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, 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: 000-56160

AMERGENT HOSPITALITY GROUP INC.

Delaware	**84-4842958**
(State or Other Jurisdiction of Incorporation or Organization)	(IRS Employer Identification Number)
7529 Red Oak Lane Charlotte, NC	**28226**
(Address of Principal Executive Offices)	(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**

Securities registered under Section 12(g) of the Act: None

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 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 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 ☒

On June 30, 2022, the last business day of the registrant's most recently completed second fiscal quarter, the aggregate market value of the registrant's common stock held by non-affiliates of the registrant was approximately $2,032,411, based upon the closing price on that date of the common stock of the registrant $0.148. For purposes of this response, the registrant has assumed that its directors, executive officers and beneficial owners of 5% or more of its common stock are deemed to be affiliates of the registrant.

The number of shares outstanding of the registrant's $0.0001 par value common stock as of June 14, 2023, was 16,833,666 shares.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

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:

- 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 2023, which may not be available or may be costly and dilutive;
- 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 and the economic hardship from rising inflation. We have pending litigation related to one store which is 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 $2.1 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 have identified a material weakness in our internal control and procedures and internal control over financial reporting.
- We have been delinquent in our SEC reporting obligations, which may continue to have an adverse effect on the liquidity and trading prices of our common stock and could lead to the disqualification of our common stock for quotation on the OTC Markets Group, Inc.

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 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").

GOING CONCERN QUALIFICATION

Our financial statements as of and for the years ended December 31, 2022 and 2021 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, 2022, our cash balance was $0.4 million, our working capital deficiency was $16.3 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.

As of December 31, 2022, we operated and franchised a system-wide total of 34 fast casual restaurants of which 23 are company-owned and included in our consolidated financial statements, and 11 are owned and operated by franchisees under franchise agreements.

American Burger Company ("ABC") was a fast-casual dining chain consisting of locations in North Carolina and New York, known for its diverse menu featuring fresh salads, customized burgers, milk shakes, sandwiches, and beer and wine. As of December 31, 2022, all locations are closed.

The Burger Joint ("BGR") consists of five company-owned locations in the United States and seven franchisee-operated locations in the United States.

Little Big Burger ("LBB") consists of 14 company-owned locations in the Portland, Oregon and Charlotte, North Carolina areas. One location was temporarily closed until it re-opened at the end of June 2022 due to lack of available employees. Of the company-owned restaurants, 10 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. At December 31, 2022, the company had one company owned location and four franchised locations.

Our Jantzen Beach, Oregon location was a former Hooters of America location. This location is now home to our Jaybee's Chicken Place, serving a selection of fast casual chicken. Next door to Jaybee's is The Nest and The Roost, offering video gaming, pool tables and drinks. These locations opened on October 8, 2022.

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 BGR, LBB and Jaybee's restaurants in the United States. ABC was located 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 and North Carolina. Jaybee's is located in Portland, Oregon. We operate gaming machines in Portland, Oregon under license from the Oregon Lottery Commission at The Nest. We no longer operate any Company owned PIE restaurants in California but continue with franchise locations in the western United States.

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

We continue to focus on providing our operators intuitive, secure technology that is tailored to our business so they can provide hospitality to our guests and our team members in a productive and efficient manner.

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, Jaybee's Chicken Palace 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 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 Regulations

We are subject to various federal, state and local laws, rules and regulations that affect our business. Regulations relating to opening and closing of restaurant dining rooms or outdoor patios, business hours, sanitation practices, 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.

Licensing

Each of our restaurants is subject to licensing and regulation by a number of governmental authorities, which may include alcoholic beverage control, labor/equal employment, building, land use, health, safety and fire agencies, and environmental regulations in the state or municipality in which the restaurant is located. We believe that we are in compliance with all relevant laws, rules and regulations in all material respects. Difficulties obtaining or maintaining the required licenses or approvals could delay or prevent the development of a new restaurant in a particular area or could adversely affect the operation of an existing restaurant.

Alcoholic beverage control regulations require each of our restaurants to apply to a federal and state authority and, in certain locations, municipal authorities for a license and permit to sell alcoholic beverages. Typically, licenses must be renewed annually and may be revoked or suspended for cause by such authority at any time. Alcoholic beverage control regulations impact numerous aspects of the daily operations of our restaurants, including the minimum age of patrons and team members, hours of operation, advertising, wholesale purchasing, inventory control and handling, and storage and dispensing of alcoholic beverages.

Dram Shop Statutes

We are subject to "dram-shop" statutes in California and other states in which we operate. Those statutes generally provide a person who has been injured by an intoxicated person the right to recover damages from an establishment that has wrongfully served alcoholic beverages to such person. We carry liquor liability coverage, as part of our existing comprehensive general liability insurance, which we believe is consistent with the coverage carried by other entities in the restaurant industry and would help protect us from exposure created by possible claims. Even though we carry liquor liability insurance, a judgment against us under a dram-shop statute in excess of our liability coverage could have a materially adverse effect on us. Regardless of whether any claims against us are valid or whether we are liable, claims may also be expensive to defend and may divert management's time and our financial resources away from our operations. We may also be adversely affected by publicity resulting from such claims.

Environmental regulation

Various laws concerning the handling, storage and disposal of hazardous materials and restaurant waste and the operation of restaurants in environmentally sensitive locations may impact aspects of our operations; however, we do not believe that compliance with applicable environmental regulations will have a material effect on our capital expenditures, financial condition, results of operations, or competitive position. Increased focus by U.S. authorities on environmental matters is likely to lead to new governmental initiatives, particularly in the area of climate change. While we cannot predict the precise nature of these initiatives, we expect that they may impact our business both directly and indirectly. There is a possibility that government initiatives, or actual or perceived effect of changes in weather patterns, climate or water resources could have a direct impact on the operations of our brands in ways that we cannot predict at this time.

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

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.

Various federal and state labor laws, along with rules and regulations, govern our relationship with our team members, including such matters as minimum wage, overtime, tip credits, health insurance, working conditions, safety and work eligibility requirements. Significant additional governmental mandates, such as an increased minimum wage, a change in the laws governing exempt team members, an increase in paid time off or leaves of absence, mandates on health benefits and insurance or increased tax reporting and payment requirements for team members who receive gratuities, could negatively impact our restaurants' profitability. We are also subject to the regulations of the Immigration and Customs Enforcement ("ICE") branch of the United States Department of Homeland Security. In addition, some states in which we operate have adopted immigration employment protection laws. Even if we operate our restaurants in strict compliance with ICE and state requirements, some of our team members may not meet federal work eligibility requirements, despite our efforts and without our knowledge, which could lead to a disruption in our work force. Additionally, our suppliers may also be affected by various federal and state labor laws which could result in supply disruptions for our various goods and services or higher costs for goods and services supplied to us.

In addition, we and our U.S. franchisees are subject to the *Patient Protection and Affordable Care Act*.

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 information security, privacy and consumer protection laws at the federal, state and local level. Failure to comply with these laws and regulations could subject us to financial and other penalties.

We are subject to food safety regulations, including supervision by the U.S. Food and Drug Administration, which governs the manufacture, labeling, packaging and safety of food. In addition, we are or may become subject to legislation or regulation seeking to tax and/or regulate high-fat, high-calorie and high-sodium foods. Certain states and municipalities have approved menu labeling legislation that requires restaurant chains to provide caloric information on menu boards, and menu labeling legislation has also been adopted on the U.S. federal level.

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, 2022, we had 319 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, related party loans and advances 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. On November 15, 2022 and December 16, 2022, the Company received notice from the SBA that the first and second PPP loans, respectively, had been fully forgiven with accrued interest.

As of December 31, 2022, our cash balance was $0.4 million, of which none was restricted, our working capital deficiency was $16.3 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.

As we execute our business plan over the next 12 months, we intend to carefully monitor the impact of our 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, we may then have to scale back or freeze our operations plans, sell assets on less than favorable terms, reduce expenses, and/or curtail future acquisition plans to manage our liquidity and capital resources.

Our current operating losses combined with our working capital deficit raise substantial doubt about our ability to continue as a going concern.

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. Although the program ended on January 1, 2022, the Company performed an analysis during the current period and determined that it was eligible for additional credits related to 2021 wages. As of each of December 31, 2022 and December 31, 2021, approximately $0.8 million of ERC is included in accounts and other receivables in the consolidated balance sheets. The Company recognized $0.7 million and $2.5 million for the years ended December 31, 2022 and 2021, respectively, of ERC as a contra-expense included in employee retention credit and other grant income in the consolidated statements of operations.

In addition to the ERC, the Company received credits under other government/government agency programs of approximately $128,000 for the year ended December 31, 2021, of which approximately $84,000 were recorded as an offset to restaurant operating expenses and $44,000 as other income, respectively, in the consolidated statements of operations.

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 were 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. As of December 31, 2022 and 2021, the Company had restricted cash of nil and $1.7 million, respectively, related to the unused proceeds from the RRF. The Company recognized $1.5 million and $0.5 million for the years ended December 31, 2022 and 2021, respectively, related to the RRF as a contra-expense included in employee retention credit and other grant income and in the consolidated statements of operations. As of December 31, 2022, all RRF funds were utilized.

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 2023, which may not be available or may be costly and dilutive;
- 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 one store which is 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 $2.1 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 have identified a material weakness in our internal control and procedures and internal control over financial reporting.

- We have been delinquent in our SEC reporting obligations, which has had an adverse effect on the liquidity and trading prices of our common stock and could lead to the disqualification of our common stock for quotation on the OTC Markets Group, Inc.

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, 2022 and 2021, approximately $2.1 million and $2.0 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 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 one store location which is 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, 2022 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.

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, 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 deficiencies:

- As of December 31, 2022, due to the inherent issue of segregation of duties in a small company, we have relied heavily on entity level management review controls. Accordingly, management has determined that this control deficiency constitutes a material weakness.

- As of December 31, 2022, we had not established a formal written policy for the approval, identification, and authorization of new vendors entered into the approved vendor listing.

- As of December 31, 2022, we had not established a formal review, on a test basis, of our third-party accounting provider's coding of transactions and reconciliations of key accounts.

- As of December 31, 2022, we had not established an automated software program to account for our operating lease schedule liabilities but were relying on a manual computation of the Company's operating lease schedule.

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.

Because of these material weaknesses, management has concluded that the Company did not maintain effective internal control over financial reporting as of December 31, 2022, based on the criteria established in the 2013 integrated framework as prescribed by the Committee of Sponsoring Organizations of the Treadway Commission, or COSO.

The Company is committed to remediating its material weaknesses as promptly as possible. 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 environmental matters, including the effects of climate change, may adversely affect our results of operations.

The occurrence of natural disasters, such as fires, hurricanes, freezing weather or earthquakes 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 or 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.

We have disaster recovery procedures and business continuity plans in place to address most events of a crisis nature, including hurricanes and other natural disasters, back up and off-site locations for recovery of electronic and other forms of data and information. However, if we are unable to fully implement our disaster recovery plans, we may experience delays in recovery of data, inability to perform vital corporate functions, tardiness in required reporting and compliance, failures to adequately support field operations and other breakdowns in normal communication and operating procedures that may have a material adverse effect on our financial condition, results of operation and exposure to administrative and other legal claims.

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.

O***ur consolidated financial statements have been prepared assuming a going concern.***

Our consolidated financial statements as of and for the fiscal years ended December 31, 2022 and 2021 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 financial statements. Our independent registered public accounting firm has issued a report related to our annual consolidated 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 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.

Our 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.

We require additional financing to support our working capital and execute our operating plans for 2023, 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 2023. 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:

- 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.

Oz Rey has provided a waiver of certain financial covenants through December 31, 2023.

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, 2022, there were 18 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 $6.8 million at December 31, 2022 and are reflected as current operating lease liabilities on the consolidated 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 Sonnet 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 respond quickly and effectively, 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 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.

We are subject to a variety of laws, government regulation, and other legal requirements and any failure to comply with these laws and regulations or any new laws or regulations could have a material adverse effect on our operations.

Our business is subject to large number of federal and state laws and regulations, including those relating to:

- the serving alcoholic beverages;
- employment practices and working conditions, including, among others, minimum wage and other wage and benefit requirements, overtime pay, meal and rest breaks, predictive scheduling, paid leave requirements, work eligibility requirements, team member classification as exempt/non-exempt for overtime and other purposes, immigration status, workplace safety, discrimination, and harassment;
- public accommodations and safety conditions, including the Americans with Disabilities Act and similar state laws that give protections to individuals with disabilities in the context of employment, public accommodations, and other areas;
- environmental matters, such as emissions and air quality, water consumption, and the discharge, storage, handling, release, and disposal of hazardous or toxic substances;
- preparation, sale and labeling of food, including regulations of the Food and Drug Administration, including those relating to inspections and food recalls, menu labeling and nutritional content;
- data privacy laws and standards for the protection of personal information, including social security numbers, financial information (including credit card numbers), and health information, and payment card industry standards and requirements;
- building and zoning requirements, including state and local licensing and regulation governing the design and operation of facilities and land use,
- health, sanitation, safety and fire standards; and
- public company compliance, disclosure and governance matters, including accounting regulations and SEC disclosure requirements;

Compliance with these laws and regulations, and future new laws or changes in these laws or regulations that impose additional requirements, can be costly. Failure to comply with the laws and regulatory requirements of federal, state and local authorities may result in, among other things, revocation of required licenses, administrative enforcement actions, fines and civil and criminal liability. Compliance with these laws and regulations can increase our exposure to litigation or governmental investigations or proceedings.

GENERAL RISKS RELATED TO OUR COMMON STOCK

We have been delinquent in our SEC reporting obligations, which may continue to have an adverse effect on the liquidity and trading prices of our common stock and could lead to the disqualification of our common stock for quotation on the OTC Markets Group, Inc.

We have been delinquent in our SEC reporting obligations, which may continue to have an adverse effect on the liquidity and trading prices of our common stock and could lead to the disqualification of our common stock for quotation on the OTC Markets Group, Inc. Our stock was removed from quotation on the OTCQB due to this delinquency and, based on the rules of the OTC Marketsm we do not expect to have our stock reinstated to the OTCQB once we become current in our filings with the SEC. Our Form 10-Q for the quarterly period ended March 31, 2023 currently remains delinquent.

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.

Through December 31, 2023, 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.

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 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

None.

ITEM 2. PROPERTIES

Through our subsidiaries, we lease the land and buildings for 23 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, 2022, approximately $2.1 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 2022 and 2021, the Company was in arrears on rent due on several of its leases. As a result, the Company has pending litigation related to one store which is 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.

During 2022, our LBB locations were notified by the Department of Labor ("DOL") of an audit concerning tip pools at 15 of our LBB stores in and around Portland, OR metropolitan area. In January 2023, the DOL reported that its audit resulted in one significant finding, that the Company improperly permitted "supervisory" in-store employees to participate in the tip pool. DOL assessed a penalty of approximately $972,000 (equal to $486,000 in inappropriately paid tips multiplied by two pursuant to the statute's liquidated damages provision). DOL offered to reduce that number in half to $486,000. The Company has fought back against the finding, asserting that the alleged supervisors did not have sufficient supervisory responsibility to be deemed a "supervisor" under the statute. Currently, settlement discussions are in progress. DOL has reduced its amount to just under $170,000. The Company has offered $25,000 to resolve the matter. It is difficult to predict at what amount the case may resolve. If it does not resolve, DOL can choose to file the case in litigation or send right-to-sue letters to each impacted employee and former employee. Currently, we do not believe it is likely that DOL will pursue litigation, having indicated that they would be discussing that option and opting not to pursue anything at this time. If the case were to proceed to settle, we expect it would do so between the $25,000 and $170,000 amounts currently on the table. The Company has recorded a charge of $25,000 as management believes this is the most likely outcome.

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, 2022, the Company does not expect the amount of ultimate liability with respect to these matters to be material to the Company's consolidated 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, 2022, 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 currently quoted on the Pink Open Market of the OTC Markets Group, Inc. under the symbol "AMHG."

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 that have not previously been reported in a Quarterly Report on Form 10-Q or a Current Report on Form 8-K.

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

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 December 31, 2022, we operated and franchised a system-wide total of 34 fast casual restaurants of which 23 are company-owned and included in our consolidated financial statements, and 11 are owned and operated by franchisees under franchise agreements.

American Burger Company ("ABC") was a fast-casual dining chain consisting of locations in North Carolina and New York, known for its diverse menu featuring fresh salads, customized burgers, milk shakes, sandwiches, and beer and wine. As of December 31, 2022, all locations are closed.

The Burger Joint ("BGR") consists of five company-owned locations in the United States and seven franchisee-operated locations in the United States.

Little Big Burger ("LBB") consists of 14 company-owned locations in the Portland, Oregon and Charlotte, North Carolina areas. One location was temporarily closed until it re-opened at the end of June 2022 due to lack of available employees. Of the company-owned restaurants, 10 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. At December 31, 2022, the company had one company-owned location and four franchised locations.

Our Jantzen Beach, Oregon location was a former Hooters of America location. This location is now home to our Jaybee's Chicken Place, serving a selection of fast casual chicken. Next door to Jaybee's is The Nest and The Roost, offering video gaming, pool tables and drinks. These locations opened on October 8, 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"). 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 statement of operations for the year ended December 31, 2021.

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.

During the year ended December 31, 2022, the Company received related party advances in the aggregate of $0.6 million from an entity in which the Chief Financial Officer serves as an officer but has no ownership interest.

In January 2023, the Company entered into an asset purchase agreement with Boudreaux's Cajun Kitchen, Inc. to acquire the Houston, Texas based brand and its four restaurant locations for an aggregate purchase price of $3.8 million. In March 2023, the transaction closed for cash consideration of $1.3 million and a convertible promissory note of $2.5 million. In connection with the transaction, the Company paid an affiliate of Oz Rey an aggregate fee of $0.3 million. The convertible promissory note accrues interest at a rate of 6.0% per annum and will mature two years from the date of closing, with $1.3 million of the principal balance of the note due and payable in July 2023. The note may be converted, at the option of the holder, into shares of common stock at a conversion price of $0.50 per share. The convertible promissory note may be prepaid in whole or in part at any time, without premium or penalty.

In February 2023, the Company closed a $2.5 million Series B convertible preferred stock (the "Series B Preferred") and warrant financing with an affiliate of Oz Rey. The Company issued 125 shares of Series B Preferred and warrants to purchase up to 1,250,000 shares of common stock at a $0.0001 par value. The warrants have a term of 10 years and an initial exercise price of $1.00 per share of common stock, which is subject to adjustment for customary provisions such as stock splits, stock dividends and distributions.

The Series B Preferred is convertible into shares of common stock at the option of the investors at a conversion price of $0.50 per share and will accrue dividends in an amount equal to 12% on an annual basis, payable in cash or in shares of common stock based on 30-day volume-weighted average price of common stock on the trading market. The Company has the right to redeem the Series B Preferred subject to certain terms.

Recent Business Trends

Throughout 2022, we faced varying degrees of COVID-19 pandemic related pressures. In spite of this, our sales have continued to increase from when compared to the corresponding quarters in 2021. Our revenue for fiscal years 2022 and 2021 was $21.3 million and $20.7 million, respectively. This represents an annual increase in revenue of 3.1%.

Looking forward to 2023, 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

The Company has three core restaurant groups: Boudreaux's Cajun Restaurants, Little Big Burger, The Burger Joint, as well as a one-off gaming concept.

In March 2023, we finalized the purchase of Boudreaux's Cajun Kitchen with four locations in Houston, Texas. We anticipate expanding this restaurant concept throughout the southern United States.

For the Little Big Burger concept, we do not anticipate opening new units in the near term.

We are actively pursuing the sale of additional The Burger Joint franchises and finding additional Company managed location opportunities.

The Company will continue looking for acquisition opportunities that will add value to our core concepts.

In 2022, the Company closed several underperforming stores. We believe that the remaining stores are cash flow positive at the store level. Our challenge remains the cost of being a public company. We plan to continue to find acquisition candidates and to add to our concepts so that, company-wide, we become cash flow positive.

COVID-19 Pandemic Update

Since at least March 2020, when it was first characterized as a global pandemic, COVID-19 dramatically impacted and continues to impact the global health and economic environments, including millions of confirmed cases and deaths, business slowdowns or shutdowns (including shutdowns or severe restrictions of capacity in our dining rooms at various points in time), labor shortfalls, supply chain challenges, regulatory challenges, inflationary pressures and market volatility. 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 and 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.

We may face future business disruptions and related risks resulting from the COVID-19 pandemic or from another pandemic, epidemic or infectious disease outbreak, or from broader macroeconomic trends, any of which could have a significant impact on our business. In addition, while all of our restaurants had open dining rooms as of December 31, 2022, we continue to experience staffing challenges, including higher wage inflation, overtime costs and other labor related costs. We also continue to experience inflationary pressures, which resulted in increased commodity prices and impacted our business and results of operations during the year ended December 31, 2022. We expect these pressures to continue during fiscal year 2023.

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 bore interest at 1% per year, was due to mature in April 2022, and required monthly interest and principal payments of approximately $0.1 million beginning in November 2020 and through maturity. On February 25, 2021, the Company received a second PPP loan in the amount of $2.0 million. The note bore interest at 1% per year, was due to mature on February 25, 2026, and required monthly principal and interest payments of approximately $45,000 beginning June 25, 2022 through maturity. On November 15, 2022 and December 16, 2022, the Company received notice from the SBA that the first and second PPP loans, respectively, had been fully forgiven with accrued interest.

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. Although the program ended on January 1, 2022, the Company performed an analysis during the current period and determined that it was eligible for additional credits related to 2021 wages. As of each of December 31, 2022 and December 31, 2021, approximately $0.8 million of ERC is included in accounts and other receivables in the consolidated balance sheets. The Company recognized $0.7 million and $2.5 million for the years ended December 31, 2022 and 2021, respectively, of ERC as a contra-expense included in employee retention credit and other grant income in the consolidated statements of operations.

In addition to the ERC, the Company received credits under other government/government agency programs of approximately $128,000 for the year ended December 31, 2021, of which approximately $84,000 were recorded as an offset to restaurant operating expenses and $44,000 as other income, respectively, in the consolidated statements of operations.

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 were 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. As of December 31, 2022 and 2021, the Company had restricted cash of nil and $1.7 million, respectively, related to the unused proceeds from the RRF. The Company recognized $1.5 million and $0.5 million for the years ended December 31, 2022 and 2021, respectively, related to the RRF as a contra-expense included in employee retention credit and other grant income and in the consolidated statements of operations. As of December 31, 2022, all RRF funds were utilized.

RESULTS OF OPERATIONS FOR THE YEAR ENDED DECEMBER 31, 2022 COMPARED TO THE YEAR ENDED DECEMBER 31, 2021

Our results of operations are summarized below:

	Year Ended December 31,				
	2022		2021		
(in thousands)	**Amount**	**% of Revenue***	**Amount**	**% of Revenue***	**% Change**
Revenue:					
Restaurant sales, net	$ 19,678	92.4%	$ 19,797	95.9%	(0.6)%
Gaming income, net	493	2.3%	403	1.9%	22.3%
Franchise income	1,123	5.3%	452	2.2%	148.5%
Total revenue	**21,294**		**20,652**		
Expenses:					
Restaurant cost of sales	6,377	32.4%*	6,172	31.2%*	3.3%
Restaurant operating expenses	15,089	76.7%*	13,262	67.0%*	13.8%
Restaurant pre-opening and closing expenses		—%	8	—%	(100.0)%
General and administrative expenses	5,584	26.2%	5,210	25.2%	7.2%
Asset impairment charges	3,208	15.1%	1,456	7.1%	120.3%
Depreciation and amortization	693	3.3%	1,047	5.1%	(33.8)%
Employee retention credit and other grant income	(2,208)	(10.4)%	(3,009)	(14.6)%	(26.6)%
Total expenses	**28,743**		**24,146**		
Operating loss	**(7,449)**		**(3,494)**		
Other income (expense):					
Interest expense	(886)	(4.2)%	(656)	(3.2)%	35.1%
Change in fair value of derivative liabilities	—	—%	119	0.6%	(100.0)%
Change in fair value of investment	(38)	(0.2)%	(244)	(1.2)%	(84.4)%
Change in fair value of convertible promissory note	99	0.5%	95	0.5%	4.2%
Gain on sale of subsidiary	—	—%	58	0.3%	(100.0)%
Gain on extinguished/settled lease liabilities	256	1.2%	412	2.0%	(37.9)%
Gain on extinguished trade payable	161	0.8%	—	—%	100.0%
Gain on loan forgiveness	4,201	19.7%	—	—%	100.0%
Other income	354	1.7%	310	1.5%	13.9%
Total other income	**4,147**		**94**		
Loss before income taxes	(3,303)		(3,400)		
Income tax expense	(42)	(0.2)%	(118)	(0.6)%	(64.4)%
Consolidated net loss	**$ (3,346)**		**$ (3,518)**		

** 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 $0.6 million or 3.1% during the year ended December 31, 2022 as compared to the year ended December 31, 2021.

	Year Ended December 31, 2022		Year Ended December 31, 2021	
	Amount	% of Revenue	Amount	% of Revenue
(in thousands)				
Restaurant sales, net	$ 19,678	92.4%	$ 19,797	95.9%
Gaming income, net	493	2.3%	403	2.0%
Franchise income	1,123	5.3%	452	2.2%
Total revenue	$ 21,294	100.0%	$ 20,652	100.0%

- Revenue from restaurant sales decreased $0.1 million or 0.6% for the year ended December 31, 2022, as compared to the year ended December 31, 2021, due to a net decrease of six company owned stores. As of December 31, 2022 and 2021, the Company had 20 and 29 company owned stores, respectively.

- Franchise income increased $0.7 million or 148.5% for the year ended December 31, 2022, as compared to the year ended December 31, 2021, primarily due to $0.7 million of franchise income recognized in March 2022 as a result of the Company terminating its international Master Franchise Agreements 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 Agreements.

Expenses

Restaurant cost of sales

Restaurant cost of sales increased $0.2 million or 3.3% for the year ended December 31, 2022, as compared to the year ended December 31, 2021. Restaurant cost of sales as a percentage of restaurant sales increased to 32.4% for the year ended December 31, 2022 compared to 31.2% for the year ended December 31, 2021 primarily due to rising food costs.

Restaurant operating expenses

Restaurant operating expenses increased $1.8 million or 13.8% for the year ended December 31, 2022, as compared to the year ended December 31, 2021, primarily due to an overall increase in payroll cost with cost-of-living increases across the board for our employees.

General and administrative expense ("G&A")

G&A expenses increased $0.4 million or 7.2% for the year ended December 31, 2022, as compared to the year ended December 31, 2021, primarily due to the net effect of (i) increase in salary and benefits of $0.7 million, primarily due to the addition of two senior management personnel and an increase in our employee headcount from December 31, 2021 to December 31, 2022 (ii) a decrease in audit, legal and other professional services of $0.4 million primarily due to a decrease in necessary legal and professional services in 2022 compared to 2021.

Significant components of G&A are summarized as follows:

	Year Ended December 31,	
	2022	2021
(in thousands)		
Audit, legal and other professional services	$ 1,905	$ 2,314
Salary and benefits	2,814	2,129
Advertising, insurance and other	752	672
Stockholder services and fees	44	31
Travel and entertainment	69	64
Total G&A expenses	$ 5,584	$ 5,210

Asset impairment charges

Asset impairment charges of an aggregate $3.2 million were recorded during the year ended December 31, 2022, which consisted of an impairment on (i) right-of-use asset of $1.8 million (ii) property and equipment of $0.8 million, (iii) trademark/tradenames of $0.3 million, and (iv) franchise rights of $0.3 million, primarily due to ongoing cash flow implications from the change in consumer dining habits in the aftermath of the COVID-19 pandemic.

Asset impairment charges of $1.5 million were recorded during the year ended December 31, 2021. 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 COVID-19 pandemic.

Employee retention credit and other grant income

Employee Retention Credit ("ERC"). For the years ended December 31, 2022 and 2021, the Company recognized $0.7 million and $2.5 million, respectively, of ERC as a contra-expense included in employee retention credit and grant income in the consolidated statements of operations. Although the program ended on January 1, 2022, the Company performed an analysis during 2022 and determined that it was eligible for additional credits related to 2021 wages.

Restaurant Revitalization Fund ("RRF"). 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. For the years ended December 31, 2022 and 2021, the Company recognized $1.5 million and $0.5 million, respectively, related to the RRF as a contra-expense included in employee retention credit and other grant income in the consolidated statements of operations. As of December 31, 2022, there was no remaining available for future recognition under the RRF.

For additional information, see Note 4 to the consolidated financial statements.

Other Income (Expense)

Interest expense

Interest expense was $0.9 million for the year ended December 31, 2022, compared to $0.7 million for the year ended December 31, 2021. This is consistent with the rising interest rates on new borrowings in 2022.

Change in fair value of derivative liabilities

There were no derivative liabilities recorded during the year ended December 31, 2022. 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 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 $0.1 million.

Change in fair value of investment

Our investment 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. We recognized a loss in fair value of $38,000 and $0.2 million during the years ended December 31, 2022 and 2021, respectively as a result of decreases in Sonnet's common stock price.

Change in fair value of convertible promissory note

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 and $0.1 million during the years ended December 31, 2022 and 2021, respectively.

Gain on extinguished/settled lease liabilities

During the years ended December 31, 2022 and 2021, we recognized a gain on extinguished/settled lease liabilities of $0.3 million and $0.4 million. The gain recognized during the year ended December 31, 2022 was the result settlements of outstanding lease liabilities. The gain recognized during the year ended December 31, 2021 was due to the derecognition of operating lease liabilities resulting from our negotiation of the cancellation of our obligations under certain lease agreements resulting from the COVID-19 pandemic.

Gain on extinguished trade payable

During the year ended December 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 trade payable extinguishments during the year ended December 31, 2021.

Gain on loan forgiveness

During the year ended December 31, 2022, we recognized a gain on loan forgiveness of $4.2 million due to the forgiveness of the PPP loans, plus accrued interest. There was no loan forgiveness during the year ended December 31, 2021.

Other income (expense)

Other income increased $43,000 or 13.9% for the year ended December 31, 2022, as compared to the year ended December 31, 2021, primarily due to (i) a gain of $0.1 million recognized as a result of franchise-related litigation settlement and (ii) a dividend received during 2022 from our investment in Hooters of America of approximately $0.1 million.

STATEMENT OF CASH FLOWS FOR THE YEAR ENDED DECEMBER 31, 2022 COMPARED TO THE YEAR ENDED DECEMBER 31, 2021

	Year Ended December 31,	
	2022	**2021**
(in thousands)		
Net cash flows used in operating activities	$ (3,711)	$ (4,474)
Net cash flows (used in) provided by investing activities	(315)	2,978
Net cash flows provided by financing activities	2,083	1,902
Effect of exchange rate changes on cash	—	(16)
Net (decrease) increase in cash and restricted cash	$ (1,943)	$ 390

Operating activities

Cash used in operating activities was primarily attributable to the net effect of (i) non-cash income of $4.2 million related to the gain recognized on the forgiveness of our PPP loans, (ii) a net loss of $3.3 million, (iii) asset impairment charges of $3.2 million, (iv) $2.0 million related to depreciation and amortization, (v) $0.3 million related to the gain on extinguished/settled lease liabilities and (vi) $0.2 million recognized for a gain on extinguished trade payable. 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 $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.

Investing activities

Cash used in investing activities during the year ended December 31, 2022 was primarily attributable to outflows from the purchase of property and equipment.

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.

Financing activities

Cash provided by financing activities for the year ended December 31, 2022 was primarily attributable to proceeds of $1.4 million related to the issuance of 8% senior unsecured convertible debentures and proceeds of $1.1 million related to the issuance of notes payable, partially offset by $0.4 million in payments of long-term debt and notes payable.

Cash provided by financing activities for the year ended December 31, 2021 was primarily attributable to proceeds from the $2.0 million PPP loan.

LIQUIDITY, CAPITAL RESOURCES AND GOING CONCERN

As of December 31, 2022, our cash balance was $0.4 million, of which none was restricted, our working capital deficiency was $16.3 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.

As we execute our business plan over the next 12 months, we intend to carefully monitor the impact of our 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, we may then have to scale back or freeze our operations plans, sell assets on less than favorable terms, reduce expenses, and/or curtail future acquisition plans to manage our liquidity and capital resources.

Our current operating losses combined with our working capital deficit 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 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.

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 as of each quarter end during 2021 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 $1.5 million for the years ended December 31, 2021. 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. During 2022, primarily as a result of multiple permanent store closures, the Company determined that triggering events occurred requiring management to review certain long-lived assets for impairment and determined that the carrying value of the Company's trademark/tradenames intangible asset, acquired franchise rights intangible asset, property and equipment and operating lease assets were impaired. resulting in an aggregate impairment charge of $3.2 million for the year ended December 31, 2022. The determinations were 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. Management has determined that the Company only has one reporting unit. 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 during 2021 and changing consumer habits, macroeconomic trends and poor performance and the ultimate closure of certain stores during 2022, management performed an impairment analysis of goodwill as of each quarter end during 2022 and 2021, the result of the analysis was that due to the negative carrying value of the reporting unit no impairment was recorded in either year.

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 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.

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 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 balance sheets of Amergent Hospitality Group, Inc. and Subsidiaries (the "Company") as of December 31, 2022 and 2021, and the related consolidated 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, 2022 and 2021, and the results of its operations and its cash flows for each of 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 approximately $3.3 million in losses for the year ended December 31, 2022, that included $3.2 million in asset impairments, and the Company has a working capital deficit of approximately $16.3 million as of December 31, 2022. 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 our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions 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 amounts of long-lived assets when events and circumstances warrant such a review in order to ascertain whether any of these assets is impaired. As a result of multiple store abandonments during fiscal year 2022, 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, 2022, long-lived assets aggregated to approximately $2,360,000 and operating lease assets aggregated to approximately $4,976,000. During fiscal year 2022, the Company recorded impairment charges of approximately $1,420,000 and $1,790,000 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 recorded impairment charges thereover.

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 and operating lease 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 utilized in the impairment analyses to assess their impact on the determination of impairment.

/s/ Cherry Bekaert LLP

We have served as the Company's auditor since 2015.

