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

# FORM 10-K

**[X] ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2020

**[ ] TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission file number: 000-56160

# AMERGENT HOSPITALITY GROUP, INC.

| **Delaware** | **84-4842958** |
|---|---|
| (State or Other Jurisdiction of Incorporation or Organization) | (IRS Employer Identification Number) |
| **7529 Red Oak Lane<br>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**

| 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 [X]

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 [X]

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

| | |
|---|---|
| Large accelerated filer [ ] | Accelerated filer [ ] |
| Non-accelerated filer [X] | Smaller reporting company [X] |
| | 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 [X]

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date. There were a total of 14,782,736 shares of Common Stock outstanding as of April 6, 2021.

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## CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS AND INFORMATION

This Annual Report on Form 10-Q (the "Report") contains forward-looking statements. These forward-looking statements are identified by terms and phrases such as "anticipate," "believe," "continue," "could," "estimate," "expect," "intend," "may," "plan," "predict," "project," "should," and "will" and similar expressions and include references to assumptions and relate to our future prospects, developments and business strategies. There are a number of important factors that could cause the actual results to differ materially from those expressed in any forward-looking statement made by us. These factors include, but are not limited to:

- the accuracy of our estimates regarding expenses, capital requirements and need for additional financing;
- our ability to operate our business and generate profits. We have not been profitable to date;
- decline in global financial markets and economic downturn resulting from the coronavirus COVID-19 global pandemic,
- business interruptions resulting from the coronavirus COVID-19 global pandemic;
- our ability to remediate weaknesses we identified in our disclosure controls and procedures and our internal control over financial reporting in a timely enough manner to eliminate the risks posed by such material weaknesses in future periods;
- general risk factors affecting the restaurant industry, including current economic climate, costs of labor and food prices;
- intensive competition in our industry and competition with national, regional chains and independent restaurant operators;
- our rights to operate and franchise the Hooters-branded restaurants are dependent on the Hooters' franchise agreements;
- our ability, and our dependence on the ability of our franchisees, to execute on business plans effectively;
- actions of our franchise partners or operating partners which could harm our business;
- failure to protect our intellectual property rights, including the brand image of our restaurants;
- changes in customer preferences and perceptions;
- increases in costs, including food, rent, labor and energy prices;
- constraints could affect our ability to maintain competitive cost structure, including, but not limited to labor constraints;
- work stoppages at our restaurants or supplier facilities or other interruptions of production;
- the risks associated with leasing space subject to long-term non-cancelable leases;
- we may not attain our target development goals and aggressive development could cannibalize existing sales;
- negative publicity about the ingredients we use, or the potential occurrence of food-borne illnesses or other problems at our restaurants;
- breaches of security of confidential consumer information related to our electronic processing of credit and debit card transactions;
- we may be unable to reach agreements with various taxing authorities on payment plans to pay off back taxes; and
- our debt financing agreements expose us to interest rate risks, contain obligations that may limit the flexibility of our operations, and may limit our ability to raise additional capital.

We undertake no obligation to update or revise the forward-looking statements included in this Report, whether as a result of new information, future events or otherwise, after the date of this Report. Our actual results, performance or achievements could differ materially from the results expressed in, or implied by, these forward-looking statements. Factors that could cause or contribute to such differences are discussed in the section entitled "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included herein.

*Unless otherwise noted, references in this Report to the "Registrant," "Company," "Amergent," "Spin-Off Entity," "we," "our" or "us" means Amergent Hospitality Group Inc., a Delaware corporation and our subsidiaries.*

## PART I

### ITEM 1. BUSINESS

### BACKGROUND- MERGER AND SPIN-OFF

*OVERVIEW*

Amergent Hospitality Group Inc. was incorporated on February 18, 2020 as a wholly-owned subsidiary of Chanticleer Holdings Inc., a Delaware corporation ("Chanticleer" or "Parent") for the purpose of conducting the business of Chanticleer and its subsidiaries after completion of the spin-off of all the shares of Amergent to the shareholders of Chanticleer.

In connection with and prior to its merger ("Merger") with Sonnet BioTherapeutics Holdings Inc., a New Jersey Corporation ("Sonnet"), Chanticleer, contributed and transferred to Amergent, a newly formed, wholly owned subsidiary of Chanticleer, all of Chanticleer's business, operations, assets and liabilities, pursuant to the Contribution Agreement between Chanticleer and Amergent dated March 31, 2020. The contributed assets included the stock interest in all Chanticleer's subsidiaries (other than Amergent and the merger-sub formed for the purposes of effecting the merger ("Merger-Sub"). On March 16, 2020, pursuant to the disposition agreement between Chanticleer and Amergent dated March 25, 2020 ("Disposition Agreement"), the Chanticleer board declared a dividend with respect to the shares of common stock outstanding at the close of business on March 26, 2020 of one share of the Amergent common stock for each outstanding share of Chanticleer common stock. The dividend, which together with the contribution and transfer of Chanticleer's restaurant business, assets and liabilities described above, is referred to herein as the "Spin-Off," was paid on April 1, 2020. Prior to the Spin-Off, Amergent engaged in no business or operations.

All of Chanticleer's then current restaurant business operations were contributed to Amergent and the stockholders of record received the same pro-rata ownership in Amergent as in Chanticleer.

As a result of the Spin-Off, Amergent emerged as successor to the business, operations, assets and liabilities of pre-merger Chanticleer. Additionally, Amergent's shareholder base and their holdings (on a pro-rata basis) are identical to that of pre-merger Chanticleer.

The financial information included in this Report include the accounts of Amergent and its subsidiaries combined with Chanticleer and its subsidiaries. Since all of Chanticleer's then current restaurant business operations were contributed to Amergent and the stockholders of record received the same pro-rata ownership in Amergent as in Chanticleer, the Spin-Off has been recognized by Amergent at the carrying value of the assets and liabilities contributed by Chanticleer. Further, as a common control transaction, the financial statements of Amergent reflect the transaction as if the contribution had occurred as of the earliest period presented in the respective financial statements included herein.

*AGREEMENTS RELATED TO THE SPIN-OFF*

Following the separation and distribution, Amergent and Parent operate separately and independently.

*Merger Agreement*

Conditions to closing under the Merger Agreement impacting Amergent:

- Completion of disposition of the Spin-Off Business;
- Spin-Off Entity was required to assume all indebtedness or other liabilities not extinguished at the time of Merger;
- The Spin-Off Entity was required to enter into an indemnification agreement, acceptable to Sonnet in form and substance, providing that Chanticleer, Sonnet, and each of their respective directors, officers, stockholders and managers who assumes such role upon or following the Merger will be fully indemnified and held harmless by the Spin-Off Entity, to the greatest extent permitted under applicable law, for any and all claims in connection with the Spin-Off for a period of six years from the date of the disposition; and
- the Spin-Off Entity was required to obtain a tail insurance policy, acceptable to Sonnet in form and substance, in a coverage amount of at least $3 million, prepaid in full by the Spin-Off Entity, at no cost to the other parties, effective for at least six years following the consummation of the disposition, covering the Spin-Off Entity's indemnification obligations.

*Disposition Agreement*

On March 16, 2020, pursuant to the Disposition Agreement between Chanticleer and Amergent dated March 25, 2020, the Chanticleer board of directors declared a dividend with respect to the shares of common stock outstanding at the close of business on March 26, 2020 of one share of the Amergent common stock for each outstanding share of Chanticleer common stock.

*Contribution Agreement*

In connection with and prior to its merger with Sonnet, Chanticleer contributed and transferred to Amergent, a newly formed, wholly owned subsidiary of Chanticleer, all of Chanticleer's business, operations, assets and liabilities, pursuant to the Contribution Agreement between Chanticleer and Amergent dated March 31, 2020. In exchange for the contribution, Chanticleer received 100% of the equity in the Spin-Off Entity.

