsible for the ramifications of such actions, including repayment of the approximately \$10.0 million of grant monies, among other items. Management completed its analysis of this contingency and concluded that, at this time, a liability does not need to be recorded for this contingency. In connection with the acquisition, the Company obtained an indemnification from the sellers which is inclusive of any matters related to the RRF.

SHARE-BASED COMPENSATION

The Company measures and recognizes share-based compensation expense for both employee and nonemployee awards based on the grant date fair value of the awards. The Company recognizes share-based compensation expense on a straight-line basis over the requisite service period of the awards, which is generally the vesting period. The Company recognizes forfeitures as they occur.

The Company estimates the fair value of employee and non-employee stock awards as of the date of grant using the Black-Scholes option pricing model. Management estimates the expected share price volatility based on the historical volatility of the Company. The expected term of the Company's stock awards has been determined utilizing the "simplified" method for awards that qualify as "plain-vanilla" stock awards. The risk-free interest rate is determined by reference to the yield curve of a zero-coupon U.S. Treasury bond on the date of grant of the award for time periods approximately equal to the expected term of the award. Expected dividend yield is zero based on the fact that the Company has never paid cash dividends on common stock and does not expect to pay any cash dividends in the foreseeable future.

INCOME TAXES

Deferred income taxes are provided on the liability method whereby deferred tax assets are recognized for deductible temporary differences and operating loss and tax credit carryforwards and deferred tax liabilities are recognized for taxable temporary differences. Temporary differences are the differences between the reported amounts of assets and liabilities and their tax bases. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. Deferred tax assets and liabilities are adjusted for the effects of changes in tax laws and rates on the date of enactment.

The Company has provided a valuation allowance for the full amount of the deferred tax assets in the accompanying condensed consolidated financial statements.

As of March 31, 2022 and December 31, 2021, the Company had no accrued interest or penalties relating to any income tax obligations. The Company currently has no federal or state examinations in progress, nor has it had any federal or state tax examinations since its inception. The last three years of the Company's tax years are subject to federal and state tax examination.

LOSS PER COMMON SHARE

The Company computes net loss per share using the weighted-average number of common shares outstanding during the period. Basic and diluted net loss per share are the same because the conversion, exercise or issuance of all potential common stock equivalents, which comprise the entire amount of the Company's outstanding warrants, as described in Note 9, the potential conversion of the convertible debt, as described in Note 7, and share-based compensation awards, as described in Note 9, would be anti-dilutive.

RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS

In May 2021, the FASB issued ASU 2021-04, *Earnings per Share (Topic 260), Debt – Modifications and Extinguishments (Subtopic 470-50), Compensation – Stock Compensation (Topic 718), and Derivatives and Hedging – Contracts in Entity's Own Equity (Subtopic 815-40): Issuer's Accounting for Certain Modifications or Exchanges or Freestanding Equity-Classified Written Call Options*. The pronouncement outlines how an entity should account for modifications made to equity-classified written call options, including stock options and warrants to purchase the entity's own common stock. The guidance in the ASU requires an entity to treat a modification of an equity classified option that does not cause the option to become liability-classified as an exchange of the original option for a new option. This guidance applies whether the modification is structured as an amendment to the terms and conditions of the equity-classified written call option or as termination of the original option and issuance of a new option. The guidance is effective prospectively for fiscal years beginning after December 15, 2021. The Company adopted this guidance on January 1, 2022, and it did not have a material effect on the condensed consolidated financial statements.

In November 2021, the FASB issued ASU 2021-10, *Government Assistance (Topic ASC 832): Disclosures by Business Entities about Government Assistance*. This standard requires disclosures about transactions with a government that have been accounted for by analogizing to a grant or contribution accounting model to increase transparency about the types of transactions, the accounting for the transactions, and the effect of the transactions on an entity's financial statements. The new standard is effective for annual periods beginning after December 15, 2021. The Company early adopted this guidance on January 1, 2022, and it did not have a material effect on the condensed consolidated financial statements.

We reviewed all other recently issued accounting pronouncements and concluded that they were either not applicable or not expected to have a significant impact to the condensed consolidated financial statements.

3. FAIR VALUE OF FINANCIAL INSTRUMENTS

The reconciliation of the convertible note payable issued in connection with the acquisition of Pie Squared Holdings measured at fair value on a recurring basis using significant unobservable inputs (Level 3) is as follows:

(in thousands)	Three months ended	
	March 31, 2022	
Balance at January 1, 2022	\$	1,099
Change in fair value		(116)
Balance at March 31, 2022	\$	983

The Company evaluated the convertible note payable in accordance with ASC Topic 815, *Derivatives and Hedging*, and determined that the conversion price discount creates a derivative. This derivative was not clearly and closely related to the debt host and was required to be separated and accounted for as a derivative instrument. The Company elected to initially and subsequently measure the convertible note payable at fair value, with changes in fair value recognized in operations. The estimated fair value of the convertible note payable was determined using a Monte Carlo simulation and the following assumptions as of March 31, 2022:

Volatility	90.00%
Risk free rate	0.35% – 1.90%
Stock price	\$ 0.37
Credit spread	25.43%

4. INVESTMENTS

Investments consist of the following:

(in thousands)	March 31, 2022	December 31, 2021
Common stock of Sonnet, at fair value ^(a)	\$ 46	\$ 50
Chanticleer Investors, LLC, at cost ^(b)	16	16
Total	\$ 62	\$ 66

(a) Represents the fair value of the common stock of Sonnet held by the Company after its exercise of warrants received in connection with the Merger. As of March 31, 2022, 122,064 shares of Sonnet were held.

(b) Represents the Company's investment in Chanticleer Investors, LLC, which holds an interest in Hooters of America, the operator and franchisor of the Hooters Brand worldwide. As of the dates presented, the Company's effective economic interest in Hooters of America was less than 1%. During the three months ended March 31, 2022, the Company received a dividend from its investment in Hooters of America of approximately \$0.1 million, which is included in other income in our condensed consolidated statement of operations.

5. PROPERTY AND EQUIPMENT, NET

Property and equipment, net consists of the following:

(in thousands)	March 31, 2022	December 31, 2021
Leasehold improvements	\$ 5,535	\$ 5,511
Restaurant furniture and equipment	2,768	2,768
Construction in progress	41	20
Office and computer equipment	37	33
Office furniture and fixtures	63	57
	8,444	8,389
Accumulated depreciation and amortization	(5,403)	(5,274)
	\$ 3,041	\$ 3,115

As of March 31, 2021, we performed an analysis of the recoverability of the carrying value of our property and equipment. Based on the analysis, an impairment charge of approximately \$0.3 million was recorded for the three months ended March 31, 2021. The impairment recognized during the three months ended March 31, 2021 was primarily the result of the impact of the COVID-19 outbreak in the United States, which had a significant impact throughout the hospitality industry. The impact varied by state/geographical area within the United States at various intervals during the pandemic and, therefore, the operating results and cash flows at the store level varied significantly.

Depreciation expense was \$0.1 million for each of the three months ended March 31, 2022 and 2021.

6. INTANGIBLE ASSETS, NET

GOODWILL

A rollforward of goodwill is as follows:

(in thousands)	Three Months Ended March 31, 2022	Year Ended December 31, 2021
Beginning balance	\$ 7,810	\$ 8,591
Acquisition of Pie Squared Holdings	—	51
Sale of Hooters UK	—	(820)
Foreign currency translation loss	—	(12)
Ending balance	\$ 7,810	\$ 7,810

OTHER INTANGIBLE ASSETS

Franchise and trademark/tradename intangible assets consist of the following:

(in thousands)		March 31, 2022	December 31, 2021
Trademark, Tradenames:			
American Roadside Burger	10 years	\$ 561	\$ 561
BGR: The Burger Joint	Indefinite	739	739
Little Big Burger	Indefinite	1,550	1,550
PizzaRev	5 years	410	410
		<u>3,260</u>	<u>3,260</u>
Acquired Franchise Rights:			
BGR: The Burger Joint	7 years	828	828
PizzaRev	5 years	410	410
		<u>1,238</u>	<u>1,238</u>
Total intangibles at cost		4,498	4,498
Accumulated amortization		(1,460)	(1,369)
Intangible assets, net		<u>\$ 3,038</u>	<u>\$ 3,129</u>

As of March 31, 2021, we performed an analysis of the recoverability of the carrying value of our intangible assets. Based on the analysis, an impairment charge of approximately \$0.3 million was recorded to trademark/tradenames for ABC: American Burger Company for the three months ended March 31, 2021.

Amortization of intangible assets was \$0.1 million for each of the three months ended March 31, 2022 and 2021. Amortization expense for the next five years is as follows (in thousands):

Year ending December 31:	
2022 (remaining nine months)	\$ 147
2023	164
2024	164
2025	164
2026	110
	<u>\$ 749</u>

7. LONG-TERM DEBT AND NOTES PAYABLE

Long-term debt and notes payable are summarized as follows:

(in thousands)	March 31, 2022	December 31, 2021
10% convertible debt (a)	\$ 4,038	\$ 4,038
8% convertible debt (b)	1,350	—
Convertible promissory note (measured at fair value) (c)	983	1,099
PPP loans (d)	4,109	4,109
EIDL loans (e)	300	300
Contractor note (f)	348	348
Notes payable (g)	256	—
Total Debt	11,384	9,894
Less: discount on convertible debt (a), (b)	(293)	(37)
Total Debt, net of discount	\$ 11,091	\$ 9,857
Current portion of long-term debt and notes payable	\$ 3,651	\$ 3,264
Long-term debt and notes payable, less current portion	\$ 7,440	\$ 6,593

- (a) In connection with and prior to the Spin-Off and Merger, on April 1, 2020, pursuant to an agreement among Chanticleer, Oz Rey, LLC ("Oz Rey") and certain original holders of the 8% non-convertible debentures that were satisfied during 2020, the Company issued a 10% secured convertible debenture (the "10% Convertible Debt") to Oz Rey in exchange for the 8% non-convertible debentures. The principal amount of the 10% Convertible Debt is \$4.0 million and payable in full on April 1, 2022, subject to extension by the holders in two-year intervals for up to 10 years from the issuance date upon Amergent meeting certain conditions. Interest is payable quarterly in cash. In connection with the exchange of the debentures, Amergent issued warrants to Oz Rey and the original 8% non-convertible debenture holders to purchase 2,925,200 shares of common stock. The exercise price is \$0.125 for 2,462,600 warrants and \$0.50 for 462,500 warrants. The warrants can be exercised on a cashless basis and expire 10 years from the issuance date.