Charlotte, North Carolina
July 14, 2023

Amergent Hospitality Group Inc. and Subsidiaries
Consolidated Balance Sheets

(in thousands except share and per share data)	December 31, 2022	December 31, 2021
ASSETS		
Current assets:		
Cash	$ 375	$ 646
Restricted cash	—	1,672
Investments	12	50
Accounts and other receivables	869	865
Inventories	158	182
Prepaid expenses and other current assets	222	360
TOTAL CURRENT ASSETS	**1,636**	**3,775**
Property and equipment, net	2,338	3,115
Operating lease assets	4,976	8,021
Intangible assets, net	2,309	3,129
Goodwill	7,810	7,810
Investments	16	16
Deposits and other assets	100	352
TOTAL ASSETS	**$ 19,185**	**$ 26,218**
LIABILITIES, CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT		
Current liabilities:		
Accounts payable and accrued expenses	$ 9,245	$ 6,844
Current portion of long-term debt and notes payable	3,329	3,264
Current portion of operating lease liabilities	5,395	4,599
Deferred grant income	—	1,545
TOTAL CURRENT LIABILITIES	**17,969**	**16,252**
Operating lease liabilities, net of current portion	5,868	8,644
Contract liabilities	67	757
Deferred tax liabilities	192	150
Long-term debt and notes payable, net of current portion (includes debt measured at fair value of $599 at December 31, 2021)	4,335	6,593
TOTAL LIABILITIES	**28,431**	**32,396**
Commitments and contingencies (see Note 13)		
Convertible Preferred Stock: Series 2: $1,000 stated value; authorized 1,500 shares; 100 issued and outstanding at both December 31, 2022 and December 31, 2021	58	58
Stockholders' Deficit:		
Common stock: $0.0001 par value; authorized 50,000,000 shares; 15,706,736 shares issued and outstanding at both December 31, 2022 and December 31, 2021	2	2
Additional paid-in-capital	93,160	92,882
Accumulated deficit	(100,976)	(97,963)
Total Amergent Hospitality Group, Inc. Stockholders' Deficit	**(7,814)**	**(5,079)**
Non-controlling interests	(1,490)	(1,157)
TOTAL STOCKHOLDERS' DEFICIT	**(9,304)**	**(6,236)**
TOTAL LIABILITIES, CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT	**$ 19,185**	**$ 26,218**

See accompanying notes to the consolidated financial statements

Amergent Hospitality Group Inc. and Subsidiaries
Consolidated Statements of Operations

(in thousands except share and per share data)	Year Ended December 31, 2022	Year Ended December 31, 2021
Revenue:		
Restaurant sales, net	$ 19,678	$ 19,797
Gaming income, net	493	403
Franchise income	1,123	452
Total revenue	**21,294**	**20,652**
Expenses:		
Restaurant cost of sales	6,377	6,172
Restaurant operating expenses	15,089	13,262
Restaurant pre-opening and closing expenses	—	8
General and administrative expenses	5,584	5,210
Asset impairment charges	3,208	1,456
Depreciation and amortization	693	1,047
Employee retention credit and other grant income	(2,208)	(3,009)
Total expenses	**28,743**	**24,146**
Operating loss	**(7,449)**	**(3,494)**
Other income (expense):		
Interest expense	(886)	(656)
Change in fair value of derivative liabilities	—	119
Change in fair value of investment	(38)	(244)
Change in fair value of convertible promissory note	99	95
Gain on sale of subsidiary	—	58
Gain on extinguished/settled lease liabilities	256	412
Gain on extinguished trade payable	161	—
Gain on forgiveness of Paycheck Protection Program loans	4,201	—
Other income	354	310
Total other income	**4,147**	**94**
Loss before income taxes	(3,303)	(3,400)
Income tax expense	(42)	(118)
Consolidated net loss	**(3,346)**	**(3,518)**
Less: Net loss attributable to non-controlling interests	333	142
Net loss attributable to Amergent Hospitality Group Inc.	**$ (3,013)**	**$ (3,376)**
Net loss attributable to Amergent Hospitality Group Inc. per common share, basic	**$ (0.19)**	**$ (0.22)**
Net loss attributable to Amergent Hospitality Group Inc. per common share, diluted	**$ (0.19)**	**$ (0.22)**
Weighted average shares outstanding, basic	15,706,736	15,303,558
Weighted average shares outstanding, diluted	15,706,736	15,303,558

See accompanying notes to the consolidated financial statements

Amergent Hospitality Group Inc. and Subsidiaries
Consolidated Statements of Comprehensive Loss

(in thousands)	Year Ended December 31, 2022	Year Ended December 31, 2021
Net loss attributable to Amergent Hospitality Group Inc.	$ (3,013)	$ (3,376)
Foreign currency translation gain	—	26
Comprehensive loss	**$ (3,013)**	**$ (3,350)**

See accompanying notes to the consolidated financial statements

Amergent Hospitality Group Inc. and Subsidiaries
Consolidated Statements of Convertible Preferred Stock and Stockholders' Deficit
Years Ended December 31, 2021 and 2022

(in thousands except share data)	(Temporary equity) Preferred Series 2 Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Non-Controlling Interests	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	100	58	15,706,736	2	92,882	(97,963)	$ —	(1,157)	(6,236)
Share-based compensation expense	—	—	—	—	15	—	—	—	15
Issuance of warrants	—	—	—	—	263	—	—	—	263
Net loss	—	—	—	—	—	(3,013)	—	(333)	(3,346)
Balance, December 31, 2022	100	$ 58	15,706,736	$ 2	$ 93,160	$ (100,976)	$ —	$ (1,490)	$ (9,304)

See accompanying notes to the consolidated financial statements

Amergent Hospitality Group Inc. and Subsidiaries
Consolidated Statements of Cash Flows

(in thousands)	Year Ended December 31, 2022	Year Ended December 31, 2021
Cash flows from operating activities:		
Net loss	$ (3,346)	$ (3,518)
Adjustments to reconcile net loss to net cash flows used in operating activities:		
Depreciation and amortization	693	1,047
Amortization of operating lease assets	1,261	1,011
Asset impairment charges	3,208	1,456
Gain on extinguished/settled lease liabilities	(256)	(412)
Gain on sale of subsidiary	—	(58)
Gain on extinguished trade payable	(161)	—
Share-based compensation	15	48
Change in fair value of investment	38	244
Change in fair value of convertible promissory note	(99)	(95)
Amortization of debt discount	195	186
Change in fair value of derivative liabilities	—	(119)
Gain on loan forgiveness	(4,201)	—
Change in operating assets and liabilities:		
Accounts and other receivables	(4)	(555)
Inventories	24	(46)
Prepaid expenses and other assets	390	(22)
Accounts payable and accrued expenses	2,450	(1,592)
Deferred tax liabilities	42	41
Deferred grant income	(1,545)	(455)
Operating lease liabilities	(1,724)	(1,495)
Contract liabilities	(691)	(74)
Derivative liability	—	(66)
Net cash flows used in operating activities	(3,711)	(4,474)
Cash flows from investing activities:		
Purchase of property and equipment	(315)	(129)
Cash and restricted cash acquired in connection with acquisition	—	2,071
Net proceeds from sale of subsidiary	—	568
Proceeds from sale of investments	—	468
Net cash flows (used in) provided by investing activities	(315)	2,978
Cash flows from financing activities:		
Proceeds from long-term debt and notes payable	2,428	2,000
Payments of long-term debt and notes payable	(309)	(53)
Payment of financing costs	(36)	—
Distributions to non-controlling interest	—	(45)
Net cash flows provided by financing activities	2,083	1,902
Effect of exchange rate changes on cash	—	(16)
Net (decrease) increase in cash and restricted cash	(1,943)	390
Cash and restricted cash, beginning of period	2,318	1,928
Cash and restricted cash, end of period	$ 375	$ 2,318
Supplemental cash flow information:		
Cash paid for interest and income taxes		
Interest	$ 676	$ 402
Income taxes	$ 23	$ 76
Non-cash operating, investing and financing activities:		
Conversion of Preferred Series 2 stock to common stock	$ —	$ 402
Change in operating lease assets and liabilities due to new and amended leases	$ 45	$ 404
Issuance of warrants in connection with convertible promissory notes	$ 263	$ —
Purchases of property and equipment included in accounts payable and accrued expenses	$ 203	$ —
Issuance of convertible promissory note as consideration for acquisition	$ —	$ 1,194
Details of end of period cash and restricted cash:		
Cash	$ 375	$ 646
Restricted cash	—	1,672
Total cash and restricted cash	$ 375	$ 2,318

See accompanying notes to the consolidated 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"). 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.

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 accompanying consolidated 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.

The consolidated 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%

LIQUIDITY, CAPITAL RESOURCES AND GOING CONCERN

As of December 31, 2022, the Company's cash balance was $0.4 million, its working capital deficiency was $16.3 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.

The Company's current operating losses, combined with its working capital deficit, raise substantial doubt about its ability to continue as a going concern. The accompanying 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

BASIS OF PRESENTATION

The accompanying consolidated 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 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 balance sheets and 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 the valuation of derivatives, options, warrants and convertible notes payable and analysis of the recoverability of goodwill and long-lived assets. Actual results could differ from those estimates.

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 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, 2022 and 2021, the Company maintained restricted cash of nil and $1.7 million, respectively. The restricted cash was maintained in a segregated bank account. The restricted cash at December 31, 2021 relates to the acquisition discussed in Note 3.

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, 2022 and 2021, 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.

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 10 years. The amortization expense of these definite-lived intangibles is included in depreciation and amortization in the Company's 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 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.

During the first quarter of 2023, as a result of recent store closures, the Company reassessed the useful lives of the indefinite-lived trademark/tradenames intangible assets, which had an aggregate carrying value of $2.3 million as of December 31, 2022, and determined that they were no longer considered to be indefinite. Prior to assigning useful lives to the previously indefinite-lived intangible assets, the Company tested the assets for impairment, concluding that they were not impaired. Effective March 31, 2023, these trademark/tradenames intangible assets were assigned a useful life of approximately five years, and the Company began amortizing their carrying values on a straight-line basis over the remaining useful lives.

Franchise Rights

As of December 31, 2021, we had intangible assets related to initial franchise fees for our PizzaRev restaurants, which were amortized over the five-year life of the franchise agreement. As of December 31, 2022, the Company determined that the franchise rights for PizzaRev restaurants should be charged off.

The Company also has intangible assets representing the acquisition date fair value of customer contracts acquired in connection with BGR's franchise business, which are amortized over the weighted average life of the underlying franchise agreements, which is the estimated useful life.

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, primarily as a result of the COVID-19 outbreak, the Company determined that triggering events occurred requiring management to review certain long-lived assets for impairment and determined that the carrying value of the Company's trademark/tradenames intangible asset, property and equipment and operating lease assets were impaired. As a result, an aggregate impairment charge was recognized of $1.5 million for the year ended December 31, 2021. Additionally, during 2022, primarily as a result of multiple permanent store closures, the Company determined that triggering events occurred requiring management to review certain long-lived assets for impairment and determined that the carrying value of the Company's trademark/tradenames intangible asset, acquired franchise rights intangible asset, property and equipment and operating lease assets were impaired. resulting in an aggregate impairment charge of $3.2 million for the year ended December 31, 2022. See Notes 7, 8 and 13 for further discussion. The determinations were 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, 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'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. Due to the impact of the COVID-19 pandemic during 2021, the Company performed quarterly quantitative impairment assessments 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 on information known at the time of the assessment. Additionally, due to changing consumer habits, macroeconomic trends and poor performance and the ultimate closure of certain stores, management performed quarterly qualitative impairment analyses of goodwill during 2022 and a quantitative analysis as of December 31, 2022, the result of the analysis was that due to the negative carrying value of the reporting unit no impairment was recorded at December 31, 2022.

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 statements of operations and comprehensive loss for the years ended December 31, 2022 and 2021. See Note 5.

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 was the functional currency for its foreign operations. The foreign subsidiary was sold in 2021, and there are no foreign assets held at December 31, 2022.

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.

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 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 is accelerated if the development agreement is terminated. During the year ended December 31, 2022, the Company recognized $0.7 million of franchise income as a result of the cancellation of its international Master Franchise Agreements. The Company recognized $0.1 million of revenue related to contract liabilities during the year ended December 31, 2021.

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.

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 statements of operations, totaled approximately $0.2 million and $0.2 million for the years ended December 31, 2022 and 2021, 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 have remaining terms of up to approximately 11 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. If the estimate of our reasonably certain lease term was changed, our 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. The Company received COVID-19-related lease concessions during 2021; however, none were received during 2022.

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.

Based on the rules of the Internal Revenue Code ("IRC"), Amergent has determined that it has approximately $23.7 million of net operating loss carryforwards available to the Company as of December 31, 2022 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.

The Company has provided a valuation allowance for the full amount of the deferred tax assets in the accompanying consolidated financial statements.

As of December 31, 2022 and 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 is 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 12, the potential conversion of the convertible debt instruments, as described in Note 9, and share-based compensation awards as described in Note 14, would be anti-dilutive.

COMPREHENSIVE INCOME OR LOSS

Standards for reporting and displaying comprehensive income or 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 or 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 or loss by their nature in financial statements, and (b) display the accumulated balance of other comprehensive income or loss separately in the equity section of the balance sheet for all periods presented. Other comprehensive income or loss represents foreign currency translation adjustments.

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 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 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 consolidated 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 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.

The assets acquired, and liabilities assumed as of the acquisition date consists of the following:

Assets acquired:		
Cash	$	71
Restricted cash		2,000
Property and equipment		348
Right of use asset		1,391
Tradename/trademark intangible		410
Franchise rights intangible		410
Goodwill		51
Security deposits and other assets		126
Total assets acquired	$	4,807
Liabilities assumed		
Gift card liability	$	139
Deferred revenue		36
Deferred grant income		2,000
Right of use liability		1,438
Total liabilities assumed	$	3,613
Net purchase price	$	1,194

Interest on the Note is due at maturity on August 30, 2023, the maturity 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. 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 Restaurant Revitalization Fund 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 Restaurant Revitalization Fund 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 has periodically submitted 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 Restaurant Revitalization Fund. The Company has used all of the funds and submitted all reports to the escrow agent and as of December 31, 2022 there were no funds or restricted cash available in the escrow account.

Restricted cash and a deferred grant income liability has been recorded on the opening balance sheet for the unused proceeds from the Restaurant Revitalization Fund, and the liability is being reduced as the restricted cash is used for eligible costs incurred under the Restaurant Revitalization Fund 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, including Pie Squared Holdings' grant from the U.S. SBA under the Restaurant Revitalization Fund, as further described in Note 4.

4. EMPLOYEE RETENTION CREDIT AND RESTAURANT REVITALIZATION FUND

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. Although the program ended on January 1, 2022, the Company performed an analysis during the current period and determined that it was eligible for additional credits related to 2021 wages. As of each of December 31, 2022 and December 31, 2021, approximately $0.8 million of ERC is included in accounts and other receivables in the consolidated balance sheets. The Company recognized $0.7 million and $2.5 million for the years ended December 31, 2022 and 2021, respectively, of ERC as a contra-expense included in employee retention credit and other grant income in the consolidated statements of operations.

In addition to the ERC, the Company received credits under other government/government agency programs of approximately $128,000 for the year ended December 31, 2021, of which approximately $84,000 were recorded as an offset to restaurant operating expenses and $44,000 as other income, respectively, in the consolidated statements of operations.

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 were 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. As of December 31, 2022 and 2021, the Company had restricted cash of nil and $1.7 million, respectively, related to the unused proceeds from the RRF. The Company recognized $1.5 million and $0.5 million for the years ended December 31, 2022 and 2021, respectively, related to the RRF as a contra-expense included in employee retention credit and other grant income and in the consolidated statements of operations. As of December 31, 2022, all RRF funds were utilized.

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, through the date at which the consolidated financial statements were available to be issued, 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.

5. FAIR VALUE OF FINANCIAL INSTRUMENTS

The tables below reflect 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, 2022				
Assets (Note 6)				
Common stock of Sonnet	$ 12	$ —	$ —	$ 12
Liabilities (Note 9)				
Convertible note payable	$ —	$ —	$ 1,000	$ 1,000

(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 6)				
Common stock of Sonnet	$ 50	$ —	$ —	$ 50
Liabilities (Note 9)				
Convertible note payable	$ —	$ —	$ 1,099	$ 1,099

The Company evaluated the convertible note payable issued in connection with the acquisition of Pie Squared Holdings (see Note 9) 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. As of December 31, 2022, the convertible note payable is classified as current, and, as such, the outstanding principal amount due and payable at maturity approximates the fair value.

The reconciliation of the convertible note payable measured at fair value on a recurring basis using significant unobservable inputs (Level 3) is as follows:

	Year Ended	
(in thousands)	December 31, 2022	December 31, 2021
Beginning balance	$ 1,099	$ —
Fair value at issuance date	—	1,194
Change in fair value	(99)	(95)
Ending balance	$ 1,000	$ 1,099

6. INVESTMENTS

Investments consist of the following:

(in thousands)	December 31, 2022	December 31, 2021
Common stock of Sonnet, at fair value [(a)]	$ 12	$ 50
Chanticleer Investors, LLC, at cost [(b)]	16	16
Total	$ 28	$ 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 December 31, 2022, 8,718 shares of Sonnet were held. During the year ended December 31, 2021, the Company sold shares of Sonnet and received proceeds of $0.1 million.

(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%. In March 2022, the Company received a dividend from its investment in Hooters of America of approximately $0.1 million, which is included in other income for the year ended December 31, 2022 in our consolidated statement of operations.

7. PROPERTY AND EQUIPMENT, NET

Property and equipment, net consists of the following:

(in thousands)	December 31, 2022	December 31, 2021
Leasehold improvements	$ 4,675	$ 5,511
Restaurant furniture and equipment	1,893	2,768
Construction in progress	—	20
Office and computer equipment	7	33
Office furniture and fixtures	54	57
	6,629	8,389
Accumulated depreciation and amortization	(4,291)	(5,274)
	$ 2,338	$ 3,115

During 2022, as a result of changing consumer habits resulting in poor performance and the ultimate closure of certain stores, the Company determined that triggering events occurred requiring management to review certain long-lived assets for impairment and determined that the carrying value of the Company's property and equipment were impaired. As a result, an impairment charge of approximately $0.8 million was recorded for the year ended December 31, 2022, which is included in asset impairment charges in our consolidated statement of operations.

During 2021, primarily as a result of the COVID-19 outbreak that had a significant impact throughout the hospitality industry, the Company determined that triggering events occurred requiring management to review certain long-lived assets for impairment and determined that the carrying value of the Company's property and equipment were impaired. As a result, an impairment charge of approximately $0.4 million was recorded for the year ended December 31, 2021, which is included in asset impairment charges in our consolidated statements of operations. The impact of COVID-19 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.

We recognized depreciation expense of $0.5 million and $0.6 million during years ended December 31, 2022 and 2021, respectively.

8. INTANGIBLE ASSETS, NET

Goodwill

A roll forward of goodwill is as follows:

(in thousands)	Year Ended December 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

On October 8, 2021, the Company, through its wholly owned 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 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, 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
		2,850	3,260
Acquired Franchise Rights:			
BGR: The Burger Joint	7 years	828	828
PizzaRev	5 years	—	410
		828	1,238
Total intangibles at cost		3,678	4,498
Accumulated amortization		(1,369)	(1,369)
Intangible assets, net		$ 2,309	$ 3,129

* See Note 2; the Company is re-designating these to 5-year useful lives in the first quarter of 2023.

Based on an analysis of the recoverability of the carrying value at each quarter end during 2022, including December 31, 2022, an impairment charge of approximately $0.3 million was recorded to trademark/tradenames for PizzaRev and $0.3 million was recorded to franchise rights for PizzaRev during the year ended December 31, 2022.

Based on an analysis of the recoverability of the carrying value at each quarter end during 2021, including December 31, 2021, 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.

Amortization of intangible assets was $0.2 million and $0.4 million for the years ended December 31, 2022 and 2021, respectively.

Amortization expense for the next five years is as follows (in thousands). The amounts below reflect the Company's change in estimate relating to the useful lives of the formerly indefinite-lived trademark/tradename intangible assets. For additional information, see Note 2**.**

Year ending December 31:	
2023	$ 343
2024	458
2025	458
2026	458
2027	458
Thereafter	134
	$ 2,309

9. LONG-TERM DEBT AND NOTES PAYABLE

Long-term debt and notes payable are summarized as follows:

(in thousands)	December 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)	1,000	1,099
PPP loans (d)	—	4,109
EIDL loans (e)	300	300
Contractor note (f)	348	348
Notes payable (g)	144	—
Related party note (h)	625	—
Total Debt	**7,805**	**9,894**
Less: discount on convertible debt (a)(b)	(141)	(37)
Total Debt, net of discount	**$ 7,664**	**$ 9,857**
Current portion of long-term debt and notes payable	$ 3,329	$ 3,264
Long-term debt and notes payable, less current portion	$ 4,335	$ 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"), a related party, 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 is payable in full on April 1, 2024, 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. All of the assets of the Company are collateral for this debt.

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 such that only the portion of the balance for which the Company has sufficient available shares, considering all other outstanding instruments at the time of conversion on a fully diluted basis, can be converted. 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 December 31, 2022, $2.4 million of the 10% Convertible Debt was convertible into approximately 23,700,000 shares of common stock.

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.

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, which has been recorded as a debt discount and is being amortized over the two-year term of the related debt.

(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 a Securities Purchase Agreement (exhibit 10.34), 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 on September 1, 2023 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 December 31, 2022, the 8% Convertible Debt was convertible into 3,375,000 shares of common stock.

The Company analyzed the 8% Convertible Debt and did not identify any embedded features that require bifurcation from the host and accounting as derivatives. However, as the convertible notes payable were issued with warrants, the net proceeds from the issuance were allocated to the 8% Convertible Debt and the warrants based on their relative fair values, resulting in an allocation of $1.0 million to the 8% Convertible Debt and $0.3 million to the warrants (see Note 12). 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.

(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. As of December 31, 2022, the note was convertible into 2,000,000 shares of common stock.

Interest on the convertible promissory note is due on August 30, 2023, the maturity date. The Company elected to measure the convertible promissory note at fair value, with changes in the fair value recorded within change in fair value of convertible promissory note in the consolidated statements of operations. See Note 5 for additional information on the valuation of the convertible promissory note as of December 31, 2022.

(d) On April 27, 2020, Amergent received a Paycheck Protection Program ("PPP") loan 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 bore interest at 1% per year, was due to mature in April 2022, and required monthly interest and principal payments of approximately $0.1 million beginning in November 2020 and through maturity. On February 25, 2021, the Company received a second PPP loan in the amount of $2.0 million. The note bore interest at 1% per year, was due to mature on February 25, 2026, and required monthly principal and interest payments of approximately $45,000 beginning June 25, 2022 through maturity. On November 15, 2022 and December 16, 2022, the Company received notice from the SBA that the first and second PPP loans, respectively, had been fully forgiven with accrued interest.

(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 December 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.

In August 2022, the Company entered into a Future Revenue Sales Agreement with Sprout Funding which is being treated as a note payable. The Company received a net $0.2 million and the terms of the note require 180 payments of $1,359 for each working day of the week. The terms of the note are open ended until all amounts under the note are repaid with an expected maturity date of February 2024. The implied interest rate is 80%.

(h) In August 2022 through December 2022, the Company received advances from a related party in aggregate of $0.6 million. The lending entity is an entity in which the Company's Chairman and Chief Executive Officer has an ownership interest and serves as the Chief Executive Officer. Interest accrues at a rate of 1%, and principal and accrued interest was due on June 30, 2023 and the loan has not been extended.

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 December 31, 2023.

Maturities of our debt as of December 31, 2022 are presented below (in thousands):

Year ending December 31:	
2023	$ 3,329
2024	4,185
2025	7
2026	7
2027	7
Thereafter	270
Total debt maturities	7,805
Less: discount on convertible debt	(141)
Total debt	$ 7,664

10. ACCOUNTS PAYABLE AND ACCRUED EXPENSES

Accounts payable and accrued expenses are summarized as follows:

(in thousands)	**December 31, 2022**	**December 31, 2021**
Accounts payable	$ 3,240	$ 2,544
Accrued expenses	3,385	1,955
Accrued taxes (sales, payroll, etc.)	2,214	2,149
Accrued interest	406	196
Accounts payable and accrued expenses, total	$ 9,245	$ 6,844

As of December 31, 2022 and December 31, 2021, approximately $2.1 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. The Company will record an additional accrual for such payroll taxes upon receipt of notice from a relevant taxing authority. During the year ended December 31, 2022, the Company increased its accrual for payroll taxes by $0.3 million. 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 $0.9 million and is recorded within accrued taxes on our consolidated balance sheet as of December 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.

As of December 31, 2022 and December 31, 2021, the Company had no accrued interest or penalties relating to any income tax obligations.

11. INCOME TAXES

The income tax expense consists of the following:

(in thousands)	December 31, 2022	December 31, 2021
Foreign		
Current	$ —	$ 38
Deferred	—	36
Change in valuation allowance	—	(36)
U.S. Federal		
Current	—	—
Deferred	(1,656)	575
Change in valuation allowance	1,616	(627)
State and local		
Current	—	—
Deferred	(355)	61
Change in valuation allowance	437	71
Income tax expense	$ 42	$ 118

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)	December 31, 2022	December 31, 2021
Computed "expected" income tax benefit	$ (479)	$ (580)
Change in valuation allowance	2,238	(593)
Permanent items	(1,295)	25
State income taxes, net of federal benefit	(399)	61
Prior year true-ups and other deferred tax balances	(116)	1,329
Rate change	74	(169)
Other	19	45
Income tax expense	$ 42	$ 118

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, 2022 and 2021 were:

(in thousands)	December 31, 2022	December 31, 2021
Net operating loss carryforwards	$ 8,033	$ 6,582
Accrued expenses	1,049	733
Section 163(j) limitation	923	848
Fixed assets and intangibles	809	750
ROU asset/liability	464	—
Capital loss carryforwards	394	387
Restaurant start-up expenses	74	77
Contract liabilities	17	198
Deferred occupancy liabilities	8	—
Charitable contribution carryforwards	4	7
Credits	176	153
Total deferred tax assets	11,951	9,735
Investments	(382)	(323)
Deferred occupancy liabilities	—	(21)
Other	—	(18)
Total deferred tax liabilities	(382)	(362)
Net deferred tax assets	11,569	9,373
Valuation allowance	(11,761)	(9,523)
Total	$ (192)	$ (150)

As of December 31, 2022, the Company has U.S. federal and state net operating loss carryovers of approximately $31.0 million, which will expire at various dates beginning in 2031 through 2036 if not utilized, with the exception of loss carryovers generated in tax years after 2017. As described in Note 2, approximately $7.2 million of these net operating loss carryovers are subject to limitations by section 382 of the IRC. 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, 2022.

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, 2022 and 2021, the change in valuation allowance was approximately $2.2 million and $(0.6) 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 consolidated statements of operations. Penalties would be recognized as a component of "general and administrative expenses." For the years ended December 31, 2022 and 2021, 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.

During the 2018 fiscal year, numerous provisions of the TCJA went into effect. The Company evaluated these provisions and incorporated the estimated impact in the 2018 income tax expense. These provisions include, but are not limited to, reductions in the corporate income tax rate with regard to current income taxes, limitations with regard to interest expense under IRC §163(j) that disallows a portion of interest expense but is carried forward with no future expiration, changes to the deductibility of meals and entertainment, changes to bonus depreciation and a reduced tax rate on foreign export sales.

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 $0.2 million 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 2021, and with no foreign activity in 2022, the impact of GILTI on taxable income is nil.

12. STOCKHOLDERS' DEFICIT

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. In March 2020, an aggregate of 713 shares of Series 2 Preferred were converted into 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.

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 discussed below. 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 December 31, 2022.

The Series 2 Preferred is classified in the accompanying 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 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 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 previously held in escrow for repayment 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. 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 consolidated statement of operations. A $0.1 million increase in fair value was recorded for year ended December 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.

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 the 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 December 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
	4,759,200		

A summary of the warrant activity during the year ended December 31, 2022 is presented below:

	Number of Warrants	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (years)
Outstanding at January 1, 2022	3,409,200	$ 0.34	7.6
Granted	1,350,000	$ 0.50	5.0
Outstanding at December 31, 2022	4,759,200	$ 0.38	5.9
Exercisable at December 31, 2022	4,759,200	$ 0.38	5.9

As discussed in Note 9, 1,350,000 warrants were granted in March 2022 in connection with the issuance of 8% Convertible Debt and are equity-classified in the consolidated financial statements. The net proceeds from the issuance were allocated to the 8% Convertible Debt and the warrants based on their relative fair values at the issuance date, resulting in an allocation of approximately $0.3 million to the warrants. Inputs 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%
Strike price	$ 0.50

13. COMMITMENTS AND CONTINGENCIES

Indemnification Agreement and Tail Policy

On March 25, 2020, in connection with the Merger, 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 expires on March 25, 2026.

In addition, 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.

Legal Proceedings

Litigation related to leased properties

During 2022 and 2021, the Company was in arrears on rent due on several of its leases. 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. The Company has four judgements against it in the amount of $0.8 million for defaulting on leases. See *Leases* section below for discussion of past due rent on abandoned locations.

No amounts in addition to contracted rent that is due have been accrued as of December 31, 2022 or 2021 in the accompanying consolidated balance sheets as management does not believe the outcome will result in additional liabilities to the Company; however, there can be no guarantees.

During 2022, our LBB locations were notified by the Department of Labor ("DOL") of an audit concerning tip pools at 15 of our LBB stores in and around Portland, OR metropolitan area. In January 2023, the DOL reported that its audit resulted in one significant finding, that the Company improperly permitted "supervisory" in-store employees to participate in the tip pool. DOL assessed a penalty of approximately $972,000 (equal to $486,000 in inappropriately paid tips multiplied by two pursuant to the statute's liquidated damages provision). DOL offered to reduce that number in half to $486,000. The Company has fought back against the finding, asserting that the alleged supervisors did not have sufficient supervisory responsibility to be deemed a "supervisor" under the statute. Currently, settlement discussions are in progress. DOL has reduced its amount to just under $170,000. The Company has offered $25,000 to resolve the matter. It is difficult to predict at what amount the case may resolve. If it does not resolve, DOL can choose to file the case in litigation or send right-to-sue letters to each impacted employee and former employee. Currently, we do not believe it is likely that DOL will pursue litigation, having indicated that they would be discussing that option and opting not to pursue anything at this time. If the case were to proceed to settle, we expect it would do so between the $25,000 and $170,000 amounts currently on the table. The Company has recorded a charge of $25,000 as management believes this is the most likely outcome.

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, 2022, the Company does not expect the amount of ultimate liability with respect to these matters to be material to the Company's consolidated 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	December 31, 2022	December 31, 2021
Right-of-use assets	Operating lease assets	$ 4,976	$ 8,021
Current lease liabilities	Current operating lease liabilities	$ 5,395	$ 4,599
Non-current lease liabilities	Long-term operating lease liabilities	5,868	8,644
		$ 11,263	$ 13,243

Lease term and discount rate were as follows:

	December 31, 2022	December 31, 2021
Weighted average remaining lease term (years)	5.9	6.7
Weighted average discount rate	8.0%	8.1%

As of December 31, 2022 and 2021, we performed an analysis of the recoverability of our right-of-use assets. Based on the analysis, we recorded an impairment of approximately $1.8 million and $0.7 million for the years ended December 31, 2022 and 2021, respectively, which is included in asset impairment charges in our consolidated statements of operations. The impairment recognized during the year ended December 31, 2022 was primarily the result of changing consumer habits resulting in poor performance and the ultimate closure of certain stores, and the impairment recognized during the year ended December 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 years ended December 31, 2022 and 2021, approximately $0.3 million and $0.4 million, respectively, of lease liabilities were derecognized due to the Company negotiating the cancellation of its obligations under certain lease agreements, which is included in gain on extinguished/settled lease liabilities in our consolidated statements of operations. The cancellations resulted from the COVID-19 pandemic. As of December 31, 2022 and 2021, the Company had lease liabilities of $6.8 million and $3.1 million, respectively, related to abandoned leases. These lease liabilities are included in current operating lease liabilities, accrued expenses and accounts payable in our consolidated balance sheets.

During the year ended December 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 during the year ended December 31, 2022 to both the right-of-use assets and lease liabilities. There were no lease modifications during the year ended December 31, 2021.

Rent expense of approximately $2.6 million and $2.4 million was incurred during the years ended December 31, 2022 and 2021, respectively, of which approximately $0.1 million was variable in each year.

Maturities of our operating lease liabilities as of December 31, 2022 are presented below (in thousands):

Year ending December 31:		
2023	$	2,645
2024		2,654
2025		2,501
2026		2,083
2027		1,626
Thereafter		2,799
Total remaining lease payments		14,308
Less: imputed interest		(3,045)
Total lease liabilities	$	11,263

Certain additional amounts of lease liabilities for leases in default have been presented as current liabilities. The above schedule reflects the original contractual maturities.

PPP Loan

As discussed in Note 9, the Company received two PPP loans totaling $4.1 million, which were established under the CARES Act and administered by the U.S. SBA. On November 15, 2022 and December 16, 2022, the Company received notice from the SBA that the first and second PPP loans, respectively, had been fully forgiven with accrued interest.

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 4, 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.

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, 2022, 200,000 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, 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 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.

During the years ended December 31, 2022 and 2021, the Company recorded share-based compensation expense of approximately $0.02 and $0.05, respectively, in general and administrative expenses.

The following table summarizes the share-based award activity for the periods presented:

	Number of Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (years)
Outstanding at January 1, 2022	450,000	$ 1.38	3.6
Forfeited	(150,000)		
Outstanding at December 31, 2022	300,000	$ 1.57	3.6
Exercisable at December 31, 2022	300,000	$ 1.57	3.6

As of December 31, 2022, the Company had no unrecognized compensation cost related to outstanding share-based awards.

15. SUBSEQUENT EVENTS

The Company has evaluated subsequent events from the balance sheet date through the date at which the consolidated financial statements were available to be issued, and there are no items requiring disclosure other than the following:

In January 2023, the Company entered into an asset purchase agreement with Boudreaux's Cajun Kitchen, Inc. to acquire the Houston, Texas based brand and its four restaurant locations for an aggregate purchase price of $3.8 million. In March 2023, the transaction closed for cash consideration of $1.3 million and a convertible promissory note of $2.5 million. In connection with the transaction, the Company paid an affiliate of Oz Rey an aggregate fee of $0.3 million. The convertible promissory note accrues interest at a rate of 6.0% per annum and will mature two years from the date of closing, with $1.3 million of the principal balance of the note due and payable in July 2023. The note may be converted, at the option of the holder, into shares of common stock at a conversion price of $0.50 per share. The convertible promissory note may be prepaid in whole or in part at any time, without premium or penalty.

In February 2023, the Company closed a $2.5 million Series B convertible preferred stock (the "Series B Preferred") and warrant financing with an affiliate of Oz Rey. The Company issued 125 shares of Series B Preferred and warrants to purchase up to 1,250,000 shares of common stock at a $0.0001 par value. The warrants have a term of 10 years and an initial exercise price of $1.00 per share of common stock, which is subject to adjustment for customary provisions such as stock splits, stock dividends and distributions.

The Series B Preferred is convertible into shares of common stock at the option of the investors at a conversion price of $0.50 per share and will accrue dividends in an amount equal to 12% on an annual basis, payable in cash or in shares of common stock based on 30-day volume-weighted average price of common stock on the trading market. The Company has the right to redeem the Series B Preferred subject to certain terms.

In April 2023, the Company received an advance of $0.4 million from MVA 916 LLC., an Oz Rey, LLC related entity. The advance does not have repayment terms and does not accrue interest.

In March 2023 and May 2023, the Company received advances of $0.04 million and $0.07 from MV Equity Partners, Inc., an Oz Rey, LLC related entity. The advances do not have repayment terms and does not accrue interest.

In May 2023, the Company received an advance of $0.07 million from Oz Rey, LLC. The advance does not have repayment terms and does not accrue interest.