*Indemnification Agreement and Tail Policy*

On March 25, 2020, pursuant to the requirements of the Merger Agreement, Chanticleer, Sonnet and the Amergent entered into an indemnification agreement ("Indemnification Agreement") providing that Amergent will fully indemnify and hold harmless each of Chanticleer and Sonnet, and each of their respective, directors, officers, stockholders and managers who assumes such role upon or following the closing of the merger against all actual or threatened claims, losses, liabilities, damages, judgments, fines and reasonable fees, costs and expenses, including attorneys' fees and disbursements, incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, administrative, investigative or otherwise, related to the Spin-Off Business prior to or in connection with its disposition to Amergent.

In addition, pursuant to Merger Agreement, prior to closing of the Merger, the Spin-Off Entity acquired a tail insurance policy in a coverage amount of $3.0 million, prepaid in full by the Spin-Off Entity, at no cost to the indemnitees, and effective for at least six years following the consummation of the disposition, covering the Spin-Off Entity's indemnification obligations to the indemnitees (referred to herein as the "Tail Policy").

*Debenture Refinancing*

In connection with and prior to the Merger and Spin-Off, pursuant to a securities purchase agreement between Chanticleer, Amergent, Oz Rey LLC, a Texas limited liability company, and certain other purchasers dated April 1, 2020, Chanticleer was released from all of its obligations under its 8% secured debentures. The 8% debentures were cancelled. In exchange Amergent (i) issued 10% secured convertible debentures in principal amount of $4,037,889 in Amergent to Oz Rey, LLC, (iii) issued 10-year warrants to purchase up to 2,462,400 shares of common stock to the purchasers at an exercise price of $0.125, and (ii) issued a 10-year warrant to purchase 462,600 shares of common stock to Oz Rey, LLC at an exercise price of $0.50 ($0.50 Warrants") and (iii) remitted $2,000,000 of the proceeds of the Merger to Oz Rey, LLC (minus $650,000 previously advanced, plus expenses). Upon issuance, the debenture was able to be converted at any time with limitations as described below at the option of holder at the lower of $0.10 per share and the volume weighted average price for Amergent's common stock 10 trading days immediately prior to delivery of the conversion notice. The warrants include a cashless exercise provision. The debentures and warrants include standard anti-dilution provisions as well as weighted average anti-dilution protection in the event Amergent shares are issued below either the exercise/conversion price of the warrants/debenture or the volume weighted average price of Amergent's common stock for the five trading days immediately prior to issuance of such other securities. The obligation is subject to a first priority security interest in substantially all the assets (excluding the segregated account securing the repayment of the guaranteed return on Series 2 Preferred and Spin-Off Entity Warrant) of Amergent and is guaranteed by all Amergent's subsidiaries.

On August 17, 2020, the Company and Oz Rey amended the 10% secured convertible debenture to fix the conversion rate into common stock at $0.10 per share. Further, the amendment provides a limitation on Oz Rey's ability to convert the debenture into common stock so that the conversion would not result in the issuance of common stock exceeding the number of authorized shares. Oz Rey may; however, upon reasonably notice to the Company, require the Company to include in its proxy materials, for any annual meeting of shareholders being held by the Company, a proposal to amend the Company's certificate of incorporation to increase the Company's authorized shares to a number sufficient to allow for conversion of all shares underlying the debenture, on a fully diluted basis. Oz Rey also agreed that the Company would not be required under any circumstances to make a cash payment to settle the conversion feature not exercisable due to the authorized share cap or in an event that the Company was unable to deliver shares under the conversion feature. Oz Rey also agreed to waive any event of default under the debenture that occurred or existed prior to August 17, 2020.

Pursuant to a registration rights agreement, Amergent granted the investors registration rights for shares of common stock underlying the 10% secured convertible debenture and warrants.

Further, contingent upon the termination of Amergent's interest in the Spin-Off Entity Warrant and Oz Rey, LLC's cash exercise of $0.50 Warrants, Amergent will assign to Oz Rey, LLC, from the Spin-Off Entity Warrant, a warrant to purchase up to one share of Sonnet's common stock for each twenty-six $.050 Warrants exercised, up to a maximum of 17,792 shares of Sonnet's common stock.

For as long as Oz Rey, LLC holds 10% debentures, it has the right, but not the obligation, to appoint two directors ("Appointees") to Amergent's board. Amergent agreed that its board or governance committee, if it has one, will re-nominate the Appointees as a directors at annual meetings. and recommend that stockholders vote "for" such Appointees at annual meetings. All proxies given to management also voted in favor of such Appointees. This right to designate the Appointees is subject to Nasdaq Listing Rules in the event Amergent seeks listing on one of the exchanges of the Nasdaq Stock Market.

*SPIN-OFF PROCEEDS AND ASSUMED LIABILITIES*

*Cash Proceeds*

In connection with the Merger, on April 1, 2020, Chanticleer received proceeds from Sonnet of $6,000,000.

Of these proceeds,

- $2,929,987.37 was remitted directly to satisfy outstanding indebtedness and other liabilities of Chanticleer immediately prior to the closing, including the following: satisfaction in full of outstanding secured credit facilities with Towne Bank (formerly Paragon Bank), payment to Oz Rey, LLC pursuant to securities purchase agreement dated April 1, 2020 refinancing outstanding 8% debentures reducing principal and reimbursing expenses, redemption of Series 1 Preferred Stock, required payment to holders of certain outstanding warrants; repayment of bridge loan received from Sonnet, and payment of Chanticleer's legal fees and expenses;
- $1,250,000 was remitted directly, on behalf of Amergent, to a segregated cash account securing Amergent's Series 2 Preferred Stock obligation, pursuant to the requirements of securities purchase agreement dated February 7, 2020; and
- $1,820,012.63 was remitted to Amergent.

*Spin-Off Entity Warrant*

Pursuant to the Merger Agreement, Sonnet issued the Spin-Off Entity Warrant to Amergent. It is a warrant to purchase 186,161, representing 2% of the aggregate outstanding shares of Sonnet, at an exercise price per share of $0.01. It has 5-year term. The Spin-Off Entity Warrant may not be exercised for 180 days from the date of issuance and is a company asset. The underlying shares will not be distributed to shareholders when it is exercised.

*Assumed Liabilities*

Pursuant to the Merger Agreement, related Contribution Agreement and Distribution Agreement, Amergent assumed all liabilities of Chanticleer that were not paid-off at the effective time of the Merger.

Pursuant to the Indemnification Agreement, Amergent agreed to fully indemnify and hold harmless each of Chanticleer and Sonnet, and each of their respective, directors, officers, stockholders and managers who assumes such role upon or following the closing of the Merger against all actual or threatened claims, losses, liabilities, damages, judgments, fines and reasonable fees, costs and expenses, including attorneys' fees and disbursements, incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, administrative, investigative or otherwise, related to the Spin-Off Business prior to or in connection with its disposition to Amergent. In addition, Amergent acquired the Tail Policy to cover its indemnification obligations to the indemnitees under the Indemnification Agreement. The Tail Policy of up to $3.0 million was prepaid in full by Amergent, at no cost to the indemnitees, and will be effective for six years following the consummation of the disposition.

As part of the Merger, all of the assets and liabilities of Chanticleers and its subsidiaries were contributed to Amergent.

Various subsidiaries of Amergent are delinquent in payment of payroll taxes to taxing authorities. As of December 31, 2020, approximately $3.0 million of employee and employer taxes (including estimated penalties and interest) was accrued but not remitted in years prior to 2019 to certain taxing authorities by certain of these subsidiaries for cash compensation paid. As a result, these subsidiaries are liable for such payroll taxes. These subsidiaries have received warnings and demands from the taxing authorities and management is prioritizing and working with the taxing authorities to make these payments in order to avoid further penalties and interest. Failure to remit these payments promptly could result in increased penalty fees.