The 10% Convertible Debt was previously amended to fix the conversion rate into common stock at \$0.10 per share. There is also a limitation on Oz Rey's ability to convert the debenture into common stock so that the conversion would not result in the issuance of common stock exceeding the amount of authorized shares. Oz Rey may, however, upon reasonable notice to the Company, require the Company to include in its proxy materials, for any annual meeting of stockholders being held by the Company, a proposal to amend the Company's certificate of incorporation to increase the Company's authorized shares to a number sufficient to allow for conversion of all shares underlying the debenture, on a fully diluted basis. Oz Rey also agreed that the Company would not be required under any circumstances to make a cash payment to settle the conversion feature not exercisable due to the authorized share cap or in an event that the Company was unable to deliver shares under the conversion feature. As of March 31, 2022, there would have been a deficiency in authorized shares of common stock of approximately 16,870,000, on a fully diluted basis, had Oz Rey elected to convert the debenture.

The Company recorded a debt discount of approximately \$0.4 million for the difference between the face value of the 10% Convertible Debt and the estimated fair value at the April 1, 2020 issuance date and amortized this discount over the two-year term of the notes. Amortization of approximately \$37,000 and \$45,000 was recorded as interest expense during the three months ended March 31, 2022 and 2021, respectively.

In connection with the 8% Convertible Debt transaction described in (b) below, the maturity date of the 10% Convertible Debt was extended to April 1, 2024 and Oz Rey agreed to subordinate payment of its 10% Convertible Debt to payment of the 8% Convertible Debt, which has been accounted for as a loan modification. In addition, Oz Rey received a fee equal to 2.0% of the principal amount of the 8% Convertible Debt issued in the transaction, totaling \$27,000, which has been recorded as a debt discount and is being amortized over the two-year term of the related debt. Amortization for the three months ended March 31, 2022 is nominal.

- (b) In March 2022, the Company commenced a private placement of up to \$3.0 million of 8% senior unsecured convertible debentures (the "8% Convertible Debt") and 3,000,000 common stock warrants. Pursuant to the Securities Purchase Agreement, the Company issued \$1.35 million of 8% Convertible Debt and warrants to purchase the number of shares of the Company's common stock equal to the principal amount of 8% Convertible Debt issued.

The 8% Convertible Debt matures 18 months after issuance and is subject to acceleration in the event of customary events of default. Interest is payable quarterly in cash. The 8% Convertible Debt may be converted by the holders at any time at a fixed conversion price of \$0.40 per share, and each warrant entitles the holder to purchase one share of common stock at an exercise price of \$0.50 per share. Both the notes and the warrants include a beneficial ownership blocker of 4.99% and contain customary provisions preventing dilution and providing the holders rights in the event of fundamental transactions. Upon the earlier of the maturity date or the one-year anniversary of conversion of the 8% Convertible Debt, holders of 51% of the registerable securities may request the Company to file a registration statement for the securities. The warrants can be exercised on a cashless basis and expire five years from the issuance date. If the Company makes any distribution to the common stockholders, the holders of the warrants will be entitled to participate on an as-if-exercised basis. As of March 31, 2022, the 8% Convertible Debt was convertible into 3,375,000 shares of common stock.

The net proceeds from the issuance were allocated to the 8% Convertible Debt and the warrants based on their respective fair values, resulting in an allocation of \$1.0 million to the 8% Convertible Debt and \$0.3 million to the warrants (see Note 9). The Company recorded a debt discount of approximately \$0.3 million for the difference between the face value of the 8% Convertible Debt and the amount allocated to the debt at the issuance date and is amortizing this discount over the 18-month term of the related debt. Amortization of approximately \$6,000 was recorded as interest expense during the three months ended March 31, 2022.

- (c) On August 30, 2021, the Company purchased all of the outstanding membership interests in Pie Squared Holdings. The purchase price was funded through the issuance of an 8% secured, convertible promissory note with a face value of \$1.0 million and a fair value of \$1.2 million at the acquisition date. The note is convertible at any time, in whole or in part, at the holder's option but includes a beneficial ownership blocker of 4.99%. The conversion price at any time is the volume weighted average price of the Company's common stock the 30 trading days immediately prior to delivery of notice of conversion, less a discount of 15%; provided, however, that the conversion price has a floor of \$0.50 per share and a cap of \$2.00 per share. The note contains customary provisions preventing dilution and providing the holder rights in the event of fundamental transactions, and it is secured by various security and other instruments creating a first priority lien on all of the membership interests and all of the assets of Pie Squared Holdings and subsidiaries in favor of the sellers.

Interest on the convertible promissory note is due quarterly and \$0.5 million of principal is due on August 30, 2022. Any remaining unpaid/non-converted amount is due on August 30, 2023. The Company has elected to measure the convertible promissory note at fair value, with changes being recognized in the condensed consolidated statements of operations. See Note 3 for additional information on the valuation of the convertible promissory note as of March 31, 2022.

- (d) On April 27, 2020, Amergent received a Paycheck Protection Program ("PPP") loan in the amount of approximately \$2.1 million. Due to the Spin-Off and Merger, Amergent was not publicly traded at the time of the loan application or funding. The note bears interest at 1% per year, matures in April 2022, and requires monthly interest and principal payments of approximately \$0.1 million beginning in November 2020 and through maturity. The currently issued guidelines of the program allow for the loan proceeds to be forgiven if certain requirements are met. Any loan proceeds not forgiven will be repaid in full. The Company had applied for loan forgiveness in the full amount of the loan, but the request was initially denied. The Company discussed the forgiveness request with the government agency that granted the loan and in March 2022, the U.S. SBA reversed its initial decision and will once again review the Company's application for loan forgiveness. No assurance can be given as to the amount, if any, of forgiveness. The application for forgiveness allowed the Company to defer the timing of repayment until the forgiveness assessment is completed.

On February 25, 2021, the Company received a second PPP loan in the amount of \$2.0 million. Amergent was not listed on a national securities exchange at the time of the loan application or funding. The note bears interest at 1% per year, matures on February 25, 2026, and requires monthly principal and interest payments of approximately \$45,000 beginning June 25, 2022 through maturity. The loan may be forgiven if certain criteria are met. No assurance can be given as to the amount, if any, of forgiveness.

- (e) On August 4, 2020, the Company obtained two loans under the Economic Injury Disaster Loan ("EIDL") assistance program from the U.S. SBA in light of the impact of the COVID-19 pandemic on the Company's business. The principal amount of the loans is \$0.3 million, with proceeds to be used for working capital purposes. Interest accrues at the rate of 3.75% per year. Total installment payments of \$1,462, including principal and interest, are due monthly. The balance of principal and interest is payable over the next thirty years from the date of the promissory note (August 2050). There are no penalties for prepayment. Based upon guidance issued by the U.S. SBA on June 19, 2020, the EIDL loans are not required to be refinanced by the PPP loan. In March 2022, the U.S. SBA extended the deferral period for the EIDL payments for an additional 12 months. The Company's installment payments will begin August 4, 2023.
- (f) The Company entered into a promissory note to repay a contractor for the build-out of a new Little Big Burger location. The note bears interest at 12% per year. In connection with and prior to the Merger and Spin-Off, on April 1, 2020, this note was assumed by Amergent. The Company is currently in default on this loan and a writ of garnishment was ordered against the Company in 2020 for approximately \$0.4 million. The additional \$0.1 million is included in accounts payable and accrued expenses at March 31, 2022 and December 31, 2021.
- (g) In February and March 2022, eight company-owned stores entered into notes payable to Toast Capital Loans. The terms of the notes require payment of 13.2% of daily credit card sales of the eight stores until the notes are paid in full. The terms of the notes are 270 days and the implied interest rate is approximately 15% per year.

The Company's various loan agreements contain financial and non-financial covenants and provisions providing for cross-default. The evaluation of compliance with these provisions is subject to interpretation and the exercise of judgment. Oz Rey has provided a waiver of certain financial covenants through April 30, 2023.

Future minimum payments are as follows (in thousands):

Year ending December 31:	
2022 (remaining nine months)	\$ 3,520
2023	2,383
2024	4,579
2025	547
2026	98
Thereafter	274
Less: discount on convertible debt	(293)
Less: fair value adjustment	(17)
	11,091
Less: current maturities of long-term debt and notes payable	(3,651)
Long-term debt and notes payable	<u>\$ 7,440</u>

8. ACCOUNTS PAYABLE AND ACCRUED EXPENSES

Accounts payable and accrued expenses are summarized as follows:

(in thousands)	March 31, 2022	December 31, 2021
Accounts payable	\$ 2,357	\$ 2,544
Accrued expenses	2,130	1,955
Accrued taxes (VAT, sales, payroll, etc.)	2,080	2,149
Accrued interest	232	196
	<u>\$6,799</u>	<u>6,844</u>

As of March 31, 2022 and December 31, 2021, approximately \$1.9 million and \$2.0 million, respectively, of employee and employer payroll taxes and associated interest and penalties have been accrued but not remitted to certain taxing authorities by the Company. These accruals are for periods prior to 2019 for cash compensation paid and are reflected as a component of the accrued taxes line above. As a result, the Company is liable for such payroll taxes and any related penalties and interest. Upon the advice of our tax professionals, we are paying the trust fund portion of the outstanding tax accruals which represents the portion of taxes withheld from our employees but not remitted to the taxing authorities. For our locations that have permanently closed, our tax liability after paying the trust fund balance is approximately \$0.8 million and is recorded within accrued taxes on our condensed consolidated balance sheet as of March 31, 2022. The taxing authorities have indicated that we are still liable for these amounts, however, since the locations are permanently closed and have no assets, they will stop active collection procedures on these amounts.

9. STOCKHOLDER'S EQUITY

2020 bridge financing

Pursuant to a Securities Purchase Agreement dated February 7, 2020, the Company sold 1,500 shares of a new series of convertible preferred stock of Chanticleer (the "Series 2 Preferred") to an institutional investor for gross proceeds to the Company of \$1.5 million less transaction costs of \$0.1 million. In addition, pursuant to the original agreement with the investors, the Company issued 5-year warrants to purchase an aggregate of 350,000 shares of common stock to the investors at \$1.25 per share. Each share of Series 2 Preferred has a stated value of \$1,000. Upon issuance, the Company bifurcated and recorded, as a liability, an embedded derivative in the amount of \$0.5 million. The effective conversion price of the Series 2 Preferred after the bifurcation of the derivative resulted in a beneficial conversion feature of \$0.7 million, which was then immediately recorded as a deemed dividend as the preferred stock is immediately convertible. In March 2020, an aggregate of 713 shares of Series 2 Preferred were converted into 1,426,849 shares of common stock. In connection with the Merger, all remaining outstanding shares of the Series 2 Preferred were automatically cancelled and exchanged for substantially similar shares of preferred stock in Amergent, the shareholders of Chanticleer common stock received shares of Amergent on a 1 for 1 basis (spin-off shares) and received 1 share of Sonnet common stock for 26 shares of Chanticleer common stock held at the time of the Merger.

On August 17, 2020, the Company and the holders of the Series 2 Preferred entered into a Waiver, Consent, and Amendment to the Certificate of Designations (the "Extension Agreement") which included provisions for an extension of the True-Up Payment discussed below from August 7, 2020 to December 10, 2020, and permitted the shares of Amergent obtained by the investor in the Spin-Off to be included in the determination of the True-Up Payment discussed below, with the Company paying all expenses incurred by the institutional investor in connection with the Extension Agreement and certain consideration for the institutional investor's willingness to extend the date of the True-Up Payment. The consideration included \$66,000 of cash and warrants to purchase 134,000 shares of the Company's common stock with a value of \$28,060 (see below).