In March 2023, the Company entered into a Forward Purchase Agreement with Kapitus LLC which is being treated as a note payable. The Company received a net $0.1 million, and the terms of the note require 52 payments of $2,899 for each week. The terms of the note are open ended until all amounts under the note are repaid with an expected maturity date of March 2024. The implied interest rate is 11%.

In May 2023, the Company entered into a Forward Purchase Agreement with Kapitus LLC which is being treated as a note payable. The Company received a net $0.1 million, and the terms of the note require 52 payments of $2,500 for each week. The terms of the note are open ended until all amounts under the note are repaid with an expected maturity date of March 2024. The implied interest rate is 11%.

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, 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 December 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 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, 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 deficiencies:

- As of December 31, 2022, due to the inherent issue of segregation of duties in a small company, we have relied heavily on entity of management review controls. Accordingly, management has determined that this control deficiency constitutes a material weakness.

- As of December 31, 2022, we had not established a formal written policy for the approval, identification, and authorization of new vendors entering into the approved vendor listing.

- As of December 31, 2022, we had not established a formal review, on a test basis, of our third-party accounting provider's coding of transactions and reconciliations of key accounts.

- As of December 31, 2022, we had not established an automated software program to account for our operating lease schedule liabilities but were relying on a manual computation of the Company's operating lease schedule.

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.

Because of these material weaknesses, management has concluded that the Company did not maintain effective internal control over financial reporting as of December 31, 2022, based on the criteria established in 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

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 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 applicable law and rules of the OTC Markets. Oz Rey, LLC has not yet submitted any appointees to Amergent.

DIRECTORS

Name	Age	Position
Michael D. Pruitt	62	Chairman, Chief Executive Officer
Keith J. Johnson	63	Director, Chairman of Audit Committee, Member Compensation Committee
Neil G. Kiefer	71	Director, Chairman of Compensation Committee Member of Nominating and Governance Committee
J. Eric Wagoner	70	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.

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	62	Chairman and Chief Executive Officer
Mark Whittle	57	Interim President
Stephen J. Hoelscher	64	Chief Financial Officer

Biography for Mr. Pruitt is included with the director profiles above. Mr. Pruitt was appointed to his position concurrently with the Merger and Spin-Off.

Mark Whittle was appointed as Interim President of Amergent on January 11, 2023. Previously, he served as EVP of Franchise Development of Amergent. Prior to joining Amergent, from June 2013 to November 2021, Mr. Whittle served as Chief Development Officer for Hooters of America/HOA Brands where he managed franchises, franchise sales, real estate, site design and construction and acquisitions.

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. 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) a Manager and Chief Financial Officer of MV Amanth LLC and its subsidiaries, also affiliates of Oz Rey, LLC.

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, 2022, none of our officers or directors filed a late Form 3 or Form 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

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 sets 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, 2022 and 2021 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	2022	$ 290,948	—	—	—	$ 290,948
Chief Executive Officer	2021	$ 287,300	—	—	—	$ 287,300
Frederick L. Glick (1)	2022	$ 278,727	—	—	—	$ 278,727
Former President	2021	$ 275,000	—	—	—	$ 275,000
Stephen J. Hoelscher	2022	$ 120,000	—	—	—	$ 120,000
Chief Financial Officer	2021	$ 112,192	—	—	—	$ 112,192

(1) Mr. Glick resigned from his position as President effective December 31, 2022 and from the board of directors on June 9, 2023.

Employment Agreements

Frederick L. Glick, Former 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.

Mr. Glick resigned from his position as President effective December 31, 2022. The Company and Mr. Glick entered into a standard separation and release agreement on January 10, 2023. Upon his resignation, he forfeited unvested stock options to purchases 175,000 shares of common stock.

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. Mr. Hoelscher received a base salary of $120,000 and earned an annual discretionary 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.

On January 30, 2023, we entered into a new at-will employment offer with Stephen J. Hoelscher for his continued service as Chief Financial Officer. His salary was increased to $180,000 per annum. In addition, his discretionary cash bonus target is $36,000. Mr. Hoelscher received 50,000 restricted stock awards that vest immediately under Amergent's 2021 Equity Incentive Plan. In addition, he was granted an option to purchase 100,000 shares of common stock, which options vest annually in three equal installments, commencing December 31, 2023. The exercise price for the first 1/3 is $0.60 for the first third, the second 1/3, $1.00, and the last third, $1.50.

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.

Mark Whittle, Interim President

On January 10, 2023, we entered into an executive offering with Mr. Whittle to serve as Interim President. His annual salary $230,000. He will continue to manage franchise development and will receive a commission equal to 10% of any franchise fee revenue (not including royalty revenue) collected by Amergent for future franchise units and franchise development agreements sold during the term of his employment in the Little Big Burger, American Burger, and BGR Systems. For 2023, his discretionary cash bonus target is $46,000. Mr. Whittle will receive four weeks of paid vacation per year and will be entitled to participate in company benefit programs available to its executive officers.

Mr. Whittle's offer of employment is at will; however, in the event he is terminated by the company without cause or resigns without good reason, a three-month paid garden leave period will be triggered. After the garden leave period, Mr. Whittle will be entitled to three months' severance. In the event the garden leave period is waived by the parties, the severance period will be extended to six months. As an inducement, the board granted Mr. Whittle 70,000 restricted shares of common stock that vest immediately under the company's 2021 Equity Incentive Plan. In addition, he was also granted an option to purchase 140,000 shares of common stock, which options will vest 1/3 per year over a three-year period. The exercise price for the first 1/3 will be $0.60 for the first third, the second 1/3, $1.00, and the last third, $1.50.

Change-in-Control Provisions

Except as described above concerning Frederick L. Glick's employment agreement, which is no longer in effect, no other officers have agreements with change-in-control provisions.

Director Compensation Table

The following table reflects compensation earned for services performed in 2022 by members of Amergent's board who were not employees. The 2022 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 since the 4th quarter of 2019 through 2022 are accrued and unpaid. The accrued but unpaid Director fees from the 4th quarter of 2019 through December 2022 were paid in January 2023 with the issuance of 1,056,930 common shares.

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, 2022:

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, Former President	150,000	—	$ 2.50	8/1/2026	—	—	—	—
Fredrick J. Glick, Former President	100,000	100,000	$ 0.56	8/1/2026	50,000	$ 20,000	—	—
Fredrick J. Glick, Former President	100,000	100,000	$ 0.81	8/1/2026	100,000	40,000	—	—
Fredrick J. Glick, Former 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 July 14, 2023 by:

- each person known by the Company to beneficially own more than 5% of the outstanding shares of the common stock;
- each of our current 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 July 14, 2023 was 16,833,666. 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 , CEO and Chairman[1]	122,377	*
Stephen J. Hoelscher, CFO	50,000	*
Mark Whittle, President	147,000	*
Keith J. Johnson, director	397,879	*
Neil G. Kiefer, director [2]	392,401	*
J. Eric Wagoner, director [3]	398,736	*
Directors and Executive Officers as a Group (6 persons)	**1,509,393**	**11.[ ]%**
Oz Rey, LLC [4]	840,000	4.99%
Arena Funds [5]	1,492,000	8.86%
NY Farms Group, Inc. [6]	950,060	5.64%
MVA 916, LLC [7]	6,250,000	27.08%

* less than 1%

(1) Includes 64,539 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 2,000 shares held directly by Mr. Kiefer's individual IRA account. Mr. Kiefer exercises voting and dispositive control over these shares.
(3) Includes 5,090 shares held directly by Mr. Wagoner's individual IRA account. Mr. Wagoner exercises voting and dispositive control over these shares.
(4) 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 114 W 7th Street, Suite 820, Austin, Texas 78701.
(5) 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.

(6) The address for NY Farms Group, Inc. is 98 Cutter Mill Rd, Great Neck, NY 11021.
(7) Includes 125 shares of Series B Preferred convertible into 5,000,000 common shares and 1,250,000 warrants held by MVA 916, LLC. The address for MVA 916, LLC is 114 W W 7th Street, Suite 820, Austin, Texas 78701.

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 2,000,000 shares was approved by our stockholders and subsequently registered on Form S-8.

The following table provides information, as of December 31, 2022, 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 and affiliated entities

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.

In October, November and December 2022, the Company received advances in the aggregate of $0.5 million from MV Equity Partners Inc., an affiliate of Oz Rey, LLC. In addition, the Company received an additional $0.1 million in 2023.

In March 2023, the Company received an advance of $0.4 million from MVA 916 LLC an affiliate of Oz Rey LLC.

In connection with Amergent's acquisition of the assets of Boudreaux's Cajun Kitchen, Inc. on March 17, 2023, Boudreaux's agreed to pay Mastodon Ventures, Inc., an affiliate of Oz Rey, LLC, an aggregate fee of $250,000 in connection with the transaction.

In February 2023, the Company closed a $2.5 million Series B convertible preferred stock (the "Series B Preferred") and warrant financing with an affiliate of Oz Rey. The Company issued 125 shares of Series B Preferred and warrants to purchase up to 1,250,000 shares of common stock at a $0.0001 par value. The warrants have a term of 10 years and an initial exercise price of $1.00 per share of common stock, which is subject to adjustment for customary provisions such as stock splits, stock dividends and distributions.

The Series B Preferred is convertible into shares of common stock at the option of the investors at a conversion price of $0.50 per share and will accrue dividends in an amount equal to 12% on an annual basis, payable in cash or in shares of common stock based on 30-day volume-weighted average price of common stock on the trading market. The Company has the right to redeem the Series B Preferred subject to certain terms.

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 (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 also 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.

During the year ended December 31, 2022, the Company received related party advances in the aggregate of $0.6 million from MV Equity Partners Inc., an affiliate of Oz Rey, LLC, in which the Chief Financial Officer serves as an officer but has no ownership interest.

Michael D. Pruitt

In August 2022 through December 2022, the Company received advances from a related party in aggregate of $0.6 million. The lending entity is an entity in which the Company's Michael D. Priutt, the Company's Chairman and Chief Executive Officer has an ownership interest and serves as the Chief Executive Officer. Interest accrues at a rate of 1%, and principal and accrued interest was due on June 30, 2023 and the loan has not been extended.

Indemnification Agreements

The company has entered into indemnification agreements with each of its current directors and executive officers. These agreements will require the company to indemnify these individuals to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to the company, and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified. The company also intends to enter into indemnification agreements with its future directors and executive officers.

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 four directors, one vacancy and the following three standing committees: an Audit Committee, a Compensation Committee, and a Governance Committee. The board determined through 2022, 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	2022	2021
Audit Fees	$ 338,450	$ 521,023
Audit-Related Fees	12,850	21,592
Tax Fees	29,300	—
Total Fees	$ 380,600	$ 542,615

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 financial statements.

Audit-Related Fees

Fees related to review of registration statements.

Tax Fees

Tax fees are associated with tax filings.

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 2022 and 2021 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 2022 and 2021 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: July 14, 2023

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
/s/ Michael D. Pruitt. Michael D. Pruitt	Chief Executive Officer, (Principal Executive Officer), Chairman of the Board	July 14, 2023
/s/ Stephen J. Hoelscher Stephen J. Hoelscher	Chief Financial Officer (Principal Financial Officer)	July 14, 2023
/s/ Keith J Johnson Keith J. Johnson	Director	July 14, 2023
/s/ J. Eric Wagoner J. Eric Wagoner	Director	July 14, 2023
/s/ Neil J. Kiefer Neil J. Kiefer	Director	July 14, 2023

EXHIBIT INDEX

Exhibit Number	Exhibit Description
2.1	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
2.2	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
2.3#	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
2.4	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
3.1	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
3.2	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
3.3	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
3.4	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
3.5	Certificate of Designations of Series B Convertible Preferred Stock dated January 30, 2023, incorplorated by reference to Exhibit 3.1 to Current Report on Form 8-K dated February 2, 2023.
3.6	Form of Bylaws, incorporated by reference to Exhibit 3.3 to Form 10-12G/A, filed July 2, 2020
4.1	Specimen Stock Certificate, incorporated by reference to Exhibit 4.1 to Form 10-12G/A, filed July 2, 2020
4.2	Specimen Preferred Stock Certificate, incorporated by reference to Exhibit 4.2 to Form 10-12G/A, filed July 2, 2020
4.3	Spin-Off Entity Warrant, incorporated by reference to Exhibit 4.3 to Form 10-12G/A, filed July 2, 2020
4.4	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
4.5	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
4 (vi)	Description of Registrant's Common Stock, incorporated by reference to Exhibit 4(vi) to Form 10-K, filed April 15, 2021
10.1	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

10.2	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
10.3	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
10.4	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
10.5	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
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
10.1	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**	Offer of Employment Agreement - Stephen J. Hoelscher dated January 30, 2023, filed herewith.
10.16**	Non-Solicitation and Confidentiality Agreement by and between Amergent and Stephen 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 (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)

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
10.20	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	Guaranty of Pie Squared Holdings, LLC, incorporated by reference to Exhibit 10.4 to Form 8-K dated August 30, 2021
10.22	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
10.23	Escrow Agreement, incorporated by reference to Exhibit 10.6 to Form 8-K dated August 30, 2021
10.24	Guaranty of PizzaRev Franchising, LLC, incorporated by reference to Exhibit 10.7 to Form 8-K dated August 30, 2021
10.25	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
10.26	Indemnification Agreement of PizzaRev Acquisition, LLC, incorporated by reference to Exhibit 10.14 to Form 8-K dated August 30, 2021
10.27	Indemnification Agreement of Principal, incorporated by reference to Exhibit 10.5 to Form 8-K dated August 30, 2021
10.28	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
10.29	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
10.30**	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
10.31**	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
10.32**	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
10.33**	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

10.34	Form of Securities Purchase Agreement for up to $3,000,000 of 8% Senior Unsecured Convertible Debentures and Warrants (incorporated by reference to Exhibit 10.34 to Form 10-K, filed April 15, 2022)
10.35	Form of 8% Senior Unsecured Convertible Debenture (incorporated by reference to Exhibit 10.35 to Form 10-K, filed April 15, 2022)
10.36	Form of Warrant issued with 8% Senior Unsecured Convertible Debentures (incorporated by reference to Exhibit 10.36 to Form 10-K, filed April 15, 2022)
10.37	Form of Securities Purchase Agreement for Series B Convertible Preferred Stock and Warrants, filed herewith
10.38	Form of Warrant issued with Series B Convertible Preferred Stock, filed herewith
10.39**	Executive Offer by and between Amergent and Mark Whittle dated January 11, 2023, filed herewith
10.40**	Executive Offer by and between Amergent and Stephen J. Hoelscher dated January 30, 2023, filed herewith
10.41#	Asset Purchase Agreement by and between 110/120 Cuisine, LLC and Boudreaux's Cajun Kitchen, Inc. dated January 18, 2023, filed herewith
10.42**	Executive Separation Agreement dated January 10, 2023 by and between Amergent and Frederick L. Glick, filed herewith.
10.43**	Stock Option Agreement- Michael D. Pruitt
10.44**	Stock Option Agreement – Stephen J. Hoelscher
10.45**	Stock Option Agreement – Mark Whittle
14.1	Code of Ethics, incorporated by reference to Exhibit 14.1 to Form 10-K, filed April 15, 2021
21.1	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
99.1**	Amergent Hospitality Group Inc. 2021 Equity Incentive Plan (incorporated by reference to Exhibit 99.1 to Form 10-K, filed April 15, 2022)
99.2**	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
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 Label Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Presentation Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Label Linkbase Document
104	Cover Page Interactive Data File (embedded within the Inline XBRL 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.

Exhibit 3.5

AMERGENT HOSPITALITY GROUP INC.

**CERTIFICATE OF DESIGNATION OF PREFERENCES,
RIGHTS AND LIMITATIONS
OF
SERIES B CONVERTIBLE PREFERRED STOCK**

PURSUANT TO SECTION 151 OF THE
DELAWARE GENERAL CORPORATION LAW

The undersigned, Michael D. Pruitt and Michelle Arcidiacono, do hereby certify that:

1. They are the President and Secretary, respectively, of AMERGENT HOSPITALITY GROUP INC., a Delaware corporation (the "Corporation").

2. That the following resolution was duly adopted by the Board of Directors (the "***Board of Directors***") of the Corporation, at a meeting duly convened and held, at which a quorum was present and acting throughout:

WHEREAS, the Certificate of Incorporation of the Corporation provides for a class of shares known as the Preferred Stock, issuable from time to time in one or more series;

WHEREAS, the Board of Directors of the Corporation is authorized, in the Certificate of Incorporation, by resolution or resolutions from time to time adopted, to fix, by resolution or resolutions, the designations, preferences, and relative, participating, optional or other special rights of the shares of each such series, and the qualifications, limitations or restrictions imposed upon each wholly unissued series of the Preferred Stock, including the right to determine the designation of such series, the number of shares to constitute such series and the stated value thereof; and

WHEREAS, the Board of Directors of the Corporation desires to designate a series of the Preferred Stock as "Series B Convertible Preferred" and to designate the number of shares constituting such series and to fix the rights, preferences, qualifications and restrictions of such series.

BE IT RESOLVED, that the Board of Directors of the Corporation hereby designates such new series of the Preferred Stock and the number of shares constituting such series and fixes the rights, preferences, privileges and restrictions relating to such series as follows:

TERMS OF SERIES B CONVERTIBLE PREFERRED STOCK

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(d).

"Amendment" means an amendment to the Company's certificate of incorporation to increase the authorized shares of Common Stock to 150,000,000.

"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.

"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).

"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.

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

"Fundamental Transaction" shall have the meaning set forth in Section 7(d).

"GAAP" means United States generally accepted accounting principles.

"Holder" shall have the meaning given such term in Section 2.

"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.

"Liquidation" shall have the meaning set forth in Section 5.

"Notice of Conversion" shall have the meaning set forth in Section 6(a).

"Original Issue Date" means the date of the first issuance of any shares of the Series B Preferred Stock regardless of the number of transfers of any particular shares of Series B Preferred Stock and regardless of the number of certificates which may be issued to evidence such Series B Preferred Stock.

"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.

"Purchase Agreement" means the Securities Purchase Agreement, dated as of the Original Issue Date, among the Corporation and the original Holders, as amended, modified or supplemented from time to time in accordance with its terms.

"Securities" means the Preferred Stock and the Underlying Shares.

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

"Senior Securities" means Series 2 Convertible Preferred Stock.

"Share Delivery Date" shall have the meaning set forth in Section 6(c).

"Stated Value" shall have the meaning set forth in Section 2.

"Subsidiary" means any subsidiary of the Corporation as defined in the Purchase Agreement and shall, where applicable, also include any direct or indirect subsidiary of the Corporation formed or acquired after the date of the Purchase Agreement.

"Successor Entity" shall have the meaning set forth in Section 7(d).

"Stockholder Approval" means the approval of the stockholders of the Corporation ("Stockholder Approval") to amend the Company's certificate of incorporation to increase the authorized shares of Common Stock to 150,000,000 at a Special Meeting of Stockholders to be held no later than May 15, 2023.

"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 Purchase Agreement, the Warrant, all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated pursuant to the Purchase Agreement.

"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.

"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 B Convertible Preferred Stock (the "Preferred Stock") and the number of shares so designated shall be up to 400 (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 no par value per share and a stated value equal to $20,000.00, subject to increase set forth in Section 3 below (the "Stated Value").

Section 3. Dividends. Holders of Series B Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of funds legally available for the payment of dividends, cumulative preferred cash dividends (or, to the extent permitted by Section 4 hereof, dividends payable in Common Stock) on each share of Preferred Stock at the rate of 12% per annum on the Stated Value (as defined below). Accrued and unpaid dividends may be declared and paid at any time (whether in cash or in kind), to holders of record on the applicable record date, which shall be no more than 45 days preceding the payment date thereof, as may be fixed by the Board of Directors. Dividends on the Series B Preferred Stock shall be cumulative and accrue from the date of issue, whether or not funds of the Corporation are legally available for the payment of such dividends and whether or not such dividends are declared by the Board of Directors. The Corporation may, at its option, when, as and if declared by the Board of Directors, out of funds legally available for the payment of dividends, and, to the extent legally permitted at such time and to the extent such dividends are not declared and paid in cash, may pay the preferred dividends payable pursuant to Section 3 hereof in shares of Common Stock instead of cash. No fractional shares shall be issued upon the payment of dividends pursuant to this Section 3, and the number of shares to be issued upon payment of such dividends will be rounded up to the nearest whole share; provided that, in lieu of rounding up to the nearest whole share, the Corporation may, at its option, pay a cash adjustment in respect of such fractional interest equal to such fractional interest multiplied by the Stated Value. So long as any Series B 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 Series B 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 Series B Preferred Stock.

To the extent dividends are paid in Common Stock, (i) such shares shall be duly and validly issued and fully paid and non-assessable, free and clear of all liens and other claims and not subject to any preemptive rights, and (ii) each Holder of Series B Preferred Stock shall receive a number of shares of Common Stock equal to the product of (x) the number of shares of Series B Preferred Stock held by such Holder and (y) a fraction, the numerator of which shall be equal to the cash amount per share of Series B Preferred Stock that would have been paid if the dividend had been paid in cash instead of Common Stock and the denominator of which shall be equal to the 30-day VWAP of the Common Stock. No fractional shares shall be issued upon the payment of dividends pursuant to this Section 3, and the number of shares to be issued upon payment of such dividends will be rounded up to the nearest whole share; *provided* that, in lieu of rounding up to the nearest whole share, the Corporation may, at its option, pay a cash adjustment in respect of such fractional interest equal to such fractional interest multiplied by the Stated Value.

Section 4. Voting Rights. The Holder shall vote together with the holders of the 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 B Preferred Stock. In addition, without the approval of Holders of a majority in interest of shares of Series B Preferred, the Corporation will not, among other things, (i) except with respect to the transactions contemplated by the Merger Agreement, 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 B 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 Series B 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 Series B 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 of the Corporation an amount equal to the Stated Value plus any accrued and unpaid interest, for each share of Series B Preferred Stock after any distributions and payment shall be made to holders of any Senior Securities and before any distribution or payment shall be made to the holders of any Junior Securities; provided however, if the assets of the Corporation shall be insufficient to pay in full such amounts, then, after any distributions and payment shall be made to holders of any Senior Securities, the remaining assets, if any, 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 of Series B Preferred 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 Series B 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)) determined by dividing the Stated Value of such share of Series B 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 Series B Preferred Stock to be converted, the number of shares of Series B Preferred Stock owned prior to the conversion at issue, the number of shares of Series B 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 Series B Preferred Stock, a Holder shall not be required to surrender the certificate(s) representing the shares of Series B Preferred Stock to the Corporation unless all of the shares of Series B Preferred Stock represented thereby are so converted, in which case such Holder shall deliver the certificate representing such shares of Series B Preferred Stock promptly following the Conversion Date at issue. Shares of Series B 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 Series B Preferred Stock shall equal to $0.50 (subject to adjustment as provided in Section 7).

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 Series B 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 Series B 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 Series B 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 Series B 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 Series B 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 Series B 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 Series B 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.

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 Series B Preferred Stock equal to the number of shares of Series B 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 Series B 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 Series B Preferred Stock as required pursuant to the terms hereof.

v. Reservation of Shares Issuable Upon Conversion. Subject to the Stockholder Approval and the Amendment, 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 Series B Preferred Stock and payment of dividends on the Series B 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 Series B Preferred Stock), not less than such aggregate number of shares of the Common Stock as shall (subject to the terms and conditions set forth in the Purchase Agreement) be issuable (taking into account the adjustments and restrictions of Section 7) upon the conversion of the then outstanding shares of Series B 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 Series B 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 Series B 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 Series B 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 Series B Preferred Stock, and a Holder shall not have the right to convert any portion of the Series B 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 Series B 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 Series B 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 Series B 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 Series B 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 Series B 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 Series B 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 Series B 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 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 Series B Preferred Stock held by the applicable Holder. A Holder, upon notice to the Corporation, may increase, decrease or waive the Beneficial Ownership Limitation provisions of this Section 6(d) applicable to its Series B Preferred Stock Any such increase or decrease in, or waiver of, 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 Series B Preferred Stock.

Section 7. Certain Adjustments.

a) Stock Dividends and Stock Splits. If the Corporation, at any time while this Series B 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 Series B 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 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 Series B 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).

c) Pro Rata Distributions. During such time as this Series B 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 Series B 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 Series B 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).

d) Fundamental Transaction. If, at any time while this Series B 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 Series B 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) on the conversion of this Series B 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 Series B Preferred Stock is convertible immediately prior to such Fundamental Transaction (without regard to any limitation in Section 6(d) on the conversion of this Series B 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 Series B 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 (as defined in the Purchase Agreement) in accordance with the provisions of this Section 7(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 of this Series B Preferred Stock, deliver to the Holder in exchange for this Series B Preferred Stock a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Series B 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 Series B Preferred Stock (without regard to any limitations on the conversion of this Series B 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 Series B 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.

e) Calculations. All calculations under this Section 7 shall be made to the nearest dollar or the nearest whole 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.

f) 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 Series B 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 Series B 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. Redemption at Option of Corporation. Series B Preferred shall be subject to redemption at any time, from time to time, our of legally available funds, upon the election of the Board of Directors and subject to the terms and conditions set forth below:

(a) Commencing May 1, 2023 through December 31, 2023, the Corporation may redeem the Series B Preferred at a price of $25,000.00 per share plus the amount of accrued but unpaid dividends.

(b) Commencing January 1, 2024 through December 31, 2024, the Corporation may redeem the Series B Preferred stock at a price of $30,000.00 per share plus the amount accrued but unpaid dividends.

(c) Commencing January 1, 2025 through December 31, 2025, the Corporation may redeem the Series B Preferred stock at a price of $35,000.00 per share plus the amount accrued but unpaid dividends.

(d) Redemptions may be made in part, pro-rata among all Holders of the Series B Preferred based upon the number of such shares owned by each record holder thereof, or in whole and require 30 days' notice to Holders. The redemption notice ("Redemption Notice") shall be in writing and shall specify the redemption date, the number of shares to be redeemed ("Redemption Shares") and the location to which the certificates evidencing the Redemption Shares shall be delivered by the record holders thereof. Each such certificate shall be duly endorsed by the record holder on the reverse of the certificate or accompanied by an appropriate stock power.

(e) On the redemption date, the Corporation shall pay the appropriate redemption amounts to the order of the person(s) whose name appears on the certificate or certificates of the Redemption Shares that shall have been surrendered to the Corporation in the manner and at the place designated in the Redemption Notice, and thereupon each surrendered certificate shall be canceled. From and after the Redemption Date, unless there shall have been a default in payment of the redemption amount, all rights of the holders of the Redemption Shares (except the right to receive the redemption amount) shall cease with respect to such shares. If any holder of the Redemption Shares shall fail on or before the Redemption Date to deliver and surrender the certificate to the Corporation as provided in the Redemptions Notice to be therefor, funds necessary for such redemption shall be set apart by the Corporation and held in a special fund for the payment of the redemption price. The holder of Redemption Shares shall thereafter be entitled at any time to deliver and surrender the Redemption Shares held by such holder and to receive the amount so set aside for such holder's benefit without any interest thereon. After the making of such deposit, the Corporation shall not be liable to pay to the holder of such Redemption Shares any dividends thereon, and the holder of such Redemption Shares shall thereafter have only the right to receive the amount so deposited, upon surrender of such Redemption Shares. If less than all of the shares evidenced by a certificate are being cancelled, the Corporation shall issue to the record holder a new certificate evidencing the shares not redeemed.

Section 9. Miscellaneous.

a) Notices. Any notice, request or other document required or permitted to be given or delivered to the Holder by the Corporation shall be delivered in accordance with the notice provisions of the Purchase Agreement.

b) Governing Law; Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Certificate of Designation shall be determined in accordance with the provisions of the Purchase Agreement.

c) 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 Series B Preferred Stock at the time, place, and rate, and in the coin or currency, herein prescribed.

d) Lost or Mutilated Series B Preferred Stock Certificate. If a Holder's Series B 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 Series B 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.

e) Waiver. Any waiver by the Corporation or a 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 or a 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 or a 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 Series B Preferred Stock. Shares of Series B Preferred Stock may only be issued pursuant to the Purchase Agreement. If any shares of Series B 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 Series B Preferred Stock.

j) Piggyback Registration Rights. Whenever the Corporation 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 Conversion Shares for sale to the public, whether for its own account or for the account of one or more stockholders of the Corporation and the form of registration statement to be used may be used to register the Conversion Shares (a "Piggyback Registration"), the Corporation 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 its intention to effect such a registration and, subject to limitations set forth in this section, shall include in such registration Conversion Shares with respect to which the Corporation has received written requests for inclusion from the Holders within 5 days after the Corporation's notice has been given to each such Holder. The Corporation may postpone or withdraw the filing or effectiveness of a Piggyback Registration at any time in its sole discretion. In connection with any offering involving an underwriting of Corporation securities pursuant, the Corporation shall not be required to include any of the Conversion Shares in such underwriting unless the Holders accept the terms of the underwriting as agreed upon between the Corporation 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 Corporation.

RESOLVED, FURTHER, that the Chairman, the president or any vice-president, and the secretary or any assistant secretary, of the Corporation be and they hereby are authorized and directed to prepare and file this Certificate of Designation of Preferences, Rights and Limitations in accordance with the foregoing resolution and the provisions of Delaware law.

IN WITNESS WHEREOF, the undersigned have executed this Certificate this 31st day of January, 2023.

/s/ Michael D. Pruitt	*/s/ Michelle Arcidiacono*
Name: Michael D. Pruitt	Name: Michelle Arcidiacono
Title: Chief Executive Officer	Title: Title: Secretary

ANNEX A

NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT SHARES OF SERIES B PREFERRED STOCK)

The undersigned hereby elects to convert the number of shares of Series B 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 by the Corporation in accordance with the Purchase Agreement. 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:

January 6, 2023

Stephen Hoelscher

Re: Offer of Employment- effective start date

Dear Steve,

On behalf of Amergent Hospitality Group Inc. (the "**Company**"), I am pleased to offer you the full-time position of Chief Financial Officer on the terms described below. All employees of the Company are paid through our payroll entity, Spark Team Associates, LLC. In your new position, you will be reporting to Mike Pruitt, the Chief Executive Officer and Chairman of the Board of the Company AND/OR his successor, AND/OR the Company's Board of Directors. Your primary place of employment will be Florence, Texas and you will be working remotely. If you do not accept this position by January 9th, 2023, this offer shall become null and void and of no further force and effect.

Start Date and Duties. Your first day of work at the Company will be as of the date of this letter (the "**Employment Start Date**"). In this position, you will have the responsibilities and authority generally held by and be required to perform the duties generally provided by persons serving in the role of CFO. You shall devote all your business time, attention and energy to the Company and shall not, during the term of your employment, be actively engaged in any managerial or employment capacity in any other business activity for gain, profit or other pecuniary advantage without the written consent of the Company.

Base Salary. Your starting annual base salary will be $180,000 less applicable payroll deductions and withholding for taxes. You will be paid according to the Company's standard payroll schedule, which is currently bi-weekly, and your salary will be subject to annual review. In addition to your Base Salary, you will have the opportunity to earn cash and equity bonuses based on the performance of the Company.

Cash Bonus Plan. We are granting you a cash bonus of $30,000 for your work during 2022 and this bonus will be paid over 10 pay periods beginning with the pay period closest to 2/1/2023. For 2023, your cash bonus will be $36,000 and paid annually within 90 days of the end of each calendar year (provided you are still employed by the Company as of the payment date). This bonus is a target bonus and is fully discretionary and will only be paid upon approval by the Board of Directors. The Bonus may be increased or decreased based on the performance of the Company and your individual performance.

Equity Bonus Components

1. As an inducement to singing this agreement we are providing you with an immediately vested grant of 50,000 shares of AMHG common stock
2. In addition, you are being granted an option to purchase 100,000 shares of AMHG common shares, which options shall vested 1/3 per year over a three year period, and shall have a strike price of 0.60 for the first third, $1.00 for the second third, and $1.50 for the last third.

This bonus opportunity is subject to the terms and conditions of the plan and related documents.

Paid Time Off. You will be entitled to two weeks of vacation per year, subject to the Company's paid leave policy as it applies to executive employees. Accrual paid time off is limited to a maximum of 7 days per year. You may accrue paid time off during the year, provided however, paid time off that is accrued must be used not later than the following year. If accrued time off is not used it will be forfeited and in no event shall such time be paid in cash. In no event may you use more than 21 paid time off, including current and accrued time off, in one calendar year.

Company Benefits. The company offers a competitive employee benefits program. As a full-time, exempt employee, you will be eligible for benefits in accordance with the applicable terms, conditions and availability of the plans and programs as may be maintained by the Company from time to time. Our current health and welfare benefits include medical, dental, vision care and prescription drug coverage, among other benefits. The Company will pay 100% of the cost of these benefits for you and you may pay the cost of such benefits for family members. The Company has a 401k plan which will be available to you, however at this time there is no matching Company contribution.

We will provide you with a lap-top. You will use your own cell phone and you will receive $100 a month for phone and data usage.

Plans and Benefits Subject to Change. The Company reserves the right to modify, amend, suspend, or terminate any of its incentive, retirement, welfare, fringe benefit or other plans or programs, whether or not described in this letter, in its sole discretion, at any time, subject to applicable law.

Employment At-Will. This offer letter does not constitute a contract of employment for any specific period of time but will create an employment at-will relationship that may be terminated at any time by you or by the Company, with or without cause and with or without advance notice.

Confidentiality; Proprietary Information; Restrictive Covenants. As a condition to your employment with the Company, you will be required to sign the Company's standard Non-Disclosure, Confidentiality and Proprietary Information Agreement.

Entire Agreement. This offer letter and any documents and agreements referenced herein constitute the entire agreement between you and the Company with respect to the subject matter hereof and supersede any and all prior or contemporaneous oral or written representations, understandings, agreements or communications between you and the Company concerning those subject matters.

Executive Representations. By accepting this offer, you acknowledge and represent and warrant that you are not a party to or bound by any agreement with a third party that would or could reasonably be interpreted to prohibit or restrict you from being employed by the Company or from performing any of your duties in the contemplated position. You also agree to provide the Company with copies of all agreements relating to employment with a third party under which you have an ongoing obligation of confidentiality, non-competition, non-solicitation, or similar restrictive covenants of whatever kind.

We are pleased to offer you this position with Amergent Hospitality Group Inc. To accept the terms above, please sign and date this offer letter and return it to me no later than January 9th, 2023.

Sincerely,

AMERGENT HOSPITALITY GROUP INC.

By: Michael Pruitt

Michael D. Pruitt
CEO

Acknowledgment and Acceptance

I accept this offer of employment with the Company and agree to the terms and conditions outlined in this offer letter.

Stephen Hoelscher

Date: 1/30/2023

Exhibit 10.37

SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (this "Agreement") is dated as of the date set forth on each Purchasers 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, the Company is offering up to 400 Units ("Units"), each Unit comprised of (i) one share of Series B Convertible Preferred Stock and (ii) a 10-year warrant to purchase up to 10,000 shares of Common Stock, to accredited investors only, as that term is defined in Rule 501(a) of Regulation D under the Securities Act of 1933, at the Purchase Price per Unit of $20,000.00. 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) that number of Units at the Subscription Price set forth below such Purchaser's name on the signature page of this Agreement, which aggregate amounts for all Purchasers together shall be up to $8,000,000.