In connection with the Merger, former executive officer of Chanticleer, Richard Adams, filed a claim for damages against American Roadside Burgers, Inc., Chanticleer's wholly owned subsidiary for unpaid severance. Mr. Adams received timely notification of non-renewal of his employment agreement, which expired December 31, 2019, but argues he is entitled to severance benefits triggered by the Merger. Amergent has been advised by legal counsel that Mr. Adam's claim is frivolous and that he has a low probability of success. Mr. Adams complaint alleges damages in an amount over $25,000.

*Assumption of Series 2 Preferred Stock*

In connection with the Merger and Spin-Off, all 787 outstanding shares of Series 2 Preferred Stock of Chanticleer were automatically exchanged for substantially identical shares of preferred stock in Amergent. The holders of Series 2 Preferred also received an aggregate of 1,426,845 shares of common stock in Amergent. The Amergent board approved the certificate of designations rights and preferences of Series 2 Preferred Stock, more fully set forth in a certificate of designations filed with the Secretary of State of Delaware and authorized the designation and immediate issuance of 787 shares of Series 2 Preferred. In addition, pursuant to Chanticleer's original agreement with the investors, Amergent issued 5-year warrants to purchase an aggregate of 350,000 shares of Amergent's common stock to the investors at $1.25 per share. Each share of Series 2 Preferred has a stated value of $1,000. In the event the proceeds received by the investor from the sale of all the shares of common stock issued upon conversion of Series 2 Preferred Stock in both Amergent and its former Parent ("Conversion Shares") do not equal at least $1,875,000 on August 10, 2020, Amergent must pay the investors an amount in cash equal to the difference between $1,875,000 and the proceeds previously realized by the investors from the sale of the Conversion Shares, net of brokerage commissions and any other fees incurred by investor in connection with the sale of Conversion Shares (the "True-Up payment"). The balance will be paid by Amergent out of either (i) the proceeds from the exercise by Amergent of existing Spin-off Entity Warrants to purchase shares of the common stock of Sonnet or (ii) from a segregated cash account. The segregated cash account was funded in the amount of $1,250,000 at closing of the Merger from $6,000,000 in proceeds received from Sonnet.

The True-up payment is accounted for as a derivative instrument. The fair value of the derivative was estimated using a Monte Carlo model and a liability of $529,000 was recorded at the Series 2 Preferred Stock issuance date. The fair value is updated at each reporting date and the liability was $184,800 at December 31, 2020 as reported in the consolidated and combined balance sheet.

The Series 2 Preferred Stock is convertible at the option of holder at the lesser of (i) $1.00 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like) or (ii) 90% of the five day average volume weighted average price of the common, provided the conversion price has a floor of $0.50 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like) Conversion is subject to a beneficial ownership limitation of 4.99%. This limitation may be increased by the holder up to 9.99%, with 61 days' notice. No dividends shall be declared or paid on the Series 2 Preferred Stock. Upon any liquidation, dissolution or winding-up of Amergent, the holder shall be entitled to receive out of the assets, whether capital or surplus, an amount equal to 125% of the stated value plus any default interest and any other fees or liquidated damages then due and owing thereon under the certificate of designations, for each share of Series 2 Preferred before any distribution or payment shall be made to the holders of Amergent common stock. The holder of Series 2 Preferred will vote together with the holders of common stock as a single class on an as-converted basis on all matters presented to the holders of common stock and shall vote as a separate class on all matters presented to the holders of Series 2 Preferred. Assuming conversion of Series 2 Preferred Stock into common stock at either $0.50 or $1.00 per share the holders of the Series 2 Preferred Stock would receive 1,574,000 or 787,000 shares of common stock and entitled to that number of votes, respectively. In addition, without the approval of the holder, Amergent will not, (i) sell all or substantially all of its assets, merge or consolidate with another entity or voluntarily liquidate or dissolve the corporation, (ii) alter or change the rights, preferences or privileges of the Series 2 Preferred, (iii) authorize or create any class of stock ranking as to dividends, redemption or distribution of assets upon a liquidation senior to, or otherwise pari passu with, the Series 2 Preferred Stock, (iv) amend its certificate of incorporation, as amended, or other charter documents in any manner that adversely affects any rights of the holder, (v) increase the number of authorized shares of Series 2 Preferred Stock, (vi) redeem any shares of capital stock of the company (other than any redemption of securities from officers or employees of the company pursuant to existing contractual arrangements with such officers or employees or in connection with the termination of their employment) or (vii) enter into any agreement with respect to any of the foregoing. Breach of Amergent's obligations and other circumstances set forth in the Certificate of Designation will trigger a redemption event. The Certificate of Designations provides for customary adjustments in the event of dividends or stock splits and anti-dilution protection.

On August 17, 2020, Amergent and the holders of Series 2 Preferred entered into a Waiver, Consent and Amendment to Certificate of Designations ("COD Amendment") extending the True-Up Date to December 10, 2020. In exchange, (i) Amergent issued warrants to purchase 134,000 shares of common stock to the holders of Series 2 Preferred, (ii) issued a cash payment of $66,000 to the holders of Series 2 Preferred agreed to pay expenses of the holders of Series 2 Preferred incurred in connection with the Amendment and (iii) released the holders of Series 2 Preferred from claims related to the Certificate of Designations and the holders' investments in Amergent or its predecessor. Other than the issuance date, the new warrants are identical to the original warrants issued to the Series 2 Preferred investors. An Amended and Restated Certificate of Designations of Series 2 Convertible Preferred Stock ("Amended COD") that provides for the extension of the True-Up Date to December 10, 2020 and provides that the Amergent may not access any portion of funds held in the segregated account until the obligations under Series 2 Preferred are satisfied in full, was filed on August 17, 2020.

On February 16, 2021, the Company and the holders of the Series 2 Preferred Stock entered into a Waiver, Consent and Amendment to the Certificate of Designations (the "Waiver"). Pursuant to the Waiver, the Company filed the Second Amendment and Restated Certificate of Designations of Series 2 Convertible Preferred Stock ("Amended COD") (i) providing for the extension of the True-Up Payment to April 1, 2021, (ii) providing for the deduction of proceeds to the original holders from sales of Series 2 Preferred for the True-Up Payment, with the Delaware Secretary of State and (iii) providing for a reduction in amount required to be held in a segregated cash account from $1,250,000 to $850,000.

*Assumption of 10% Debentures*

See "Agreements Related to the Spin-Off-Debenture Refinancing" above.

**BUSINESS**

Amergent is in the business of owning, operating and franchising fast casual dining concepts domestically and internationally.

We operate and franchise a system-wide total of 35 fast casual restaurants of which 26 are company-owned and included in our consolidated and combined financial statements, and 9 are owned and operated by franchisees under franchise agreements.

American Burger Company ("ABC") is a fast-casual dining chain consisting of 3 locations in North Carolina and New York, known for its diverse menu featuring fresh salads, customized burgers, milk shakes, sandwiches, and beer and wine.

BGR: The Burger Joint ("BGR") was acquired in March 2015 and currently consists of 7 company-owned locations in the United States and 9 franchisee-operated locations in the United States and the Middle East.

Little Big Burger ("LBB") was acquired in September 2015 and currently consists of 15 company-owned locations in the Portland, Oregon, Seattle, Washington, and Charlotte, North Carolina areas. Of the company-owned restaurants, 8 of those locations are operated under partnership agreements with investors we have determined we are the primary beneficiary as we control the management and operations of the stores and the partner supplies the capital to open the store in exchange for a noncontrolling interest.

As of December 31, 2020, we operated 1 company-owned Hooters full-service restaurant in the United Kingdom. Hooters restaurants are casual beach-themed establishments featuring music, sports on large flat screens, and a menu that includes seafood, sandwiches, burgers, salads and Hooters original chicken wings.