On February 16, 2021, the Company and the holders of the Series 2 Preferred entered into a Waiver, Consent and Amendment to the Certificate of Designations (the "Waiver"). Pursuant to the Waiver, the Company filed the Second Amendment and Restated Certificate of Designations of Series 2 Convertible Preferred Stock ("Amended COD") with the Delaware Secretary of State (i) providing for the extension of the True-Up Payment to April 1, 2021, (ii) providing for the deduction of proceeds to the original holders from sales of Series 2 Preferred for the True-Up Payment, and (iii) providing for a reduction in amount of cash subject to restriction as discussed below from \$1.3 million to \$0.9 million.

During the year ended December 31, 2021, the investors converted 637 shares of the Series 2 Preferred into 1,274,000 common shares and sold those common shares in the market. In addition, the investors sold their remaining 150 Series 2 Preferred to other investors. The shares sold to the investors no longer contain the True-Up Payment provision. The new investors converted 50 shares of Series 2 Preferred into 100,000 shares of common stock during May 2021, and 100 shares of Series 2 Preferred remain outstanding at December 31, 2021 and March 31, 2022.

The Series 2 Preferred is classified in the accompanying condensed consolidated balance sheets as temporary equity due to certain contingent redemption features which are outside the control of the Company.

Designations, rights and preferences of Series 2 Preferred:

Stated value: Each share of Series 2 Preferred had a stated value of \$1,000.

True-Up Payment: Amergent is required to pay the original holder an amount in cash equal to the dollar value of 125% of the stated value of the Series 2 Preferred less the proceeds previously realized by the holder from the sale of all conversion and spin-off shares received by holder in Amergent, net of brokerage commissions and any other fees incurred by the holder in connection with the sale of any conversion shares or spin-off shares on April 1, 2021 (which period was extended). This True-Up Payment was settled in July 2021 with a payment of \$0.1 million, and the cash is no longer subject to restriction for this matter. Prior to the settlement, the True-Up Payment was accounted for as a derivative and a \$0.2 million change in fair value was recorded for the three months ended March 31, 2021.

The Company determined that the True-Up Payment constituted a “make-whole” provision as defined by U.S. GAAP that was required to be settled in cash and, as such, was bifurcated from the host instrument, the Series 2 Preferred. It was accounted for as a derivative liability prior to settlement, with changes in fair value recorded in change in fair value of derivative liabilities in the condensed consolidated statement of operations for the three months ended March 31, 2021.

Redemption: There are triggering events, as defined, that can cause the Series 2 Preferred to be redeemable at the option of the holder, some of which are outside the control of the Company.

Conversion at option of holder/ beneficial ownership limitation: The Series 2 Preferred is convertible at the option of holder at the lesser of (i) \$1.00 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like) or (ii) 90% of the five day average volume weighted average price of the common, provided the conversion price has a floor of \$0.50 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like). Conversion is subject to a beneficial ownership limitation of 4.99%. This limitation was increased by the holder to 9.99% prior to the Merger.

Forced conversion: The Company had the right to require the holder to convert up to 1,400 shares of Series 2 Preferred upon delivery of notice three days prior to the Merger, subject to the beneficial ownership limitation and applicable Nasdaq rules. Unconverted shares of Series 2 Preferred automatically were exchanged for an equal number of shares of Series 2 Preferred in Amergent on substantially the same terms.

Liquidation preference: Upon any liquidation, dissolution or winding-up of the Company, the holder is entitled to receive out of the assets, whether capital or surplus, an amount equal to 125% of the stated value plus any default interest and any other fees or liquidated damages then due and owing thereon under the Certificate of Designations, for each share of Series 2 Preferred before any distribution or payment to the holders of common stock.

Voting rights: The holder of Series 2 Preferred has the right to vote together with the holders of common stock as a single class on an as-converted basis on all matters presented to the holders of common stock and shall vote as a separate class on all matters presented to the holders of Series 2 Preferred. In addition, without the approval of the holder, the Company is required to obtain the approval of Series 2 Preferred, as is customary, for certain events and transactions not contemplated by the Merger.

Triggering events: Breach of Company’s obligations will trigger a redemption event.

Anti-dilution: The Series 2 Preferred provides for customary adjustments in the event of dividends or stock splits and anti-dilution protection.

Warrants

At March 31, 2022, the outstanding warrants consisted of the following:

Date Issued	Number of Warrants	Exercise Price	Expiration Date
April 1, 2020	2,462,600	\$ 0.125	April 1, 2030
April 1, 2020	462,600	\$ 0.500	April 1, 2030
March 30, 2020	350,000	\$ 1.250	March 30, 2025
August 17, 2020	134,000	\$ 1.250	August 17, 2025
March 15, 2022	250,000	\$ 0.500	March 15, 2027
March 21, 2022	250,000	\$ 0.500	March 21, 2027
March 22, 2022	250,000	\$ 0.500	March 22, 2027
March 24, 2022	600,000	\$ 0.500	March 24, 2027
	<u>4,759,200</u>		

A summary of the warrant activity during the three months ended March 31, 2022 is presented below:

	Number of Warrants	Weighted Average Exercise Price	Weighted Average Remaining Life
Outstanding at January 1, 2022	3,409,200	\$ 0.34	7.6
Granted	1,350,000	\$ 0.50	5.0
Exercised	—	\$ —	—
Forfeited/Other Adjustments	—	\$ —	—
Outstanding at March 31, 2022	4,759,200	\$ 0.38	6.6
Exercisable at March 31, 2022	4,759,200	\$ 0.38	6.6

As discussed in Note 7, 1,350,000 warrants were granted in March 2022 in connection with the issuance of 8% Convertible Debt and are equity-classified in the condensed consolidated financial statements. The net proceeds from the issuance were allocated to the 8% Convertible Debt and the warrants based on their respective fair values at the issuance date, resulting in an allocation of approximately \$0.3 million to the warrants. Assumptions used in calculating the fair value of the warrants at the issuance date include the following:

Stock price per share	\$ 0.37 – 0.40
Term	5.0 years
Expected volatility	90.00%
Divided yield	—
Risk-free interest rate	2.10% – 2.39%

Options

In August 2021, the Company adopted the 2021 Inducement Plan (“the Plan”). Under the 2021 Inducement Plan, the Company can grant stock options and stock awards. There are 500,000 shares of common stock reserved for issuance under the Plan. As of March 31, 2022, 50,000 shares remained available for future grants.

In November 2021, the Company adopted the 2021 Equity Incentive Plan (the “Incentive Plan”). Under the 2021 Incentive Plan, the Company can grant stock options and stock awards. The stockholders of the Company approved the Incentive Plan on December 30, 2021. There are 2,000,000 shares of common stock reserved for issuance under the Incentive Plan. As of March 31, 2022, 2,000,000 shares remained available for future grants.

Share-based awards generally vest over a period of three years, and share-based awards that lapse or are forfeited are available to be granted again. The contractual life of all share-based awards is five years. The expiration date of the outstanding share-based awards is August 2026.

The Company recorded share-based compensation expense of approximately \$6,000 in general and administrative expenses during the three months ended March 31, 2022.

The following table summarizes the share-based awards as of March 31, 2022:

	Number of Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term
Outstanding at March 31, 2022	450,000	\$ 1.38	4.3
Exercisable at March 31, 2022	175,000	\$ 2.22	4.3

There were no options granted, exercised or forfeited during the three months ended March 31, 2022. As of March 31, 2022, the unrecognized compensation cost related to outstanding share-based awards was approximately \$43,000 and is expected to be recognized as expense over a weighted-average period of approximately 1.5 years.

10. COMMITMENTS AND CONTINGENCIES

Legal proceedings

Indemnification agreement and tail policy

On March 25, 2020, pursuant to the requirements of the Merger Agreement, Chanticleer, Sonnet and Amergent entered into an indemnification agreement (“Indemnification Agreement”) providing that Amergent will fully indemnify and hold harmless each of Chanticleer and Sonnet, and each of their respective directors, officers, stockholders and managers who assumes such role upon or following the closing of the Merger against all actual or threatened claims, losses, liabilities, damages, judgments, fines and reasonable fees, costs and expenses, including attorneys’ fees and disbursements, incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, administrative, investigative or otherwise, related to the Spin-Off business prior to or in connection with its disposition to Amergent. The Indemnification Agreement will expire on March 25, 2026.

In addition, pursuant to Merger Agreement, prior to closing of the Merger, the Spin-Off entity acquired a tail insurance policy in a coverage amount of \$3.0 million, prepaid in full by the Spin-Off entity, at no cost to the indemnitees, and effective for at least six years following the consummation of the disposition, covering the Spin-Off entity’s indemnification obligations to the indemnitees (referred to herein as the “Tail Policy”). No claims have arisen to date, and the Company does not anticipate that any potential liability would exceed the insured amount.

Litigation related to leased properties

During 2021 and the three months ended March 31, 2022, the Company was in arrears on rent due on several of its leases as a result of the COVID-19 pandemic. As a result, the Company has pending litigation related to seven sites of which four have permanently closed. The outcome of this litigation could result in the permanent closure of additional restaurant locations as well as the possibility of the Company being required to pay interest and damages, modify certain leases on unfavorable terms and could result in material impairments to the Company’s assets. See *leases* section below for discussion of past due rent on abandoned locations.

No amounts have been accrued as of March 31, 2022 or December 31, 2021 in the accompanying condensed consolidated balance sheets as management does not believe the outcome will result in additional liabilities to the Company; however, there can be no guarantees.

From time to time, the Company may be involved in other legal proceedings and claims that have arisen in the ordinary course of business are generally covered by insurance. As of March 31, 2022, the Company does not expect the amount of ultimate liability with respect to these matters to be material to the Company’s financial condition, results of operations or cash flows.

Leases

The Company’s leases typically contain rent escalations over the lease terms. The Company recognizes expense for these leases on a straight-line basis over the lease terms. Additionally, tenant incentives used to fund leasehold improvements are recognized when earned and reduce our right-of-use asset related to the leases. These incentives are amortized through the right-of-use asset as reductions of expense over the lease terms.

Some of the Company’s leases include rent escalations based on inflation indexes and fair market value adjustments. Certain leases contain contingent rental provisions that include a fixed base rent plus an additional percentage of the restaurant’s sales in excess of stipulated amounts. Operating lease liabilities are calculated using the prevailing index or rate at lease commencement. Subsequent escalations in the index or rate and contingent rental payments are recognized as variable lease expenses. The Company’s lease agreements do not contain any material residual value guarantees or material restrictive covenants. As part of the lease agreements, the Company is also responsible for payments regarding non-lease components (common area maintenance, operating expenses, etc.) and percentage rent payments based on monthly or annual restaurant sales amounts which are considered variable costs and are not included as part of the lease liabilities.