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..

"Certificate of Designations" means the Certificate of Designations to be filed prior to the Closing by the Company with the Secretary of State of Delaware, defining the rights, preferences and privileges of the Preferred Stock in the form of Exhibit A attached hereto.

"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 Preferred Stock.

"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(ii).

"Intellectual Property Rights" shall have the meaning ascribed to such term in Section 3.1(n).

"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).

"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 $20,000.00 per Unit.

"Purchaser Party" shall have the meaning ascribed to such term in Section 4.9.

"Preferred Stock" means the Series B Convertible Preferred Stock to be delivered to the Purchasers at the Closing.

"Required Approvals" shall have the meaning ascribed to such term in Section 3.1(c).

"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(jj).

"Securities" means the Units, Preferred Stock, 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.

"Subscription Price" means each Purchasers aggregate subscription amount (in multiples of $20,000.00).

"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 OTC Markets Pink Sheets, the OTCQB, the OTCQX, 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, Certificate of Designations, the Warrant 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.

"Unit" means one share of Preferred Stock and a Warrant to purchase up to 10,000 shares of Common Stock.

"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 ten (10) 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 April 15, 2023. 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 Securities and (b) the Company agrees to issue, and the Purchasers, severally and not jointly, agree to acquire the Securities 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) that number of Units set forth on the signature page hereof; and

(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; and

(ii) wire transfer of immediately available funds in the amount of Subscription 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 3.2 shall be true and correct when made, and shall be true and correct on the Closing Date or the applicable additional Closing Date;

(ii) all obligations, covenants and agreements of each Purchaser required to be performed at or prior to each Closing Date shall have been performed; and

(iii) 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 3.1. shall have been true and correct when made and shall be true and correct on the applicable additional Closing Date.

(ii) all obligations, covenants and agreements of the Company required to be performed at or prior to the Closing Date shall have been performed;

(iii) the delivery by the Company of the items set forth in Section 2.2(a) of this Agreement; and

(iv) there shall have been no Material Adverse Effect with respect to the Company since the date hereof.

ARTICLE III.
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company. 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.

(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 approval of the stockholders of the Corporation ("Stockholder Approval") to amend the Company's certificate of incorporation to increase the authorized shares of Common Stock to 150,000,000 ("Amendment") at a Special Meeting of Stockholders to be held no later than May 15, 2023 ("Special Meeting")and (ii) 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 Company will seek the Stockholder Approval in order to effect the Amendment. The Preferred Shares and Warrants 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 Company will reserve from its duly authorized capital stock a number of shares of Common Stock for issuance of the Warrant Shares and Conversion Shares promptly upon receipt of Stockholder Approval.

(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. Other than the Stockholder Approval required to effect the Amendment, no further approval or authorization of any stockholder, the Board of Directors or others is required for the issuance and sale of the Securities.

(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) 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.

(q) 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.

(r) 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.

(s) 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, 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 3.2 hereof.

(t) 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.

(u) 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.

(v) 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.

(w) 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.

(x) 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, 2022.

(y) 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.

(z) 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.

(aa) Acknowledgment Regarding Purchaser's Trading Activity. Anything in this Agreement or elsewhere herein to the contrary notwithstanding, 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 counterparties 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.

(bb) 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.

(cc) 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").

(cc) 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.

(dd) 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.

(ee) 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.

(ff) 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.

(gg) 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.

(hh) 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.

(ii) Use of Proceeds. Up to $4 million will be used for the acquisition of Boudreaux's Cajun Kitchen; up to $1.5 million will be used to pay down accounts payable, short-term debt maturities; up to $2.5 million will, after deduction of offering fees and expenses of approximately $50,000, be used for general working capital and general corporate purposes. Proceeds may not be used to repay or pre-pay the principal in the amount of four million dollars ($4 million) due to Oz Rey, LLC under its convertible Debenture; provided however quarterly interest payments due under the Oz Rey Debenture will continue to be paid by the Company.

(jj) SEC Reports; Financial Statements. With the exception of the Company's quarterly report on Form 10Q for the period ending September 30, 2022 which was not timely filed, 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.

(kk) 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.

3.2 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 3.2 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 OR EXERCISABLE HAS 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 OR 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 Preferred Stock 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 4.1. 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 Securities 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 Preferred Stock set forth the totality of the procedures required of the Purchasers in order to convert the Preferred Stock. 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 Preferred Stock. No additional legal opinion, other information or instructions shall be required of the Purchasers to convert their Preferred Stock. The Company shall honor conversions of the Preferred Stock and shall deliver Shares in accordance with the terms, conditions and time periods set forth in the Transaction Documents, subject to the Company obtaining the Stockholder Approval and effecting the Amendment.

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 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 15, 2023; 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 (5^{th}) 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 Preferred Stock 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 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, the prevailing party in such Action or Proceeding shall be reimbursed by the nonprevailing 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 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.

5.17 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.

5.18 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.

5.19 **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):

_____

Subscription Price (multiples of $20,000.00 only): $_____

Number of Units ($20,000.00 per share) $_____
Number of Series B Convertible Preferred Stock (one per Unit) _____
Number of Warrant Shares (10,000 per Unit) _____

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 April 15, 2023, 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 Subscription 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 Subscription Price (as applicable) to such other party on the Closing Date.

[SIGNATURE PAGES CONTINUE]

APPENDIX 1

WIRE INSTRUCTIONS

ABA/Routing Number:

Beneficiary Bank:

Address of Beneficiary Bank:

Beneficiary Party: Amergent Hospitality Group Inc.

Physical Address of Beneficiary Party: 7529 Red Oak Lane
Charlotte, NC 28226

Account #

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 10.38

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),_____, 2023 (the "Initial Exercise Date") and on or prior to the close of business on the ten (10) 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 _____, 2023, 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(c)(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. 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 one dollar ($1.00), subject to adjustment hereunder (the "Exercise Price").

c) 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 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.

"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 Warrants then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

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(c)(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(c)(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.

(d) 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 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 and 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. To the extent that the limitation contained in this Section 2(e) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company 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 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 and 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). 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.

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 the 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 (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).

(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, 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 (without regard to any limitations on exercise 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).

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.

e) Calculations. All calculations under this Section 3 shall be made to the nearest dollar or the nearest 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.

f) 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(c)(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 availability of a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant is subject to the Stockholder Approval and the Amendment. The Board of Directors will use commercially reasonable efforts to amend the Company's certificate of incorporation to increase the number of authorized but unissued shares of Common Stock to 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 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) Governing Law; 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 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) 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 Warrant Shares 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 Warrant Shares (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 Holder of Warrant of its intention to effect such a registration and, subject to limitations set forth in this section, shall include in such registration. Warrant Shares with respect to which the Company has received written requests for inclusion from the Holders 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. In connection with any offering involving an underwriting of Company securities pursuant, the Company shall not be required to include any of the Warrant Shares 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.

****

(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:

By:
Its:

EXHIBIT A

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.

(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: _____

EXHIBIT B

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: _____

Exhibit 10.39

January 10, 2023 Mark Whittle

Re: Offer of Promotion Dear Mark,

On behalf of Amergent Hospitality Group Inc. (the "Company"), I am pleased to offer you the full-time position of Interim President on the terms described below. Please be advised all employees of the Company are paid through our payroll entity, Spark Team Associates, LLC. In your new position, you will be reporting to the Chief Executive Officer and the Company's board of directors. Your primary place of employment will be located in the metropolitan area or suburbs of Atlanta, Georgia and you will be working remotely. If you do not accept this position by January 13, 2023, this offer shall become null and void and of no further force and effect.

Start Date and Duties. Your promotion to Interim President at the Company will commence the day you accept and countersign this offer letter (the "Employment Start Date"). In the position, you will have the responsibilities and authority generally held by the President and will be required to perform the duties generally provided by persons serving in the role of President. You will also continue to serve in franchise development and support. You shall devote all of your business time, attention and energy to the Company and shall not, during the term of your employment, be actively engaged in any managerial or employment capacity in any other business activity for gain, profit or other pecuniary advantage without the written consent of the Company. Notwithstanding the foregoing, the Company acknowledges and agrees that the following activities will not constitute a breach of your obligations under this agreement: (1) your current minority equity ownership in a small European treat concept chain and your services providing minimal strategic advisory consultation to the majority owner and (2) ownership of less than 5% of equity in each of Focus Brands Holdings Inc. and Hawk Parent LLC.

Base Salary. Your starting annual base salary will be $230,000 less applicable payroll deductions and withholding for taxes. You will be paid according to the Company's standard payroll schedule, which is currently semi-monthly, and your salary will be subject to annual review. In addition to your Base Salary, you will have the opportunity to earn franchise sales commissions and cash and equity bonuses based on the performance of the Company.

Franchise Sales Commission. The Company will pay you a commission equal to 10% of any franchise fee revenue (not including royalty revenue) collected by the Company for future franchise units and franchise development agreements sold during the term of your employment in the Little Big Burger, American Burger, and BGR Systems.

Cash Bonus Plan. We are granting you a cash bonus of $36,000 for your work during 2022 and this bonus will be paid over 10 pay periods beginning with the pay period closest to 2/1/2023. For 2023, your cash bonus target is $46,000 and, to the extent earned, will be paid within ninety (90) days of the end of 2023 (provided you are still employed by the Company as of the payment date). This bonus is a target bonus based on performance criteria, is fully discretionary, and it will only be paid upon approval by the Board of Directors. The Bonus may be increased or decreased based on the performance of the Company and your individual performance. Additionally, it is our intent to adjust your title and role with the Company once we complete certain acquisitions. As such, within ninety (90) days of this Agreement, you will be provided with an Additional Cash Bonus Plan which will include an incentive to earn an additional cash amount of not less than $46,000, based on specifical performance goals related to the assets under your management role.

Equity Bonus Components.

1. As an inducement to singing this agreement we are providing you with an immediately vested grant of 70,000 shares of AMHG common stock

2. In addition, you are being granted an option to purchase 140,000 shares of AMHG common shares, which options shall vested 1/3 per year over a three year period and shall have a strike price of 0.60 for the first third, $1.00 for the second third, and $1.50 for the last third.

This bonus opportunity is subject to the terms and conditions of the Company's plan, award agreements and related documents.

Paid Time Off. You will be entitled to up to four weeks of vacation and/ or sick leave per year, subject to the Company's paid leave policy as it applies to executive employees. Accrual of paid time off is limited to and capped at a maximum of twenty (20) days (200 hours), at any time. If accrued paid time off is not used, it will be forfeited, and in no event shall such time be paid in cash. Further you may not use more than ten (10) days of consecutive PTO at one-time without the prior written consent of the CEO.

Company Benefits. The Company offers a competitive employee benefits program. As a full-time, exempt employee, you will be eligible for benefits in accordance with the applicable terms, conditions and availability of the plans and programs as may be maintained by the Company from time to time. Our

current health and welfare benefits include medical, dental, vision care and prescription drug coverage, among other benefits. The Company will pay 100% of the cost of these benefits for you and you may pay the cost of such benefits for family members. The Company has a 401k plan which will be available to you; however, at this time there is no matching Company contribution.

We will provide you with a lap-top you will use your own cell phone for business. You will received $100 a month for phone and data usage. Further, we will reimburse business expenses that you incur performing your duties provided requests and relevant documentation are submitted in compliance with the Company's expense reimbursement policy in effect at the time.

Plans and Benefits Subject to Change. The Company reserves the right to modify, amend, suspend, or terminate any of its incentive, retirement, welfare, fringe benefit or other plans or programs, whether or not described in this letter, in its sole discretion, at any time, subject to applicable law.

Employment At-Will. This offer letter does not constitute a contract of employment for any specific period of time but will create an employment at-will relationship that may be terminated at any time by you, with or without Good Reason, or by the Company, with or without Cause and with or without advance notice.

Termination.

As used herein,

"Good Reason" means any one of the following: (i) the material reduction of your base compensation that does not impact similarly-situated executives; or (ii) a requirement to report to any person or entity other than the CEO, board of directors or its designee provided, that, in each case, you will not be deemed to have Good Reason unless (i) you first provide the board with written notice of the condition giving rise to Good Reason within thirty (30) days of its initial occurrence, (ii) the Company fails to cure such condition within thirty (30) days after receiving such written notice (the "Cure Period"), and (iii) your resignation based on such Good Reason is effective within thirty (30) days after the expiration of the Cure Period.

"Disability" means a mental or physical condition which, in the opinion of the Company as supported by competent medical evidence and after consideration and compliance with its obligations under the Americans with Disabilities Act, and all applicable state and local laws, renders you unable and incompetent to carry out the material job responsibilities which you held or the material duties to which you were assigned at the time the Disability was incurred.

"Cause" means: (i) a breach by you of your fiduciary duties to the Company; (ii) your breach of this Agreement or the NDA, which, if curable, remains uncured or continues after thirty (30) days' written notice by the Company thereof; (iii) the commission of (A) any crime constituting a felony in the jurisdiction in which committed, (B) any crime involving moral turpitude (whether or not a felony), or (C) any other criminal act involving embezzlement, misappropriation of money, fraud, theft, or bribery (whether or not a felony); (iv) illegal or controlled substance abuse or insobriety by you that interferes with the performance of your duties to the Company; (v) your material negligence or dereliction in the performance of, or failure to perform your duties of employment with the Company, which remains uncured or continues after thirty (30) days' written notice by the Company thereof or failure recurs following any such correction; (vi) any conduct, action or behavior by you that is materially and demonstrably damaging to the Company, whether to the business interests, finance or reputation, which remains uncured or continues after thirty (30) days' written notice by the Company thereof or failure recurs following any such correction or (vii) a disqualifying event causing Company "bad actor" disqualification under Rule 506(d) of the Securities Act of 1933, as amended.

Upon termination of your employment by you without Good Reason, by the Company with Cause or because of your incapacity due to Disability, or in the event of your death, you will receive payment of any accrued but unpaid base salary through the termination date, reimbursement for any unpaid and approved expenses incurred through the termination date and vested equity, including stock options (collectively referred to herein as "Accrued Benefits").

In the event that the Company terminates your employment without Cause or you resign for Good Reason, then subject to the conditions set forth herein, payable at the termination of the Garden Leave Period, if applicable you will receive: (i) Accrued Benefits, (ii) after the Garden Leave Period, an amount equal to three (3) months of your then current base salary, paid during the Company's normal payroll schedule over a period of three (3) months (***subject to extension to six (6) months in the event the Garden Leave Period is waived)*** (the "Severance Period"); and (ii) to the extent permitted by applicable law, subject to your timely election of COBRA continuation coverage on the first regularly scheduled payroll date of each month during the Severance Period, the Company will pay you an amount equal to the COBRA premium cost for you and your dependents ("COBRA Payments").

Your receipt of benefits other than those legally prescribed is conditioned on and subject to (i) execution this Agreement and the Company's standard non-disclosure agreement ("NDA"), and (ii) signing and not rescinding an effective, general release of all claims in favor of the Company and in a form acceptable to the Company within no greater than sixty (60) days following the termination date. In the event you breach the NDA, any entitlement to severance will be forfeited.

In the event of your death, payments will be made to your estate or legal representative, and any death benefits payable and due to your death under Company benefit plans or programs will also be paid.

Garden Leave. There will be a "Garden Leave Period" of three (3) months in the event of (i) your resignation from the Company without Good Reason or (ii) a termination of your employment by the Company without Cause. The Garden Leave Period will not apply to a termination of your employment by the Company for Cause, a termination by you for Good Reason, or a termination due to your death or Disability.

If you intend to resign from employment with the Company without Good Reason or if the Company intends to terminate your employment with the Company without Cause, you or the Company, as applicable, agrees to notify the other party of such intention at least three (3) months in advance of the intended effective date of the employment termination.

During the Garden Leave Period, you will continue to be an employee of the Company, will continue to be paid the same level of base salary as would otherwise be in effect during such period, and will be eligible to continue to participate in the Company's benefits programs in accordance with their terms. During the Garden Leave Period, the Company will have the right, in its discretion, to take any of the following actions (in any combination), and in no case will such action or actions taken during the Garden Leave Period constitute the basis for you to resign for Good Reason or otherwise be considered a violation of this Agreement: (i) require you to perform any portion or all of your duties (to the extent commensurate with your position) and/or to refrain from performing any portion or all of your duties on behalf of the Company; (ii) require you to use accrued but unused paid time off during a period in which you are directed to refrain from performing any services for the Company; (iii) require you, as reasonably requested by the Company, to assist the Company in transitioning your duties and client or customer relationships to one or more successors; appoint one or more other individuals to a position having duties and responsibilities that fully or in part are substantially similar to your duties to act jointly with you during the Garden Leave Period with respect to such duties and responsibilities; (iv) require you to resign from any board of directors, committee, or other appointed roles within the Company organization and/or to cease being an authorized signatory or representative of the Company; (v) require you not to contact any customers, clients, employees, independent contractors, or vendors of the Company with respect to business of the Company; (vi) require you to work from home to the extent reasonably practicable; or (vii) refuse your entry to any or all premises of the Company, suspend or terminate your authorized access to any information technology system of the Company, and/or suspend or terminate your authorized access to any confidential or proprietary information of the Company.

During the Garden Leave Period, you will: (i) maintain contact with the Company and make yourself available to provide such services as may be reasonably requested that are commensurate with your position or otherwise contemplated during the Garden Leave Period; (ii) continue to comply with all other terms of your employment with the Company, including, without limitation, obligations of good faith, loyalty, confidentiality, fiduciary duties, and the restrictive covenants set forth in this Agreement and the NDA; (iii) not make any unauthorized public statements regarding the Company or its operations; and (iv) not commence employment with any other employer.

Notwithstanding anything herein to the contrary, during a Garden Leave Period, the Company may elect to terminate the Garden Leave Period and your employment immediately at any time if (i) the Company terminates your employment for Cause or (ii) you fail to make reasonable efforts to follow any directive of the Company or fulfill any of your responsibilities during the Garden Leave Period, and, if curable, you fail to cure such failure within a reasonable period (not to exceed fifteen (15) days) after being notified of the failure.

If the parties mutually agree to waive the Garden Leave Period, your Severance Period will be extended from three (3) months to six (6) months.

Confidentiality; Proprietary Information; Restrictive Covenants. As a condition to your employment with the Company, you will be required to sign the Company's standard NDA.

Entire Agreement. This offer letter constitutes the entire agreement between you and the Company with respect to the subject matter hereof and supersedes any and all prior or contemporaneous oral or written representations, understandings, agreements or communications between you and the Company concerning those subject matters. Your Employment Agreement with the Company dated November 29, 2021 will be deemed terminated and of no further effect upon your execution of this offer letter, provided however you will be entitled to reimbursement of expenses incurred prior to this promotion (in accordance with the Company's expense reimbursement policy) and will retain any accrued and unpaid leave from fiscal 2023 not to exceed twenty (20) days.

Executive Representations. By accepting this offer, you acknowledge and represent and warrant that you are not a party to or bound by any agreement with a third party that would or could reasonably be interpreted to prohibit or restrict you from being employed by the Company or from performing any of your duties in the contemplated position. You also agree to provide the Company with copies of all agreements relating to employment with a third party under which you have an ongoing obligation of confidentiality, non-competition, non-solicitation, or similar restrictive covenants of whatever kind.

We are pleased to offer you this promotion with Amergent Hospitality Group Inc. To accept the terms above, please sign and date this offer letter and return it to me no later than January 13, 2023

Sincerely,

AMERGENT HOSPITALITY GROUP INC.

By: */s/ Michael D. Pruitt*
Michael D. Pruitt
CEO

Acknowledgment and Acceptance

I accept this offer of employment with the Company and agree to the terms and conditions outlined in this offer letter.

Mark Whittle
Date: January 10, 2023

Exhibit 10.40

January 6, 2023

Stephen Hoelscher

Re: Offer of Employment- effective start date

Dear Steve,

On behalf of Amergent Hospitality Group Inc. (the **"Company"),** I am pleased to offer you the full-time position of Chief Financial Officer on the ter1ns described below. All employees of the Company are paid through our payroll entity, Spark Team Associates, LLC. In your new position, you will be reporting to Mike Pruitt, the Chief Executive Officer and Chairman of the Board of the Company AND/OR his successor, AND/OR the Company's Board of Directors. Your primary place of employment will be Florence, Texas and you will be working remotely. If you do not accept this position by January 9th, 2023, this offer shall become null and void and of no further force and effect.

Start Date and Duties. Your first day of work at the Company will be as of the date of this letter (the **"Employment Start Date").** In this position, you will have the responsibilities and authority generally held by and be required to perform the duties generally provided by persons serving in the role of CFO. You shall devote all your business time, attention and energy to the Company and shall not, during the tertn of your employment, be actively engaged in any managerial or employment capacity in any other business activity for gain, profit or other pecuniary advantage without the written consent of the Company.

Base Salary. Your starting annual base salary will be $180,000 less applicable payroll deductions and withholding for taxes. You will be paid according to the Company's standard payroll schedule, which is currently bi-weekly, and your salary will be subject to annual review. In addition to your Base Salary, you will have the opportunity to earn cash and equity bonuses based on the perfor1nance of the Company.

Cash Bonus Plan. We are granting you a cash bonus of $30,000 for your work during 2022 and this bonus will be paid over 10 pay periods beginning with the pay period closest to 2/1/2023. For 2023, your cash bonus will be $36,000 and paid annually within 90 days of the end of each calendar year (provided you are still employed by the Company as of the payment date). This bonus is a target bonus and is fully discretionary and will only be paid upon approval by the Board of Directors. The Bonus may be increased or decreased based on the perforrnance of the Company and your individual perfor1nance.

Equity Bonus Components

1. As an inducement to singing this agreement we are providing you with an immediately vested grant of 50,000 shares of AMHG common stock

2. In addition, you are being granted an option to purchase 100,000 shares of AMHG common shares, which options shall vested 1/3 per year over a three year period, and shall havea strike price of 0.60 for the first third, $1.00 for the second third, and $1.50 for the last third.

This bonus opportunity is subject to the terms and conditions of the plan and related documents.

Paid Time Off. Y_ou will be entitled to two weeks of vacation per year, subject to the Company's paid leave policy as it applies to executive employees. Accrual paid time off is limited to a maximum of 7 days per year. You may accrue paid time off during the year, provided however, paid time off that is accrued must be used not later than the following year. If accrued time off is not used it will be forfeited and in no event shall such time be paid in cash. In no event may you use more than 21 paid time off, including current and accrued time off, in one calendar year.

Company Benefits. The company offers a competitive employee benefits program. As a full-time, exempt employee, you will be eligible for benefits in accordance with the applicable terms, conditions and availability of the plans and programs as may be maintained by the Company from time to time. Our current health and welfare benefits include medical, dental, vision care and prescription drug coverage, among other benefits. The Company will pay 100% of the cost of these benefits for you and you may pay the cost of such benefits for family members. The Company has a 401k plan which will be available to you, however at this time there is no matching Company contribution.

We will provide you with a lap-top. You will use your own cell phone and you will receive $100 a month for phone and data usage.

Plans and Benefits Subject to Change. The Company reserves the right to modify, amend, suspend, or terminate any of its incentive, retirement, welfare, fringe benefit or other plans or
programs, whether or not described in this letter, in its sole discretion, at any time, subject to applicable law.

Employment At-Will. This offer letter does not constitute a contract of employment for any specific period of time but will create an employment at-will relationship that may be tern1inated at any time by you or by the Company, with or without cause and with or without advance notice.

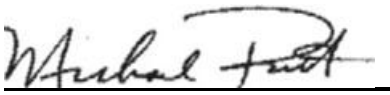
Confidentiality; Proprietary Information; Restrictive Covenants. As a condition to your employment with the Company, you will be required to sign the Company's standard Non Disclosure, Confidentiality and Proprietary Information Agreement.

Entire Agreement. This offer letter and any documents and agreements referenced herein constitute the entire agreement between you and the Company with respect to the subject matter hereof and supersede any and all prior or contemporaneous oral or written representations, understandings, agreements or communications between you and the Company concerning those subject matters.

Executive Representations. By accepting this offer, you acknowledge and represent and warrant that you are not a party to or bound by any agreement with a third party that would or could reasonably be interpreted to prohibit or restrict you from being employed by the Company or from performing any of your duties in the contemplated position. You also agree to provide the Company with copies of all agreements relating to employment with a third party under which you have an ongoing obligation of confidentiality, non-competition, non-solicitation, or similar restrictive covenants of whatever kind.

We are pleased to offer you this position with Amergent Hospitality Group Inc. To accept the terms above, please sign and date this offer letter and return it to me no later than January 9th, 2023.
Sincerely,

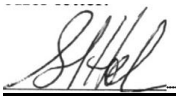
AMERGENT HOSPITALITY GROUP INC.

By: 

Michael D. Pruitt
CEO

Acknowledgment and Acceptance

I accept this offer of employment with the Company and agree to the terms and conditions outlined in this offer letter.



Stephen Hoelscher

Date: 01/30/2023

Exhibit 10.41

ASSET PURCHASE AGREEMENT BY

AND BETWEEN

110/120 CUISINE, LLC

AND

BOUDREAUX'S CAJUN KITCHEN INC. DATED

AS OF JANUARY 18, 2023

TABLE OF CONTENTS

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is made as of January 18, 2023 (the "Effective Date") by and among 110/120 CUISINE, LLC, a Texas limited liability company ("Purchaser"), and BOUDREAUX'S CAJUN KITCHEN INC., a Texas corporation ("Seller"). Purchaser and Seller are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. Seller owns certain rights and assets used in its conduct of the Business.

B. Subject to the terms and conditions set forth herein, Seller desires to sell, convey, transfer, assign and deliver to Purchaser, and Purchaser desires to purchase and acquire from Seller, all of Seller's right, title and interest in and to the Purchased Assets (the "Acquisition").

AGREEMENT

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1. DEFINITIONS

1.1 Definitions. Capitalized terms used and not otherwise defined herein have the meanings ascribed to such terms in this Article 1.

"Acquired Intellectual Property" shall have the meaning given to such term in Section 2.1(e).

"Acquisition" shall have the meaning given to such term in the Recitals.

"Action" means any civil, criminal or administrative litigation, claim, action, suit, arbitration, hearing or other similar proceeding.

"Affiliate" shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person, provided that, for purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"Agreement" means this Asset Purchase Agreement, including all exhibits and schedules hereto.

"Assumed Contracts" shall have the meaning given to such term in Section 2.3(a).

"Assumed Liabilities" shall have the meaning given to such term in Section 2.3.

"Assumption Agreement" shall mean the Assumption Agreement substantially in the form of Exhibit A attached hereto.

"Bill of Sale" shall mean the Bill of Sale substantially in the form of Exhibit B attached hereto.

"Business" means the ownership and operation of four "Boudreaux's Cajun Kitchen" restaurants, as historically conducted by Seller.

"Business Day" means any day other than a Saturday, a Sunday or any other day on which commercial banks in Dallas, Texas are required to be closed or are closed generally.

"Business Employees" shall mean those employees of Seller who are employed by Seller primarily in connection with the Business (including employees on vacation/paid time off, disability leave or other leave of absence).

"Business Names" means the following trade name: "Boudreaux's Cajun Kitchen".

"Claim Notice" shall have the meaning given to such term in Section 8.3(a).

"Closing" shall have the meaning given to such term in Section 2.7.

"Closing Date" shall have the meaning given to such term in Section 2.7.

"Closing Purchase Price" shall have the meaning given to such term in Section 2.5(c).

"Code" means the Internal Revenue Code of 1986, as it may be amended from time to time, and any successor thereto.

"Company Plans" shall have the meaning given to such term in Section 3.16(a).

"Concession Agreements" shall mean the Temporary Concession and Management Agreements substantially in the form of Exhibit H attached hereto.

"Contracts" means all written or unwritten agreements, contracts, arrangements, commitments, undertakings, leases and guarantees.

"Deductible" shall have the meaning given to such term in Section 8.1.

"Defense Notice" shall have the meaning given to such term in Section 8.3(a).

"Deposit" shall have the meaning given to such term in Section 2.5(b).

"Disputed Items" shall have the meaning given to such term in Section 2.6(c).

"Effective Date" means shall have the meaning given to such term in the preamble of this Agreement.

"End Date" shall have the meaning give to such term in Section 7.1(b)(i).

"Enforcement Limitation" means any applicable bankruptcy, reorganization, insolvency, moratorium or other similar Law affecting creditors' rights generally and principles governing the availability of equitable remedies.

"Environmental Laws" means, whenever enacted and in effect, all applicable foreign, United States federal, state, and local statutes, regulations, ordinances, codes and other provisions having the force or effect of law, all judicial and administrative orders and determinations and all common law, in any case concerning pollution, protection of the environment or natural resources, Hazardous Materials, and protection of human health and safety and worker health and safety.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

"Excluded Assets" shall have the meaning given to such term in Section 2.2.

"Excluded Liabilities" shall have the meaning given to such term in Section 2.4. "Firm" shall have the meaning given such term in Section 2.6(c).

"Fraud" means an actual and intentional fraud with respect to the making of the representations and warranties in this Agreement; provided, that such actual and intentional fraud shall only be deemed to exist if the Person making such representations and warranties had actual knowledge (as opposed to imputed or constructive knowledge) that such representations and warranties were actually breached when made, with the express intention that Purchaser or Seller, as applicable, rely thereon to its detriment.

"Fundamental Representation" means the representation and warranties set forth in Sections 3.1, 3.2, 3.12, 3.13, 4.1, 4.2, and 4.5.

"Governmental Authorities" means all agencies, authorities, bodies, boards, commissions, courts, instrumentalities, legislatures and offices of any nature whatsoever of any government, quasi-governmental unit or political subdivision, whether foreign, federal, state, county, district, municipality, city or otherwise.

"Guaranty" means a Guaranty, substantially in the form of Exhibit F attached hereto.

"Hazardous Materials" means any substance, material or waste, regardless of physical form or concentration, that (a) is hazardous, toxic, infectious, explosive, radioactive, carcinogenic, ignitable, corrosive, or reactive, or otherwise deleterious to living things or the environment, (b) is identified, defined, designated, listed, restricted or otherwise regulated under Environmental Laws, or (c) as to which liability or standards of conduct may be imposed pursuant to any Environmental Law.

"Indemnitee" shall have the meaning given to such term in Section 8.3(a).

"Indemnitor" shall have the meaning given to such term in Section 8.3(a).

"Interest" shall have the meaning given to such term in Section 2.9.

"Knowledge of Purchaser" (or any similar phrase or qualification based on Purchaser's knowledge) means the actual knowledge of each of the executive officers of Purchaser.

"Knowledge of Seller" (or any similar phrase or qualification based on Seller's knowledge) means the actual knowledge of Richard Hicks, and if a reasonable person with Richard Hicks's actual knowledge of the relevant facts and circumstances at that time would have deemed a further investigation necessary, the actual knowledge that Richard Hicks would have obtained after due inquiry and reasonable investigation.

"Law" means any federal, state, foreign or local statute, law, ordinance, regulation, rule, code, Order, other requirement or rule of law.

"Leased Real Property" means the real property leased by Seller as tenant, subtenant or otherwise, together with all buildings and other structures, facilities or improvements located thereon; provided, however, that the Leased Real Property shall not include any of the Excluded Assets. The Leased Real Property is set forth on Schedule 3.14.

"Liability" means any liability, indebtedness, assessment, expense, claim, loss, damage, deficiency, obligation or responsibility, known or unknown, disputed or undisputed, joint or several, vested or unvested, executory or not, fixed or unfixed, choate or inchoate, liquidated or unliquidated, secured or unsecured, determinable or undeterminable, accrued or unaccrued, absolute or not, actual or potential, contingent or otherwise (including any liability under any guarantees).

"Lien" means any mortgage, lien (including mechanics, warehousemen, laborers and landlords liens), pledge, charge, community property interest, easement, encroachment, security interest or similar restriction or right, option, or encumbrance.

"Loss" shall have the meaning given to such term in Section 8.1.

"Material Adverse Effect" means any change, event, effect, circumstance, state of facts or development (or combination of the foregoing) which, individually or in the aggregate, has had (a) a material adverse effect on the business, financial condition or results of operations of the Business or (b) a material adverse effect on the ability of Seller to consummate the transactions contemplated hereby; provided, however, no such change, impact, event, effect, circumstance, state of facts or development resulting from or arising in connection with the following shall constitute (or be taken into account in determining the occurrence of) a Material Adverse Effect: (i) changes or conditions affecting generally the industries in which the Business operates, (ii) changes or conditions affecting the economy as a whole or capital, financial, banking or securities markets generally in the United States, (iii) the announcement, declaration, commencement, occurrence, continuation, threat or worsening of any war or armed hostilities, any act or acts of terrorism or any other national or international political or social event or condition, (iv) any failure to meet any projections or forecasts or estimates of revenues or earnings for any period (it being understood and agreed that any changes, events, effects, circumstances, states of facts or developments giving rise to such failure that are not otherwise excluded from the definition of Material Adverse Effect may be taken into account in determining whether there has been a Material Adverse Effect), (v) the reaction (including subsequent actions) of any Person not a Party to any transaction contemplated herein (including the announcement thereof), (vi) any change in applicable accounting requirements or principles or any change or anticipated change in applicable Law or the interpretation thereof, (vii) any action required to be taken under any Assumed Contract or applicable Law, (viii) any natural disaster or other acts of God, (ix) any disease outbreak, cluster, epidemic, pandemic or plague, regardless of stage, including the outbreak or escalation of the COVID-19 coronavirus, (x) any action expressly required or permitted to be taken pursuant to this Agreement or any other Transaction Document, or (xi) any event, occurrence or circumstance with respect to which Purchaser has Knowledge as of the date hereof; provided, that, any of the matters set forth in clauses (ii), (iii) and (vi) shall be taken into account in determining whether there is a Material Adverse Effect to the extent that such effects have a material disproportionate adverse effect on the Business (as compared to other businesses operating in the industries in which the Business operates).

"Negative Working Capital Items" means (i) the value as of the Closing Date of all unredeemed gift card amounts for gift cards sold commencing January 1, 2020 through Closing; (ii) all accrued current liabilities incurred by Seller in the ordinary course of business with respect to goods and services utilized by Seller during the period prior to Closing but that are actually paid by Purchaser following Closing; and (iii) the Liabilities related to accrued but unused vacation days or other paid time off with respect to each Business Employee who accepts the offer of employment from Purchaser or any of its Affiliates.

"Objection Notice" shall have the meaning given to such term in Section 2.6(b).

"Orders" shall have the meaning given to such term in Section 3.8.

"Ordinary Course of Business" means with respect to any Person, (a) any action taken or not taken by such Person in the ordinary course of business consistent with past practice, and (b) any other action taken or not taken by such Person in response to the actual or anticipated effect on such Person's business of COVID-19 or any Law, order, directive, guideline or recommendation by any Governmental Authority, in each case with respect to this clause (b) in connection with or in response to COVID-19.

"Permits" shall have the meaning given to such term in Section 3.18.