Through the use of partnerships, the Company partners with private investors who contribute all or substantially all of the capital required to open a restaurant in return for an ownership interest in the LLC and an economic interest in the net income of the restaurant location. The Company manages the operations of the restaurant in return for a management fee and an economic interest in the net income of the restaurant location. While terms may vary by LLC, the investor generally contributes between $250,000 and $350,000 per location and is entitled to 80% of the net income of the LLC until such time as the investor recoups the initial investment and the investor return on net income changes from 80% to 50%. The Company contributes the intellectual property and management related to operating a Little Big Burger, manages the construction, opening and ongoing operations of the store in return for a 5% management fee and 20% of net income until such time as the investor recoups the initial investment and the Company return on net income changes from 20% to 50%.

Additionally, we utilize franchise agreements to allow third parties to franchise a restaurant, and thus, are able to utilize the intellectual property, trademark, and trade dress in return for a franchise fee. The franchise agreement provides the franchisee with a designated territory or marketing area for an initial term of 10 years, with four successive five- year renewals. An upfront fee of $40,000 is required along with a $5,000 renewal fee and continuing fees based on a percent of revenues. We recognize the upfront fee allocated to each restaurant as revenue on a straight-line basis over the restaurant's license term, which generally begins upon the signing of the contract for area development agreements and upon the signing of a store lease for franchise agreements. The payments for these upfront fees are generally received upon contract execution. Continuing fees, which are based upon a percentage of franchisee revenues (typically 5.5%) and are not subject to any constraints, are recognized on the accrual basis as those sales occur. The payments for these continuing fees are generally made on a weekly basis.

Franchises must be operated in strict compliance with our operations manual, which prescribes staffing requirements, minimum months, days and hours of operation, techniques and processes for service, length and method of training personnel, working capital and inventory requirements, accounting system and other operational standards. We provide up to five days of on-site training at no charge to franchisee. Additional on-site training may be requested by franchisee and will be provided at a daily rate of $500. We have the right to approve the property lease for each new franchise. We maintain image control and may direct a franchise to remodel. We provide specifications for equipment, safety and security, subject to additional location regulations. Franchisees must utilize designated, approved suppliers or obtain pre-approval of any new supplier. Franchisees have certain prescribed marketing requirements and we may require franchisee to contribute a percentage of net sales to a regional brand development fund. Further, we may require certain of franchisee's personnel to attend an annual conference or all franchisee's personnel to attend refresher training, at franchisee's sole expense.

Franchisees have sole control over the day-to-day operations of the franchise. The franchisee is responsible for the hiring and termination of its personnel and compliance with applicable laws. Franchisee must sell wine and beer at the store and may opt to sell other alcoholic beverages. Franchisee is responsible for obtaining all required business licenses, including liquor licenses and to carry required insurance.

Any improvements or new concepts developed by a franchisee (such as improvements to proprietary recipes, equipment, merchandise or software) belong to us. Our franchise agreement contains confidentiality and non-disclosure covenants and franchisee must require its personnel to execute confidentiality and non-disclosure agreements.

We also operate 1 Hooters location in the United Kingdom. Hooters restaurants are casual beach-themed establishments featuring music, sports on large flat screens, and a menu that includes seafood, sandwiches, burgers, salads, and of course, Hooters original chicken wings and the "nearly world famous" Hooters Girls. Amergent started initially as an investor in Hooters of America and subsequently evolved into a franchisee operator. We continue to hold a minority investment in corporate owned Hooters. However, we do not currently intend to open additional Hooters restaurants and instead plan to utilize the cash flows from these two restaurants to support growth in our other fast casual brands.

Restaurant Geographic Locations

*United States*

We currently operate ABC, BGR and LBB restaurants in the United States. ABC is in North Carolina and New York. BGR operates company restaurants in the mid-Atlantic region of the United States, as well as franchise locations across the US and internationally. LBB operates in Oregon, Washington and North Carolina. We also operate gaming machines in Portland, Oregon under license from the Oregon Lottery Commission.

*Europe*

We currently own and operate one Hooters restaurant in the United Kingdom located in Nottingham, England.

Competition

The restaurant industry is extremely competitive. We compete with other restaurants on the taste, quality and price of our food offerings. Additionally, we compete with other restaurants on service, ambience, location and overall customer experience. We believe that we compete primarily with local and regional sports bars and national casual dining and quick casual establishments, and to a lesser extent with quick service restaurants in general. Many of our competitors are well-established national, regional or local chains and many have greater financial and marketing resources than we do. We also compete with other restaurant and retail establishments for site locations and restaurant employees.

Proprietary Rights

We have trademarks and trade names associated with American Burger, BGR and Little Big Burger. We believe that the trademarks, service marks and other proprietary rights that we use in our restaurants have significant value and are important to our brand-building efforts and the marketing of our restaurant concepts. Although we believe that we have sufficient rights to all of our trademarks and service marks, we may face claims of infringement that could interfere with our ability to market our restaurants and promote our brand. Any such litigation may be costly and divert resources from our business. Moreover, if we are unable to successfully defend against such claims, we may be prevented from using our trademarks or service marks in the future and may be liable for damages.

We also use the "Hooters" mark and certain other service marks and trademarks used in our Hooters restaurant pursuant to our franchise agreements with Hooters of America.

Government Regulation

*Environmental regulation*

We are subject to a variety of federal, state and local environmental laws and regulations. Such laws and regulations have not had a significant impact on our capital expenditures, earnings or competitive position.

*Local regulation*

Our locations are subject to licensing and regulation by a number of government authorities, which may include health, sanitation, safety, fire, building and other agencies in the countries, states or municipalities in which the restaurants are located. Opening sites in new areas could be delayed by license and approval processes or by more requirements of local government bodies with respect to zoning, land use and environmental factors. Our agreements with our franchisees require them to comply with all applicable federal, state and local laws and regulations.

Each restaurant requires appropriate licenses from regulatory authorities allowing it to sell liquor, beer and wine, and each restaurant requires food service licenses from local health authorities. Our licenses to sell alcoholic beverages may be suspended or revoked at any time for cause, including violation by us or our employees of any law or regulation pertaining to alcoholic beverage control. We are subject to various regulations by foreign governments related to the sale of food and alcoholic beverages and to health, sanitation and fire and safety standards. Compliance with these laws and regulations may lead to increased costs and operational complexity and may increase our exposure to governmental investigations or litigation.

Franchise Regulations

We must comply with regulations adopted by the Federal Trade Commission (the "FTC") and with several state and foreign laws that regulate the offer and sale of franchises. The FTC's Trade Regulation Rule on Franchising ("FTC Rule") and certain state and foreign laws require that we furnish prospective franchisees with a franchise disclosure document containing information prescribed by the FTC Rule and applicable state and foreign laws and regulations. We register the disclosure document in domestic and foreign jurisdictions that require registration for the sale of franchises. Our domestic franchise disclosure document complies with FTC Rule and various state disclosure requirements, and our international disclosure documents comply with applicable requirements.

We also must comply with state and foreign laws that regulate some substantive aspects of the franchisor-franchisee relationship. These laws may limit a franchisor's ability to: terminate or not renew a franchise without good cause; interfere with the right of free association among franchisees; disapprove the transfer of a franchise; discriminate among franchisees regarding charges, royalties and other fees; and place new stores near existing franchises. Bills intended to regulate certain aspects of franchise relationships have been introduced into the United States Congress on several occasions during the last decade, but none have been enacted.

Employment Regulations

We are subject to state and federal employment laws that govern our relationship with our employees, such as minimum wage requirements, overtime and working conditions and citizenship requirements. Many of our employees are paid at rates which are influenced by changes in the federal and state wage regulations. Accordingly, changes in the wage regulations could increase our labor costs. The work conditions at our facilities are regulated by the Occupational Safety and Health Administration and are subject to periodic inspections by this agency. In addition, the enactment of recent legislation and resulting new government regulation relating to healthcare benefits may result in additional cost increases and other effects in the future.

Gaming Regulations

We are also subject to regulations in Oregon where we operate gaming machines. Gaming operations are generally highly regulated and conducted under the permission and oversight of the state or local gaming commission, lottery or other government agencies.