Related to the adoption of Leases Topic 842, our policy elections were as follows:

Short-term policy

The Company has elected the short-term lease recognition exemption for all applicable classes of underlying assets. Leases with an initial term of 12 months or less, that do not include an option to purchase the underlying asset that the Company is reasonably certain to exercise, are not recorded on the balance sheet.

Supplemental balance sheet information related to leases was as follows (in thousands):

Operating Leases	Classification	March 31, 2022	December 31, 2021
Right-of-use assets	Operating lease assets	\$ 8,336	\$ 8,021
Current lease liabilities	Current operating lease liabilities	4,425	4,599
Non-current lease liabilities	Long-term operating lease liabilities	8,897	8,644
		\$ 13,322	\$ 13,243

Lease term and discount rate were as follows:

	March 31, 2022	December 31, 2021
Weighted average remaining lease term (years)	6.5	6.7
Weighted average discount rate	7.8%	8.1%

As of March 31, 2021, we performed an analysis of the recoverability of our right-of-use assets. Based on the analysis, an impairment charge of approximately \$0.7 million was recorded for the three months ended March 31, 2021. The impairment recognized during the three months ended March 31, 2021 was primarily the result of the impact of the COVID-19 outbreak in the United States, which had a significant impact throughout the hospitality industry. Negative impacts to the operating results and cash flows varied significantly at the store level, where some stores operated at a reduced capacity and several stores were permanently closed.

During the three months ended March 31, 2022, no lease liabilities were derecognized. During the three months ended March 31, 2021, approximately \$43,000 of lease liabilities were derecognized due to the Company negotiating the cancellation of its obligations under certain lease agreements. The cancellations resulted from the COVID-19 pandemic. The Company had lease liabilities of \$2.5 million related to abandoned leases as of March 31, 2022. These lease liabilities are presented as part of current operating lease liabilities.

During the three months ended March 31, 2022, the Company amended certain leases and changed its assumptions regarding the exercise of a renewal option, which have been accounted for as lease modifications. The operating lease assets and liabilities were remeasured at the modification dates, resulting in an increase of \$0.6 million to both the right-of-use assets and lease liabilities. There were no lease modifications during the three months ended March 31, 2021.

Rent expense of approximately \$0.5 million was incurred during the three months ended March 31, 2022, of which approximately \$13,000 was variable. Rent expense of approximately \$0.6 million was recognized the three months ended March 31, 2021, of which approximately \$0.1 million was variable.

PPP loan

The Company received two PPP loans totaling \$4.1 million, which were established under the CARES Act and administered by the U.S. SBA. The application for the PPP loans requires the Company to, in good faith, certify that the current economic uncertainty made the loan requests necessary to support the ongoing operations of the Company. This certification further requires the Company to take into account current business activity and the Company's ability to access other sources of liquidity sufficient to support the ongoing operations in a manner that is not significantly detrimental to the business. The receipt of funds from the PPP loans and forgiveness of the PPP loans is dependent on the Company having initially qualified for the PPP loans and qualifying for the forgiveness of such PPP loans based on funds being used for certain expenditures such as payroll costs and rent, as required by the terms of the PPP loans. There is no assurance that the Company's obligation under the PPP loans will be forgiven. If the PPP loans are not forgiven, the Company will need to repay the PPP loans over the applicable deferral period.

Presently, the U.S. SBA and other governmental communications have indicated that all loans in excess of \$2.0 million will be subject to audit and that those audits could take up to seven years to complete. If the U.S. SBA determines that the PPP loans were not properly obtained and/or expenditures supporting forgiveness were not appropriate, the Company would need to repay some or all of the PPP loans and record additional expense which could have a material adverse impact on the business, financial condition and results of operations in a future period.

RRF

As discussed in Note 2, Pie Squared Holdings received an approximately \$10.0 million grant under the RRF and the Company assumed the risks and rewards related to the grant through the acquisition of Pie Squared Holdings. If it is determined that Pie Squared Holdings obtained the grant improperly or the disbursement of such grant monies was not for “eligible uses,” then the Company would be responsible for the ramifications of such actions including the repayment of the \$10.0 million of grant monies, among other items.

11. SUBSEQUENT EVENTS

The Company has evaluated subsequent events from the balance sheet date through the date at which the condensed consolidated financial statements were available to be issued, and there are no items requiring disclosure.

12. RESTATEMENT OF PREVIOUSLY ISSUED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

The Company, while undergoing the audit of its consolidated financial statements as of December 31, 2021 and for the year then ended, determined that it had over-depreciated certain assets. This impacted the previously reported amounts for property and equipment and depreciation and amortization, among other line items, in the condensed consolidated interim financial statements.

The following table sets forth the effects of the adjustment on affected items within the Company’s previously reported Condensed Consolidated Balance Sheet:

(in thousands)	March 31, 2021		
	As reported	Adjustment	As restated
Property and equipment, net	\$ 3,172	\$ 136	\$ 3,308
Accumulated deficit	\$ (97,136)	\$ 136	\$ (97,000)

The following table sets forth the effects of the adjustment on affected items within the Company’s previously reported Condensed Consolidated Statement of Operations:

	Three months ended March 31, 2021		
	As reported	Adjustment	As restated
Depreciation and amortization	\$ 368	\$ (136)	\$ 232
Operating (loss) income	\$ (2,790)	\$ 136	\$ (2,654)
Consolidated net (loss) income	\$ (2,713)	\$ 136	\$ (2,577)
Net (loss) income attributable to Amergent Hospitality Group Inc.	\$ (2,548)	\$ 136	\$ (2,412)
Net (loss) income attributable to Amergent Hospitality Group Inc. per common share, basic and diluted	\$ (0.18)	\$ 0.01	\$ (0.17)

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

The following discussion and analysis of our financial condition and results of operations should be read together with our financial statements and the related notes and the other financial information included elsewhere in this Report. This discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors, including those discussed below and elsewhere in this Report, particularly those under "Risk Factors."

Overview

As of March 31, 2022, we operate and franchise a system-wide total of 42 fast casual restaurants, of which 29 are company-owned and 13 are owned and operated by franchisees under franchise agreements.

American Burger Company ("ABC") is a fast-casual dining chain consisting of 2 company-owned locations in North Carolina and New York. ABC is known for its diverse menu featuring fresh salads, customized burgers, milk shakes, sandwiches, and beer and wine.

The Burger Joint ("BGR") was acquired in March 2015 and consists of 7 company-owned locations and 7 franchisee-operated locations in the United States.

Little Big Burger ("LBB") was acquired in September 2015 and consists of 16 company-owned locations in the Portland, Oregon, Seattle, Washington, and Charlotte, North Carolina areas. One location was temporarily closed at March 31, 2022 due to lack of available employees. Of the company-owned restaurants, 8 of those locations are operated under partnership agreements with investors where we control the management and operations of the stores, and the partners supply the capital to open the stores in exchange for a non-controlling interest.

Pie Squared Holdings ("PIE") was acquired in August 2021. PIE, directly and through its 4 wholly-owned subsidiaries, owns, operates and franchises pizza restaurants operating under the tradename PizzaRev. The PizzaRev stores consist of 3 company-owned locations, one of which opened on January 4, 2022, and 9 franchised locations. Three of these franchised locations were not open at the time of purchase and are not included in our total store count. One additional franchise location is planned to open in 2022.

The Jantzen Beach, Oregon gaming location was a former Hooters of America location and is only open for online gaming sales, drinks and a limited food menu.

Recent developments

In March 2022, we commenced a private placement of up to \$3.0 million of 8% senior unsecured convertible debentures (the "8% Convertible Debt") and 3,000,000 common stock warrants. Pursuant to the Securities Purchase Agreement, we issued \$1.35 million of 8% Convertible Debt and warrants to purchase the number of shares of our common stock equal to the principal amount of 8% Convertible Debt issued. The 8% Convertible Debt matures 18 months after issuance and is subject to acceleration in the event of customary events of default. Interest is payable quarterly in cash. The 8% Convertible Debt may be converted by the holders at any time at a fixed conversion price of \$0.40 per share, and each warrant entitles the holder to purchase one share of common stock at an exercise price of \$0.50 per share. Both the notes and the warrants include a beneficial ownership blocker of 4.99% and contain customary provisions preventing dilution and providing the holders rights in the event of fundamental transactions. Upon the earlier of the maturity date or the one-year anniversary of conversion of the 8% Convertible Debt, holders of 51% of the registrable securities may request the Company to file a registration statement for the securities. The warrants can be exercised on a cashless basis and expire five years from the issuance date. If the Company makes any distribution to the common stockholders, the holders of the warrants will be entitled to participate on an as-if-exercised basis.

In connection with the issuance of the 8% Convertible Debt, the maturity date of the existing 10% secured convertible debenture ("10% Convertible Debt") was extended to April 1, 2024, and the holder of the existing 10% Convertible Debt agreed to subordinate payment of its 10% Convertible Debt to payment of the 8% Convertible Debt.

RESULTS OF OPERATIONS FOR THE THREE MONTHS ENDED MARCH 31, 2022 COMPARED TO THE THREE MONTHS ENDED MARCH 31, 2021

Our results of operations are summarized below:

(in thousands)	Three months ended				
	March 31, 2022		March 31, 2021		% Change
	Amount	% of Revenue*	Amount	% of Revenue*	
Revenue:					
Restaurant sales, net	\$ 4,758	84.2%	\$ 4,444	96.8%	7.1%
Gaming income, net	103	1.8%	57	1.2%	80.7%
Franchise income	789	14.0%	92	2.0%	757.6%
Total revenue	5,650		4,593		
Expenses:					
Restaurant cost of sales	1,492	31.4%	1,316	29.6%	13.4%
Restaurant operating expenses	3,479	73.1%	3,245	73.0%	7.2%
General and administrative expenses	1,336	23.6%	1,166	25.4%	14.6%
Asset impairment charges	—	0.0%	1,288	28.0%	(100.0)%
Depreciation and amortization	222	3.9%	232	5.1%	(4.3)%
Grant income	(548)	(9.7)%	—	—%	100.0%
Total expenses	5,981		7,247		
Operating loss	(331)		(2,654)		
Other income (expense):					
Interest expense	(187)	(3.3)%	(157)	(3.4)%	19.1%
Change in fair value of derivative liabilities	—	—%	185	4.0%	(100.0)%
Change in fair value of investment	(4)	(0.1)%	4	0.1%	(200.0)%
Change in fair value of convertible promissory note	116	2.1%	—	—%	100.0%
Gain on extinguished lease liabilities	—	—%	43	0.9%	(100.0)%
Gain on extinguished trade payable	161	2.8%	—	—%	100.0%
Other income	219	3.9%	2	—%	10,850.0%
Total other income	305		77		
Loss before income taxes	(26)		(2,577)		
Income tax expense	(2)	—%	—	—%	100.0%
Consolidated net loss	\$ (28)		\$ (2,577)		

* Restaurant cost of sales and operating expenses percentages are based on restaurant sales, net. Other percentages are based on total revenue.