"Permitted Liens" means (a) Liens for current Taxes not yet due or being contested in good faith; (b) minor imperfections of title and encumbrances that do not impair the value or interfere with the present or continued use of such property or asset; (c) Liens listed in any Schedule or noted in any of the Financial Statements; (d) Liens created by the express terms of any Assumed Contract or any equipment lease; (e) Liens arising under any original purchase price conditional sales contract or equipment lease; (f) easements, covenants, conditions or restrictions of public record; (g) easements, covenants, conditions or restrictions not of public record as to which no material violation or encroachment exists or, if such violation or encroachment exists, as to which the cure of such violation or encroachment would not materially interfere with the conduct of the business of the applicable Person; (h) zoning or other governmentally established Liens; (i) pledges or deposits to secure any obligation under any workers or unemployment compensation Law or to secure any other public or statutory obligation; (j) mechanic's, materialmen's, landlord's, carrier's, supplier's or vendor's liens or similar Liens arising or incurred in the Ordinary Course of Business of the applicable Person that secure any amount that is not overdue for a period of more than 90 days; or (k) other imperfections of title or licenses or other Liens incurred in the Ordinary Course of Business or that do not materially impair the conduct of the business of the Business as presently conducted.

"Person" means an individual, corporation, partnership, limited partnership, limited liability company, limited liability partnership, syndicate, person (including a "person" as defined in Section 13(d)(3) of the Securities Exchange Act of 1934, as amended), trust, association, entity or government or political subdivision, agency or instrumentality.

"Positive Working Capital Items" means (i) the value of all usable inventory located on the Leased Real Property at Closing ("Closing Inventory"); (ii) the value of store bank and cash on hand at the Leased Real Property at Closing ("Closing Cash"); and (iii) all accrued current assets and prepaids incurred by Seller and usable by Purchaser in the ordinary course of business with respect to the period following Closing ("Closing Prepaids").

"Post-Closing Liabilities" means any Liabilities incurred, accrued or arising on or after the Closing Date related to the Business.

"Pre-Closing Tax Period" shall mean all taxable periods ending on or before the Closing Date and the portion through the end of the Closing Date for any taxable period that includes (but does not end on) the Closing Date.

"Preliminary Closing Statement" shall have the meaning given that term in Section 2.5(c).

"Promissory Note" shall mean a Promissory Note, to be secured by a first priority security interest in favor of Seller in all of the Purchased Assets, issued by Purchaser to Seller to be executed in connection with Closing in the form attached hereto as Exhibit D.

"Proprietary Rights" shall mean all of the following in any jurisdiction throughout the world: (a) patents, patent applications, patent disclosures, and statutory invention registrations, including divisionals, continuations, continuations-in-part, foreign counterparts, re-issues and re- examinations thereof and any patents and patent applications claiming priority from any of the foregoing (collectively, "Patents"); (b) common law and registered trademarks, service marks, trade dress, trade names, corporate names, logos and slogans (and all translations, adaptations, derivations and combinations of the foregoing) and Internet domain names, and pending registrations and applications therefor, together with all goodwill associated with each of the foregoing (collectively, "Trademarks"); (c) registered and unregistered copyrights and copyrightable works and pending registrations and applications therefor (collectively, "Copyrights"); (d) trade secrets and confidential information (including inventions, ideas, formulae, compositions, research and development information, drawings, specifications, designs, plans, proposals, technical data, financial, business and marketing plans, and customer and supplier lists and related information) (collectively, "Trade Secrets"); and (e) computer software and software systems (including data, source code and object code, databases and related documentation).

"Purchase Price" shall have the meaning given to such term in Section 2.5(a).

"Purchase Price Allocation" shall have the meaning given to such term in Section 5.12.

"Purchased Assets" shall have the meaning given to such term in Section 2.1.

"Purchaser" shall have the meaning given to such term in the preamble of this Agreement.

"Purchaser Indemnified Party" shall have the meaning given to such term in Section 8.1.

"Real Property Lease" means, collectively, each lease, sublease, license and other agreement pursuant to which Seller is granted the right to use or occupy, now or in the future, the Leased Real Property or any portion thereof, including any and all modifications, amendments and supplements thereto and any assignments thereof.

"Reconciliation Statement" shall have the meaning given such term in Section 2.6(a).

"Release" means any spilling, leaking, seeping, pumping, pouring, emitting, emptying, injecting, discharging, escaping, leaching, migrating, dumping, disposing or releasing of Hazardous Material into the environment or any structure of any kind whatsoever, including the abandonment or discarding of barrels, containers, tanks or other receptacles containing or previously containing Hazardous Material.

"Representatives" means, with respect to any Party to this Agreement, such Party's directors, officers, employees, attorneys, accountants, representatives, lenders, consultants, independent contractors and other agents.

"Retained Interest" shall have the meaning given to such term in Section 2.9.

"Security Agreement" means a Security Agreement pursuant to which Purchaser grants a first priority security interest in favor of Seller in all of the assets of Purchaser, in the form attached hereto as Exhibit E.

"Seller" shall have the meaning given to such term in the preamble of this Agreement.

"Seller Indemnified Party" shall have the meaning given to such term in Section 8.2.

"Tax Benefit" shall have the meaning given to such term in Section 8.5.

"Taxes" means: (a) any and all taxes, fees, levies, duties, tariffs, imposts and other charges of any kind, imposed by any Governmental Authority or taxing authority, including taxes or other charges on, measured by, or with respect to income, franchise, windfall or other profits, gross receipts, property, sales, use, capital stock, payroll, employment, social security, workers' compensation, unemployment compensation or net worth; taxes or other charges in the nature of excise, withholding, ad valorem, stamp, transfer, value-added or gains taxes; license, registration and documentation fees; and customers' duties, tariffs and similar charges; (b) any liability for the payment of any amounts of the type described in (a) as a result of being a member of an affiliated, combined, consolidated or unitary group for any taxable period; and (c) any and all interest, penalties, additions to tax and additional amounts imposed in connection with or with respect to any amounts described in (a) or (b).

"Tax Return" means any return, report, statement, form or other documentation (including any additional or supporting material and any amendments or supplements) filed or maintained, or required to be filed or maintained, with respect to or in connection with the calculation, determination, assessment or collection of any Taxes.

"Transaction Documents" shall mean, collectively, this Agreement, and each of the other agreements and instruments to be executed and delivered by all or some of the Parties in connection with the consummation of the Acquisition (including exhibits and schedules thereto), including the Bill of Sale, the Assumption Agreement, the Promissory Note, the Security Agreement, the Guaranty, the Transition Services Agreement, the Concession Agreements, assignments of Assumed Contracts, and assignments of Real Property Leases.

"Transfer Taxes" shall have the meaning given to such term in Section 5.10.

"Transition Services Agreement" shall mean a Transition Services Agreement between Seller and Purchaser to be executed in connection to Closing in the form attached hereto as Exhibit G.

1.2 Interpretation. Unless the context otherwise requires, the terms defined in this Article 1 shall have the meanings herein specified for all purposes of this Agreement, applicable to both the singular and plural forms of any of the terms defined herein. When a reference is made in this Agreement to Sections, such reference shall be to a Section of this Agreement unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The word "or" shall be inclusive. All references to "$" or dollars shall be deemed references to United States dollars.

ARTICLE 2. PURCHASE AND SALE OF PURCHASED ASSETS

2.1 Purchased Assets. Subject to the terms and conditions of this Agreement, at the Closing, Seller shall sell, convey, transfer, assign and deliver to Purchaser, and Purchaser shall purchase and acquire from Seller, all of Seller's right, title and interest in and to the following assets, properties, leases, rights, claims, and Contracts related to the Business (except as set forth in Section 2.2) (collectively, the "Purchased Assets"):

(a) other than any Excluded Asset, all personal property and equipment and interests therein related to the Business;

(b) all books and records necessary to operate the Business (or in the case of any such books and records that are not exclusively used in the Business, a copy of such books and records);

(c) all goodwill and other intangible properties related to the Business;

(d) all inventory and raw materials related to the Business;

(e) all Proprietary Rights related to the Business and the Business Names (collectively, the "Acquired Intellectual Property");

(f) all rights of Seller under the Assumed Contracts; and

(g) all rights (including rights of recovery, rights of set off and rights of recoupment), claims, credits, defenses, causes of action (including counterclaims), choses in action and all other rights to bring any Action at law or in equity or to the extent arising out of or relating to any Purchased Asset or any Assumed Liability.

2.2 Excluded Assets. Notwithstanding anything herein to the contrary, Seller shall retain all of its right, title and interest in and to, and shall not transfer or sell to Purchaser any of the following assets or rights (collectively, the "Excluded Assets"):

(a) any accounts, notes and other receivables (including unbilled receivables);

(b) cash and cash equivalents;

(c) all checkbooks, bank deposits, bank accounts, deposit accounts, investment accounts and related assets;

(d) any Tax assets (including any refunds, rebates or credits or similar benefits) of Seller or its Affiliates;

(e) Seller's corporate resolutions and minutes; and

(f) any rights of Seller under this Agreement or the Transaction Documents.

2.3 Assumed Liabilities. On and subject to the terms and conditions of this Agreement, Purchaser agrees to assume and become responsible for the Assumed Liabilities as of the Closing. Purchaser shall not assume or have any responsibility with respect to any liability of Seller that is not an Assumed Liability. "Assumed Liabilities" means the following Liabilities:

(a) all Liabilities with respect to performance obligations following the Closing and payments becoming due and payable following the Closing under the Contracts listed on Schedule 2.3(a) (the "Assumed Contracts");

(b) all Negative Working Capital Items (including the value as of the Closing Date of all unredeemed gift card amounts for gift cards sold commencing January 1, 2020 through Closing, and all Liabilities related to accrued but unused vacation days or other paid time off with respect to each Business Employee who accepts the offer of employment from Purchaser or any of its Affiliates, the amounts of which as of the Effective Date are listed on Schedule 2.3(b), but the final amount of which will be as provided on the Preliminary Closing Statement and adjusted pursuant to the finally determined Reconciliation Statement as provided in Section 2.6 below); and

(c) all Post-Closing Liabilities.

2.4 Excluded Liabilities. Notwithstanding anything herein to the contrary, Seller shall maintain sole responsibility of, and solely shall retain, pay, perform, and discharge, the following liabilities of Seller, and Purchaser shall not assume, any of the following Liabilities (collectively, the "Excluded Liabilities"):

(a) any Liability for Taxes, including (i) any Taxes arising as a result of Seller's operation of the Business or ownership of the Purchased Assets prior to the Closing, (ii) any Taxes that will arise as a result of the sale of the Purchased Assets pursuant to this Agreement, (iii) any employment Taxes paid or to be paid by Seller for any reason whatsoever, and (iv) any deferred Taxes of any nature;

(b) any Liability under any Contract that is not an Assumed Contract, including any Liability arising out of or relating to Seller's credit facilities or any security interest related thereto;

(c) any Liabilities under any Environmental Laws arising out of or relating to the operation of Seller's business or Seller's leasing, ownership or operation of the Leased Real Property prior to the Closing;

(d) any Liability under any employee benefit plans or relating to payroll, workers' compensation, unemployment benefits, pension benefits, employee stock option or profit-sharing plans, health care plans or benefits or any other employee plans or benefits of any kind for Seller's employees or former employees or both, including any Liability with respect to the payment of bonuses for any reason;

(e) any Liability under any employment, severance, retention or termination agreement with any employee of Seller or any of its Affiliates;

(f) any Liability arising out of or relating to any employee grievance whether or not the affected employees are hired by Purchaser;

(g) any Liability of Seller to any shareholder or Affiliate of the Seller, other than Liabilities incurred in the ordinary course of business;

(h) any Liability to indemnify, reimburse or advance amounts to any officer, director, employee or agent of Seller, other than Liabilities incurred in the ordinary course of business;

(i) any Liability to distribute to any of Seller's shareholders or otherwise apply all or any part of the consideration received hereunder;

(j) any Liability arising out of any Proceeding pending as of the Closing;

(k) any Liability arising out of any Proceeding commenced after the Closing and arising out of or relating to any occurrence or event happening prior to the Closing;

(l) any Liability arising out of or resulting from Seller's compliance or noncompliance with any Law or Order of any Governmental Authority;

(m) any Liability of Seller related to the lease agreements for the Leased Real Property with respect to the period prior to Closing;

(n) any Liability of Seller under this Agreement or any other document executed in connection with the transactions contemplated hereby, including any Liability of Seller for expenses incurred by Seller or its Affiliates in connection with this Agreement and any Liability of Seller for any bonuses, commissions, or incentive payments paid or payable to any Person by reason of the consummation of the transactions contemplated hereby;

(o) any Liability of Seller based upon Seller's acts or omissions occurring after the Closing;

(p) each brokerage or similar payment described on Schedule 3.12; and

(q) Liabilities arising under Assumed Contracts as a result of any breach of such Assumed Contracts occurring prior to the Closing (excluding any breach of such Assumed Contracts occurring on the Closing Date as a result of any assignment of such Assumed Contract in connection with the transactions contemplated hereby without any required counterparty consent), or any related charge, complaint, action, suit, proceeding, hearing, investigation, claim or demand.

2.5 Purchase Price; Deposit; Payment of Closing Purchase Price.

(a) Purchase Price. In consideration of Seller's sale of the Purchased Assets to Purchaser, Purchaser will assume the Assumed Liabilities and will pay to Seller an amount equal to (i) $3,750,000, plus (ii) the Positive Working Capital Items, less (iii) the Negative Working Capital Items (the "Purchase Price").

(b) Deposit. On the Effective Date, Purchaser shall pay to Seller $250,000.00 by wire transfer of immediately available funds in accordance with the wire transfer instructions delivered to Purchaser by Seller (the "Deposit"). The Deposit shall be applied against the Closing Purchase Price at Closing.

(c) Payment of Closing Purchase Price. No later than five (5) Business Days prior to Closing, Seller will deliver to Purchaser a statement with estimates of the Positive Working Capital Items and Negative Working Capital Items (the "Preliminary Closing Statement"). At Closing, Seller shall pay to Purchaser an estimate of the Purchase Price based on the amounts in the Preliminary Closing Statement (the "Closing Purchase Price") as follows: (i) application of the Deposit; (ii) cash of $1,000,000.00 by wire transfer of immediately available funds in accordance with the wire transfer instructions delivered to Purchaser by Seller on the Closing Date; and (iii) the balance in the form of the Promissory Note.

2.6 Working Capital Purchase Price Adjustment.

(a) Reconciliation Statement. No later than forty-five (45) days following Closing, Purchaser shall deliver to Seller a statement with the following: (i) a calculation of any amount by which the Closing Inventory varied from the amount shown in the Preliminary Closing Statement, together with documentation demonstrating such variation; (ii) a calculation of any amount by which the Closing Cash varied from the amount shown in the Preliminary Closing Statement, together with documentation demonstrating such variation; (iii) a calculation of any amount by which the Closing Prepaids varied from the amount shown on the Preliminary Closing Statement, with all necessary documents and calculations supporting such variation; and (iv) a calculation of any amount by which the Negative Working Capital Items varied from the amount shown on the Preliminary Closing Statement, together with documents and calculations supporting such variation (the "Reconciliation Statement").

(b) Objections. Following the receipt by Seller of the Reconciliation Statement, Purchaser shall permit Seller and its representatives to have reasonable access during normal business hours to the books, records and other documents pertaining to or used in connection with preparation of the Reconciliation Statement. On or prior to the thirtieth (30th) day after Seller's receipt of the Reconciliation Statement, Seller may give Purchaser a written notice stating in reasonable detail any objections (an "Objection Notice") to any amount in the Reconciliation Statement. Any Objection Notice shall specify in reasonable detail the dollar amount of the objection and the basis therefor. Except to the extent Seller makes an objection to a specific determination set forth in the Reconciliation Statement pursuant to an Objection Notice delivered to Purchaser within such thirty (30) day period, Purchaser's calculation in the Reconciliation Statement shall be final and binding upon the parties.

(c) Dispute. If Seller gives a timely Objection Notice as described in Section 2.6(b) above, then Purchaser and Seller shall negotiate in good faith to resolve their disputes. If Purchaser and Seller are unable to resolve all disputes on or prior to the thirtieth (30th) day after the delivery of the Objection Notice, then Purchaser and Seller shall, within five (5) business days thereafter, retain the Dallas office of Grant Thornton or other accounting firm mutually agreed to by Purchaser and Seller (provided no such accounting firm shall have any existing or past relationship with Seller or Purchaser) (the "Firm"), and shall instruct the Firm to resolve the dispute as soon as practicable, and in any event within thirty (30) days. The Firm shall only decide the specific items under dispute by the parties (the "Disputed Items"), solely in accordance with the terms of this Agreement, it being understood that in making such decision, the Firm shall be functioning as an expert and not as an arbitrator. In resolving any Disputed Item, the Firm may not assign a value to any item greater than the greatest value for such item claimed by either party or less than the smallest value for such item claimed by either party. The Firm's determination shall be based solely on presentations by Purchaser and Seller (i.e., not on independent review) and on the definitions and other terms included herein. With respect to the Closing Inventory and the Closing Cash, the amounts in the Preliminary Closing Statement shall be presumptively correct, unless clear evidence of a variation is presented. The determination of the Disputed Items, as determined by the Firm, shall absent manifest error be final and binding upon the parties hereto and the Reconciliation Statement shall be adjusted accordingly. The fees and expenses of the Firm (i) shall be borne by Seller, in the proportion that the aggregate dollar amount of Disputed Items submitted thereto for resolution that are unsuccessfully disputed by Seller (as finally determined by the Firm) bears to the aggregate dollar amount of such submitted Disputed Items and (ii) shall be borne by Purchaser in the proportion that the aggregate dollar amount of Disputed Items submitted thereto for resolution that are successfully disputed by Seller (as finally determined by the Firm) bears to the aggregate dollar amount of such submitted Disputed Items. Purchaser and Seller and their respective agents shall cooperate with the Firm during its engagement and as promptly as practicable provide all documents and information reasonably requested by the Firm.

(d) Purchase Price Adjustment. To the extent the Purchase Price, as determined with respect to the finally determined Reconciliation Statement as described above, is greater than or less than the Closing Purchase Price, then within ten (10) days of the final determination of all items in the Reconciliation Statement as provided above, Purchaser shall deliver to Seller an amended and restated Promissory Note to reflect such difference.

2.7 Closing. On the terms and subject to the conditions set forth in this Agreement, the closing of the transactions contemplated hereby (the "Closing") shall take place remotely via the exchange of documents and signatures on (a) February 13, 2023, provided that all conditions to Closing set forth in Article 6 (other than conditions that by their terms are to be satisfied at Closing but subject to the satisfaction or waiver (to the extent permitted by Law) of such conditions) are satisfied or waived as of such date, (b) if such conditions are not met on or before the first Business Day following the thirtieth (30) day following the date hereof, on the date that is the third Business Day following the satisfaction or waiver (to the extent permitted by Law) of all conditions set forth in Article 6 (other than conditions that by their terms are to be satisfied at Closing but subject to the satisfaction or waiver of such conditions), or (c) on such other date as the Parties may agree (the "Closing Date"). All actions to be taken and all documents to be executed or delivered at Closing will be deemed to have been taken, executed and delivered simultaneously, and no action will be deemed taken and no document will be deemed executed or delivered until all have been taken, delivered and executed, except in each case to the extent otherwise stated in this Agreement or any such other document. Closing shall be deemed effective as of 12:01 a.m. central time on the Closing Date.

(a) Purchaser Closing Deliveries. At or prior to the Closing:

(i) Purchaser shall deliver to Seller the Purchase Price, including the Promissory Note, duly executed by Purchaser and Amergent Hospitality Group Inc.;

(ii) Purchaser shall deliver to Seller the Guaranty, duly executed by Amergent Hospitality Group Inc.;

(iii) Purchaser shall deliver to Seller copies of each other Transaction Document duly executed by Purchaser;

(iv) Purchaser shall deliver to Seller a certificate, dated as of the Closing Date, duly executed by the Secretary, Assistant Secretary or any other executive officer of Purchaser certifying, among other things, that attached or appended to such certificate: (A) is a true and correct copy of the Purchaser's organizational documents, and all amendments thereto; and (B) is a true copy of all corporate actions taken by it, including resolutions of its board of directors authorizing the consummation of the Acquisition and the execution, delivery and performance of this Agreement and each of the Transaction Documents to be delivered by Purchaser pursuant hereto;

(v) Purchaser shall deliver to Seller the certificate required by Section 6.2(c); and

(vi) Purchaser shall deliver to Seller such other documents and instruments as may be reasonably requested by Seller to consummate the Acquisition and to carry out the obligations of the Parties hereunder.

(b) Seller Closing Deliveries. At or prior to the Closing:

(i) Seller shall deliver to Purchaser a certificate, dated as of the Closing Date, duly executed by the Secretary, Assistant Secretary or any other executive officer of Seller certifying, among other things, that attached or appended to such certificate: (A) is a true and correct copy of Seller's organizational documents, and all amendments thereto; and (B) is a true copy of all corporate actions taken by it, including resolutions of its board of directors authorizing the consummation of the Acquisition and the execution, delivery and performance of this Agreement and each of the Transaction Documents to be delivered by Seller pursuant hereto;

(ii) Seller shall deliver to Purchaser copies of each Transaction Document to which it is a party, duly executed by Seller;

(iii) Seller shall deliver to Purchaser all material records and documentation of Seller relating exclusively to the Purchased Assets;

(iv) Seller shall deliver to Purchaser possession of the Purchased Assets;

(v) Seller shall deliver to Purchaser a non-foreign affidavit dated as of the Closing Date, in form and substance required under Treasury Regulations issued pursuant to Code §1445, stating that Seller is not a "foreign person" as defined in Code §1445;

(vi) Seller shall deliver to Purchaser the certificate required by Section 6.1(c); and

(vii) Seller shall deliver to Purchaser such other documents and instruments as may be reasonably requested by Purchaser to consummate the Acquisition and to carry out the obligations of the Parties hereunder.

2.8 Transfer Taxes. Seller and Purchaser agree to cooperate in securing any available exemptions from any Transfer Taxes (including any bulk sales Taxes) on the transfer of the Purchased Assets hereunder.

2.9 Assignment of Assets. Notwithstanding anything to the contrary in this Agreement, to the extent that any sale, conveyance, transfer or assignment of any Purchased Assets, or any claim, right or benefit arising thereunder or resulting therefrom (collectively, the "Interests") contemplated hereunder is not permitted by applicable Law or the terms of the Contract governing such Interest or is not permitted without the consent of any Person which consent has not been obtained at or prior to the Closing, this Agreement shall not be deemed to constitute a sale, conveyance, transfer or assignment of any such Interest unless and until such Interest (a "Retained Interest") can be sold, conveyed, transferred or assigned or such consent is obtained, at which time such Retained Interest shall be deemed to be sold, conveyed, transferred and assigned in accordance with the provisions hereunder, subject to any condition or provision contained in such consent, whereupon it shall cease to be a Retained Interest. While any such Interest is a Retained Interest, Seller and Purchaser shall, subject to Section 5.11 and for a period not to exceed 90 days after the Closing Date, cooperate in a mutually agreeable arrangement under which Purchaser shall obtain the benefits and assume the obligations associated with, and shall indemnify Seller for Losses during such period after the Closing Date relating to, each Retained Interest.

ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchaser, except as set forth in the Disclosure Schedules, that:

3.1 Organization and Qualification. Seller is a corporation duly organized, validly existing and in good standing under the Laws of the State of Texas and has all requisite power and authority, corporate or otherwise, to own, lease and operate its properties and to carry on its business as it is now being conducted. Seller is duly qualified or licensed to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except where the failure to be so qualified, licensed or in good standing has not had a Material Adverse Effect. Seller's organizational documents are in full force and effect. Seller is not in material violation of any of the provisions of its organizational documents that would adversely affect (a) the Purchased Assets, (b) the Acquisition, or (c) the other transactions contemplated by the Transaction Documents.

3.2 Authority Relative to this Agreement. Seller has all necessary corporate power and authority to execute and deliver this Agreement and the other Transaction Documents to which it is a party, to perform its obligations hereunder and thereunder and to consummate the Acquisition. The execution, delivery and performance of this Agreement and the other Transaction Documents by Seller and the consummation by Seller of the Acquisition have been duly and validly authorized by all necessary corporate action of Seller, and no other corporate proceedings or action on the part of Seller or any holders of Seller's capital stock or other security holders are necessary to authorize this Agreement and the other Transaction Documents or to consummate the Acquisition. This Agreement and the other Transaction Documents have been duly executed and delivered by Seller, and, assuming the due authorization, execution and delivery by the other parties hereto or thereto, each such agreement constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except to the extent enforceability may be limited by any Enforcement Limitation.

3.3 No Conflict. Assuming that all consents and other actions described in Section 3.4 have been obtained, and except as may result from any facts or circumstances relating solely to Purchaser or its Affiliates, the execution, delivery and performance by Seller of this Agreement and the Transaction Documents and the consummation of the transactions contemplated hereby or thereby will not: (a) conflict with or violate or constitute a default under any provision of its organizational documents or any resolutions adopted by its board of directors or stockholders; (b) conflict with or violate or result in a breach of or default under any provision of any Law or Order applicable to Seller or by which any of the Purchased Assets or Seller is subject, bound or affected in any respect; (c) to the Knowledge of Seller, result in any breach of or constitute a default (or an event which with the giving of notice or lapse of time or both could reasonably be expected to become a default) under, require notice or other action by any Person under, or give to others any right of termination, amendment, acceleration, consent, notice or cancellation pursuant to any Assumed Contract; or (d) result in the creation of a Lien on any of the Purchased Assets other than a Permitted Lien; except where such a breach, violation, default, conflict or right under clauses (b) through (d) above has not had and would not reasonably be expected to have a Material Adverse Effect.

3.4 Filings and Consents. The execution and delivery of this Agreement and the other Transaction Documents by Seller does not, and the performance by Seller of its obligations hereunder and thereunder and the consummation of the Acquisition will not, require any consent, approval, exemption, authorization or permit of, or filing by Seller with or notification by Seller to, any Person or Governmental Authority, except (a) as set forth on Schedule 3.4, or (b) to the extent that the failure to obtain any such consent or to take any such action or make such filing or notification will not result in a Material Adverse Effect.

3.5 Financial Statements. Copies of Seller's income statement for the year-ended December 31, 2021, balance sheet as of December 31, 2021, year-to-date income statement for the portion of 2022 ending July 31, 2022, and balance sheet as of July 31, 2022 (the "Seller Financial Statements") are attached hereto as Exhibit C. The Seller Financial Statements are based on the books and records of Seller, and fairly present in all material respects the financial condition of Seller as of the respective dates they were prepared and the results of the operations of Seller for the periods indicated. Seller maintains a standard system of accounting and Seller Financial Statements are prepared and kept in accordance with Seller's customary accounting principles.

3.6 Intellectual Property. Seller is the sole and exclusive owner of, and has good, valid and marketable title to (free and clear of all Liens, other than Permitted Liens), or has a valid, enforceable and transferable license to make, use or sell the Acquired Intellectual Property. Schedule 3.6 lists each registered Trademark and Copyright comprising the Acquired Intellectual Property. To the Knowledge of Seller, (i) the Proprietary Rights used by Seller in the conduct of the Business as it is currently conducted and has been conducted within the last three years do not infringe upon, misappropriate, or otherwise violate any Proprietary Rights of any third party and
(ii) no third party is infringing, misappropriating or otherwise violating the Proprietary Rights of Seller.

3.7 Environmental and Safety Matters. To the Knowledge of Seller, Seller is and has been since January 1, 2019 in compliance in all material respects with applicable Environmental Laws in connection with the operation of the Business and the Purchased Assets. Seller has not received written notice of (and, to the Knowledge of Seller, none of the Leased Real Property is subject to) any pending Action, notice of material violation, infraction or Liability, or any pending claim, citation, complaint, order, request for information or notice from (or any agreement with) any Person respecting any actual or alleged Release of Hazardous Materials by Seller relating to the Business, or any actual, potential, or alleged violation of, non-compliance with, or Liability under any Environmental Law by Seller relating to the Business.

3.8 Compliance with Laws. To the Knowledge of Seller, Seller is not, in any material respect, and has not been since January 1, 2019, in any material respect, in conflict with, or in default or violation of, or in receipt of any written notice alleging any conflict, default or violation of, any: (a) order, judgment, preliminary or permanent injunction, temporary restraining order, award, citation, decree, consent decree or writ (collectively, "Orders") of any Governmental Authority; or (b) Laws of any Governmental Authority.

3.9 Assets. Seller is the sole and exclusive owner of and has title to all of the Purchased Assets that are not leased, free and clear of all Liens other than Permitted Liens. The Bill of Sale and Assumption Agreement and the endorsements, assignments and other instruments to be executed and delivered by Seller to Purchaser at the Closing will effectively transfer to Purchaser good, valid and marketable title to, and ownership of, the Purchased Assets free and clear of all Liens other than Permitted Liens. Except as set forth on Schedule 3.9, the Purchased Assets include all of the material tangible and intangible assets, properties and rights, of any nature whatsoever, used by Seller primarily in the Business. None of the Purchased Assets are located outside the United States. Except as set forth on Schedule 3.9, the Purchased Assets will, taking into account all Transaction Documents, constitute in all material respects all of the assets, rights and properties necessary to conduct the Business as presently conducted immediately following the Closing.

3.10 Claims and Proceedings. There is no outstanding Order of any Governmental Authority against or involving Seller with respect to the Business, the Purchased Assets or the transactions contemplated hereby. Except as set forth on Schedule 3.10, there is no Action pending or, to the Knowledge of Seller, threatened against Seller, or to which Seller is otherwise a party, before any Governmental Authority, with respect to or related to the Business, the Purchased Assets or the transactions contemplated hereby.

3.11 Contracts. Other than the Assumed Contracts, neither Seller nor any of its Affiliates is a party to any Contract that is material to the Business or the Purchased Assets. Seller is not in default under, and to the Knowledge of Seller, no event has occurred which, with the giving of notice or the passage of time or both, would constitute a default by any party to, any Assumed Contract. Seller has not, and to the Knowledge of Seller, no other party thereto has, repudiated any material provision of any Assumed Contract. Each of the Assumed Contracts is in full force and effect, and is valid and enforceable in accordance with its terms, subject to the Enforcement Limitations.

3.12 No Broker. Except as set forth on Schedule 3.12, Seller has not employed any broker, finder or agent or incurred and will not incur, any obligation or liability to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

3.13 Taxes and Tax Returns. Seller has filed all material Tax Returns it was required to file in respect of the Business and the Purchased Assets and all such Tax Returns are true, correct and complete in all material respects. Seller has paid to the appropriate Governmental Authority all material Taxes owed by Seller with respect to the Business and the Purchased Assets. Seller has not received any written claim with respect to the Business from an authority in a jurisdiction where Seller does not file Tax Returns that Seller is or may be subject to taxation by that jurisdiction as a result of the activities conducted by the Business. There are no Liens (other than Permitted Liens) on any of the Purchased Assets that arose in connection with any failure to pay any Tax. With respect to the Business, Seller has complied in all material respects with all applicable Laws relating to the withholding and payment of any Taxes and has timely withheld and paid to the proper Governmental Authorities all amounts required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, shareholder or any other third party. Seller has not deferred any "applicable employment taxes" (as defined in Section 2302(d)(1) of the CARES Act) in respect of calendar year 2020 pursuant to Section 2302 of the CARES Act, which Taxes would otherwise have been payable by Seller in respect of calendar year 2020 but for the application of the CARES Act, and Seller has not received any Small Business Administration Paycheck Protection Program loans that have not, as of the Closing Date, been forgiven in full. Schedule 3.13 lists all CARES Act or similar types of governmental assistance received by Seller as of the Closing Date, including but not limited to Paycheck Protection Program loans, ERTC credits, EIDL loans, and RRF grants, and applicable forgiveness date for each.

3.14 Real Property. Schedule 3.14 identifies each parcel of Leased Real Property. Seller has furnished to Purchaser true and complete copies of each Real Property Lease. To the Knowledge of Seller: (a) subject to any Enforcement Limitations, each Real Property Lease is a valid and binding obligation on Seller and, to the Knowledge of Seller, each other party thereto and is in full force and effect; (b) there is no material breach or material default under any Real Property Lease by Seller or any other party thereto; and (c) Seller has a good and valid leasehold interest in each Leased Real Property to which it is either the tenant or licensee named under the Real Property Lease, free and clear of all Liens (other than Permitted Liens).

3.15 Employees. Schedule 3.15 sets forth, with respect to each Business Employee as of January 1, 2023: (a) the name, title and classification of each employee as exempt/nonexempt under the federal Fair Labor Standards Act and full-time/part-time (with full-time being any employee regularly scheduled to work 30 or more hours per week); (b) each employee's current annualized base compensation; (c) whether the employee is receiving workers' compensation or disability payments or is on leave or other inactive status (other than ordinary use of vacation or similar paid time off), the reason therefor and the expected end date of such status; and (d) accrued but unused vacation days or other paid time off. Other than the Business Employees, no other employee of Seller is exclusively involved in the Business. Seller is and at all relevant times has been in compliance in all material respects with COVID-19 related safety and health Laws issued and enforced by the Occupational Safety and Health Administration, and with the paid and unpaid leave requirements of the Families First Coronavirus Response Act; and to the extent Seller has granted employees paid sick leave or paid family leave under the Families First Coronavirus Response Act, Seller has taken commercially reasonable efforts to obtain and retain all material documentation required to substantiate eligibility for sick leave or family leave tax credits pursuant to applicable Law to the extent the time limit to obtain or receive such substantiation has not lapsed. To the extent Seller has Knowledge of any Business Employees or independent contractors who have tested positive for COVID-19, Seller has taken commercially reasonable efforts to take all material precautions required under applicable Law with respect to such Business Employees and independent contractors. Seller has also used commercially reasonable efforts to document any such diagnosis to the extent required by Laws of the Occupational Safety and Health Administration. As of the Closing Date, Seller has not implemented, in response to COVID-19, any material workforce reductions, material reductions in or material changes to compensation or to Company Plans, nor has Seller applied for or received loans or payments under the Coronavirus Aid, Relief, and Economic Security Act, as signed into law by the President of the United States on March 27, 2020 (the "CARES Act"), claimed any tax credits under the CARES Act, or deferred any Taxes under the CARES Act except as set forth on Schedule 3.13.

3.16 Employee Benefit Plans. Schedule 3.16 sets forth all Company Plans in effect as of Closing. To the Knowledge of Seller, each "employee benefit plan" (within the meaning of Section 3(3) of ERISA), and any severance, change in control, employment or retention plan, program or agreement, vacation, incentive, bonus, stock option and restricted stock, profit sharing, retirement, deferred compensation or other material benefit plan, program, policy, agreement or arrangement sponsored, maintained or contributed to by Seller, in which any Business Employee participates (collectively, the "Company Plans") has been established, operated and administered in all material respects in accordance with its terms, ERISA, the Code and all other applicable Law. Each of the Company Plans intended to be "qualified" within the meaning of Section 401(a) of the Code has received a favorable determination letter from the IRS (or is maintained on a preapproved plan document that has received an opinion or advisory letter), and nothing has occurred that would reasonably be expected to adversely affect such qualification.

3.17 Absence of Certain Changes or Events. Since January 1, 2022, there has not occurred any Material Adverse Effect. Except as contemplated by this Agreement, since January 1, 2022 (a) Seller has conducted the Business in the Ordinary Course of Business, and (b) there has not occurred any change, impact, event, effect, circumstance or development (or combination of the foregoing) that would, or would reasonably be expected to, individually or in the aggregate, materially impair or delay the ability of Seller to consummate the transactions contemplated by, or to perform its obligations under, the Transaction Agreements.