Other Regulations

We are subject to a variety of consumer protection and similar laws and regulations at the federal, state and local level. Failure to comply with these laws and regulations could subject us to financial and other penalties.

Seasonality

The sales of our restaurants may peak at various times throughout the year due to certain promotional events, weather and holiday related events. For example, our domestic fast casual restaurants tend to peak in the Spring, Summer and Fall months when the weather is milder. Quarterly results also may be affected by the timing of the opening of new stores and the closing of existing stores. For these reasons, results for any quarter are not necessarily indicative of the results that may be achieved for the full fiscal year.

Human Capital Resources

As of December 31, 2020, we had approximately 281 employees, including 3 in the United Kingdom, and 278 in the United States. We employ additional people on a part-time basis as needed.

Working Capital Practices

Historically, we have financed our operations through public and private sales of common stock, issuance of preferred and common stock, convertible debt instruments, term loans and credit lines from financial institutions, and cash generated from operations. On March 27, 2020, Congress passed "The Coronavirus Aid, Relief, and Economic Security Act" (CARES Act), which included the "Paycheck Protection Program" (PPP) for small businesses. On April 27, 2020, Amergent received a PPP loan in the amount of $2.1 million. On February 25, 2021, the Company received a second PPP loan of $2.0 million. These PPP loans may be forgiven if certain criteria are met.

**Available Information**

We are subject to the reporting requirements of the Exchange Act and, accordingly, we file annual reports, quarterly reports and other information with the Securities and Exchange Commission, or SEC. Access to copies of our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and other filings with the SEC, including amendments to such filings, may be obtained free of charge from our website, http://www.amergenthg.com. These filings are available promptly after we file them with, or furnish them to, the SEC. We are not incorporating our website or any information from the website into this annual report. The SEC also maintains a website, http://www.sec.gov, that contains our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Report on Form 8-K and other filings with the SEC. Access to these filings is free of charge.

**ITEM 1A. RISK FACTORS**

*The following are some of the risks and uncertainties that could cause our actual results to differ materially from those presented in our forward-looking statements. The risks and uncertainties described below are not the only ones we face but do represent those risks and uncertainties that we believe are material to us. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also harm our business. All forward-looking statements in this document are based on information available to us as of the date hereof, and we assume no obligations to update any such forward-looking statements.*

***RISKS RELATED TO DELINQUENT PAYROLL TAXES***

***Various subsidiaries of the Company are delinquent in payment of payroll taxes to taxing authorities prior to the current year when previous management was in place, and a failure to remit these payments promptly or through settlements could have a material adverse effect on our business, financial condition and results of operations.***

As of December 31, 2020, approximately $3.0 million of employee and employer taxes (including estimated penalties and interest) has been accrued but not remitted in years prior to 2019 to certain taxing authorities by certain subsidiaries of the Company for cash compensation paid. As a result, these subsidiaries of the Company are liable for such payroll taxes. These various subsidiaries of the Company have received warnings and demands from the taxing authorities and management is prioritizing and working with the taxing authorities to make these payments in order to avoid further penalties and interest. Failure to remit these payments promptly could result in increased penalty fees and have a material adverse effect on our business, financial condition and results of operations. Interest and penalties on the remaining liability are accruing at approximately $15,000 per month.

If an existing or future restaurant is not profitable, and we decide to close it, we may nonetheless be committed to perform our obligations under the applicable lease including, among other things, paying the base rent for the balance of the lease term. In addition, as each of our leases expires, we may fail to negotiate renewals, either on commercially acceptable terms or at all, which could cause us to pay increased occupancy costs or to close restaurants in desirable locations. These potential increased occupancy costs and closed restaurants could have a material adverse effect on our business, financial condition and results of operations.

As of December 31, 2020, there were eight restaurants that the Company had abandoned and maintained its operating lease liabilities as the Company had not negotiated the termination of the underlying leases with its landlord. Such liabilities amount to approximately $3.1 million at December 31, 2020 and are reflected as operating lease liabilities on the consolidated and combined balance sheet included in this report.

We are not contractually obligated to guarantee leasing arrangements between franchisees and their landlords.

### *RISKS RELATED TO CORONAVIRUS*

***Pandemics or disease outbreaks, such as the recent outbreak of the novel coronavirus (COVID-19 virus), have disrupted, and may continue to disrupt, our business, and have materially affected our operations and results of operations.***

Pandemics or disease outbreaks such as the novel coronavirus (COVID-19 virus) have and may continue to have a negative impact on customer traffic at our restaurants, may make it more difficult to staff our restaurants and, in more severe cases, may cause a temporary inability to obtain supplies and/or increase to commodity costs and have caused closures of affected restaurants, sometimes for prolonged periods of time. We have temporarily shifted to a “to-go” only operating model, suspending sit-down dining. We have also implemented closures, modified hours or reductions in onsite staff, resulting in cancelled shifts for some of our employees. COVID-19 may also materially adversely affect our ability to implement our growth plans, including delays in construction of new restaurants, or adversely impact our overall ability to successfully execute our plans to enter into new markets. These changes have negatively impacted our results of operations, and these and any additional changes may materially adversely affect our business or results of operations in the future, and may impact our liquidity or financial condition, particularly if these changes are in place for a significant amount of time. In addition, our operations could be further disrupted if any of our employees or employees of our business partners were suspected of having contracted COVID19 or other illnesses since this could require us or our business partners to quarantine some or all such employees or close and disinfect our impacted restaurant facilities. If a significant percentage of our workforce or the workforce of our business partners are unable to work, including because of illness or travel or government restrictions in connection with pandemics or disease outbreaks, our operations may be negatively impacted, potentially materially adversely affecting our business, liquidity, financial condition or results of operations. Furthermore, such viruses may be transmitted through human contact, and the risk of contracting viruses could continue to cause employees or guests to avoid gathering in public places, which has had, and could further have, adverse effects on our restaurant guest traffic or the ability to adequately staff restaurants, in addition to the measures we have already taken with respect to shifting to a “to-go” only operating model. We could also be adversely affected if government authorities continue to impose restrictions on public gatherings, human interactions, operations of restaurants or mandatory closures, seek voluntary closures, restrict hours of operations or impose curfews, restrict the import or export of products or if suppliers issue mass recalls of products. Additional regulation or requirements with respect to the compensation of our employees could also have an adverse effect on our business. Even if such measures are not implemented and a virus or other disease does not spread significantly within a specific area, the perceived risk of infection or health risk in such area may adversely affect our business, liquidity, financial condition and results of operations. The COVID-19 pandemic and mitigation measures have also had an adverse impact on global economic conditions, which could have an adverse effect on our business and financial condition. Our revenue and operating results may be affected by uncertain or changing economic and market conditions arising in connection with and in response to the COVID-19 pandemic, including prolonged periods of high unemployment, inflation, deflation, prolonged weak consumer demand, a decrease in consumer discretionary spending, political instability or other changes. The significance of the operational and financial impact to us will depend on how long and widespread the disruptions caused by COVID-19, and the corresponding response to contain the virus and treat those affected by it, prove to be. Currently, many states and municipalities in the U.S. and abroad have temporarily suspended the operation of restaurants in light of COVID-19.

## *RISKS RELATED TO MATERIAL WEAKNESS IN OUR INTERNAL CONTROL AND PROCEDURES AND INTERNAL CONTROL OVER FINANCIAL REPORTING*

***We have identified a material weakness in our internal control and procedures and internal control over financial reporting. If not remediated, our failure to establish and maintain effective disclosure controls and procedures and internal control over financial reporting could result in material misstatements in our financial statements and a failure to meet our reporting and financial obligations, each of which could have a material adverse effect on our financial condition and the trading price of our common stock.***

Maintaining effective internal control over financial reporting and effective disclosure controls and procedures are necessary for us to produce reliable financial statements. We have re-evaluated our internal control over financial reporting and our disclosure controls and procedures and concluded that they were not effective as of December 31, 2020 and we concluded there was a material weakness in the design of our internal control over financial reporting.