Revenue

Total revenue increased to \$5.7 million for the three months ended March 31, 2022 from \$4.6 million for the three months ended March 31, 2021.

(in thousands)	Three months ended March 31, 2022	
	Amount	% of Revenue
Restaurant sales, net	\$ 4,758	84.2%
Gaming income, net	103	1.8%
Franchise income	789	14.0%
Total revenue	\$ 5,650	100.0%

(in thousands)	Three months ended March 31, 2021	
	Amount	% of Revenue
Restaurant sales, net	\$ 4,444	96.8%
Gaming income, net	57	1.2%
Franchise income	92	2.0%
Total revenue	\$ 4,593	100.0%

- Revenue from restaurant sales increased 7.1% to \$4.8 million for the three months ended March 31, 2022, compared to \$4.4 million for the three months ended March 31, 2021. The primary reasons for the increase were due to increased occupancy and declining hesitancy from the public to dine in public locations as a result of the rebound from the COVID-19 pandemic.
- Gaming income increased 80.7% to \$0.1 million for the three months ended March 31, 2022, compared to \$0.06 million for the three months ended March 31, 2021. The primary reason for this increase was due to the effect of COVID-19 pandemic recovery.
- Franchise income increased 757.6% to \$0.8 million for the three months ended March 31, 2022, compared to \$0.1 million for the three months ended March 31, 2021, which is primarily due to \$0.7 million of franchise income recognized in March 2022 as a result of the Company terminating its international Master Franchise Agreement as the requirements in the agreement had not been met and all international stores had been closed. The Master Franchisee notified the Company that it would not be reopening these stores. In addition, contract liabilities decreased \$0.7 million as a result of the termination of the international Master Franchise Agreement.

Restaurant cost of sales

Restaurant cost of sales increased to \$1.5 million for the three months ended March 31, 2022 from \$1.3 million for the three months ended March 31, 2021. The restaurant cost of sales as a percentage of restaurant sales increased to 31.4% for the three months ended March 31, 2022 from 29.6% for the three months ended March 31, 2021. The overall increase in restaurant cost of sales was due to the 7.1% increase in restaurant revenue to \$4.8 million for the three months ended March 31, 2022 compared to \$4.4 million for the three months ended March 31, 2021. The increase in restaurant cost of sales as a percentage of restaurant sales is a result of rising food costs.

Restaurant operating expenses

Restaurant operating expenses increased to \$3.5 million for the three months ended March 31, 2022 from \$3.2 million for the three months ended March 31, 2021. The increase in restaurant operating expenses was driven by the overall increase in revenue, as described in the revenue section above. In addition, we operated 29 company-owned restaurants during the three months ended March 31, 2022, compared to 26 company-owned restaurants during the three months ended March 31, 2021.

General and administrative expense ("G&A")

G&A expenses were approximately \$1.3 million during the three months ended March 31, 2022 and \$1.2 million during the three months ended March 31, 2021. During the three months ended March 31, 2022, salary and benefits increased by \$0.2 million due to the addition of two senior management personnel and advertising, insurance and other expenses increased by \$0.1 million due to an increase in advertising spending as we begin to recover from the COVID-19 pandemic. These increases were offset by a decrease of \$0.1 million in audit, legal and other professional services, as the three months ended March 31, 2021 included the first year-end audit subsequent to being spun-off from Chanticleer, as well as professional services and fees related to lease-related legal and accounting matters. Significant components of G&A are summarized as follows:

(in thousands)	Three months ended		
	March 31, 2022	March 31, 2021	Change
Audit, legal and other professional services	\$ 465	\$ 607	\$ (142)
Salary and benefits	657	438	219
Advertising, insurance and other	179	112	67
Stockholder services and fees	13	4	9
Travel and entertainment	22	5	17
Total G&A expenses	<u>\$ 1,336</u>	<u>\$ 1,166</u>	<u>\$ 170</u>

Asset impairment charges

We did not record any asset impairment charges during the three months ended March 31, 2022.

Asset impairment charges of \$1.3 million were recorded during the three months ended March 31, 2021. The impairment was comprised of \$0.3 million, \$0.7 million and \$0.3 million of impairment on property and equipment, right-of-use asset and intangible assets, respectively, and was due to cash flow implications resulting from the ongoing COVID-19 pandemic.

Grant income

Grant income of \$0.5 million from the Restaurant Revitalization Fund ("RRF") was recognized during the three months ended March 31, 2022. Pie Squared Holdings, which we acquired during August 2021, received a grant under the RRF and \$2.0 million of unused funds at the closing of the acquisition were placed into escrow for our benefit.

We did not receive any grant income during the three months ended March 31, 2021.

Other income (expense)

Interest expense increased 19.1% to \$0.2 million for the three months ended March 31, 2022, compared to \$0.2 million for the three months ended March 31, 2021. The increase in interest expense is primarily the result of new borrowings, including the 8% secured, convertible promissory note of \$1.0 million issued as consideration for the acquisition of Pie Squared Holdings in August 2021, \$1.4 million of 8% senior unsecured convertible debentures issued in March 2022, and \$0.3 million in notes payable issued in March 2022.

There were no derivative liabilities recorded during the three months ended March 31, 2022. During the three months ended March 31, 2021, the change in fair value of derivative liabilities was a \$0.2 million gain related to the True-Up Payment derivative. Derivative liabilities were marked to market on a quarterly basis and fluctuations in value are reflective of the fair market value at the point in time at which the instruments were measured. The True-Up Payment derivative was settled in July 2021 with a cash payment of \$66,136.

In August 2021, we issued an 8% secured, convertible promissory note as consideration for the acquisition of Pie Squared Holdings. We have elected to measure the convertible promissory note at fair value, with changes in fair value recognized in operations. We recognized a change in fair value of \$0.1 million during the three months ended March 31, 2022. There were no similar transactions during the three months ended March 31, 2021.

There were no cancelled lease obligations during the three months ended March 31, 2022. During the three months ended March 31, 2021, we recognized a gain on extinguished lease liabilities of \$43,000 due to the derecognition of operating lease liabilities resulting from our negotiation of the cancellation of our obligations under certain lease arrangements. The cancellations resulted from the COVID-19 pandemic.

During the three months ended March 31, 2022, we recognized a gain on extinguished trade payable of \$0.2 million due to the settlement of outstanding amounts with a supplier. There were no such settlements during the three months ended March 31, 2021.

Other income increased \$0.2 million to \$0.2 million for the three months ended March 31, 2022, compared to \$2,000 for the three months ended March 31, 2021, which was primarily due to a dividend received from our investment in Hooters of America of approximately \$0.1 million and rebates of \$0.1 million.

STATEMENT OF CASH FLOWS FOR THE THREE MONTHS ENDED MARCH 31, 2022 COMPARED TO THE THREE MONTHS ENDED MARCH 31, 2021

(in thousands)	Three months ended	
	March 31, 2022	March 31, 2021
Net cash used in operating activities	\$ (707)	\$ (684)
Net cash used in investing activities	(57)	(2)
Net cash provided by financing activities	1,597	1,955
Effect of foreign currency exchange rates	—	7
	<u>\$ 833</u>	<u>\$ 1,276</u>

Cash used in operating activities was approximately \$0.7 million for each of the three months ended March 31, 2022 and 2021. The use of cash in the three months ended March 31, 2022 was primarily attributable to the net loss of \$28,000 and non-cash income of \$0.1 million for a fair value adjustment to a convertible promissory note, offset by non-cash charges to operations of \$0.6 million for depreciation and amortization. The balance of the change in cash flows from operating activities was related to net movements in asset and liability accounts. The use of cash in the three months ended March 31, 2021 was primarily attributable to the net loss of \$2.8 million and non-cash income of \$0.2 million for a fair value adjustment to a derivative, offset by non-cash charges to operations of \$1.3 million for asset impairments and \$0.5 million for depreciation and amortization. The balance of the change in cash flows from operating activities was related to net movements in asset and liability accounts. The cash movements in asset and liability accounts from the three months ended March 31, 2021 to the three months ended March 31, 2022 can be attributed primarily to a \$0.4 million decrease in cash for payments of accounts payable and accrued expenses, offset by a \$0.4 million increase in cash due to collection of other receivables consisting primarily of grant income.

Cash used in investing activities for the three months ended March 31, 2022 and 2021 was primarily attributable to expenditures on property and equipment.

Cash provided by financing activities for the three months ended March 31, 2022 was approximately \$1.6 million, compared to cash provided by financing activities of approximately \$2.0 million for the three months ended March 31, 2021. The primary drivers of the cash provided by financing activities during 2022 were proceeds of \$1.4 million related to the issuance of 8% senior unsecured convertible debentures and proceeds of \$0.3 million related to the issuance of notes payable. The primary driver of the cash provided by financing activities during 2021 was proceeds from a \$2.0 million Payment Protection Program (“PPP”) loan.

LIQUIDITY, CAPITAL RESOURCES AND GOING CONCERN

As of March 31, 2022, our cash balance was \$3.1 million, of which \$0.6 million was restricted cash, our working capital deficiency was \$12.0 million and we had significant near-term commitments and contractual obligations. The level of additional cash needed to fund operations and our ability to conduct business for the next 12 months will be influenced primarily by the following factors:

- our ability to access the capital and debt markets to satisfy current obligations and operate the business;

- our ability to qualify for and access financial stimulus programs available through federal and state government programs;
- our ability to refinance or otherwise extend maturities of current debt obligations;
- our ability to manage our operating expenses and maintain gross margins;
- popularity of and demand for our fast-casual dining concepts; and
- general economic conditions and changes in consumer discretionary income.

We have typically funded our operating costs, acquisition activities, working capital requirements and capital expenditures with proceeds from the issuances of our common stock and other financing arrangements, including convertible debt, lines of credit, notes payable, capital leases, government stimulus funds and other forms of external financing.

In early March 2020, the COVID-19 pandemic was declared to be a National Public Health Emergency, and the Centers for Disease Control and Prevention, as well as state and local legislative bodies and health departments, began issuing orders related to social distancing requirements, reduced restaurant seating capacity and other restrictions which resulted in a significant reduction in traffic at our restaurants. As of mid-March 2020, the ordinances tightened, and dine-in capacity was eliminated or severely restricted. By April 2020, at the request of most state and local legislative bodies, we closed all of our dining rooms and began to operate in a take-out and delivery only capacity. In early May 2020, states began allowing the re-opening of dining rooms in a limited capacity and by the end of June 2020, we had re-opened dining rooms in approximately 95% of our restaurants while adhering to social distancing restrictions, which limited the number of guests we could serve in our restaurants at one time. During November 2020, rising case rates resulted in certain jurisdictions implementing restrictions that again reduced dining room capacity or mandated the closure of dining rooms. As a result, we began fiscal 2021 with significant limitations on our operations which, over the course of the fiscal year, varied widely from time to time, state to state and city to city; however, nonetheless negatively impacted our sales. Once COVID-19 vaccines were approved and moved into wider distribution in the United States in early to mid-2021, public health conditions improved and almost all of the COVID-19 restrictions on businesses eased.