3.18 Permits. Schedule 3.18 sets forth all material governmental permits (including all licenses, regulatory consents, franchises, permits, privileges, immunities, approvals and other authorizations of any Governmental Authority) (the "Permits") Seller owns, holds or possesses, in respect of the Business, which are necessary to entitle Seller to own or lease, operate or use the Purchased Assets or to carry on and conduct the Business as currently conducted. To the Knowledge of Seller, there is no suit, action, proceeding, investigation, complaint, claim, charge or Order threatening to revoke, modify or otherwise fail to renew any Permit. To the Knowledge of Seller, Seller is in compliance in all material respects with each Permit.

3.19 No Additional Representations. Except as expressly set forth in this Article 3, Seller makes no other express or implied representations or warranties and hereby disclaims any additional representation or warranty.

3.20 No Additional Purchaser Representations Seller acknowledges and agrees that, except for the representations and warranties explicitly made by Purchaser in Article 4, neither Purchaser nor any other Person makes any express or implied representation or warranty with respect to Purchaser or its assets, operations, Liabilities, condition (financial or otherwise) or prospects of any of the foregoing, and Purchaser hereby disclaims any such other representations or warranties. In particular, without limiting the foregoing, Seller acknowledges and agrees that except for the representations and warranties made by Purchaser in Article 4, neither Purchaser nor any other Person makes or has made any representation or warranty to Seller or any of its Representatives, with respect to any oral or written information furnished or made available to Seller or any of its Representatives in the course of their due diligence investigation of Purchaser, the negotiation of this Agreement or the consummation of the transactions contemplated hereby, including the accuracy, completeness or currency thereof, and neither Purchaser nor any other Person shall have any Liability to Seller or any other Person in respect of such information, including any subsequent use of such information, except in the case of Fraud in the making of any representation or warranty under Article 4.

ARTICLE 4. REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller that:

4.1 Formation and Qualification. Purchaser is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Texas and has all requisite power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted. Purchaser is duly qualified or licensed to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary.

4.2 Authority Relative to this Agreement. Purchaser has all necessary power and authority to execute and deliver this Agreement and the other Transaction Documents to which it is a party, to perform its obligations hereunder and thereunder and to consummate the Acquisition. The execution and delivery of this Agreement and each of the other Transaction Documents, as applicable, by Purchaser and the consummation by Purchaser of the Acquisition have been duly and validly authorized by all necessary corporate action, and no other proceedings on the part of Purchaser are necessary to authorize this Agreement or to consummate the Acquisition. This Agreement and the other Transaction Documents have been or will be duly executed and delivered by Purchaser, as applicable, and, assuming the due authorization, execution and delivery by the other parties hereto and thereto, each such agreement constitutes a legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms.

4.3 No Conflict. The execution and delivery of this Agreement and the other Transaction Documents by Purchaser does not, and the performance by Purchaser of its obligations hereunder and thereunder and the consummation of the Acquisition will not: (a) conflict with or violate any provision of Purchaser's organizational documents, each as amended to date, or any resolutions adopted by its board of directors, managing director or stockholders; (b) conflict with or violate any Law or Order applicable to Purchaser or by which Purchaser is bound or affected; or (c) conflict with, result in a breach of, constitute a default (or event which with the giving of notice or lapse of time or both would become a default) under, require any consent under, or give to others any rights of termination, amendment, acceleration, suspension, revocation or cancellation of, any note, bond, mortgage or indenture, agreement, lease, sublease, license, permit, franchise or other instrument or arrangement to which Purchaser is a party or pursuant to which its property or assets are bound, except in each case as would not materially and adversely affect the ability of Purchaser to carry out its obligations under, and to consummate the transactions contemplated by, this Agreement and the other Transaction Documents.

4.4 Required Filings and Consents. The execution and delivery of this Agreement and the other Transaction Documents by Purchaser, as applicable, do not, and the performance by Purchaser of its obligations hereunder and thereunder and the consummation of the Acquisition will not, require any consent, approval, exemption, authorization or permit of, or filing by Purchaser with or notification by Purchaser to, any Governmental Authority.

4.5 No Broker. Purchaser has not employed any broker, finder or agent or incurred and will not incur any obligation or liability to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

4.6 Availability of Funds. Following the Closing, Purchaser will have available cash or available borrowing capacity under committed borrowing facilities sufficient to enable Purchaser to consummate the transactions contemplated hereby and to carry on the Business in the Ordinary Course of Business following the Acquisition, including as required to discharge the Assumed Liabilities. Purchaser's obligations hereunder are not contingent upon procuring any financing.

4.7 Litigation. There is no Action, by or before any Governmental Authority or arbitrator, pending or, to the Knowledge of Purchaser, threatened that, if adversely determined, would reasonably be expected to have a material adverse effect on Purchaser's ability to consummate the Acquisition or the other transactions contemplated by the Transaction Documents.

4.8 Independent Investigation. Purchaser has performed an independent investigation, examination, analysis and verification of the business, assets, liabilities, operations and financial condition of Seller, including Purchaser's own estimate of the value of the Business and the Purchased Assets. Purchaser has had the opportunity to visit with Seller and meet with representatives of the Business to discuss the foregoing matters. All materials and information requested by Purchaser have been provided to Purchaser to its reasonable satisfaction. Purchaser has performed the due diligence Purchaser deems adequate regarding all matters relating to this Agreement and the transactions contemplated by the Transaction Documents. In connection with the foregoing, Purchaser and its representatives have received certain estimates, budgets, forecasts, plans and financial projections. There are uncertainties inherent in such forward-looking statements, and Purchaser is familiar with such uncertainties. Purchaser is taking full responsibility for making its own evaluation of, and hereby assumes all risks regarding, the adequacy and accuracy of such forward-looking statements (including the reasonableness of the assumptions upon which they are based).

4.9 Solvency. After giving effect to the Closing and the Acquisition, Purchaser will be able to pay its debts as they become due and shall own property which has a fair market value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all contingent liabilities). Immediately after giving effect to the Acquisition, Purchaser shall have adequate capital to carry on their business (including the Business). No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated hereby with the intent to hinder, delay or defraud any of Purchaser's or its Affiliates' current or future creditors.

4.10 No Additional Representations. Except as expressly set forth in this Article 4, Purchaser makes no other express or implied representations or warranties and hereby disclaims any additional representation or warranty.

4.11 No Additional Seller Representations Purchaser acknowledges and agrees that, except for the representations and warranties explicitly made by Seller in Article 3, neither Seller nor any other Person makes any express or implied representation or warranty with respect to Seller, the Business, Seller's assets (including the Purchased Assets), operations, Liabilities (including the Assumed Liabilities), condition (financial or otherwise) or prospects of any of the foregoing, and Seller hereby disclaims any such other representations or warranties. In particular, without limiting the foregoing, Purchaser acknowledges and agrees that except for the representations and warranties made by Seller in Article 3, neither Seller nor any other Person makes or has made any representation or warranty to Purchaser or any of its Representatives, with respect to any oral or written information furnished or made available to Purchaser or any of its Representatives in the course of their due diligence investigation of the Business and the Purchased Assets, the negotiation of this Agreement or the consummation of the transactions contemplated hereby, including the accuracy, completeness or currency thereof, and neither Seller nor any other Person shall have any Liability to Purchaser or any other Person in respect of such information, including any subsequent use of such information, except in the case of Fraud in the making of any representation or warranty under Article 3.

ARTICLE 5. COVENANTS

5.1 Conduct of Business. Except for matters required by applicable Law, expressly permitted by this Agreement, or as otherwise consented to in writing by Purchaser (which consent will not be unreasonably withheld, conditioned or delayed), from the date hereof to the Closing Date (or until the earlier termination of this Agreement in accordance with Section 7.1), Seller will conduct the Business in the Ordinary Course of Business in all material respects.

5.2 Efforts to Consummate Closing. Upon the terms and subject to the conditions set forth in this Agreement, each of the Parties shall use its commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other Party in doing, all things necessary to fulfill all conditions applicable to such Party pursuant to this Agreement and the other Transaction Documents and to consummate and make effective, in the most expeditious manner reasonably practicable (and in any event prior to the End Date), the Closing, the Acquisition and the other transactions contemplated hereby, including (a) obtaining all necessary consents required to be obtained by such party as a condition to Closing (provided, however, that no Party shall be required to pay any consideration therefor); (b) obtaining all necessary actions or non-actions, waivers, consents, qualifications and approvals from Governmental Authorities and making all necessary registrations, filings and notifications and taking all steps as may be necessary to obtain an approval, expiration or termination of any waiting period, clearance, non-action letter, waiver or exemption from any Governmental Authority; (c) defending any lawsuits or other legal proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the Acquisition or other transactions contemplated hereby, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Authority vacated or reversed; and (d) executing and delivering any additional documents or instruments necessary to consummate the Acquisition and the other transactions contemplated hereby and to carry out this Agreement and the Transaction Documents.

5.3 Pre-Closing Access From the date hereof through Closing, so long as this Agreement remains in effect, Seller will afford Purchaser and its Representatives reasonable access, during normal business hours and upon reasonable prior notice, to the facilities, personnel, and books and records of Seller. Notwithstanding the foregoing, Seller shall not be required to disclose any information to Purchaser if such disclosure would be reasonably likely to: (i) cause competitive harm to Seller if the Acquisition is not consummated; (ii) jeopardize any attorney- client or other legal privilege; or (iii) contravene any applicable Law, fiduciary duty or binding Contract entered into prior to the date hereof.

5.4 Contact. Until the Closing Date, none of Purchaser, its Affiliates or their Representatives shall contact or communicate with the customers, suppliers, vendors, employees, contractors or consultants of Seller in connection with the Acquisition or the other transactions contemplated by this Agreement, or the operation of the Business without the prior written consent of Seller.

5.5 Confidentiality; Publicity.

(a) Confidentiality. For a period of two years from and after the date hereof, subject to the provisions of Section 5.5(c), (i) the Parties shall, and shall cause their respective Representatives and Affiliates to, treat and hold as confidential, and not disclose to any Person, information related to the discussions and negotiations among the Parties regarding this Agreement and the transactions contemplated hereby; and (ii) Purchaser shall, and shall cause its Representatives and Affiliates to, treat and hold as confidential, and not disclose to any Person, any confidential information which was obtained in connection with this Agreement or the transactions contemplated hereby relating to Seller or Seller's business or assets (other than, after the Closing, confidential information relating exclusively to the Business, the Purchased Assets or the Assumed Liabilities). Notwithstanding the foregoing, nothing herein shall prohibit Seller from retaining information related to the Business, the Purchased Assets and the Assumed Liabilities in accordance with its document retention policies. If this Agreement is, for any reason, terminated prior to Closing, the provisions of this Section 5.5 shall survive and remain in full force and effect.

(b) Public Announcements. Except as stated in this Section 5.5(b), each Party will not, and each Party will cause each of its Representatives and Affiliates not to, make any public release or announcement regarding this Agreement or any of the transactions contemplated hereby without the prior written approval of Purchaser and Seller (which will not be unreasonably withheld, conditioned or delayed). Seller and Purchaser will cooperate with each other in issuing, promptly upon both Effective Date and Closing Date, a joint press release that announces the Acquisition.

(c) Certain Permitted Disclosures. Notwithstanding the foregoing, nothing in this Section 5.5 will prevent any of the following at any time:

(i) a Party or any of its Representatives or Affiliates disclosing any information to the extent required under applicable Law or under the rules and regulations of any national securities exchange (to the extent such party or any of its Affiliates has any of its securities traded or listed thereon);

(ii) before Closing, Seller informing other potential acquirers of the Purchased Assets that a definitive agreement has been entered into, without identifying Purchaser or any of its Affiliates;

(iii) before Closing, Seller communicating with any of its suppliers or vendors on a need-to-know basis regarding this Agreement and the Acquisition;

(iv) before Closing, Purchaser and Seller communicating with any of their respective employees on a need-to-know basis regarding this Agreement and the Acquisition; or

(v) a party or any of its Affiliates making a statement or disclosure (A) as part of its or any of its Affiliates' financial statements or Tax Returns or (B) to the extent reasonably necessary to enforce or comply with this Agreement.

5.6 Further Assurances. Seller hereby agrees, without further consideration, to execute and deliver following the Closing such other instruments of transfer and take such other actions as Purchaser or its counsel may reasonably request in order to (a) confirm or evidence the transfer to Purchaser of the Purchased Assets, and (b) to put Purchaser in possession of, and to vest in Purchaser, good and valid title to the Purchased Assets in accordance with this Agreement. Purchaser hereby agrees, without further consideration, to take such other action following the Closing and execute and deliver such other documents as Seller or its counsel may reasonably request in order to assume all of the Assumed Liabilities and to consummate the Acquisition in accordance with this Agreement.

5.7 Taxes and Tax Returns. Seller shall file all Tax Returns with respect to the Purchased Assets required to be filed by it for all taxable periods ending on or before the Closing Date. Seller will pay all Taxes imposed on Seller or for which Seller is or will be liable with respect to the Purchased Assets, whether to taxing authorities or to other persons (pursuant to a tax sharing agreement or otherwise), for the Pre-Closing Tax Period. Each Party will cooperate in all reasonable respects in timely making all filings, returns and reports as may be required to comply with the provisions of applicable Law with respect to any Tax and in executing and delivering certificates and similar items that accurately set forth relevant facts to entitle a Party to exemptions from or reductions to the payment of Transfer Taxes (if applicable).

5.8 Business Names. As promptly as practicable after the Closing Date, Seller shall cease using the Business Names and shall file as promptly as practicable, in any jurisdictions where it is qualified to do business and in which such filings are appropriate, any documents reasonably necessary to reflect that it is no longer operating under such Business Names. From and after the Closing Date, Seller shall cease the use of such names and variations thereof for all business purposes; provided, however, that such names may be referred to as former names in any Tax or other filing required to be made with any Governmental Authority.

5.9 Wrong Pockets. Seller shall promptly pay or deliver to Purchaser any monies or checks that have been sent to Seller or any of its Affiliates after the Closing to the extent that they are Purchased Assets. Purchaser shall, or shall cause its applicable Affiliates to, promptly pay or deliver to Seller any monies or checks that have been sent to Purchaser or any of its Affiliates after the Closing to the extent that they are not in respect of the Purchased Assets and to the extent they are in respect of the businesses of Seller or its Affiliates.

5.10 Expenses. Except as otherwise specifically provided in this Agreement, each of the Parties shall bear its own expenses incurred in connection with the preparation, execution and performance of this Agreement and the Acquisition, including all fees and expenses of its Representatives. Without limiting the generality of the foregoing, Purchaser shall pay all transfer, documentary, sales, use, excise, stamp, registration and other such Taxes, and all conveyance fees, recording charges and other fees and charges (including any penalties and interest) (the "Transfer Taxes") incurred in connection with the consummation of the transactions contemplated by this Agreement when due, and the Party required to file all necessary Tax Returns and other documentation with respect to all such Taxes, fees and charges shall file such Tax Returns and other documentation, and, if required by applicable Law, the Parties will, and will cause their Affiliates to, join in the execution of any such Tax Returns and other documentation.

5.11 Third Party Consents. To the extent that Seller does not obtain any required third- party consents set forth on Schedule 3.4 prior to the Closing, Seller shall reasonably cooperate with Purchaser for a period not to exceed 90 days to the extent requested by Purchaser to make or obtain (or cause to be made or obtained) as promptly as practicable all such consents. Seller shall not be obligated to make any payment to obtain any such consents. Purchaser acknowledges and agrees that (a) certain consents may be necessary from parties to Assumed Contracts in connection with the transactions contemplated herein in order not to constitute a breach or violation of or a default under, conflict with or give rise to or create any right or obligation under, such Assumed Contracts, which consents have not been obtained and may not be obtained prior to Closing; and (b) except to the extent expressly stated in Article 3, Seller has not made (and no Person on behalf of Seller has made) any representation or warranty or similar assurance regarding the need for or desirability of any consent or approval by, notification to or filing with any Person. Purchaser agrees that, except as otherwise expressly provided in Section 2.9 or this Section 5.11 (or as a result of a breach of any representation or warranty in Article 3), Seller will not have any obligation whatsoever to Purchaser or any of its Affiliates arising out of, relating to or resulting from the failure to obtain any consent (provided that Seller has performed its obligations hereunder).

5.12 Allocation of Purchase Price. Within one hundred and twenty (120) days after the Closing Date, Seller shall allocate the Purchase Price and other relevant items, including the value of the Assumed Liabilities, among the Purchased Assets in accordance with the principles of Section 1060 of the Code and the Treasury Regulations thereunder (the "Purchase Price Allocation"). Each of Purchaser and Seller shall (a) be bound by the Purchase Price Allocation for purposes of determining any Taxes, (b) prepare and file, and cause its Affiliates to prepare and file, its Tax Returns on a basis consistent with the Purchase Price Allocation, and (c) take no position, and cause its Affiliates to take no position, inconsistent with the Purchase Price Allocation on any Tax Return, in any refund claim, in any audit, dispute or proceeding before any Tax authority or otherwise with respect to such Tax Returns.

5.13 Bulk Sales Laws. Purchaser and Seller hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Purchaser (and Purchaser agrees that such non-compliance, and any event or circumstance arising out of, relating to or resulting from such non-compliance, does not and will not constitute a breach of any representation, warranty, covenant or agreement of Seller in this Agreement).

5.14 Employee Matters.

(a) Prior to Closing, Purchaser shall make offers of employment to each Business Employee who is then an employee of Seller, to be effective as of the Closing.

(b) The provisions of this Section 5.14 are solely for the benefit of the Parties to this Agreement, and no current or former employee, director or independent contractor or any other individual associated therewith shall be regarded for any purpose as a third-party beneficiary of the Agreement, and nothing herein shall be construed as an amendment to any employee benefit plan for any purpose. Nothing in this Section 5.14 shall be construed to (i) limit the right of Purchaser or any of its Affiliates to amend or terminate any employee benefit plan, to the extent such amendment or termination is permitted by the terms of the applicable plan, or (ii) require Purchaser or any of its Affiliates to retain the employment of any particular Business Employee for any fixed period of time following the Closing Date.

5.15 Post-Closing Access. Throughout the seven-year period after Closing, subject to the reasonable confidentiality precautions of the Party whose information is being accessed, each Party will, during normal business hours and upon reasonable notice from any requesting Party: (a) cause such requesting Party and such requesting Party's Representatives to have reasonable access to the books and records (including financial and Tax records, Tax Returns, files, papers and related items) of such Party, and to the personnel responsible for preparing and maintaining such books and records and, with respect to Purchaser, to the personnel responsible for conducting the Business, in each case to the extent necessary or reasonably desirable to (i) prepare or audit financial statements, (ii) prepare or file Tax Returns or (iii) address other Tax, accounting, financial or legal matters or respond to any investigation or other inquiry by or under the control of any Governmental Authority; and (b) permit such requesting Party and such requesting Party's Representatives to make copies of such books and records for the foregoing purposes, at such requesting Party's expense. Furthermore, Seller will assist Purchaser, at Purchaser's sole cost and expense, to produce financial records and statements and assist Purchaser and its representatives in preparation of audited financial statements for fiscal years commencing with the fiscal year ended December 31, 2020.

ARTICLE 6. CONDITIONS PRECEDENT

6.1 Conditions to Obligations of Purchaser. The obligations of Purchaser to effect Closing and consummate the Acquisition are subject to the satisfaction on or prior to Closing of the following conditions, any or all of which may be waived, in whole or in part, to the extent permitted by applicable Law, in a written instrument executed and delivered by Purchaser:

(a) Representations and Warranties. The representations and warranties of Seller set forth in Article 3 hereof shall be true and correct in all respects as of the Closing Date as though made on and as of the Closing Date, except (i) to the extent such representations and warranties are made on and as of a specified date, in which case the same shall continue on the Closing Date to be true and correct as of the specified date and (ii) to the extent that the facts, events and circumstances that cause such representations and warranties to not be true and correct as of such dates have not had a Material Adverse Effect.

(b) Covenants. Seller shall have performed in all material respects all agreements and covenants required by this Agreement to be performed by Seller on or prior to the Closing Date.

(c) Certificate. Purchaser shall have received a certificate signed by a duly authorized officer of Seller certifying the items in Sections 6.1(a) and (b).

(d) Closing Deliverables. Purchaser shall have received all documents, certificates and instruments required to be delivered pursuant to Section 2.7(b)).

(e) No Orders. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Law or Order (whether temporary, preliminary or permanent) that has the effect of making the Acquisition or the other transactions contemplated hereby illegal or otherwise prohibiting or restricting the consummation of such transactions.

6.2 Conditions to Obligations of Seller. The obligations of Seller to effect Closing and consummate the Acquisition are subject to the satisfaction on or prior to Closing of the following conditions, any or all of which may be waived, in whole or in part, to the extent permitted by applicable Law, in a written instrument executed and delivered by Seller:

(a) Representations and Warranties. The representations and warranties of Purchaser set forth in Article 4 hereof shall be true and correct in all respects as of the Closing Date as though made on and as of the Closing Date, except (i) to the extent such representations and warranties are made on and as of a specified date, in which case the same shall continue on the Closing Date to be true and correct as of the specified date and (ii) to the extent that the facts, events and circumstances that cause such representations and warranties to not be true and correct as of such dates have not had a material adverse effect on the ability of Purchaser to consummate the transactions contemplated by this Agreement.

(b) Covenants. Purchaser shall have performed in all material respects its covenants and agreements contained in this Agreement required to be performed on or prior to the Closing Date.

(c) Certificate. Seller shall have received a certificate signed by an authorized officer of Purchaser certifying the items in Sections 6.2(a) and (b).

(d) Closing Deliverables. Seller shall have received all documents, certificates and instruments required to be delivered pursuant to Section 2.7(a)).

(e) No Orders. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Law or Order (whether temporary, preliminary or permanent) that has the effect of making the Acquisition or the other transactions contemplated hereby illegal or otherwise prohibiting or restricting the consummation of such transactions.

6.3 Frustration of Closing Conditions. Neither Seller nor Purchaser may rely, either as a basis for not consummating Closing or terminating this Agreement, on the failure of any condition set forth in Sections 6.1 or 6.2, as the case may be, to be satisfied if such failure was caused by such Party's breach of any provision of this Agreement or failure to use its commercially reasonable efforts to consummate the transactions contemplated hereby.

ARTICLE 7. TERMINATION

7.1 Termination. This Agreement may be terminated at any time prior to Closing:

(a) by the written agreement of Purchaser and Seller;

(b) by either Purchaser or Seller upon written notice to the other:

(i) if Closing shall not have occurred on or prior to February 28, 2023 (the "End Date"), unless the failure to consummate Closing is the result of a breach of this Agreement by the Party seeking to terminate this Agreement, provided however Purchaser may elect to extend the End Date by up to 30 days by written notice to Seller; or

(ii) if any Governmental Authority issues an Order or takes any other action permanently enjoining, restraining or otherwise prohibiting Closing and such Order or other action shall have become final and nonappealable; provided, that the party seeking to terminate this Agreement pursuant to this Section 7.1(b)(ii) shall have used its reasonable best efforts to contest, appeal and remove such Order or action and shall not be in material violation of this Agreement;

(c) by Purchaser upon written notice to Seller if there has been a breach by Seller of any of its representations, warranties, covenants or agreements in this Agreement such that the conditions in Section 6.1(a) or 6.1(b), as applicable, will not be satisfied; provided, however, that if such breach is curable and can reasonably be expected to be cured by the End Date, then the right to terminate pursuant to this Section 7.1(c) shall be suspended so long as reasonable, good faith efforts are being exerted to effect a cure; or

(d) by Seller by written notice to Purchaser if there has been a breach by Purchaser of any of its representations, warranties, covenants or agreements in this Agreement such that the conditions in Section 6.2(a) or 6.2(b) will not be satisfied; provided, however, that if such breach is curable and can reasonably be expected to be cured by the End Date, then the right to terminate pursuant to this Section 7.1(d) shall be suspended so long as reasonable, good faith efforts are being exerted to effect a cure.

7.2 Effect of Termination. In the event of termination of this Agreement pursuant to the provisions of Section 7.1, this Agreement shall become void and there shall be no further obligation on the part of Purchaser or Seller (except as set forth in Section 5.5 (confidentiality; publicity), Section 5.10 (expenses), Article 7 (termination) and Article 9 (miscellaneous), all of which shall survive the termination); provided, however, that nothing herein shall relieve any Party hereto from Liability for its willful breach of this Agreement. In the event of termination of this Agreement, Seller shall retain the Deposit; provided, however, in the event this Agreement is terminated by Purchaser pursuant to Section 7.1(b)(i) or 7.1(c), Seller shall pay the Deposit to Purchaser within five (5) Business Days of the effective date of the termination of this Agreement.

ARTICLE 8. SURVIVAL; INDEMNIFICATION

8.1 Indemnification by Seller. From and after the Closing, Seller will indemnify, defend and hold harmless Purchaser and its Affiliates and Representatives (each, a "Purchaser Indemnified Party"), from and against any and all Liabilities, demands, claims, suits, actions, causes of action, assessments, costs, expenses, interest, fines, penalties or costs or expenses of any and all investigations, proceedings, judgments, remediations, settlements and compromises (including reasonable fees and expenses of attorneys, accountants and other experts) but not any consequential, incidental, indirect, special, exemplary or punitive damages (other than those actually awarded in connection with any third party claim) or any damages based on a multiple (individually, a "Loss" and collectively, the "Losses") sustained or incurred by such Purchaser Indemnified Party relating to, resulting from or arising out of any of the following:

(a) any inaccuracy in or breach of a representation or warranty of Seller in this Agreement;

any non-compliance with or breach of any covenant or agreement by Seller under this Agreement; or

(b) any Excluded Liabilities.

provided, that (i) Seller shall not have any liability pursuant to this Section 8.1 for any individual Loss of less than $10,000, (ii) Seller shall not have any liability under clause (a) above unless the aggregate of all Losses relating thereto for which Seller would, but for this proviso, be liable exceeds on a cumulative basis an amount equal to $50,000 (the "Deductible"), and then only for the amount of such Losses in excess of the Deductible; (iii) Seller's aggregate liability under clause (a) above (other than with respect to the Fundamental Representations) shall in no event exceed the sum of the Deposit, the cash paid by Purchaser at Closing, and the total amount of principal actually paid by Purchaser on the Promissory Note as of the date of the Claim Notice; and (iv) Seller's aggregate liability under this Agreement shall in no event exceed the Purchase Price (with it being understood, however, that nothing in this Agreement (including this Section 8.1) shall limit or restrict any of the Purchaser Indemnified Parties' rights to maintain or recover any amounts in connection with any action or claim based upon Fraud by Seller).

8.2 Indemnification by Purchaser. From and after the Closing, Purchaser agrees to indemnify, defend and hold harmless Seller and its Affiliates and each of their respective Representatives (each, a "Seller Indemnified Party") from and against any and all Losses sustained or incurred by any Seller Indemnified Party relating to, resulting from or arising out of any of the following:

(a) any inaccuracy in or breach of a representation or warranty of Purchaser in this Agreement;

any non-compliance with or breach of any covenant or agreement by Purchaser under this Agreement;

(b) any Assumed Liabilities; or

all Liabilities arising from the ownership or operation of the Purchased Assets following the Closing Date;

provided, that (i) Purchaser shall not have any liability pursuant to this Section 8.2 for any individual Loss of less than $10,000, (ii) Purchaser shall not have any liability under clause (a) above unless the aggregate of all Losses relating thereto for which Purchaser would, but for this proviso, be liable exceeds on a cumulative basis an amount equal to the Deductible, and then only for the amount of such Losses in excess of the Deductible; and (iii) Purchaser's aggregate liability under this Agreement shall in no event exceed the Purchase Price (with it being understood, however, that nothing in this Agreement (including this Section 8.2) shall limit or restrict any of the Seller Indemnified Parties' rights to maintain or recover any amounts in connection with any action or claim based upon Fraud by Purchaser).

8.3 Indemnification Procedure for Third Party Claims.

(a) Any party making a claim for indemnification under this Agreement (an "Indemnitee") shall notify the indemnifying party (an "Indemnitor") of the claim (a "Claim Notice") in writing promptly (and in any event within 30 days) after receiving written notice of any action, lawsuit, proceeding, investigation or other claim against it by a third party, describing the claim, the amount or estimated amount thereof, and the basis therefor; provided that the failure to so notify an Indemnitor shall not relieve the Indemnitor of its obligations hereunder, except to the extent that the Indemnitor is actually prejudiced thereby. Any Indemnitor shall be entitled to participate in the defense of such action, lawsuit, proceeding, investigation or other claim giving rise to an Indemnitee's claim for indemnification at such Indemnitor's expense, and at its option (subject to the limitations set forth below) shall be entitled to assume the defense thereof by giving notice to the Indemnitee (the "Defense Notice") within 30 days of receiving a Claim Notice and appointing counsel reasonably acceptable to the Indemnitee to be the lead counsel in connection with such defense. In the event that the Indemnitor shall fail to give the Defense Notice, it shall be deemed, with respect to any claims other than pursuant to Section 8.1(c), to have elected not to conduct the defense of the subject claim, and in such event the Indemnitee shall have the right to conduct such defense but shall require the prior written consent of the Indemnitor to compromise or settle the claim (which will not be unreasonably withheld, conditioned or delayed) and the Indemnitor will be liable for all costs, expenses, settlement amounts or other Losses paid or incurred in connection therewith to the extent Indemnitor would otherwise be liable for such Losses in accordance with Section 8.1 or 8.2, as applicable.

(b) Notwithstanding the foregoing, with respect to any claims other than pursuant to Section 8.1(c), (i) the Indemnitee shall be entitled to participate in the defense of such claim and to employ counsel of its choice for such purpose; provided that the fees and expenses of such separate counsel shall be borne by the Indemnitee; (ii) the Indemnitor shall not be entitled to assume control of such defense and shall pay the fees and expenses of counsel retained by the Indemnitee if (A) the claim for indemnification relates to or arises in connection with any criminal proceeding, action, indictment, allegation or investigation; (B) the claim primarily seeks an injunction or other equitable relief against the Indemnitee; (C) upon petition by the Indemnitee, the appropriate court rules that the Indemnitor failed or is failing to vigorously prosecute or defend such claim; or (D) it is reasonable to expect that the Loss relating to such claim would materially exceed the maximum amount that such Indemnitee could then be entitled to recover under the applicable provisions of this Agreement; and (iii) if the Indemnitor shall control the defense of any such claim, the Indemnitor shall obtain the prior written consent of the Indemnitee (which shall not be unreasonably withheld, conditioned or delayed) before entering into any settlement of a claim or ceasing to defend such claim if, pursuant to or as a result of such settlement or cessation, injunctive or other equitable relief will be imposed against the Indemnitee or if such settlement does not expressly and unconditionally release the Indemnitee from all Liabilities and obligations with respect to such claim, without prejudice.

(c) Notwithstanding the rights of the Indemnitee pursuant to Sections 8.3(a) and (b), with respect to any third-party claims arising under Section 8.1(c), the Indemnitee shall have no rights or obligations, including with respect to conducting any defense related to such claims, except that the Indemnitor may not settle any such claim without the prior written consent of the Indemnitee (not to be unreasonably withheld, conditioned or delayed) if the Indemnitee will be obligated to pay any monetary damages or have imposed against it any injunctive or other equitable relief.

(d) The Indemnitee will cooperate with and make available to the Indemnitor such assistance and materials as it may reasonably request. To the extent the Indemnitee elects to employ its own counsel pursuant to Section 8.3(b)(i) above, the Indemnitee shall not have the right to compromise and settle the claim without the prior written consent of the Indemnitor, which consent shall not be unreasonably withheld, conditioned or delayed.

8.4 Survival of Representations and Warranties and Covenants. All of the representations and warranties contained in Article 3 and Article 4 shall survive the Closing for a period ending 24 months following the Closing Date, except that: (a) the Fundamental Representations shall survive until the applicable statute of limitations for the matter underlying such representation or warranty has run plus 30 days; and (b) all representations and warranties shall survive until finally resolved in accordance with this Agreement with respect to any inaccuracy therein or breach thereof, notice of which shall have been duly given within the time period described in clause (a) above in accordance with this Article 8. The covenants and agreements of Seller and Purchaser contained herein shall survive the Closing until they are fully performed or terminate in accordance with their respective terms.

8.5 Manner of Payment. Any indemnification of the Seller Indemnified Parties pursuant to this Article 8 shall be effected by wire transfer of immediately available funds from Purchaser to an account designated by Seller within ten days after the determination thereof. Any indemnification of the Purchaser Indemnified Parties pursuant to this Article 8 shall be effected by (x) first, as a corresponding reduction in the outstanding interest then due pursuant to the Promissory Note, (y) second, as a corresponding reduction in the amount of outstanding principal pursuant to the Promissory Note, and (z) following such time as the amounts due under the Promissory Note have been reduced to $0, by wire transfer of immediately available funds from Seller to an account designated by Purchaser within ten days after the determination thereof. The amount of any Loss for which indemnification is provided under this Article 8 shall be reduced, including retroactively, by the amount of any insurance proceeds, any net benefit regarding Taxes actually realized in the taxable year of such Loss or any prior taxable year, as calculated on a with and without basis (a "Tax Benefit") or other amount or benefit received, directly or indirectly, by the Indemnitee (or any Purchaser Indemnified Party or Seller Indemnified Party, as applicable) regarding such Loss. Without limiting the generality of the foregoing, if (a) the Indemnitee (or any Purchaser Indemnified Party or Seller Indemnified Party, as applicable) receives from or on behalf of an Indemnitor, or an Indemnitor pays on behalf of the Indemnitee (or any Purchaser Indemnified Party or Seller Indemnified Party, as applicable), a payment regarding a Loss, and (b) the Indemnitee (or any Purchaser Indemnified Party or Seller Indemnified Party, as applicable) receives, directly or indirectly, any insurance proceeds, Tax Benefit or other amount or benefit regarding such Loss, then such Indemnitee (on its own behalf and on behalf of any Purchaser Indemnified Party or Seller Indemnified Party, as applicable) will promptly pay to the Indemnitor the amount of such insurance proceeds, Tax Benefit or other amount or benefit, or, if less, the amount of such payment. The amount of such insurance proceeds, Tax Benefit or other amount or benefit received will be net of any costs and expenses incurred by the Indemnitee (or any Purchaser Indemnified Party or Seller Indemnified Party, as applicable) in procuring the same and after giving effect to the identified impact of such recovery on insurance premiums or other costs of insurance. Each Party will use its commercially reasonable efforts to recover all insurance proceeds relating to any Losses under each applicable insurance policy.

8.6 Allocation of Indemnification Payments. The parties hereto agree that any indemnification payment pursuant to this Agreement shall be treated as an adjustment to the Purchase Price for Tax purposes and shall be allocated as set forth in Section 5.12.