A material weakness is defined as a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

We identified a deficiency related to our financial close process including maintaining a sufficient compliment of personnel commensurate with our accounting and financial reporting requirements, as well as development and extension of controls over the recording of journal entries and proper cutoff of accounts payable and accrued expenses at period end and in assessing agreements and the accounting treatment required to record the agreements correctly in the financial records.

The Company is committed to remediating its material weaknesses as promptly as possible. Implementation of the Company's remediation plans has commenced and is being overseen by the audit committee. As part of its remediation efforts, the Company hired two third party accounting firms with technical accounting experience during 2020 to support management to ensure accurate reporting. Further, the Company is in the process of designing and implementing procedures for control over the segregation of duties for the preparation of, approval and recording of journal entries and procedure to obtain the proper cut-off of accounts payable and accrued expenses in a period. However, there can be no assurance as to when these material weaknesses will be remediated or that additional material weaknesses will not arise in the future. Even effective internal control can provide only reasonable assurance with respect to the preparation and fair presentation of financial statements. Any failure to remediate the material weaknesses, or the development of new material weaknesses in our internal control over financial reporting, could result in material misstatements in our financial statements, which in turn could have a material adverse effect on our financial condition and the trading price of our common stock and we could fail to meet our financial reporting obligations.

## *RISKS RELATED TO OUR OPERATING LOSSES*

***We have not been profitable to date and operating losses could continue.***

We have incurred operating losses and generated negative cash flows since our inception and have financed our operations principally through equity investments and borrowings. Future profitability is difficult to predict with certainty. Failure to achieve profitability could materially and adversely affect the value of our Company and our ability to effect additional financings. The success of the business depends on our ability to increase revenues to offset expenses. If our revenues fall short of projections or we are unable to reduce operating expenses, our business, financial condition and operating results will be materially adversely affected.

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

Our financial statements as of and for the fiscal years ended December 31, 2019 and December 31, 2020 were prepared under the assumption that we will continue as a going concern for the next 12 months from the date of issuance of these financial statements. Our independent registered public accounting firm has issued a report related to our annual financial statements that includes an explanatory paragraph referring to our losses from operations and expressing substantial doubt in our ability to continue as a going concern without additional capital becoming available. Our ability to continue as a going concern is dependent upon our ability to obtain additional financing, re-negotiate or extend existing indebtedness, obtain further operating efficiencies, reduce expenditures and ultimately, create profitable operations. We may not be able to refinance or extend our debt or obtain additional capital on reasonable terms. Our financial statements do not include adjustments that would result from the outcome of this uncertainty.

## *RISKS RELATED TO OUR DEBT FINANCING ARRANGEMENTS AND SIGNNIFICANT SHAREHOLDERS*

***We have debt financing arrangements that could have a material adverse effect on our financial health and our ability to obtain financing in the future and may impair our ability to react quickly to changes in our business.***

Our exposure to debt financing could limit our ability to satisfy our obligations, limit our ability to operate our business and impair our competitive position. For example, it could:

- increase our vulnerability to adverse economic and industry conditions, including interest rate fluctuations, because a portion of our borrowings are at variable rates of interest;
- require us to dedicate significant future cash flows to the repayment of debt, reducing the availability of cash to fund working capital, capital expenditures or other general corporate purposes;
- limit our flexibility in planning for, or reacting to, changes in our business and industry; and
- limit our ability to obtain additional debt or equity financing due to applicable financial and restrictive covenants contained in our debt agreements.

We may also incur additional indebtedness in the future, which could materially increase the impact of these risks on our financial condition and results of operations. Failure to successfully recapitalize the business could have a material adverse effect on our business, financial condition and results of operations.

***Our 10% Secured Convertible Debenture in favor of Oz Rey LLC ("Oz Rey") contains financial and other covenants that, if breached, could trigger default.***

Pursuant to our 10% Secured Convertible Debenture dated April 1, 2020 in favor of Oz Rey, we are required to:

- maintain a positive EBITDA
- timely file all reports required by Section 12(g) or Section 15(d) of the Exchange Act
- maintain positive net earnings;
- maintain a minimum market capitalization (based upon the number of shares of common stock outstanding and a 30-day VWAP) of at least $5,500,000
- use commercially reasonable efforts to list the common stock on a Nasdaq Stock Market exchange;

Any breach that is not waived by Oz Rey could trigger default.

***Oz Rey beneficially owns approximately 72.6%*** of our common stock and has right to appoint two directors to our board. Although Oz Rey does not currently hold any of our outstanding common stock, Oz Rey may greatly influence the outcome of all matters on which stockholders vote.

Because Oz Rey beneficially owns approximately 72.6% of our common stock (based on shares underlying 10% secured convertible debenture and currently exercisable warrants), it may greatly influence the outcome of all matters on which stockholders vote. Oz Rey LLC may also, upon reasonably notice to the Company, require the Company to include in its proxy materials, for any annual meeting of shareholders being held by the Company, a proposal to amend the Company's certificate of incorporation to increase the Company's authorized shares to a number sufficient to allow for conversion of all shares underlying the debenture, on a fully diluted basis, which would increase Oz Rey's beneficial ownership of our common stock to approximately 72.6%. Oz Rey also has the right to appoint two directors to our board, which right Oz Rey has not yet exercised. As a result, Oz Rey is able to affect the outcome of, or exert significant influence over, all matters requiring stockholder approval, including the election and removal of directors and any change in control. This concentration of ownership of our common stock could have the effect of delaying or preventing a change of control of us or otherwise discouraging or preventing a potential acquirer from attempting to obtain control of us. This, in turn, could have a negative effect on the market price of our common stock. It could also prevent our stockholders from realizing a premium over the market prices for their shares of common stock. Moreover, the interests of this concentration of ownership may not always coincide with our interests or the interests of other stockholders, and accordingly, they could cause us to enter into transactions or agreements that we would not otherwise consider. (Beneficial ownership is calculated pursuant to Section 13d-3 of the Securities Exchange Act of 1934, as amended, and includes shares underlying derivative securities which may be exercised or converted within 60 days.)

***Oz Rey's interests may not always coincide with the interests of other holders of our common stock.***

Oz Rey is a secured creditor of Amergent, holding a first priority secured note with a principal balance of $4,037,889, guaranteed by all of our subsidiaries. Oz Rey's security interest is subordinate only to certain interests of holders of our Series 2 Preferred stock and guaranteed by all Amergent's subsidiaries. As such, Oz Rey's interests may not always coincide with the interests of other holders of - common stock.

***Transactions involving our common stock engaged by significant stockholders may have an adverse effect on the price of our stock.***

The holders of our Series 2 Preferred contractually have a beneficial ownership limitation, as a group, together with their affiliates, of 9.99%. However, they hold registration rights for the shares underlying the Series 2 Preferred. The beneficial ownership limitation is not designed to inhibit sales of the underlying common stock. Oz Rey also holds registration rights for shares of common stock underlying 10% debentures and warrants. Sales of our shares by these stockholders could have the effect of lowering our stock price. The perceived risk associated with the possible sale of a large number of shares by these stockholders, or the adoption of significant short positions by hedge funds or other significant investors, could cause some of our stockholders to sell their stock, thus causing the price of our stock to decline. In addition, actual or anticipated downward pressure on our stock price due to actual or anticipated sales of stock could cause other institutions or individuals to engage in short sales of our common stock, which may further cause the price of our stock to decline.

## *RISKS RELATED TO OUR BUSINESS MODEL*

***We do not have full operational control over the franchisee-operated restaurants.***

We are and will be dependent on our franchisees to maintain quality, service and cleanliness standards, and their failure to do so could materially affect our brands and harm our future growth. Our franchisees have flexibility in their operations, including the ability to set prices for our products in their restaurants, hire employees and select certain service providers. In addition, it is possible that some franchisees may not operate their restaurants in accordance with our quality, service and cleanliness, health or product standards. Although we intend to take corrective measures if franchisees fail to maintain high quality service and cleanliness standards, we may not be able to identify and rectify problems with sufficient speed and, as a result, our image and operating results may be negatively affected.