While cases continue to decline and staffing continues to improve, overall consumer and business activity remains muted in certain markets as consumer behaviors have changed due to the COVID-19 pandemic and some businesses have yet to bring employees back into their offices. Our restaurant operations have been, and could again in the future, be disrupted by team member staffing issues because of illness, exclusion, fear of contracting COVID-19 or caring for family members due to COVID-19, legal requirements for employee vaccinations or COVID testing, lack of labor supply, competitive labor pressures, or for other reasons. Furthermore, inflation has been and is elevated across our business, including food costs, due in part to the supply chain impacts of the pandemic. We remain in regular contact with our major suppliers and while, to date, we have not experienced significant disruptions in our supply chain due to the COVID-19 pandemic, we could see significant future disruptions should the impacts of the pandemic continue. Currently, national, state and local jurisdictions have removed their capacity restrictions on businesses and, therefore, our restaurants are serving customers in our dining rooms without social distancing requirements. However, it is possible additional outbreaks could lead to restrictive measures that could impact our guest demand and dining room capacity.

Our current operating losses, combined with our working capital deficit and uncertainties regarding the impact of COVID-19, raise substantial doubt about our ability to continue as a going concern.

In addition, our business is subject to additional risks and uncertainties, including, but not limited to, those described in Item 1A. "Risk Factors."

The condensed consolidated financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts and classification of liabilities that might be necessary should we be unable to continue as a going concern.

ITEM 3: QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not applicable.

ITEM 4: CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We evaluated, under the supervision and with the participation of the principal executive officer and principal financial officer, the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities and Exchange Act of 1934, as amended (“Exchange Act”)) as of March 31, 2022, the end of the period covered by this Report. Based on this evaluation, our Chairman, President and Chief Executive Officer (principal executive officer) and our Chief Financial Officer (principal financial officer) have concluded that our disclosure controls and procedures were not effective at the reasonable assurance level at March 31, 2022 because of the material weakness in the Company’s internal control over financial reporting that existed at December 31, 2021 that has not been fully remediated by the end of the three month period ended March 31, 2022.

Disclosure controls and procedures are designed to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act (i) is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms, and (ii) is accumulated and communicated to management, including the principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosures. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. Due to the inherent limitations of control systems, not all misstatements may be detected. These inherent limitations include the realities that judgments in decision-making can be faulty and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. Controls and procedures can only provide reasonable, not absolute, assurance that the above objectives have been met.

Changes in Internal Control over Financial Reporting

Other than the material weakness and remediation activities discussed below, there were no changes in our internal control over financial reporting during the three months ended March 31, 2022 that have materially affected, or are reasonably likely to materially affect, the Company’s internal control over financial reporting.

Material Weakness in Internal Control over Financial Reporting

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

Management identified the following deficiency in its internal control over financial reporting:

- We identified a deficiency related to our financial close process including maintaining a sufficient complement of personnel commensurate with our accounting and financial reporting requirements, as well as development and extension of controls over the recording of closing journal entries, accounting for business combinations, contingencies and proper cut-off of accounts payable and accrued expenses at period end.

Management determined that the deficiency could potentially result in a material misstatement of the consolidated financial statements in a future annual or interim period that would not be prevented or detected. Therefore, the deficiency constitutes a material weakness in internal control.

Remediation Plans

We initiated several steps to evaluate and implement measures designed to improve our internal control over financial reporting in order to remediate the control deficiencies noted above, including recruitment of an accounting consultant and seeking outside advice from other third-party consultants to assist in improving the Company's internal control, simplifying its reporting processes and reducing the risk of undetected errors. In June 2020, the Company hired an accounting consultant that has appropriate expertise in accounting and reporting under U.S. GAAP and SEC regulations and has allowed the Company to be better aligned with segregation of duties. With the hiring of this consultant, the Company will be instituting monthly and quarterly meetings to identify significant, infrequent and unusual transactions as well as ensure timely reporting. Additionally, in September 2020 the Company engaged a third-party accounting and advisory firm to assist with, among other areas, the analysis of complex, infrequent and unusual transactions as well as provide valuation services to the Company. However, there can be no assurance as to when these material weaknesses will be remediated or that additional material weaknesses will not arise in the future. Even effective internal control can provide only reasonable assurance with respect to the preparation and fair presentation of financial statements. Any failure to remediate the material weaknesses, or the development of new material weaknesses in our internal control over financial reporting, could result in material misstatements in our financial statements, which in turn could have a material adverse effect on our financial condition and the trading price of our common stock and we could fail to meet our financial reporting obligations.

PART II – OTHER INFORMATION

ITEM 1: LEGAL PROCEEDINGS

Various subsidiaries of Amergent are delinquent in payment of payroll taxes to taxing authorities. As of March 31, 2021, approximately \$1.3 million of employee and employer taxes (including estimated penalties and interest) was accrued but not remitted in years prior to 2019 to certain taxing authorities by certain of these subsidiaries for cash compensation paid. As a result, these subsidiaries are liable for such payroll taxes. These subsidiaries have received warnings and demands from the taxing authorities and management is prioritizing and working with the taxing authorities to make these payments in order to avoid further penalties and interest. Failure to remit these payments promptly could result in increased penalty fees.

During 2021 and the three months ended March 31, 2022, the Company was in arrears on rent due on several of its leases as a result of the COVID-19 pandemic. As a result, the Company has pending litigation related to seven sites, of which four have permanently closed. The outcome of this litigation could result in the permanent closure of additional restaurant locations as well as the possibility of the Company being required to pay interest and damages, modify certain leases on unfavorable terms and could result in material impairments to the Company's assets.

From time to time, the Company may be involved in other legal proceedings and claims that arise in the ordinary course of business and may generally be covered by insurance. As of March 31, 2022, the Company does not expect the amount of ultimate liability with respect to these matters to be material to the Company's financial condition, results of operations or cash flows.

ITEM 1A: RISK FACTORS

In addition to other information set forth in this Report, you should carefully consider the risk factors discussed in Part I, Item 1A of our Annual Report on Form 10-K (our "Form 10-K") for the year ended December 31, 2021 and any subsequent filings with the Securities and Exchange Commission ("SEC") made prior to the date hereof, which could materially affect our business, financial condition, results of operations or future results. These risks and uncertainties discussed in our Form 10-K and in any subsequent filings with the SEC made prior to the date hereof are not the only ones facing our business. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial may materially adversely affect our business, cash flows, financial condition and/or results of operations. Please also read the section entitled Cautionary Notice Regarding Forward-Looking Statements included in this Report.

ITEM 2: UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

None.

ITEM 3: DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4: MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5: OTHER INFORMATION**ITEM 6: EXHIBITS**

<u>Exhibit No.</u>	<u>Description</u>
10.1	<u>Amendment No. 3 to 10% Secured Convertible Debenture dated March 9, 2021 by and between Amergent and Oz Rev. LLC (Incorporated by Reference to Exhibit 10.17 to Annual Report on Form 10-K for the period ended December 31, 2021, as filed April 15, 2022)</u>
31.1	<u>Certification of the Principal Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a), filed herewith.</u>
31.2	<u>Certification of the Chief Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a), filed herewith.</u>
32.1***	<u>Certification of Principal Executive Officer pursuant to Rule 13a-14(b) or Rule 15d-14(b), filed herewith.</u>
32.2***	<u>Certification of Chief Financial Officer pursuant to Rule 13a-14(b) or Rule 15d-14(b), filed herewith.</u>
101.INS*	Inline XBRL Instance Document
101.SCH*	Inline XBRL Taxonomy Extension Schema Document
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

* XBRL (Extensible Business Reporting Language) information is furnished and not filed or a part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, as amended, is deemed not filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and otherwise is not subject to liability under these sections.

** Management Compensatory Contract or Arrangement

*** Furnished, not filed.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized on May 23, 2022.

AMERGENT HOSPITALITY GROUP, INC.

Date: May 23, 2022

By: /s/ Michael D. Pruitt
Michael D. Pruitt
Chief Executive Officer
(Principal Executive Officer)

Date: May 23, 2022

/s/ Stephen Hoelscher
Stephen Hoelscher
Chief Financial Officer
(Principal Financial Officer)

Exhibit 31.1

**CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 302 OF
THE SARBANES-OXLEY ACT OF 2002**

I, Michael D. Pruitt, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q ("Report") for the period ended March 31, 2022 of Amergent Hospitality Group Inc.;
2. Based on my knowledge, this Report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this Report;
3. Based on my knowledge, the financial statements, and other financial information included in this Report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this Report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this Report is being prepared;
 - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Report based on such evaluation; and
 - d. disclosed in this Report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 23, 2022

/s/ Michael D. Pruitt

Michael D. Pruitt
Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

**CERTIFICATION OF THE CHIEF FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 302 OF
THE SARBANES-OXLEY ACT OF 2002**

I, Stephen Hoelscher, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q ("Report") for the period ended March 31, 2022 of Amergent Hospitality Group Inc.;
2. Based on my knowledge, this Report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this Report;
3. Based on my knowledge, the financial statements, and other financial information included in this Report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this Report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this Report is being prepared;
 - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Report based on such evaluation; and
 - d. disclosed in this Report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual Report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 23, 2022

/s/ Stephen Hoelscher

Stephen Hoelscher
Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Amergent Hospitality Group Inc., a Delaware corporation (the "Company") for the period ending March 31, 2022 as filed with the U.S. Securities and Exchange Commission on the date hereof (the "Report"), Michael D. Pruitt, Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge and belief:

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

May 23, 2022

/s/ Michael D. Pruitt

Michael D. Pruitt
Chief Executive Officer
(Principal Executive Officer)

Exhibit 32.2

**CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT TO 18 U.S.C. SECTION 1350, AS
ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Amergent Hospitality Group Inc., a Delaware corporation (the "Company") for the period ending March 31, 2022 as filed with the U.S. Securities and Exchange Commission on the date hereof (the "Report"), Stephen Hoelscher, Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge and belief:

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

May 23, 2022

/s/ Stephen Hoelscher

Stephen Hoelscher
Chief Financial Officer
(Principal Financial Officer)

GUARANTEE OF PERFORMANCE

For value received, Amergent Hospitality Group, Inc., a Delaware corporation (the "**Guarantor**"), located at 7621 Little Avenue, Suite 414, Charlotte, North Carolina 28226, absolutely and unconditionally guarantees to assume the duties and obligations of LBB Franchising, LLC, located at 7621 Little Avenue, Suite 414, Charlotte, North Carolina 28226 (the "**Franchisor**"), under its franchise registration in each state where the franchise is registered, and under its Franchise Agreement identified in its Franchise Disclosure Document issued May 19, 2022, as it may be amended, and as that Franchise Agreement may be entered into with franchisees and amended, modified or extended from time to time. This guarantee continues until all such obligations of the Franchisor under its franchise registrations and the Franchise Agreement are satisfied or until the liability of Franchisor to its franchisees under the Franchise Agreement has been completely discharged, which ever occurs first. The Guarantor is not discharged from liability if a claim by a franchisee against the Franchisor remains outstanding. Notice of acceptance is waived. The Guarantor does not waive receipt of notice of default on the part of the Franchisor. This guarantee is binding on the Guarantor and its successors and assigns.