8.7 Mitigation. Each Party will use its reasonable best efforts to mitigate (including by causing any Purchaser Indemnified Party or Seller Indemnified Party, as applicable, to use reasonable best efforts to mitigate) each Loss for which such Party is or may become entitled to be indemnified hereunder. No Party (nor any Purchaser Indemnified Party or Seller Indemnified Party, as applicable) will be entitled to indemnification hereunder in respect of any such Loss to the extent the indemnification obligations hereunder have increased due to the failure of such Person to use such reasonable best efforts.

8.8 Exclusive Remedy. After the Closing, the indemnities set forth in this Article 8 shall be the sole and exclusive remedy for money damages of the Parties, their successors and assigns, and their respective officers, directors, employees, agents and Affiliates with respect to this Agreement, the events giving rise to this Agreement and the transactions contemplated hereby, except for claims for Fraud.

8.9 Subrogation. If an Indemnitor makes an indemnification payment to an Indemnitee (or to any Purchaser Indemnified Party or Seller Indemnified Party, as applicable) with respect to any Loss, then such Indemnitor will be subrogated, to the extent of such payment, to all related rights and remedies of such Indemnitee (or, if applicable, of such Purchaser Indemnified Party or Seller Indemnified Party, as applicable) under any insurance policy or otherwise against or with respect to such Loss, except with respect to amounts not yet recovered by such Indemnitee (or such Purchaser Indemnified Party or Seller Indemnified Party, as applicable) under any such insurance policy or otherwise that already have been netted against such Loss for purposes of determining the indemnifiable amount of such Loss. Promptly following such Indemnitor's request, such Indemnitee will (and such Indemnitee will cause each such Purchaser Indemnified Party or Seller Indemnified Party, as applicable, to) take all reasonably necessary, proper or desirable actions (including the execution and delivery of any document reasonably requested) to accomplish the foregoing.

ARTICLE 9. GENERAL

9.1 Notices. All notices, requests, claims, demands or other communications that are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been duly given (a) when delivered, if delivered by hand, or (b) one Business Day after transmitted, if transmitted by a nationally recognized overnight courier service (with charges prepaid for next day delivery), to the parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 9.1):

If to the Purchaser:

110/120 CUISINE, LLC
7529 Red Oak Lane
Charlotte, North Carolina 28226
Attention: Michael D. Pruitt

With a simultaneous copy (which will not constitute notice) to:

Raines Feldman
18401 Von Karman Avenue, Suite 360
Irvine, CA 92612
Attention: Ruba R. Qashu

If to Seller:

BOUDREAUX'S CAJUN KITCHEN INC.
6010 W. Spring Creek Parkway
Plano, Texas 75024
Attention: Rich Hicks

With a simultaneous copy (which will not constitute notice) to:

Mincey-Carter, PC
12221 Merit Drive, Suite 200
Dallas, Texas 75251
Attention: J. Brooks Durham

9.2 Severability; Parties in Interest. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement or the application of any such provision to any Person or circumstance is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic and legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party or intended beneficiary hereof.

9.3 Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns; provided that neither this Agreement nor any of the rights, interests, or obligations hereunder may be assigned by any Party without the prior written consent of the other Party.

9.4 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS OTHER THAN CONFLICT OF LAWS PRINCIPLES THEREOF DIRECTING THE APPLICATION OF ANY LAW OTHER THAN THAT OF TEXAS.

9.5 Specific Performance. Each of Seller and Purchaser acknowledges and agrees that the other Party would be damaged irreparably in the event any of the provisions of this Agreement is not performed in accordance with its specific terms or is otherwise breached. Accordingly, Seller and Purchaser agree that the other Party shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any action instituted in any court in the United States or in any state having jurisdiction over the parties and the matter in addition to any other remedy to which they may be entitled pursuant hereto.

9.6 Consent to Jurisdiction. EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE APPLICABLE FEDERAL AND STATE COURTS LOCATED IN DALLAS COUNTY, TEXAS AND ANY APPELLATE COURT FROM ANY THEREOF, SOLELY IN RESPECT OF THE INTERPRETATION AND ENFORCEMENT OF THE PROVISIONS OF THIS AGREEMENT AND OF THE DOCUMENTS REFERRED TO IN THIS AGREEMENT, AND HEREBY WAIVES, AND AGREES NOT TO ASSERT, AS A DEFENSE IN ANY ACTION, SUIT OR PROCEEDING FOR THE INTERPRETATION OR ENFORCEMENT HEREOF OR OF ANY SUCH DOCUMENT, (A) THAT IT IS NOT SUBJECT THERETO OR THAT SUCH ACTION, SUIT OR PROCEEDING MAY NOT BE BROUGHT OR IS NOT MAINTAINABLE IN SAID COURTS, (B) THAT THE VENUE THEREOF MAY NOT BE APPROPRIATE OR (C) THAT THE INTERNAL LAWS OF THE STATE OF TEXAS DO NOT GOVERN THE VALIDITY, INTERPRETATION OR EFFECT OF THIS AGREEMENT, AND THE PARTIES HERETO IRREVOCABLY AGREE THAT ALL DISPUTES WITH RESPECT TO SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH A STATE OR FEDERAL COURT. EACH PARTY HEREBY CONSENTS TO AND GRANTS ANY SUCH COURT JURISDICTION OVER THE PERSON OF SUCH PARTIES AND OVER THE SUBJECT MATTER OF ANY SUCH DISPUTE AND AGREES THAT MAILING OF PROCESS OR OTHER PAPERS IN CONNECTION WITH ANY SUCH ACTION OR PROCEEDING IN THE MANNER PROVIDED IN SECTION 9.1, OR IN SUCH OTHER MANNER AS MAY BE PERMITTED BY LAW, SHALL BE VALID AND SUFFICIENT SERVICE THEREOF.

9.7 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY LITIGATION, ACTION, PROCEEDING, CROSS-CLAIM, OR COUNTERCLAIM IN ANY COURT (WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF, RELATING TO OR IN CONNECTION WITH (A) THIS AGREEMENT OR THE VALIDITY, PERFORMANCE, INTERPRETATION, COLLECTION OR ENFORCEMENT HEREOF, (B) THE ACTIONS OF THE PARTIES IN THE NEGOTIATION, AUTHORIZATION, EXECUTION, DELIVERY, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF OR (C) ANY TRANSACTION OR AGREEMENT CONTEMPLATED HEREBY OR THE ACTIONS OF THE PARTIES HERETO.

9.8 Headings; Interpretation. The descriptive headings contained in this Agreement are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.

9.9 Counterparts; Facsimiles. This Agreement may be executed and delivered (including by facsimile or portable document format (PDF) transmission) in two or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed and delivered shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

9.10 Entire Agreement. This Agreement and the other Transaction Documents executed in connection with the consummation of the Acquisition contain the entire agreement between the Parties with respect to the subject matter hereof and related transactions and supersede all prior agreements, written or oral, with respect thereto.

9.11 Waivers and Amendments; Non-Contractual Remedies; Preservation of Remedies. This Agreement may be amended, superseded, canceled, renewed or extended only by a written instrument signed by all of the Parties. Any provision hereof may be waived in a writing signed by the Party that could otherwise seek enforcement of the provision being waived. No delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party of any such right, power or privilege, be deemed to be a waiver of any other right, power or privilege or the same right, power or privilege on a future occasion, nor shall any single or partial exercise of any such right, power or privilege, preclude any further exercise thereof or the exercise of any other such right, power or privilege. Except as otherwise provided herein, the rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies that any Party may otherwise have at Law or in equity.

9.12 Exhibits and Schedules. Any matter disclosed on any Exhibit or Schedule referred to herein shall be deemed also to have been disclosed on any other applicable Exhibit or Schedule to the extent such disclosure is readily apparent on the face of such Exhibit or Schedule.

[Signatures appear on next page]

IN WITNESS WHEREOF, intending to be legally bound hereby, the Parties have caused this Asset Purchase Agreement to be signed in their respective names by their duly authorized representatives as of the date first above written.

110/120 CUISINE, LLC

By: Amergent Hospitality Group Inc., its Manager

By: DocuSigned by: Michael D. Pruitt DD31AC7374AC4C1... Name: Michael D. Pruitt
Title: CEO

BOUDREAUX'S CAJUN KITCHEN INC.

By: DocuSigned by: Michael Morales 074F774396FA4A1... Name: Michael Morales
Title: CFO

Exhibit 10.42

EXECUTIVE SEPARATION AGREEMENT

This Separation Agreement (this "Agreement") is dated as of January 10, 2023 by and between Frederick L. Glick ("Employee") and Amergent Hospitality Group Inc., a corporation formed under the laws of the State of Delaware ("Employer").

WHEREAS, Employer engaged Employee to be an employee of Employer;

WHEREAS, Employee and Employer are parties to an Employment Agreement dated July 1, 2021 (the "Employment Agreement");

WHEREAS, Employee resigned without "Good Reason" (as defined in the Employment Agreement);

WHEREAS, the Employer has agreed to waive the provision for a garden leave period provided in the Employment Agreement; and

WHEREAS, the parties wish to confirm set forth their agreement as to the manner in which Employee's employment with Employer will be closed out.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, receipt of which is hereby acknowledged, Employer and Employee agree as follows:

1. Termination of Employment; Waiver of Garden Leave.

(a) The parties hereto hereby agree that Employee resigned without "Good Reason" (as defined in the Employment Agreement) effective as of December 31, 2022 (the "Separation Date"). Employee resigned without "Good Reason" (as defined in the Employment Agreement), effective as of the Separation Date, all positions, titles, duties, authorities, and responsibilities at or with Employer and its affiliates (together and each individually, as the context requires, the "Company") other than his position on the board of directors of Employer, and Employee agrees to execute all additional documents and take such further steps as Employer may require to effectuate such resignation. Employee agrees to continue to serve as a director of Employer until the earlier of July 1, 2023 or such date that the board of directors requests that he resign. Employee will be paid the standard board compensation paid by Employer to non-employee directors for the term of his service as director.

(b) Upon execution and satisfaction in full of the terms and conditions of this Agreement, the Company hereby waives the requirement for a garden leave period, as set forth in Section 7.4 of the Employment Agreement.

2. Certain Payments and Benefits.

(a) **Accrued Obligations.** As required by law, but no later than the first regular payroll date following the Separation Date, Employer shall pay Employee $5,420.00 representing all base salary earned but unpaid as of the Separation Date and $15,067.60 in respect of vacation earned but not taken prior to the Separation Date. Employee acknowledges and agrees that as of the date hereof, he has made all requests for reimbursement of business expenses to which he may be entitled pursuant to the Company's reimbursement policy, and provided such substantiation as may be required thereunder, and shall hereafter not have any right to request reimbursement of any additional amounts.

(b) **Separation Payment.** Employer agrees to pay Employee $1,000.00 (the "Separation Payment") in 10 substantially equal installments, twice a month, commencing on the first payroll date following the Separation Date, subject to Sections 5, 6, 8(a), and 9 herein. The Separation Payment shall not be taken into account as compensation and no service credit shall be given after the Separation Date for purposes of determining the benefits payable under any benefit plan, program, agreement, or arrangement of the Company. Employee acknowledges that, except for the Separation Payment agreed to herein, he is not entitled to any payment in the nature of severance or termination pay from the Company, and that the Separation Payment is in full satisfaction of all obligations owed to him by the Company, except as set forth in Sections 2(a), 2(c) and 2(d) hereof.

(c) **Transition Services.** Employee has agreed to assist Employer, on a consulting basis, with transitioning his duties and responsibilities to another employee, on an as needed basis not to exceed 10 hours per week, through May 31, 2022, for a flat fee of $35,000.00 ("Transition Services"), payable in 10 substantially equal installments, twice a month, commencing on the first payroll date following the Separation Date. Employee is solely responsible for paying when due any taxes, including estimated taxes, incurred as a result of the compensation paid by Employer to Employee for Transition Services. This includes but is not limited to any federal, state or local income taxes, social security or unemployment tax, or any other taxes.

(d) **Qualified Plans/COBRA.** Employee shall be entitled to all vested benefits under any tax qualified pension plan of the Company and continuation of health insurance benefits, at Employee's cost, to the extent provided in Section 4980B of the Internal Revenue Code of 1986, as amended (the "Code") and Section 601 of the Employee Retirement Income Security Act of 1974, as amended (which provisions are commonly known as "COBRA").

(e) **Cooperation.** From the Effective Date through December 31, 2023 (the "Cooperation Period"), Employee agrees to cooperate with Employer with regard to pending litigation, and any other litigation relating to Employee's period of employment for which Employer reasonably requests Employee's participation; provided, however, that Employee's agreement to consult respecting such litigation shall continue for the duration of any such litigation, whether or not such cooperation occurs during or after the Cooperation Period. If requested by Employer, such cooperation shall include, without limitation, (1) responding reasonably promptly to requests for information and documents in Employee's possession concerning matters pertinent to any of the foregoing, (2) making himself reasonably available as a witness and testifying at trial, depositions, hearings, or other proceedings, as well as being reasonably available for adequate preparation for such testimony; and (3) participating at reasonable times in interviews and meetings with representatives of the Company, representatives of governments or regulatory authorities, or others designated by Employer. Unless prohibited by applicable law or any rule of any applicable regulatory authority, Employee further agrees to notify Employer promptly of any request made to him by any party to any such litigations for information or assistance with respect to such litigations, and the substance of Employee's response to such request. Employee shall also provide Employer with a copy of such request and response, if in writing. Employee and Employer will each use good faith best efforts to reconcile and accommodate any scheduling conflicts. Without limitation of the foregoing, Employee agrees to reasonably cooperate (including attending meetings) with respect to any claim, arbitral hearing, lawsuit, action, or governmental or internal investigation relating to the business of the Company prior to the Separation Date. Employee agrees to provide full and complete disclosure in response to any inquiry in connection with any such matters.

(f) **Equity Awards.** All vested options to purchase stock of Employer and/or any other vested equity-based awards granted to Employee and outstanding immediately prior to the Separation Date shall remain in full force and effect as provided in the agreements evidencing those awards, the plans pursuant to which such awards were made, and otherwise in accordance with their terms. All unvested options to purchase stock of Employer and/or any other unvested equity-based awards are hereby forfeited by Employee. ***For clarity, vested option awards are as follows: options to purchase 150,00 shares of common stock at $2.50 per share; options to purchase 100,00 shares at $0.56 per share; and options to purchase 25,000 shares at $0.81 per share.***

3. Other Agreements.

(a) Each party shall pay their respective costs and legal fees incurred in connection with the negotiation of this Agreement.

(b) Any liabilities Employee may have to the Company, including, without limitation, any liabilities in respect of outstanding loans or advances by Employer and any liabilities to reimburse Employer for any personal expenses (such as for taxis, car service, or meals) that Employee has charged to Employer, must be paid in full before payment of any amounts will be made to Employee under this Agreement or Employer may, at its option, deduct any such amounts from any payment to be made to Employee under this Agreement, to the extent permitted by applicable law (including without limitation Section 409A of the Code and the regulations and guidance promulgated thereunder (collectively, "Section 409A")).

4. General Release and Waiver.

(a) Employee hereby releases, remises, and acquits the Company and its officers, directors, shareholders, members, partners, agents, employees, consultants, independent contractors, attorneys, advisers, successors, and assigns (collectively, the "Releasees"), jointly and severally, from any and all claims, known or unknown, which Employee or Employee's heirs, successors, or assigns have or may have against any of the Releasees arising on or prior to the date of execution of this Agreement and any and all liability which any of the Releasees may have to Employee, heirs, successors, and assigns whether denominated claims, demands, causes of action, obligations, damages, or liabilities arising from any and all bases, however, denominated, including but not limited to, the Age Discrimination in Employment Act ("ADEA"), the Americans with Disabilities Act of 1990, the Family and Medical Leave Act of 1993, Title VII of the United States Civil Rights Act of 1964, 42 U.S.C. § 1981, applicable California (state or local) civil or human rights laws, any other federal, state, or local law, and any workers' compensation or disability claims under any such laws or claims under any contract, including the Employment Agreement and/or the agreements governing any equity-based awards. This release relates to claims by reason of any matter, cause, or thing occurring, done, or omitted to be done from the beginning of the world until the date of the execution hereof. Employee further agrees that Employee will not file or permit to be filed on Employee's behalf any such claim. Notwithstanding the preceding sentence or any other provision of this Agreement, this release is not intended to interfere with Employee's right to file a charge with the Equal Employment Opportunity Commission (the "EEOC") in connection with any claim he believes he may have against the Company. However, by executing this Agreement, Employee hereby waives the right to recover in any proceeding Employee may bring before the EEOC or any state or local human rights commission or in any proceeding brought by the EEOC or any state or local human rights commission on Employee's behalf. In addition, this release is not intended to interfere with Employee's right to challenge that his waiver of any and all ADEA claims pursuant to this Agreement is a knowing and voluntary waiver, notwithstanding Employee's specific representation that he has entered into this Agreement knowingly and voluntarily. This release is for any relief, no matter how denominated, including, but not limited to, injunctive relief, wages, back pay, front pay, compensatory damages, or punitive damages. This release shall not apply to any obligation of the Company pursuant to this Agreement, any rights in the nature of indemnification which Employee may have with respect to claims against Employee relating to or arising out of his employment with the Company, or any vested benefit to which Employee is entitled under any tax qualified pension plan of the Company, COBRA continuation coverage benefits, or any other similar benefits required to be provided by statute.

(b) Employee acknowledges that the Separation Payment is in addition to anything of value to which Employee already is entitled from the Company and constitutes good and valuable consideration for the release contained in this Section 4.

5. Confidentiality; Intellectual Property; Cooperation; Company Property.

(a) **Confidential Agreement.** Employee shall keep the terms of this Agreement confidential and shall not directly or indirectly disseminate any information (in any form) regarding this Agreement or his termination of employment to any person or entity except as may be agreed to in writing by Employer and except for any terms which are or become generally available to the public, other than as a result of unauthorized or improper disclosure by Employee. Notwithstanding the foregoing, Employee may disclose the information described herein, to the extent Employee is compelled to do so by lawful service of process, subpoena, court order, or as Employee is otherwise compelled to do by law, including full and complete disclosure in response thereto, in which event Employee agrees to provide Employer with a copy of the document(s) seeking disclosures of such information promptly upon receipt of such document(s) and prior to disclosure by Employee of any such information, so that Employer may, upon notice to Employee, take such action as it deems to be necessary or appropriate in relation to such subpoena or request and Employee may not disclose any such information until Employer has had the opportunity to take such action.

(b) **Confidential Information.** Employee agrees that he will not appropriate for his own use, use, disclose, divulge, furnish, or make available to any person any confidential or proprietary information concerning the Company, including without limitation any confidential or proprietary information concerning the operations, plans, or methods of the Company (the "Information"); provided, that the term "Information" shall not include such information which is or becomes generally available to the public other than as a result of unauthorized or improper disclosure by Employee. Notwithstanding the foregoing, Employee may disclose Information to the extent he is compelled to do so by lawful service of process, subpoena, court order, or as he is otherwise compelled to do by law or the rules or regulations of any regulatory body to which he is subject, including full and complete disclosure in response thereto, in which event he agrees to provide Employer with a copy of the documents seeking disclosure of such information promptly upon receipt of such documents and prior to their disclosure of any such information, so that Employer may, upon notice to Employee, take such action as Employer deems appropriate in relation to such subpoena or request and Employee may not disclose any such information until Employer has had the opportunity to take such action.

(c) **Intellectual Property.** Employee agrees that all right, title, and interest to all works of whatever nature generated in the course of his employment with the Company resides with the Company. Employee agrees that he will return to Employer, not later than the Separation Date, all property, in whatever form (including computer files and other electronic data), of the Company in his possession, including without limitation, all copies (in whatever form) of all files or other information pertaining to the Company, its officers, employees, directors, shareholders, customers, suppliers, vendors, or distributors and any business or business opportunity of the Company.

(d) **Company Property.** Employee hereby agrees to return to Employer and to cease using any property of the Company, including without limitation, cell phones, blackberries, security key cards, corporate credit cards, telephone calling cards, or home office equipment provided by the Company and to return such property promptly; provided however Executive may retain the Company laptop through May 31, 2023 for use solely for his transition services to the Company.

(e) **Acknowledgements Respecting Restrictive Covenants.** With respect to the restrictive covenants set forth in this Section 5, the parties acknowledge and agree that:

(i) (A) each of the restrictive covenants contained in this Section 5 shall be construed as a separate covenant with respect to each geographic area and each activity to which it applies, (B) if, in any judicial proceeding, a court shall deem any of the restrictive covenants invalid, illegal, or unenforceable because its scope is considered excessive, such restrictive covenant shall be modified so that the scope of the restrictive covenant is reduced only to the minimum extent necessary to render the modified covenant valid, legal, and enforceable, and (C) if any restrictive covenant (or portion thereof) is deemed invalid, illegal, or unenforceable in any jurisdiction, as to that jurisdiction such restrictive covenant (or portion thereof) shall be ineffective to the extent of such invalidity, illegality, or unenforceability, without affecting in any way the remaining restrictive covenants (or portion thereof) in such jurisdiction or rendering that or any other restrictive covenant (or portion thereof) invalid, illegal, or unenforceable in any other jurisdiction.

(ii) The parties hereto hereby declare that it is impossible to measure in money the damages that will accrue to the Company in the event that Employee breaches any of the restrictive covenants provided in this Section 5. In the event that Employee breaches any such restrictive covenant, the Company shall be entitled to an injunction, a restraining order or such other equitable relief, including, but not limited to, specific performance (without the requirement to post bond) restraining Employee from violating such restrictive covenant. If the Company shall institute any action or proceeding to enforce the restrictive covenant, Employee hereby waives the claim or defense that the Company has an adequate remedy at law and agrees not to assert in any such action or proceeding the claim or defense that the Company has an adequate remedy at law. The foregoing shall not prejudice the Company's right to require Employee to account for and pay over to the Company, and Employee hereby agrees to account for and pay over, the compensation, earnings, profits, monies, accruals, or other benefits derived or received by Employee as a result of any transaction constituting a breach of any of the restrictive covenants provided in this Section 5, and the parties hereby agree that the Company shall be entitled to an equitable accounting of all such compensation, earnings, profits, monies, accruals, and other benefits. The parties hereby agree that the Restricted Period shall be extended by any period during which Employee is found to be in violation of, or to have violated, this Section 5.

(iii) The remedies provided for in this Section 5(h) are cumulative and in addition to any other rights and remedies the Company may have under law or in equity.

(iv) The restrictive covenants provided in this Section 5 shall be in addition to any restrictions imposed on Employee by statute or at common law.

6. **Certain Forfeitures in Event of Breach.** Employee acknowledges and agrees that, notwithstanding any other provision of this Agreement, in the event (i) Employee materially breaches any of his obligations under this Agreement or (ii) a condition existed prior to the Separation Date that, had the Company been fully aware of such condition, would have given the Company the right to terminate Employee's employment "For Cause", Employee will forfeit his right to receive the Separation Payment under Section 2(b) of this Agreement to the extent not theretofore paid to him as of the date of such breach and, if already made as of the time of breach, Employee agrees that he will reimburse Employer, immediately, for the amount of such payments on a pre-tax basis.

7. **Agreement Part of Settlement Discussions/No Admission of Liability.** Employee represents and warrants that any payments or benefits provided to Employee under the terms of this Agreement do not constitute an admission by the Company that it has violated any law or legal obligation with respect to any aspect of Employee's employment or separation therefrom. If Employee does not accept this Agreement, Employee acknowledges and agrees that the delivery of this Agreement is in contemplation of the settlement of any potential claims Employee may have against the Company and will not be admissible for any purpose against the Company, and that any payments or benefits contemplated in this Agreement do not constitute an admission by the Company that it has violated any law or legal obligation with respect to any aspect of Employee's employment or separation therefrom.

8. General Provisions.

(a) **Heirs and Assigns.** This Agreement is binding on and is for the benefit of the parties hereto and their respective successors, assigns, heirs, executors, administrators, and other legal representatives. Neither this Agreement nor any right or obligation hereunder may be assigned by Employee.

(b) **Affiliates.** As used in this Agreement, "affiliates" shall mean all companies, corporations, and entities that are, or in the future under common control with Employer.

(c) **Integration.** This Agreement constitutes the complete agreement between the Company and Employee regarding the issues addressed in this Agreement. The terms of this Agreement may be changed, modified, or discharged only by an instrument in writing signed by the parties hereto. A failure of the Company or Employee to insist on strict compliance with any provision of this Agreement shall not be deemed a waiver of such provision or any other provision hereof. In the event that any provision of this Agreement is determined to be so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable.

(d) **Choice of Law.** This Agreement shall be construed, enforced, and interpreted in accordance with and governed by the laws of the State of California, without regard to its choice of law provisions.

(e) **Withholding.** The Company may withhold from any and all amounts payable under this Agreement such federal, state, and local taxes or other withholdings as may be required to be withheld pursuant to any applicable law or regulation.

(f) **Construction of Agreement.** The parties hereto acknowledge and agree that each party has reviewed and negotiated the terms and provisions of this Agreement and has had the opportunity to contribute to its revision. Accordingly, the rule of construction to the effect that ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement. Rather, the terms of this Agreement shall be construed fairly as to both parties hereto and not in favor or against either party.

(g) **Counterparts.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which counterpart, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Agreement.

(h) **Notice.** Any notice or other communication required or permitted under this Agreement shall be effective only if it is in writing and shall be deemed to be given when delivered personally or four days after it is mailed by registered or certified mail, postage prepaid, return receipt requested or one day after it is sent by a reputable overnight courier service and, in each case, addressed as follows (or if it is sent through any other method agreed upon by the parties):

If to Employer:
Amergent Hospitality Group Inc.
PO Box 470695
Charlotte, NC 28247
mp@amergenthg.com
Attention: Michael D. Pruitt

with a copy to:
Raines Feldman LLP
18401 Von Karman Avenue, Suite 360
Irvine, CA 92612
rqashu@raineslaw.com
Attention: Ruba Qashu

If to Employee:
Frederick L. Glick
2320 Littler Lane
Oceanside, CA 92056
fglick64@gmail.com

or to such other address as any party hereto may designate by notice to the others.

(i) **Section 409A Compliance.** The intent of the parties is that payments and benefits under this Agreement comply with, or are exempt from, the requirements of Section 409A and, accordingly, to the maximum extent permitted, this Agreement shall be limited, construed and interpreted in accordance with such intent. It is intended that each installment, if any, of the payments and benefits provided hereunder shall be treated as a separate "payment" for purposes of Section 409A. Neither the Company nor Employee shall have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A; and if, as of the date of the "separation from service," Employee is a "specified employee" (within the meaning of that term under Section 409A(a)(2)(B) of the Code, or any successor provision thereto), then with regard to any payment or the provision of any benefit that is subject to this section (whether under this Agreement, or pursuant to any other agreement with or plan, program, payroll practice of the Company) and is due upon or as a result of Employee's separation from service, such payment or benefit shall not be made or provided, to the extent making or providing such payment or benefit would result in additional taxes or interest under Section 409A of the Code, until the date which is the earlier of (A) the expiration of the six-month period measured from the date of such "separation from service," and (B) the date of Employee's death (the "Delay Period") and this Agreement and any such other agreement plan program or practice shall hereby be deemed amended accordingly. Upon the expiration of the Delay Period, all payments and benefits delayed pursuant to this section (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid or reimbursed to Employee in a lump sum, and any remaining payments and benefits due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein. All reimbursements and in-kind benefits provided under this Agreement or otherwise to Employee shall be made or provided in accordance with the requirements of Section 409A to the extent that such reimbursements or in-kind benefits are subject to Section 409A. All expenses or other reimbursements paid pursuant herewith and therewith that are taxable income to Employee shall in no event be paid later than the end of the calendar year next following the calendar year in which Employee incurs such expense or pays such related tax. With regard to any provision herein that provides for reimbursement of costs and expenses or in-kind benefits, except as permitted by Section 409A, the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit, the amount of expenses eligible for reimbursement, or in-kind benefits provided, during any taxable year shall not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year, provided that, the foregoing clause shall not be violated with regard to expenses reimbursed under any arrangement covered by Section 105(b) of the Code solely because such expenses are subject to a limit related to the period the arrangement is in effect and such payments shall be made on or before the last day of the Employee's taxable year following the taxable year in which the expense occurred.

(j) **Severability.** The parties hereto intend that the validity and enforceability of any provision of this Agreement shall not affect or render invalid any other provision of this Agreement.

9. Knowing and Voluntary Waiver. Employee acknowledges that, by Employee's free and voluntary act of signing below, Employee agrees to all of the terms of this Agreement and intends to be legally bound thereby.

Employee understands that he may consider whether to agree to the terms contained herein for a period of forty-five days. Accordingly, Employee must execute this Agreement by February 24, 2023 to acknowledge his understanding of and agreement with the foregoing. However, the Separation Payment provided herein will in any event be delayed at least until this Agreement becomes effective, enforceable, and irrevocable. Any payments or benefits delayed as a result of this Section 9 (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid in a lump sum on the first payroll date following the Effective Date. Employee acknowledges that he has been advised to consult with an attorney prior to executing this Agreement.

This Agreement will become effective, enforceable and irrevocable on the eighth day after the date on which it is executed by Employee (the "Effective Date"). During the seven-day period prior to the Effective Date, Employee may revoke his agreement to accept the terms hereof by indicating in writing to Employer his intention to revoke. If Employee exercises the right to revoke hereunder, he shall forfeit his right to receive any of the benefits provided for herein (exclusive of accrued obligations), and to the extent such payments have already been made, Employee agrees that he will immediately reimburse Employer for the amounts of such payment.

[*Signature page follows*]

IN WITNESS WHEREOF, Employer has caused this Agreement to be signed by its duly authorized representative and Employee has signed this Agreement as of the day and year first above written.

EMPLOYER

AMERGENT HOSPITALITY GROUP INC.

/s/ Michael D. Pruitt
By:
Title: Michael D. Pruitt, CEO

EMPLOYEE

/s/ Frederick K. Glick
FREDERICK L. GLICK

Date: _____

Exhibit 10.43

INCENTIVE STOCK OPTION AGREEMENT

UNDER THE AMERGENT HOSPITALITY GROUP INC.
2021 EQUITY INCENTIVE PLAN

This INCENTIVE STOCK OPTION AGREEMENT ("Agreement") is between Amergent Hospitality Group Inc., a Delaware corporation (the "Company"), and the individual optionee specified below (the "Optionee") and is made and effective as of April 24, 2023 (the "Effective Date"). Capitalized terms not defined herein shall have the meanings ascribed to them in the Amergent Hospitality Group Inc. 2021 Equity Incentive Plan (the "Plan").

1. Notice of Stock Option Grant.

The Company, pursuant to action of the Committee and in accordance with the Plan, grants to Optionee an Incentive Stock Option to purchase common stock of the Company, $0.0001 par value per share ("Option Shares"), upon the terms and conditions set forth in the Agreement:

Name of Optionee	Michael D. Pruitt
Total Number of Option Shares	Option 1: 100,000 Option 2: 100,000 Option 3: 100,000
Fair Market Value per Option Share on Grant Date and Option Price	Fair Market Value: $0.16 Option 1: $0.60 Option 2: $1.00 Option 3: $1.50
Grant Date	April 24, 2023
Number of Option Shares Subject to Time Based Vesting	Option 1: 100,000 Option 2: 100,000 Option 3: 100,000
Time Based Vesting Schedule	Option 1: December 31, 2023 Option 2: December 31, 2024 Option 3: December 31, 2025
Number of Option Shares Subject to Performance Based Vesting	N/A
Performance Based Vesting Schedule	N/A
Expiration Date	April 24, 2033

No portion of this Option may be exercised until such portion shall have become exercisable. Subject to the discretion of the Committee (as defined in the Plan) to accelerate the exercisability schedule hereunder, this Option shall be exercisable with respect to the number of Option Shares on the dates indicated above so long as the Optionee remains an employee of the Company on such dates. Once exercisable, this Option shall continue to be exercisable at any time or times prior to the close of business on the Expiration Date (set forth above), subject to the provisions hereof and of the Plan. All or a portion of the Option Shares may vest based on length of Employment, as set forth above, and the remainder of the Option Shares may vest based upon achievement of performance goals, as specified above. If the number of Option Shares would result in the issuance of a fraction of a share, no fractional share shall be issued and instead the number of Option Shares shall be increased or decreased to the nearest whole number. Any Option Shares that vest contingent upon performance measures that fail to meet the performance goals set forth above shall be forfeited. In the event that the aggregate Fair Market Value of shares of Common Stock with respect to the Option exercisable by Optionee in any calendar year exceeds $100,000, then the Option granted hereunder to Optionee 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 Options, but all other terms and provisions of such Option shall remain unchanged.

2. Manner of Exercise.

(a) The Option may only be exercised in accordance with the terms of the Plan and the administrative procedures established by the Company and/or the Committee from time to time. The exercise of the Option is subject to the Optionee making appropriate tax withholding arrangements with the Company in accordance with the terms of the Plan and the administrative procedures established by the Company and/or the Committee from time to time.

(b) The transfer to the Optionee on the records of the Company or of the transfer agent of the Option Shares will be contingent upon (i) the Company's receipt from the Optionee of the full purchase price for the Option Shares (ii) the fulfillment of any other requirements prescribed by the Committee, contained herein and in the Plan or in any other agreement or provision of laws, and (iii) the receipt by the Company of any agreement, statement or other evidence that the Company may require to satisfy itself that the issuance of Option Shares to be purchased pursuant to the exercise of Options under the Plan and any subsequent resale of the Option Shares will be in compliance with applicable laws and regulations.

(c) The Option Shares purchased upon exercise of this Option shall be transferred to the Optionee on the records of the transfer agent upon compliance, to the satisfaction of the Committee, with all requirements prescribed by the Committee and required under applicable laws or regulations in connection with such transfer and with the requirements hereof and of the Plan. The determination of the Committee as to such compliance shall be final and binding on the Optionee. The Optionee shall not be deemed to be the holder of, or to have any of the rights of a holder with respect to, any Option Shares subject to this Option unless and until this Option shall have been exercised pursuant to the terms hereof, the Company or the transfer agent shall have transferred the shares to the Optionee, and the Optionee's name shall have been entered as the stockholder of record on the books of the Company. Thereupon, the Optionee shall have full voting, dividend and other ownership rights with respect to such Option Shares.

(d) No partial exercise of an Option shall be for an aggregate exercise price of less than $1,000.00, unless this minimum is waived by the Committee.

(e) Notwithstanding any other provision hereof or of the Plan, no portion of this Option shall be exercisable after the Expiration Date hereof.

3. Termination of Employment. If the Optionee's Employment by the Company or a Subsidiary is terminated, the period within which to exercise the Option may be subject to earlier termination as set forth below.

(a) If Optionee's termination of Employment occurs prior to the Option's expiration date, for any reason whatsoever other than death or authorized retirement (as defined in subparagraph (b) below), any unexercised portion of the Option shall terminate automatically.

(b) If Optionee retires upon reaching the Company's normal retirement age or earlier, with the written consent of the Company, because of physical or mental disability (collectively, "authorized retirement"), any unexercised or unvested portion of the Option shall expire three months after the effective date of such authorized retirement. The Optionee may exercise all or any vested portion of an Option from the date of his or her authorized retirement to three months thereafter.