***Any prior acquisitions, as well as future acquisitions, may have unanticipated consequences that could harm our business and our financial condition.***

Any acquisition that we pursue, whether successfully completed or not, involves risks, including:

- material adverse effects on our operating results, particularly in the fiscal quarters immediately following the acquisition as the acquired restaurants are integrated into our operations;
- risks associated with entering into markets or conducting operations where we have no or limited prior experience;
- problems retaining key personnel;

- potential impairment of tangible and intangible assets and goodwill acquired in the acquisition;
- potential unknown liabilities;
- difficulties of integration and failure to realize anticipated synergies; and
- disruption of our ongoing business, including diversion of management's attention from other business concerns.

Future acquisitions of restaurants or other businesses, which may be accomplished through a cash purchase transaction, the issuance of our equity securities or a combination of both, could result in potentially dilutive issuances of our equity securities, the incurrence of debt and contingent liabilities and impairment charges related to goodwill and other intangible assets, any of which could harm our business and financial condition.

***We are subject to the risks associated with leasing space subject to long-term non-cancelable leases.***

We lease all the real property and we expect the new restaurants we open in the future will also be leased. We are obligated under non-cancelable leases for our restaurants and our corporate headquarters. Our restaurant leases generally require us to pay a proportionate share of real estate taxes, insurance, common area maintenance charges and other operating costs. Some restaurant leases provide for contingent rental payments based on sales thresholds, although we generally do not expect to pay significant contingent rent on these properties based on the thresholds in those leases. Additional sites that we lease are likely to be subject to similar long-term non-cancelable leases.

If an existing or future restaurant is not profitable, and we decide to close it, we may nonetheless be committed to perform our obligations under the applicable lease including, among other things, paying the base rent for the balance of the lease term. In addition, as each of our leases expires, we may fail to negotiate renewals, either on commercially acceptable terms or at all, which could cause us to pay increased occupancy costs or to close restaurants in desirable locations. These potential increased occupancy costs and closed restaurants could have a material adverse effect on our business, financial condition and results of operations.

As of December 31, 2020, there were eight restaurants that the Company had abandoned and maintained its operating lease liabilities as the Company had not negotiated the termination of the underlying leases with its landlord. Such liabilities amount to approximately $3.1 million at December 31, 2020 and are reflected as operating lease liabilities on the consolidated and combined balance sheet included in this report.

We are not contractually obligated to guarantee leasing arrangements between franchisees and their landlords.

***We may not attain our target development goals and aggressive development could cannibalize existing sales.***

Our growth strategy depends in large part on our ability to open new stores (either directly or through franchisees or joint venture partners). The successful development of new units will depend in large part on our ability and the ability of our franchisees to open new restaurants and to operate these restaurants on a profitable basis. We cannot guarantee that we, or our franchisees or joint venture partners, will be able to achieve our expansion goals or that new restaurants will be operated profitably. Further, there is no assurance that any new restaurant will produce operating results like those of our existing restaurants. Other risks that could impact our ability to increase our ability to open new stores include prevailing economic conditions and our, or our franchisees' and joint venture partners', ability to obtain suitable restaurant locations, obtain required permits and approvals in a timely manner and hire and train qualified personnel.

Our franchisees and joint venture partners also frequently depend upon financing from banks and other financial institutions in order to construct and open new restaurants. If it becomes more difficult or expensive for them to obtain financing to develop new restaurants, our planned growth could slow, and our future revenue and cash flows could be adversely impacted.

In addition, the new restaurants could impact the sales of our existing restaurants nearby. It is not our intention to open new restaurants that materially cannibalize the sales of our existing restaurants. However, as with most growing retail and restaurant operations, there can be no assurance that sales cannibalization will not occur or become more significant in the future as we increase our presence in existing markets over time.

### *RISKS RELATED TO SPIN-OFF TRANSACTION*

***The Spin-Off does not qualify as a tax-free transaction, and therefore you and our Parent could be subject to material amounts of taxes.***

The distribution of our shares by our Parent pursuant to this Form 10 does not qualify as a tax-free spin-off to our Parent's shareholders under Section 355 of the Code. As a consequence, you could be subject to material amounts of taxes. Each U.S. holder of our Parent's common stock who received our common stock in the Spin-Off will generally be treated as receiving a taxable distribution of property in an amount equal to the fair market value of our common stock received. That distribution will be taxable to each such shareholder as a dividend to the extent of such shareholder's share of our Parent's current and accumulated earnings and profits. For each such shareholder, any amount that exceeded its share of our Parent's earnings and profits will be treated first as a non-taxable return of capital to the extent of such shareholder's tax basis in his or her or its Parent common stock with any remaining amount being taxed as a capital gain. Our Parent will be subject to tax as if it had sold common stock in a taxable sale for their fair market value and would recognize taxable gain in an amount equal to the excess of the fair market value of such shares over its tax basis in such shares.

***The Spin-Off could give rise to disputes or other unfavorable effects, which could have a material adverse effect on our business, financial position and results of operations.***

Disputes with third parties could arise out of the distribution, and we could experience unfavorable reactions to the distribution from employees, investors, or other interested parties. These disputes and reactions of third parties could have a material adverse effect on our business, financial position, and results of operations. In addition, following the Spin-Off, disputes between us and Sonnet could arise in connection with any of the Indemnification Agreement or other agreements between the parties.

***Our potential indemnification obligations pursuant to the Indemnification Agreement could materially adversely affect us.***

Under the Indemnification Agreement we have an obligation to indemnify Sonnet for liabilities associated with our business and the assets and liabilities distributed to us or our subsidiaries in connection with the Spin-Off. We have obtained a Tail Policy with policy limits in the amount of $3,000,000 to cover such liabilities; however, if we have to indemnify our Parent for unanticipated liabilities in excess of this amount, the cost of such indemnification obligations may have a material and adverse effect on our financial performance.

***A court could deem the Spin-Off to be a fraudulent conveyance and void the transaction or impose substantial liabilities upon us.***

If the transaction is challenged by a third party, a court could deem the distribution by our Parent of our common stock or certain internal restructuring transactions undertaken by us in connection with the Spin-off to be a fraudulent conveyance or transfer. Fraudulent conveyances or transfers are defined to include transfers made or obligations incurred with the actual intent to hinder, delay or defraud current or future creditors or transfers made or obligations incurred for less than reasonably equivalent value when the debtor was insolvent, or that rendered the debtor insolvent, inadequately capitalized or unable to pay its debts as they become due. In such circumstances, a court could void the transactions or impose substantial liabilities upon us, which could adversely affect our financial condition and our results of operations. Among other things, the court could require our stockholders to return to us some or all of the shares of our common stock issued in the Spin-off or require us to fund liabilities of other companies involved in the restructuring transactions for the benefit of creditors.

***Our suppliers, vendors or other companies with whom we conduct business may need assurances that our financial stability on a stand-alone basis is sufficient to satisfy their requirements for doing or continuing to do business with them.***

Some of our suppliers, vendors or other companies with whom we conduct business may need assurances that the Company's financial stability on a stand-alone basis is sufficient to satisfy their requirements for doing or continuing to do business with them. Any failure of parties to be satisfied with our financial stability could have an adverse effect on our business, financial condition, results of operations and cash flows.

***There are risks inherent in expansion of operations, including our ability to generate profits from new restaurants, find suitable sites and develop and construct locations in a timely and cost-effective way.***

We cannot project with certainty the number of new restaurants we and our franchisees will open. Our failure to effectively develop locations in new territories would adversely affect our ability to execute our business plan by, among other things, reducing our revenues and profits and preventing us from realizing our strategy. Furthermore, we cannot assure you that our new restaurants will generate revenues or profit margins consistent with those currently operated by us.