The Guarantor executes this guarantee at Charlotte, North Carolina, on the 19th day of May, 2022.

Guarantor: Amergent Hospitality Group, Inc.

By: _____

Print Name: _____

Print Title: _____

EXHIBIT E

LIST OF STATE ADMINISTRATORS AND AGENTS FOR SERVICE OF PROCESS

LIST OF STATE ADMINISTRATORS

We intend to register this disclosure document as a “franchise” in some or all of the following states, if required by the applicable state laws. If and when we pursue franchise registration (or otherwise comply with the franchise investment laws) in these states, the following are the state administrators responsible for the review, registration, and oversight of franchises in these states:

CALIFORNIA Commissioner of Financial Protection and Innovation Department of Financial Protection and Innovation 320 West Fourth Street, Suite 750 Los Angeles, California 90013-2344 (213) 576-7500 Toll Free: (866) 275-2677	NEW YORK New York State Department of Law Investor Protection Bureau 28 Liberty Street, 21 st Floor New York, New York 10005 (212) 416-8222
HAWAII Commissioner of Securities Department of Commerce & Consumer Affairs Business Registration Division Securities Compliance Branch 335 Merchant Street, Room 203 Honolulu, Hawaii 96813 (808) 586-2722	NORTH DAKOTA North Dakota Securities Department State Capitol Department 414 600 East Boulevard Avenue, Fifth Floor Bismarck, North Dakota 58505-0510 (701) 328-4712
ILLINOIS Illinois Office of the Attorney General Franchise Bureau 500 South Second Street Springfield, Illinois 62706 (217) 782-4465	RHODE ISLAND Department of Business Regulation Securities Division, Building 69, First Floor John O. Pastore Center 1511 Pontiac Avenue Cranston, Rhode Island 02920 (401) 462-9527
INDIANA Secretary of State Franchise Section 302 West Washington, Room E-111 Indianapolis, Indiana 46204 (317) 232-6681	SOUTH DAKOTA Division of Insurance Securities Regulation 124 South Euclid Avenue, 2 nd Floor Pierre, South Dakota 57501 (605) 773-3563
MARYLAND Office of the Attorney General Securities Division 200 St. Paul Place Baltimore, Maryland 21202-2020 (410) 576-6360	VIRGINIA State Corporation Commission Division of Securities and Retail Franchising 1300 East Main Street, 9th Floor Richmond, Virginia 23219 (804) 371-9051
MICHIGAN Michigan Attorney General's Office Corporate Oversight Division, Franchise Section 525 West Ottawa Street G. Mennen Williams Building, 1 st Floor Lansing, Michigan 48913 (517) 335-7567	WASHINGTON Department of Financial Institutions Securities Division – 3 rd Floor 150 Israel Road, Southwest Tumwater, Washington 98501 (360) 902-8760
MINNESOTA Minnesota Department of Commerce 85 7 th Place East, Suite 280 St. Paul, Minnesota 55101 (651) 539-1600	WISCONSIN Division of Securities 4822 Madison Yards Way, North Tower Madison, Wisconsin 53705 (608) 266-2139

AGENTS FOR SERVICE OF PROCESS

We intend to register this disclosure document as a “franchise” in some or all of the following states, if required by the applicable state law. If and when we pursue franchise registration (or otherwise comply with the franchise investment laws) in these states, we will designate the following state offices or officials as our agents for service of process in these states. There may be states in addition to those listed below in which we have appointed an agent for service of process. There may also be additional agents in some of the states listed.

CALIFORNIA Commissioner of Financial Protection and Innovation Department of Financial Protection and Innovation 320 West Fourth Street, Suite 750 Los Angeles, California 90013-2344 (213) 576-7500 Toll Free: (866) 275-2677	NEW YORK New York Secretary of State New York Department of State One Commerce Plaza, 99 Washington Avenue, 6 th Floor Albany, New York 12231-0001 (518) 473-2492
HAWAII Commissioner of Securities Department of Commerce & Consumer Affairs Business Registration Division Securities Compliance Branch 335 Merchant Street, Room 203 Honolulu, Hawaii 96813 (808) 586-2722	NORTH DAKOTA North Dakota Securities Commissioner State Capitol 600 East Boulevard Avenue, Fifth Floor Bismarck, North Dakota 58505-0510 (701) 328-4712
ILLINOIS Illinois Attorney General 500 South Second Street Springfield, Illinois 62706 (217) 782-4465	RHODE ISLAND Director of Department of Business Regulation Department of Business Regulation Securities Division, Building 69, First Floor John O. Pastore Center 1511 Pontiac Avenue Cranston, Rhode Island 02920 (401) 462-9527
INDIANA Secretary of State Franchise Section 302 West Washington, Room E-111 Indianapolis, Indiana 46204 (317) 232-6681	SOUTH DAKOTA Division of Insurance Director of the Securities Regulation 124 South Euclid Avenue, 2 nd Floor Pierre, South Dakota 57501 (605) 773-3563
MARYLAND Maryland Securities Commissioner 200 St. Paul Place Baltimore, Maryland 21202-2020 (410) 576-6360	VIRGINIA Clerk of the State Corporation Commission 1300 East Main Street, 1 st Floor Richmond, Virginia 23219 (804) 371-9733
MICHIGAN Michigan Attorney General’s Office Corporate Oversight Division, Franchise Section 525 West Ottawa Street G. Mennen Williams Building, 1 st Floor Lansing, Michigan 48913 (517) 335-7567	WASHINGTON Director of Department of Financial Institutions Securities Division – 3 rd Floor 150 Israel Road, Southwest Tumwater, Washington 98501 (360) 902-8760

MINNESOTA

Commissioner of Commerce
Minnesota Department of Commerce
85 7th Place East, Suite 280
St. Paul, Minnesota 55101
(651) 539-1600

WISCONSIN

Division of Securities
4822 Madison Yards Way, North Tower
Madison, Wisconsin 53705
(608) 266-2139

EXHIBIT F
STATE SPECIFIC ADDENDA TO AGREEMENTS

**ADDENDUM TO THE LITTLE BIG BURGER
AREA DEVELOPMENT AGREEMENT
REQUIRED FOR NORTH DAKOTA DEVELOPERS**

This Addendum to the Little Big Burger Area Development Agreement dated _____ (“**Development Agreement**”) is entered into by and between **LBB Franchising, LLC**, a North Carolina limited liability company (“**we**”, “**us**”, “**our**” or “**Franchisor**”) and _____, a _____ [insert type of organization and delete these brackets] formed in _____ [insert state and delete these brackets] (“**you**”, “**your**” or “**Developer**”) as of the Effective Date (which is the date indicated on the signature page of this Addendum).

1. The provisions of this Addendum form an integral part of, and are incorporated into, the Development Agreement. This Addendum is being executed because: **(A)** the offer or sale of a franchise to Developer was made in the State of North Dakota; **(B)** Developer is a resident of the State of North Dakota; and/or **(C)** part or all of the Development Territory is located in the State of North Dakota.
2. Releases. The following sentence is added to the end of Section 6.4.4:

Any release required as a condition of renewal, sale and/or assignment/transfer will not apply to the extent prohibited by the North Dakota Franchise Investment Law.
3. Covenants Not To Compete. The following sentence is added to the end of Section 5.2.:

Covenants not to compete are generally considered unenforceable in the State of North Dakota; however, we will enforce the covenants to the maximum extent the law allows.
4. Choice of Law. The following sentence is added to the end of Section 13.1:

Notwithstanding the foregoing, to the extent required by the North Dakota Franchise Investment Law, North Dakota law will apply to claims arising under the North Dakota Franchise Investment Law.
5. Choice of Venue. The following sentence is added to the end of Section 13.2.:

Notwithstanding the foregoing, to the extent required by the North Dakota Franchise Investment Law, you may bring an action in North Dakota for claims arising under the North Dakota Franchise Investment Law.
6. Statute of Limitations. The following sentence is added to the end of Section 13.3:

Notwithstanding the foregoing, the statute of limitations under North Dakota law applies with respect to claims arising under the North Dakota Franchise Investment Law.
7. Waiver of Certain Damages and Rights. To the extent required by the North Dakota Franchise Investment Law, Section 13.6 of the Agreement is deleted.
8. Miscellaneous. Any capitalized terms that are not defined in this Addendum shall have the meaning given them in the Development Agreement. Except as expressly modified by this Addendum, the Development Agreement remains unmodified and in full force and effect. This Addendum may be executed in multiple counterparts, each of which when executed and delivered shall be deemed an original and all of which together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page of this Addendum by facsimile and any other electronic transmission (including PDF) shall be as effective as delivery of a manually executed counterpart of this Addendum.

IN WITNESS WHEREOF, the parties have duly executed, sealed and delivered this Addendum as of the Effective Date identified below.

FRANCHISOR:
LBB Franchising, LLC
a North Carolina limited liability company

By: _____
Print Name: _____
Title: _____

EFFECTIVE DATE: _____

Notice Address: 7621 Little Avenue, Suite 414
Charlotte, North Carolina 28226

DEVELOPER:

a _____

By: _____
Print Name: _____
Title: _____

Date: _____
Notice Address: _____

**ADDENDUM TO THE LITTLE BIG BURGER
FRANCHISE AGREEMENT
REQUIRED FOR NORTH DAKOTA FRANCHISEES**

This Addendum to the Little Big Burger Franchise Agreement dated _____ (“Franchise Agreement”) between **LBB Franchising, LLC**, a North Carolina limited liability company (“**we**”, “**us**”, “**our**” or “**Franchisor**”) and _____, a _____ [insert type of organization and delete these brackets] formed in _____ [insert state and delete these brackets] (“**you**”, “**your**” or “**Franchisee**”) as of the Effective Date (which is the date indicated on the signature page of this Addendum).