(c) If prior to the expiration date of the Option, the Optionee dies while employed or engaged by the Company or its Subsidiary or within three months of his or her authorized retirement, the Optionee's estate, heirs or legatees shall have the privilege of exercising all of the unexercised Option within six months after the Optionee's death.

Nothing contained in this Section shall extend the time for exercising all or any part of the then unexercised portion of an Option. The Committee's determination of the reason for termination of the Optionee's Employment shall be conclusive and binding on the Optionee and his or her representatives or legatees.

4. Adjustment upon Changes in Capitalization. The Option is subject to adjustment in the event of certain changes in the capitalization of the Company, to the extent set forth in Section 8 of the Plan.

5. Incorporation of Plan. Notwithstanding anything herein to the contrary, this Option shall be subject to and governed by all the terms and conditions of the Plan, including the powers of the Committee set forth in Section 4 of the Plan. Capitalized terms in this Agreement shall have the meaning specified in the Plan, unless a different meaning is specified herein. If there is a conflict between the provisions of this Agreement and the provisions of the Plan, the provisions of the Plan will govern.

6. Transferability. This Agreement is personal to the Optionee. The Option 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 an Optionee, only by Optionee. Upon the death of Optionee, the outstanding Option granted to such Optionee may be exercised only by the executors or administrators of the Optionee'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 this Option, or the right to exercise any Option, 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 Option that are or would have been applicable to the Option and to be bound by the acknowledgements made by the Optionee in connection with the grant of the Option.

7. Status of the Option. This Option is intended to qualify as an "incentive Option" under Section 422 of the Code, but the Company does not represent or warrant that this Option qualifies as such. The Optionee should consult with his or her own tax advisors regarding the tax effects of this Option and the requirements necessary to obtain favorable income tax treatment under Section 422 of the Code, including, but not limited to, holding period requirements. To the extent any portion of this Option does not so qualify as an "incentive option," such portion shall be deemed to be a non-qualified option. If the Optionee intends to dispose or does dispose (whether by sale, gift, transfer or otherwise) of any Option Shares within the one-year period beginning on the date after the transfer of such shares to him or her, or within the two-year period beginning on the day after the grant of this Option, he or she will so notify the Company within 30 days after such disposition.

8. Tax Withholding. The Optionee shall, not later than the date as of which the exercise of this Option becomes a taxable event for Federal income tax purposes, pay to the Company or make arrangements satisfactory to the Committee for payment of any Federal, state, and local taxes required by law to be withheld on account of such taxable event. The Company shall have the authority to cause the required tax withholding obligation to be satisfied, in whole or in part, by withholding from Option Shares to be issued to the Optionee a number of Option Shares with an aggregate fair market value that would satisfy the withholding amount due; provided, however, that the amount withheld does not exceed the maximum statutory tax rate or such lesser amount as is necessary to avoid adverse accounting treatment or as determined by the Committee.

9. No Obligation to Continue Employment. Neither the Company nor any Subsidiary is obligated by or as a result of the Plan or this Agreement to continue the Optionee in Employment and neither the Plan nor this Agreement shall interfere in any way with the right of the Company or any Subsidiary to terminate the Employment of the Optionee at any time.

10. Integration. This Agreement and the Plan constitute the entire agreement between the parties with respect to this Option and supersede all prior agreements and discussions between the parties concerning such subject matter.

11. Data Privacy Consent. In order to administer the Plan and this Agreement and to implement or structure future equity grants, the Company, its Subsidiaries and affiliates and certain agents thereof (together, the "Relevant Companies") may process any and all personal or professional data, including but not limited to Social Security or other identification number, home address and telephone number, date of birth and other information that is necessary or desirable for the administration of the Plan and/or this Agreement (the "Relevant Information"). By entering into this Agreement, the Optionee (i) authorizes the Company to collect, process, register and transfer to the Relevant Companies all Relevant Information; (ii) waives any privacy rights the Optionee may have with respect to the Relevant Information; (iii) authorizes the Relevant Companies to store and transmit such information in electronic form; and (iv) authorizes the transfer of the Relevant Information to any jurisdiction in which the Relevant Companies consider appropriate. The Optionee shall have access to, and the right to change, the Relevant Information. Relevant Information will only be used in accordance with applicable law.

12. Notices. Notices hereunder shall be mailed or delivered to the Company at its principal place of business and shall be mailed or delivered to the Optionee at the address on file with the Company or, in either case, at such other address as one party may subsequently furnish to the other party in writing.

13. Governing Law. This Agreement and the rights of all persons claiming hereunder will be construed and determined in accordance with the laws of the State of Delaware without giving effect to the choice of law principles thereof.

14. Blackout Periods. The Optionee acknowledges that, from time to time as determined by the Company in its sole discretion, the Company may establish "blackout periods" during which this Option may not be exercised. The Company may establish a blackout period for any reason or for no reason.

15. Other Laws. The Company shall have the right to refuse to issue or transfer any Option Shares under this Agreement if the Company acting in its absolute discretion determines that the issuance or transfer of such Option Shares might violate any applicable law or regulation, and any payment tendered in such event to exercise this Option shall be promptly refunded to the Optionee.

16. Investment Intent. The Company may request the Optionee to hold any Option shares received upon the exercise of all or part of the Option for personal investment and not for purposes of resale or distribution to the public and the Optionee shall, if so requested by the Company, deliver a certified statement to that effect to the Company as a condition to the transfer of such Option Shares to the Optionee.

17. Compliance. In addition to the remedies of the Company elsewhere provided for herein, failure by Optionee to comply with any of the terms and conditions of the Plan or this Agreement, unless such failure is remedied by such Optionee within ten days after having been notified of such failure by the Committee, shall be grounds for the cancellation and forfeiture of such Option, in whole or in part, as the Committee, in its absolute discretion, may determine.

18. Severability. If any provision hereof is found by a court of competent jurisdiction to be prohibited or unenforceable, it shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision to the extent it is not prohibited or unenforceable, nor invalidate the other provisions hereof.

19. Arbitration. If at any time there shall be a dispute arising out of or relating to any provision of this Agreement or any agreement contemplated hereby, such dispute shall be submitted for binding and final determination by arbitration in accordance with the regulations then obtaining of the American Arbitration Association. Judgment upon the award rendered by the arbitrator(s) resulting from such arbitration shall be in writing and shall be final and binding upon all involved parties. The site of any arbitration shall be within Mecklenburg County, North Carolina.

[Signature Page Follows]

By the Optionee's signature and the signature of the Company's representative below, the Optionee and the Company agree that this Option is granted under and governed by the terms and conditions of this Option Agreement and the Plan. The Optionee has reviewed this Option Agreement and the Plan in their entirety, has had an opportunity to obtain the advice of counsel before executing this Option Agreement and fully understands all provisions of this Option Agreement and the Plan. The Optionee hereby agrees to accept as binding, conclusive, and final all decisions or interpretations of the Committer upon any questions relating to this Agreement and the Plan.

AMERGENT HOSPITALITY GROUP, INC.

By: _____
Name: Steve Hoelscher
Title: CFO

The foregoing Agreement is hereby accepted, and the terms and conditions thereof hereby agreed to by the undersigned Optionee. Electronic acceptance of this Agreement pursuant to the Company's instructions to the Optionee (including through an online acceptance process) is acceptable. The Optionee further agrees that the Company may deliver all documents relating to the Plan or this Option (including prospectuses required by the Securities and Exchange Commission), and all other documents that the Company is required to deliver to its security holders or the Optionee (including annual reports, proxy statements and financial statements), either by e-mail or by e-mail notice of a Web site location where those documents have been posted. The Optionee may at any time (i) revoke this consent to e-mail delivery of those documents; (ii) update the e-mail address for delivery of those documents; (iii) obtain at no charge a paper copy of those documents, in each case by writing the Company at its principal place of business. The Optionee may request an electronic copy of any of those documents by requesting a copy in writing from the Company. The Optionee understands that an e-mail account and appropriate hardware and software, including a computer or compatible cell phone and an Internet connection, will be required to access documents delivered by e-mail.

OPTIONEE

Signature:_____

Printed Name:_____

Optionee's address:

Exhibit 10.44

INCENTIVE STOCK OPTION AGREEMENT

UNDER THE AMERGENT HOSPITALITY GROUP INC.
2021 EQUITY INCENTIVE PLAN

This INCENTIVE STOCK OPTION AGREEMENT ("Agreement") is between Amergent Hospitality Group Inc., a Delaware corporation (the "Company"), and the individual optionee specified below (the "Optionee") and is made and effective as of April 24, 2023 (the "Effective Date"). Capitalized terms not defined herein shall have the meanings ascribed to them in the Amergent Hospitality Group Inc. 2021 Equity Incentive Plan (the "Plan").

1. Notice of Stock Option Grant.

The Company, pursuant to action of the Committee and in accordance with the Plan, grants to Optionee an Incentive Stock Option to purchase common stock of the Company, $0.0001 par value per share ("Option Shares"), upon the terms and conditions set forth in the Agreement:

Name of Optionee	Steve Hoelscher
Total Number of Option Shares	Option 1: 33,333 Option 2: 33,333 Option 3: 33,334
Fair Market Value per Option Share on Grant Date and Option Price	Fair Market Value: $0.16 Option 1: $0.60 Option 2: $1.00 Option 3: $1.50
Grant Date	April 24, 2023
Number of Option Shares Subject to Time Based Vesting	Option 1: 33,333 Option 2: 33,333 Option 3: 33,334
Time Based Vesting Schedule	Option 1: December 31, 2023 Option 2: December 31, 2024 Option 3: December 31, 2025
Number of Option Shares Subject to Performance Based Vesting	N/A
Performance Based Vesting Schedule	N/A
Expiration Date	April 24, 2033

No portion of this Option may be exercised until such portion shall have become exercisable. Subject to the discretion of the Committee (as defined in the Plan) to accelerate the exercisability schedule hereunder, this Option shall be exercisable with respect to the number of Option Shares on the dates indicated above so long as the Optionee remains an employee of the Company on such dates. Once exercisable, this Option shall continue to be exercisable at any time or times prior to the close of business on the Expiration Date (set forth above), subject to the provisions hereof and of the Plan. All or a portion of the Option Shares may vest based on length of Employment, as set forth above, and the remainder of the Option Shares may vest based upon achievement of performance goals, as specified above. If the number of Option Shares would result in the issuance of a fraction of a share, no fractional share shall be issued and instead the number of Option Shares shall be increased or decreased to the nearest whole number. Any Option Shares that vest contingent upon performance measures that fail to meet the performance goals set forth above shall be forfeited. In the event that the aggregate Fair Market Value of shares of Common Stock with respect to the Option exercisable by Optionee in any calendar year exceeds $100,000, then the Option granted hereunder to Optionee 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 Options, but all other terms and provisions of such Option shall remain unchanged.

2. Manner of Exercise.

(a) The Option may only be exercised in accordance with the terms of the Plan and the administrative procedures established by the Company and/or the Committee from time to time. The exercise of the Option is subject to the Optionee making appropriate tax withholding arrangements with the Company in accordance with the terms of the Plan and the administrative procedures established by the Company and/or the Committee from time to time.

(b) The transfer to the Optionee on the records of the Company or of the transfer agent of the Option Shares will be contingent upon (i) the Company's receipt from the Optionee of the full purchase price for the Option Shares (ii) the fulfillment of any other requirements prescribed by the Committee, contained herein and in the Plan or in any other agreement or provision of laws, and (iii) the receipt by the Company of any agreement, statement or other evidence that the Company may require to satisfy itself that the issuance of Option Shares to be purchased pursuant to the exercise of Options under the Plan and any subsequent resale of the Option Shares will be in compliance with applicable laws and regulations.

(c) The Option Shares purchased upon exercise of this Option shall be transferred to the Optionee on the records of the transfer agent upon compliance, to the satisfaction of the Committee, with all requirements prescribed by the Committee and required under applicable laws or regulations in connection with such transfer and with the requirements hereof and of the Plan. The determination of the Committee as to such compliance shall be final and binding on the Optionee. The Optionee shall not be deemed to be the holder of, or to have any of the rights of a holder with respect to, any Option Shares subject to this Option unless and until this Option shall have been exercised pursuant to the terms hereof, the Company or the transfer agent shall have transferred the shares to the Optionee, and the Optionee's name shall have been entered as the stockholder of record on the books of the Company. Thereupon, the Optionee shall have full voting, dividend and other ownership rights with respect to such Option Shares.

(d) No partial exercise of an Option shall be for an aggregate exercise price of less than $1,000.00, unless this minimum is waived by the Committee.

(e) Notwithstanding any other provision hereof or of the Plan, no portion of this Option shall be exercisable after the Expiration Date hereof.

3. Termination of Employment. If the Optionee's Employment by the Company or a Subsidiary is terminated, the period within which to exercise the Option may be subject to earlier termination as set forth below.

(a) If Optionee's termination of Employment occurs prior to the Option's expiration date, for any reason whatsoever other than death or authorized retirement (as defined in subparagraph (b) below), any unexercised portion of the Option shall terminate automatically.

(b) If Optionee retires upon reaching the Company's normal retirement age or earlier, with the written consent of the Company, because of physical or mental disability (collectively, "authorized retirement"), any unexercised or unvested portion of the Option shall expire three months after the effective date of such authorized retirement. The Optionee may exercise all or any vested portion of an Option from the date of his or her authorized retirement to three months thereafter.

(c) If prior to the expiration date of the Option, the Optionee dies while employed or engaged by the Company or its Subsidiary or within three months of his or her authorized retirement, the Optionee's estate, heirs or legatees shall have the privilege of exercising all of the unexercised Option within six months after the Optionee's death.

Nothing contained in this Section shall extend the time for exercising all or any part of the then unexercised portion of an Option. The Committee's determination of the reason for termination of the Optionee's Employment shall be conclusive and binding on the Optionee and his or her representatives or legatees.

4. Adjustment upon Changes in Capitalization. The Option is subject to adjustment in the event of certain changes in the capitalization of the Company, to the extent set forth in Section 8 of the Plan.

5. Incorporation of Plan. Notwithstanding anything herein to the contrary, this Option shall be subject to and governed by all the terms and conditions of the Plan, including the powers of the Committee set forth in Section 4 of the Plan. Capitalized terms in this Agreement shall have the meaning specified in the Plan, unless a different meaning is specified herein. If there is a conflict between the provisions of this Agreement and the provisions of the Plan, the provisions of the Plan will govern.

6. Transferability. This Agreement is personal to the Optionee. The Option 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 an Optionee, only by Optionee. Upon the death of Optionee, the outstanding Option granted to such Optionee may be exercised only by the executors or administrators of the Optionee'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 this Option, or the right to exercise any Option, 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 Option that are or would have been applicable to the Option and to be bound by the acknowledgements made by the Optionee in connection with the grant of the Option.

7. Status of the Option. This Option is intended to qualify as an "incentive Option" under Section 422 of the Code, but the Company does not represent or warrant that this Option qualifies as such. The Optionee should consult with his or her own tax advisors regarding the tax effects of this Option and the requirements necessary to obtain favorable income tax treatment under Section 422 of the Code, including, but not limited to, holding period requirements. To the extent any portion of this Option does not so qualify as an "incentive option," such portion shall be deemed to be a non-qualified option. If the Optionee intends to dispose or does dispose (whether by sale, gift, transfer or otherwise) of any Option Shares within the one-year period beginning on the date after the transfer of such shares to him or her, or within the two-year period beginning on the day after the grant of this Option, he or she will so notify the Company within 30 days after such disposition.

8. Tax Withholding. The Optionee shall, not later than the date as of which the exercise of this Option becomes a taxable event for Federal income tax purposes, pay to the Company or make arrangements satisfactory to the Committee for payment of any Federal, state, and local taxes required by law to be withheld on account of such taxable event. The Company shall have the authority to cause the required tax withholding obligation to be satisfied, in whole or in part, by withholding from Option Shares to be issued to the Optionee a number of Option Shares with an aggregate fair market value that would satisfy the withholding amount due; provided, however, that the amount withheld does not exceed the maximum statutory tax rate or such lesser amount as is necessary to avoid adverse accounting treatment or as determined by the Committee.

9. No Obligation to Continue Employment. Neither the Company nor any Subsidiary is obligated by or as a result of the Plan or this Agreement to continue the Optionee in Employment and neither the Plan nor this Agreement shall interfere in any way with the right of the Company or any Subsidiary to terminate the Employment of the Optionee at any time.

10. Integration. This Agreement and the Plan constitute the entire agreement between the parties with respect to this Option and supersede all prior agreements and discussions between the parties concerning such subject matter.

11. Data Privacy Consent. In order to administer the Plan and this Agreement and to implement or structure future equity grants, the Company, its Subsidiaries and affiliates and certain agents thereof (together, the "Relevant Companies") may process any and all personal or professional data, including but not limited to Social Security or other identification number, home address and telephone number, date of birth and other information that is necessary or desirable for the administration of the Plan and/or this Agreement (the "Relevant Information"). By entering into this Agreement, the Optionee (i) authorizes the Company to collect, process, register and transfer to the Relevant Companies all Relevant Information; (ii) waives any privacy rights the Optionee may have with respect to the Relevant Information; (iii) authorizes the Relevant Companies to store and transmit such information in electronic form; and (iv) authorizes the transfer of the Relevant Information to any jurisdiction in which the Relevant Companies consider appropriate. The Optionee shall have access to, and the right to change, the Relevant Information. Relevant Information will only be used in accordance with applicable law.

12. Notices. Notices hereunder shall be mailed or delivered to the Company at its principal place of business and shall be mailed or delivered to the Optionee at the address on file with the Company or, in either case, at such other address as one party may subsequently furnish to the other party in writing.

13. Governing Law. This Agreement and the rights of all persons claiming hereunder will be construed and determined in accordance with the laws of the State of Delaware without giving effect to the choice of law principles thereof.

14. Blackout Periods. The Optionee acknowledges that, from time to time as determined by the Company in its sole discretion, the Company may establish "blackout periods" during which this Option may not be exercised. The Company may establish a blackout period for any reason or for no reason.

15. Other Laws. The Company shall have the right to refuse to issue or transfer any Option Shares under this Agreement if the Company acting in its absolute discretion determines that the issuance or transfer of such Option Shares might violate any applicable law or regulation, and any payment tendered in such event to exercise this Option shall be promptly refunded to the Optionee.

16. Investment Intent. The Company may request the Optionee to hold any Option shares received upon the exercise of all or part of the Option for personal investment and not for purposes of resale or distribution to the public and the Optionee shall, if so requested by the Company, deliver a certified statement to that effect to the Company as a condition to the transfer of such Option Shares to the Optionee.

17. Compliance. In addition to the remedies of the Company elsewhere provided for herein, failure by Optionee to comply with any of the terms and conditions of the Plan or this Agreement, unless such failure is remedied by such Optionee within ten days after having been notified of such failure by the Committee, shall be grounds for the cancellation and forfeiture of such Option, in whole or in part, as the Committee, in its absolute discretion, may determine.

18. Severability. If any provision hereof is found by a court of competent jurisdiction to be prohibited or unenforceable, it shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision to the extent it is not prohibited or unenforceable, nor invalidate the other provisions hereof.

19. Arbitration. If at any time there shall be a dispute arising out of or relating to any provision of this Agreement or any agreement contemplated hereby, such dispute shall be submitted for binding and final determination by arbitration in accordance with the regulations then obtaining of the American Arbitration Association. Judgment upon the award rendered by the arbitrator(s) resulting from such arbitration shall be in writing and shall be final and binding upon all involved parties. The site of any arbitration shall be within Mecklenburg County, North Carolina.

[Signature Page Follows]

By the Optionee's signature and the signature of the Company's representative below, the Optionee and the Company agree that this Option is granted under and governed by the terms and conditions of this Option Agreement and the Plan. The Optionee has reviewed this Option Agreement and the Plan in their entirety, has had an opportunity to obtain the advice of counsel before executing this Option Agreement and fully understands all provisions of this Option Agreement and the Plan. The Optionee hereby agrees to accept as binding, conclusive, and final all decisions or interpretations of the Committer upon any questions relating to this Agreement and the Plan.

AMERGENT HOSPITALITY GROUP, INC.

By: _____
Name: Michael D. Pruitt
Title: CEO

The foregoing Agreement is hereby accepted, and the terms and conditions thereof hereby agreed to by the undersigned Optionee. Electronic acceptance of this Agreement pursuant to the Company's instructions to the Optionee (including through an online acceptance process) is acceptable. The Optionee further agrees that the Company may deliver all documents relating to the Plan or this Option (including prospectuses required by the Securities and Exchange Commission), and all other documents that the Company is required to deliver to its security holders or the Optionee (including annual reports, proxy statements and financial statements), either by e-mail or by e-mail notice of a Web site location where those documents have been posted. The Optionee may at any time (i) revoke this consent to e-mail delivery of those documents; (ii) update the e-mail address for delivery of those documents; (iii) obtain at no charge a paper copy of those documents, in each case by writing the Company at its principal place of business. The Optionee may request an electronic copy of any of those documents by requesting a copy in writing from the Company. The Optionee understands that an e-mail account and appropriate hardware and software, including a computer or compatible cell phone and an Internet connection, will be required to access documents delivered by e-mail.

OPTIONEE

Signature:_____

Printed Name:_____

Optionee's address:

Exhibit 10.45

INCENTIVE STOCK OPTION AGREEMENT

UNDER THE AMERGENT HOSPITALITY GROUP INC.
2021 EQUITY INCENTIVE PLAN

This INCENTIVE STOCK OPTION AGREEMENT ("Agreement") is between Amergent Hospitality Group Inc., a Delaware corporation (the "Company"), and the individual optionee specified below (the "Optionee") and is made and effective as of February 1, 2023 (the "Effective Date"). Capitalized terms not defined herein shall have the meanings ascribed to them in the Amergent Hospitality Group Inc. 2021 Equity Incentive Plan (the "Plan").

1. Notice of Stock Option Grant.

The Company, pursuant to action of the Committee and in accordance with the Plan, grants to Optionee an Incentive Stock Option to purchase common stock of the Company, $0.0001 par value per share ("Option Shares"), upon the terms and conditions set forth in the Agreement:

Name of Optionee	Mark Anthony Whittle
Total Number of Option Shares	Option 1: 46,667 Option 2: 46,667 Option 3: 46,666
Fair Market Value per Option Share on Grant Date and Option Price	Fair Market Value: $0.224 Option 1: $0.60 Option 2: $1.00 Option 3: $1.50
Grant Date	January 27, 2023
Number of Option Shares Subject to Time Based Vesting	Option 1: 46,667 Option 2: 46,667 Option 3: 46,666
Time Based Vesting Schedule	Option 1: January 11, 2024 Option 2: January 11, 2025 Option 3: January 11, 2026
Number of Option Shares Subject to Performance Based Vesting	N/A
Performance Based Vesting Schedule	N/A
Expiration Date	January 11, 2033

No portion of this Option may be exercised until such portion shall have become exercisable. Subject to the discretion of the Committee (as defined in the Plan) to accelerate the exercisability schedule hereunder, this Option shall be exercisable with respect to the number of Option Shares on the dates indicated above so long as the Optionee remains an employee of the Company on such dates. Once exercisable, this Option shall continue to be exercisable at any time or times prior to the close of business on the Expiration Date (set forth above), subject to the provisions hereof and of the Plan. All or a portion of the Option Shares may vest based on length of Employment, as set forth above, and the remainder of the Option Shares may vest based upon achievement of performance goals, as specified above. If the number of Option Shares would result in the issuance of a fraction of a share, no fractional share shall be issued and instead the number of Option Shares shall be increased or decreased to the nearest whole number. Any Option Shares that vest contingent upon performance measures that fail to meet the performance goals set forth above shall be forfeited. In the event that the aggregate Fair Market Value of shares of Common Stock with respect to the Option exercisable by Optionee in any calendar year exceeds $100,000, then the Option granted hereunder to Optionee 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 Options, but all other terms and provisions of such Option shall remain unchanged.

2. Manner of Exercise.

(a) The Option may only be exercised in accordance with the terms of the Plan and the administrative procedures established by the Company and/or the Committee from time to time. The exercise of the Option is subject to the Optionee making appropriate tax withholding arrangements with the Company in accordance with the terms of the Plan and the administrative procedures established by the Company and/or the Committee from time to time.

(b) The transfer to the Optionee on the records of the Company or of the transfer agent of the Option Shares will be contingent upon (i) the Company's receipt from the Optionee of the full purchase price for the Option Shares (ii) the fulfillment of any other requirements prescribed by the Committee, contained herein and in the Plan or in any other agreement or provision of laws, and (iii) the receipt by the Company of any agreement, statement or other evidence that the Company may require to satisfy itself that the issuance of Option Shares to be purchased pursuant to the exercise of Options under the Plan and any subsequent resale of the Option Shares will be in compliance with applicable laws and regulations.

(c) The Option Shares purchased upon exercise of this Option shall be transferred to the Optionee on the records of the transfer agent upon compliance, to the satisfaction of the Committee, with all requirements prescribed by the Committee and required under applicable laws or regulations in connection with such transfer and with the requirements hereof and of the Plan. The determination of the Committee as to such compliance shall be final and binding on the Optionee. The Optionee shall not be deemed to be the holder of, or to have any of the rights of a holder with respect to, any Option Shares subject to this Option unless and until this Option shall have been exercised pursuant to the terms hereof, the Company or the transfer agent shall have transferred the shares to the Optionee, and the Optionee's name shall have been entered as the stockholder of record on the books of the Company. Thereupon, the Optionee shall have full voting, dividend and other ownership rights with respect to such Option Shares.

(d) No partial exercise of an Option shall be for an aggregate exercise price of less than $1,000.00, unless this minimum is waived by the Committee.

(e) Notwithstanding any other provision hereof or of the Plan, no portion of this Option shall be exercisable after the Expiration Date hereof.

3. Termination of Employment. If the Optionee's Employment by the Company or a Subsidiary is terminated, the period within which to exercise the Option may be subject to earlier termination as set forth below.

(a) If Optionee's termination of Employment occurs prior to the Option's expiration date, for any reason whatsoever other than death or authorized retirement (as defined in subparagraph (b) below), any unexercised portion of the Option shall terminate automatically.

(b) If Optionee retires upon reaching the Company's normal retirement age or earlier, with the written consent of the Company, because of physical or mental disability (collectively, "authorized retirement"), any unexercised or unvested portion of the Option shall expire three months after the effective date of such authorized retirement. The Optionee may exercise all or any vested portion of an Option from the date of his or her authorized retirement to three months thereafter.

(c) If prior to the expiration date of the Option, the Optionee dies while employed or engaged by the Company or its Subsidiary or within three months of his or her authorized retirement, the Optionee's estate, heirs or legatees shall have the privilege of exercising all of the unexercised Option within six months after the Optionee's death.

Nothing contained in this Section shall extend the time for exercising all or any part of the then unexercised portion of an Option. The Committee's determination of the reason for termination of the Optionee's Employment shall be conclusive and binding on the Optionee and his or her representatives or legatees.

4. Adjustment upon Changes in Capitalization. The Option is subject to adjustment in the event of certain changes in the capitalization of the Company, to the extent set forth in Section 8 of the Plan.

5. Incorporation of Plan. Notwithstanding anything herein to the contrary, this Option shall be subject to and governed by all the terms and conditions of the Plan, including the powers of the Committee set forth in Section 4 of the Plan. Capitalized terms in this Agreement shall have the meaning specified in the Plan, unless a different meaning is specified herein. If there is a conflict between the provisions of this Agreement and the provisions of the Plan, the provisions of the Plan will govern.

6. Transferability. This Agreement is personal to the Optionee. The Option 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 an Optionee, only by Optionee. Upon the death of Optionee, the outstanding Option granted to such Optionee may be exercised only by the executors or administrators of the Optionee'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 this Option, or the right to exercise any Option, 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 Option that are or would have been applicable to the Option and to be bound by the acknowledgements made by the Optionee in connection with the grant of the Option.

7. Status of the Option. This Option is intended to qualify as an "incentive Option" under Section 422 of the Code, but the Company does not represent or warrant that this Option qualifies as such. The Optionee should consult with his or her own tax advisors regarding the tax effects of this Option and the requirements necessary to obtain favorable income tax treatment under Section 422 of the Code, including, but not limited to, holding period requirements. To the extent any portion of this Option does not so qualify as an "incentive option," such portion shall be deemed to be a non-qualified option. If the Optionee intends to dispose or does dispose (whether by sale, gift, transfer or otherwise) of any Option Shares within the one-year period beginning on the date after the transfer of such shares to him or her, or within the two-year period beginning on the day after the grant of this Option, he or she will so notify the Company within 30 days after such disposition.

8. Tax Withholding. The Optionee shall, not later than the date as of which the exercise of this Option becomes a taxable event for Federal income tax purposes, pay to the Company or make arrangements satisfactory to the Committee for payment of any Federal, state, and local taxes required by law to be withheld on account of such taxable event. The Company shall have the authority to cause the required tax withholding obligation to be satisfied, in whole or in part, by withholding from Option Shares to be issued to the Optionee a number of Option Shares with an aggregate fair market value that would satisfy the withholding amount due; provided, however, that the amount withheld does not exceed the maximum statutory tax rate or such lesser amount as is necessary to avoid adverse accounting treatment or as determined by the Committee.

9. No Obligation to Continue Employment. Neither the Company nor any Subsidiary is obligated by or as a result of the Plan or this Agreement to continue the Optionee in Employment and neither the Plan nor this Agreement shall interfere in any way with the right of the Company or any Subsidiary to terminate the Employment of the Optionee at any time.

10. Integration. This Agreement and the Plan constitute the entire agreement between the parties with respect to this Option and supersede all prior agreements and discussions between the parties concerning such subject matter.

11. Data Privacy Consent. In order to administer the Plan and this Agreement and to implement or structure future equity grants, the Company, its Subsidiaries and affiliates and certain agents thereof (together, the "Relevant Companies") may process any and all personal or professional data, including but not limited to Social Security or other identification number, home address and telephone number, date of birth and other information that is necessary or desirable for the administration of the Plan and/or this Agreement (the "Relevant Information"). By entering into this Agreement, the Optionee (i) authorizes the Company to collect, process, register and transfer to the Relevant Companies all Relevant Information; (ii) waives any privacy rights the Optionee may have with respect to the Relevant Information; (iii) authorizes the Relevant Companies to store and transmit such information in electronic form; and (iv) authorizes the transfer of the Relevant Information to any jurisdiction in which the Relevant Companies consider appropriate. The Optionee shall have access to, and the right to change, the Relevant Information. Relevant Information will only be used in accordance with applicable law.

12. Notices. Notices hereunder shall be mailed or delivered to the Company at its principal place of business and shall be mailed or delivered to the Optionee at the address on file with the Company or, in either case, at such other address as one party may subsequently furnish to the other party in writing.

13. Governing Law. This Agreement and the rights of all persons claiming hereunder will be construed and determined in accordance with the laws of the State of Delaware without giving effect to the choice of law principles thereof.

14. Blackout Periods. The Optionee acknowledges that, from time to time as determined by the Company in its sole discretion, the Company may establish "blackout periods" during which this Option may not be exercised. The Company may establish a blackout period for any reason or for no reason.

15. Other Laws. The Company shall have the right to refuse to issue or transfer any Option Shares under this Agreement if the Company acting in its absolute discretion determines that the issuance or transfer of such Option Shares might violate any applicable law or regulation, and any payment tendered in such event to exercise this Option shall be promptly refunded to the Optionee.

16. Investment Intent. The Company may request the Optionee to hold any Option shares received upon the exercise of all or part of the Option for personal investment and not for purposes of resale or distribution to the public and the Optionee shall, if so requested by the Company, deliver a certified statement to that effect to the Company as a condition to the transfer of such Option Shares to the Optionee.

17. Compliance. In addition to the remedies of the Company elsewhere provided for herein, failure by Optionee to comply with any of the terms and conditions of the Plan or this Agreement, unless such failure is remedied by such Optionee within ten days after having been notified of such failure by the Committee, shall be grounds for the cancellation and forfeiture of such Option, in whole or in part, as the Committee, in its absolute discretion, may determine.

18. Severability. If any provision hereof is found by a court of competent jurisdiction to be prohibited or unenforceable, it shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision to the extent it is not prohibited or unenforceable, nor invalidate the other provisions hereof.

19. Arbitration. If at any time there shall be a dispute arising out of or relating to any provision of this Agreement or any agreement contemplated hereby, such dispute shall be submitted for binding and final determination by arbitration in accordance with the regulations then obtaining of the American Arbitration Association. Judgment upon the award rendered by the arbitrator(s) resulting from such arbitration shall be in writing and shall be final and binding upon all involved parties. The site of any arbitration shall be within Mecklenburg County, North Carolina.

[Signature Page Follows]

By the Optionee's signature and the signature of the Company's representative below, the Optionee and the Company agree that this Option is granted under and governed by the terms and conditions of this Option Agreement and the Plan. The Optionee has reviewed this Option Agreement and the Plan in their entirety, has had an opportunity to obtain the advice of counsel before executing this Option Agreement and fully understands all provisions of this Option Agreement and the Plan. The Optionee hereby agrees to accept as binding, conclusive, and final all decisions or interpretations of the Committer upon any questions relating to this Agreement and the Plan.

AMERGENT HOSPITALITY GROUP INC.

By: _____
Name: Michael D. Pruitt
Title: CEO
Date:

The foregoing Agreement is hereby accepted, and the terms and conditions thereof hereby agreed to by the undersigned Optionee. Electronic acceptance of this Agreement pursuant to the Company's instructions to the Optionee (including through an online acceptance process) is acceptable. The Optionee further agrees that the Company may deliver all documents relating to the Plan or this Option (including prospectuses required by the Securities and Exchange Commission), and all other documents that the Company is required to deliver to its security holders or the Optionee (including annual reports, proxy statements and financial statements), either by e-mail or by e-mail notice of a Web site location where those documents have been posted. The Optionee may at any time (i) revoke this consent to e-mail delivery of those documents; (ii) update the e-mail address for delivery of those documents; (iii) obtain at no charge a paper copy of those documents, in each case by writing the Company at its principal place of business. The Optionee may request an electronic copy of any of those documents by requesting a copy in writing from the Company. The Optionee understands that an e-mail account and appropriate hardware and software, including a computer or compatible cell phone and an Internet connection, will be required to access documents delivered by e-mail.

OPTIONEE

Signature:_____

Printed Name:_____

Date:

Optionee's address:

EXHIBIT 21.1

SUBSIDIARIES OF AMERGENT HOSPITALITY GROUP INC.

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%

Exhibit 22(II)

AMERGENT HOSPITALITY 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.

EXHIBIT 31.1

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: July 14, 2023

/s/ Michael D. Pruitt

Michael D. Pruitt
Chief Executive Officer
(Principal Executive Officer)

EXHIBIT 31.2

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: July 14, 2023

/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 Annual Report on Form 10-K of Amergent Hospitality Group Inc., a Delaware corporation (the "Company") for the year ended December 31, 2022, 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: July 14, 2023

By: */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 Annual Report on Form 10-K of Amergent Hospitality Group Inc., a Delaware corporation (the "Company") for the year ended December 31, 2022, 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: July 14, 2023

By: */s/ Stephen Hoelscher*
Stephen Hoelscher
Chief Financial Officer
(Principal Financial Officer)