1. The provisions of this Addendum form an integral part of, and are incorporated into, the Franchise Agreement. This Addendum is being executed because: **(A)** the offer or sale of a franchise to Franchisee was made in the State of North Dakota; **(B)** Franchisee is a resident of the State of North Dakota; and/or **(C)** the Franchised Restaurant will be located and/or operated, and/or all or part of the Protected Area will be located, in the State of North Dakota.
2. Releases. The following sentence is added to the end of Sections 16.4.4, 17 and 18.3:

Any release required as a condition of renewal, sale and/or assignment/transfer will not apply to the extent prohibited by the North Dakota Franchise Investment Law.
3. Early Termination Damages. The following sentence is added to the end of Section 20.3:

We and you acknowledge that certain parts of this provision might not be enforceable under the North Dakota Franchise Investment Law. However, we and you agree to enforce the provision to the extent the law allows.
4. Covenants Not To Compete. The following sentence is added to the end of Section 15.2:

Covenants not to compete are generally considered unenforceable in the State of North Dakota; however, we will enforce the covenants to the maximum extent the law allows.
5. Choice of Law. The following sentence is added to the end of Section 26.2:

Notwithstanding the foregoing, to the extent required by the North Dakota Franchise Investment Law, North Dakota law will apply to claims arising under the North Dakota Franchise Investment Law.
6. Choice of Venue. The following sentence is added to the end of Section 26.3:

Notwithstanding the foregoing, to the extent required by the North Dakota Franchise Investment Law, you may bring an action in North Dakota for claims arising under the North Dakota Franchise Investment Law.
7. Statute of Limitations. The following sentence is added to the end of Section 26.4:

Notwithstanding the foregoing, the statute of limitations under North Dakota law applies with respect to claims arising under the North Dakota Franchise Investment Law.
8. Waiver of Certain Damages and Rights. To the extent required by the North Dakota Franchise Investment Law, Section 26.7 of the Agreement is deleted.

9. Miscellaneous. Any capitalized terms that are not defined in this Addendum shall have the meaning given them in the Franchise Agreement. Except as expressly modified by this Addendum, the Franchise Agreement remains unmodified and in full force and effect. This Addendum may be executed in multiple counterparts, each of which when executed and delivered shall be deemed an original and all of which together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page of this Addendum by facsimile and any other electronic transmission (including PDF) shall be as effective as delivery of a manually executed counterpart of this Addendum.

IN WITNESS WHEREOF, the parties have duly executed, sealed and delivered this Addendum as of the Effective Date identified below.

FRANCHISOR:
LBB Franchising, LLC
a North Carolina limited liability company

By: _____
Print Name: _____
Title: _____

EFFECTIVE DATE: _____

Notice Address: 7621 Little Avenue, Suite 414
Charlotte, North Carolina 28226

FRANCHISEE:

a _____

By: _____
Print Name: _____
Title: _____

Date: _____

Notice Address: _____

**ADDENDUM TO THE LITTLE BIG BURGER AREA DEVELOPMENT AGREEMENT
DISCLOSURE VERIFICATION, AND RELATED AGREEMENTS
REQUIRED FOR WASHINGTON DEVELOPERS**

This Addendum to the Little Big Burger Area Development Agreement dated _____ (“**Development Agreement**”) is entered into by and between **LBB Franchising, LLC**, a North Carolina limited liability company (“**we**”, “**us**”, “**our**” or “**Franchisor**”) and _____, a _____ [insert type of organization and delete these brackets] formed in _____ [insert state and delete these brackets] (“**you**”, “**your**” or “**Developer**”) as of the Effective Date (which is the date indicated on the signature page of this Addendum).

1. The provisions of this Addendum form an integral part of, and are incorporated into, the Development Agreement. This Addendum is being executed because: **(A)** the offer or sale of a franchise to you was made in the State of Washington; **(B)** you are a resident of the State of Washington; and/or **(C)** part or all of the Development Area is located in the State of Washington.
2. The state of Washington has a statute, the Washington Franchise Investment Protection Act (the “Act”), Section 19.100.180 of which may supersede this Agreement in your relationship with us, including in the areas of termination and renewal of your franchise. There also may be court decisions that may supersede this Agreement in your relationship with us, including in the areas of termination and renewal of your franchise.
3. In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.
4. RCW 19.100.180 may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.
5. In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.
6. A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.
7. Transfer fees are collectable to the extent that they reflect the franchisor’s reasonable estimated or actual costs in effecting a transfer.
8. Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee’s earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor’s earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the

franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

9. RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.
10. Securities offering fees shall be limited to our reasonable costs and expenses in reviewing your security offering documents.
11. Any capitalized terms that are not defined in this Addendum shall have the meaning given them in the Development Agreement.
12. Except as expressly modified by this Addendum, the Development Agreement remains unmodified in full force and effect.
13. This Addendum may be executed in multiple counterparts, each of which when executed and delivered shall be deemed an original and all of which together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page of this Addendum by electronic transmission (including PDF) shall be as effective as delivery of a manually executed counterpart of this Addendum.

IN WITNESS WHEREOF, the parties have duly executed, sealed and delivered this Addendum as of the Effective Date identified below.

FRANCHISOR:
LBB Franchising, LLC
a North Carolina limited liability company

DEVELOPER:

a _____

By: _____
Print Name: _____
Title: _____

By: _____
Print Name: _____
Title: _____

EFFECTIVE DATE: _____

Date: _____

Notice Address: _____

Notice Address: 7621 Little Avenue, Suite 414
Charlotte, North Carolina 28226

**ADDENDUM TO THE LITTLE BIG BURGER FRANCHISE AGREEMENT
DISCLOSURE VERIFICATION, AND RELATED AGREEMENTS
REQUIRED FOR WASHINGTON FRANCHISEES**

This Addendum to the Little Big Burger Franchise Agreement dated _____ (“**Franchise Agreement**”) is entered into by and between **LBB Franchising, LLC**, a North Carolina limited liability company (“**we**”, “**us**”, “**our**” or “**Franchisor**”) and _____, a _____ [insert type of organization and delete these brackets] formed in _____ [insert state and delete these brackets] (“**you**”, “**your**” or “**Franchisee**”) as of the Effective Date (which is the date indicated on the signature page of this Addendum).

1. The provisions of this Addendum form an integral part of, and are incorporated into, the Franchise Agreement. This Addendum is being executed because: **(A)** the offer or sale of a franchise to you was made in the State of Washington; **(B)** you are a resident of the State of Washington; and/or **(C)** the Restaurant will be located in the State of Washington.
2. The state of Washington has a statute, the Washington Franchise Investment Protection Act (the “Act”), Section 19.100.180 of which may supersede this Agreement in your relationship with us, including in the areas of termination and renewal of your franchise. There also may be court decisions that may supersede this Agreement in your relationship with us, including in the areas of termination and renewal of your franchise.
3. In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.
4. RCW 19.100.180 may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.
5. In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.
6. A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.
7. Transfer fees are collectable to the extent that they reflect the franchisor’s reasonable estimated or actual costs in effecting a transfer.
8. Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee’s earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor’s earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the

franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

9. RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.
10. Securities offering fees shall be limited to our reasonable costs and expenses in reviewing your security offering documents.
11. Any capitalized terms that are not defined in this Addendum shall have the meaning given them in the Franchise Agreement.
12. Except as expressly modified by this Addendum, the Franchise Agreement remains unmodified in full force and effect.
13. This Addendum may be executed in multiple counterparts, each of which when executed and delivered shall be deemed an original and all of which together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page of this Addendum by electronic transmission (including PDF) shall be as effective as delivery of a manually executed counterpart of this Addendum.

IN WITNESS WHEREOF, the parties have duly executed, sealed and delivered this Addendum as of the Effective Date identified below.

FRANCHISOR:
LBB Franchising, LLC
a North Carolina limited liability company

FRANCHISEE:

a _____

By: _____
Print Name: _____
Title: _____

By: _____
Print Name: _____
Title: _____

EFFECTIVE DATE: _____

Date: _____

Notice Address: _____

Notice Address: 7621 Little Avenue, Suite 414
Charlotte, North Carolina 28226

EXHIBIT G
LIST OF FRANCHISEES

LITTLE BIG BURGER
LIST OF FRANCHISEES AS OF DECEMBER 31, 2021

LIST OF FRANCHISED LOCATIONS AS OF DECEMBER 31, 2021

None

**LIST OF FRANCHISEES THAT HAVE SIGNED A FRANCHISE AGREEMENT BUT THE
FRANCHISED RESTAURANT IS NOT YET OPEN AS OF DECEMBER 31, 2021**

None

LIST OF DEVELOPERS AS OF DECEMBER 31, 2021

None

**LIST OF FRANCHISEES THAT CLOSED A RESTAURANT, TRANSFERRED A FRANCHISE
OR HAD A FRANCHISE AGREEMENT TERMINATED OR NOT RENEWED IN 2021**

None

If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

EXHIBIT H
STATE EFFECTIVE DATES

State Effective Dates

The following states have franchise laws that require that the Franchise Disclosure Document be registered or filed with the state, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

This document is effective and may be used in the following states, where the document is filed, registered or exempt from registration, as of the Effective Date stated below:

STATES	EFFECTIVE DATE
California	PENDING
Hawaii	PENDING
North Dakota	PENDING
South Dakota	PENDING
Virginia	PENDING
Washington	PENDING

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.

EXHIBIT I
RECEIPTS

RECEIPT

This disclosure document summarizes certain provisions of the Franchise Agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If LBB Franchising, LLC offers you a franchise, LBB Franchising, LLC must provide this disclosure document to you 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale. New York requires that LBB Franchising, LLC gives you this disclosure document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship. Iowa requires that LBB Franchising, LLC gives you this disclosure document at the earlier of the first personal meeting or 14 calendar days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first. Michigan requires that LBB Franchising, LLC gives you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

If LBB Franchising, LLC does not deliver this disclosure document on time or if it contains a false or misleading statement or a material omission, a violation of federal and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and to the appropriate state agency listed in Exhibit E.

The franchisor is LBB Franchising, LLC, located at 7621 Little Avenue, Suite 414 Charlotte, NC 28226. Its telephone number is (704) 366-5122.

The issuance date of this Franchise Disclosure Document is May 19, 2022.

The name, principal business address and telephone number of each franchise seller offering the franchise is: Chairman and Chief Executive Officer: Mike Pruitt, President: Frederick L. Glick, Executive Vice President, Franchise and Development: Mark Whittle, Brand Leader: Adrian Oca, and Director of Training: April Miller, Amergent Hospitality Group, Inc., 7621 Little Avenue, Suite 414 Charlotte, NC 28226, (704) 366-5122.

LBB Franchising, LLC authorizes the respective state agencies identified on Exhibit E to receive service of process of it in the particular state.

I have received a Franchise Disclosure Document dated May 19, 2022, that included the following exhibits:

- | | |
|---|---------------------------|
| A. Area Development Agreement | F. State Specific Addenda |
| B. Franchise Agreement | G. List of Franchisees |
| C. Manual Table of Contents | H. State Effective Dates |
| D. Financial Statements | I. Receipts |
| E. List of State Administrators and Agents for Service of Process | |

Date Received

Please sign this copy of the receipt, date your signature, return the signed receipt to Mark Whittle, our Vice President, Franchise and Development, at 7621 Little Avenue, Suite 414, Charlotte, NC 28226 or Franchising@littlebigburger.com.

Prospective Franchisee

Name (please print)

Address: _____

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Please sign this copy of the receipt, date your signature and retain the signed Receipt for your records.