The number of openings and the performance of new locations will depend on various factors, including:

- the availability of suitable sites for new locations;
- our ability to negotiate acceptable lease or purchase terms for new locations, obtain adequate financing, on favorable terms, required to construct, build-out and operate new locations and meet construction schedules, and hire and train and retain qualified restaurant managers and personnel;
- managing construction and development costs of new restaurants at affordable levels;
- the establishment of brand awareness in new markets; and
- the ability of our Company to manage expansion.

Additionally, competition for suitable restaurant sites in target markets is intense. Restaurants we open in new markets may take longer to reach expected sales and profit levels on a consistent basis and may have higher construction, occupancy or operating costs than restaurants we open in existing markets, thereby affecting our overall profitability.

New markets may have competitive conditions, consumer tastes and discretionary spending patterns that are more difficult to predict or satisfy than our existing markets. We may need to make greater investments than we originally planned in advertising and promotional activity in new markets to build brand awareness. We may find it more difficult in new markets to hire, motivate and keep qualified employees who share our vision, passion and culture. We may also incur higher costs from entering new markets if, for example, we assign regional managers to manage comparatively fewer restaurants than in more developed markets.

We may not be able to successfully develop critical market presence for our brand in new geographical markets, as we may be unable to find and secure attractive locations, build name recognition or attract new customers. Inability to fully implement or failure to successfully execute our plans to enter new markets could have a material adverse effect on our business, financial condition and results of operations.

Not all of these factors are within our control or the control of our partners, and there can be no assurance that we will be able to accelerate our growth or that we will be able to manage the anticipated expansion of our operations effectively.

***We may not be able to adequately protect our intellectual property, which could harm the value of our brand and have a material adverse effect on our business, financial condition and results of operations.***

Our intellectual property is material to the conduct of our business. Our ability to implement our business plan successfully depends in part on our ability to further build brand recognition using our trademarks, tradenames and other proprietary intellectual property, including our name and logos and the unique ambience of our restaurants. While it is our policy to protect and defend vigorously our rights to our intellectual property, we cannot predict whether steps taken by us to protect our intellectual property rights will be adequate to prevent misappropriation of these rights or the use by others of restaurant features based upon, or otherwise similar to, our restaurant concept. It may be difficult for us to prevent others from copying elements of our concept and any litigation to enforce our rights will likely be costly and may not be successful. Although we believe that we have sufficient rights to all our trademarks and service marks, we may face claims of infringement that could interfere with our ability to market our restaurants and promote our brand. Any such litigation may be costly and could divert resources from our business. Moreover, if we are unable to successfully defend against such claims, we may be prevented from using our trademarks or service marks in the future and may be liable for damages, which in turn could have a material adverse effect on our business, financial condition and results of operations.

In addition, we license certain of our proprietary intellectual property, including our name and logos, to third parties. For example, we grant our franchisees and licensees a right to use certain of our trademarks in connection with their operation of the applicable restaurant. If a franchisee or other licensee fails to maintain the quality of the restaurant operations associated with the licensed trademarks, our rights to, and the value of, our trademarks could potentially be harmed. Negative publicity relating to the franchisee or licensee could also be incorrectly associated with us, which could harm our business. Failure to maintain, control and protect our trademarks and other proprietary intellectual property would likely have a material adverse effect on our business, financial condition and results of operations and on our ability to enter into new franchise agreements.

## GENERAL RISKS RELATED TO OUR BUSINESS

***Litigation and unfavorable publicity could negatively affect our results of operations as well as our future business.***

We are subject to potential for litigation and other customer complaints concerning our food safety, service and/or other operational factors. Guests may file formal litigation complaints that we are required to defend, whether we believe them to be true or not. Substantial, complex or extended litigation could have an adverse effect on our results of operations if we incur substantial defense costs and our management is distracted. Employees may also, from time to time, bring lawsuits against us regarding injury, discrimination, wage and hour, and other employment issues. Additionally, potential disputes could subject us to litigation alleging non-compliance with franchise, development, support service, or other agreements. Additionally, we are subject to the risk of litigation by our stockholders as a result of factors including, but not limited to, performance of our stock price.

In certain states we are subject to “dram shop” statutes, which generally allow a person injured by an intoxicated person the right to recover damages from an establishment that wrongfully served alcoholic beverages to the intoxicated person. Some dram shop litigation against restaurant companies has resulted in significant judgments, including punitive damages. We carry liquor liability coverage as part of our existing comprehensive general liability insurance, but we cannot provide assurance that this insurance will be adequate in the event we are found liable in a dram shop case.

In recent years there has been an increase in the use of social media platforms and similar devices that allow individuals’ access to a broad audience of consumers and other interested persons. The availability of information on social media platforms is virtually immediate in its impact. A variety of risks are associated with the use of social media, including the improper disclosure of proprietary information, negative comments about our Company, exposure of personally identifiable information, fraud or outdated information. The inappropriate use of social media platforms by our guests, employees or other individuals could increase our costs, lead to litigation, or result in negative publicity that could damage our reputation, and create an adverse change in the business climate that impairs goodwill. If we are unable to quickly and effectively respond, we may suffer declines in guest traffic, which could materially affect our financial condition and results of operations.

***Food safety and foodborne illness concerns could have an adverse effect on our business.***

We cannot guarantee that our internal control and training will be fully effective in preventing all food safety issues at our restaurants, including any occurrences of foodborne illnesses such as salmonella, E. coli and hepatitis A. In addition, there is no guarantee that our franchise restaurants will maintain the high levels of internal control and training we require at our company-operated restaurants.

Furthermore, we and our franchisees rely on third-party vendors, making it difficult to monitor food safety compliance and increasing the risk that foodborne illness would affect multiple locations rather than a single restaurant. Some foodborne illness incidents could be caused by third-party vendors and transporters outside of our control. New illnesses resistant to our current precautions may develop in the future, or diseases with long incubation periods could arise, that could give rise to claims or allegations on a retroactive basis. One or more instances of foodborne illness in any of our restaurants or markets or related to food products we sell could negatively affect our restaurant revenue nationwide if highly publicized on national media outlets or through social media.

This risk exists even if it were later determined that the illness was wrongly attributed to us or one of our restaurants. Several other restaurant chains have experienced incidents related to foodborne illnesses that have had a material adverse effect on their operations. The occurrence of a similar incident at one or more of our restaurants, or negative publicity or public speculation about an incident, could have a material adverse effect on our business, financial condition and results of operations.

***We operate in the highly competitive restaurant industry. If we are not able to compete effectively, it will have a material adverse effect on our business, financial condition and results of operations.***

We face significant competition from restaurants in the fast-casual dining and traditional fast food segments of the restaurant industry. These segments are highly competitive with respect to, among other things, taste, price, food quality and presentation, service, location and the ambience and condition of each restaurant. Our competition includes a variety of locally owned restaurants and national and regional chains offering dine-in, carry-out, delivery and catering services. Many of our competitors have existed longer and have a more established market presence with substantially greater financial, marketing, personnel and other resources than we do. Among our competitors are a number of multi-unit, multi-market, fast casual restaurant concepts, some of which are expanding nationally. As we expand, we will face competition from these restaurant concepts as well as new competitors that strive to compete with our market segments. These competitors may have, among other things, lower operating costs, better locations, better facilities, better management, more effective marketing and more efficient operations. Additionally, we face the risk that new or existing competitors will copy our business model, menu options, presentation or ambience, among other things.

Any inability to successfully compete with the restaurants in our markets and other restaurant segments will place downward pressure on our customer traffic and may prevent us from increasing or sustaining our revenue and profitability. Consumer tastes, nutritional and dietary trends, traffic patterns and the type, number and location of competing restaurants often affect the restaurant business, and our competitors may react more efficiently and effectively to those conditions. Several of our competitors compete by offering menu items that are specifically identified as low in carbohydrates, gluten-free or healthier for consumers. In addition, many of our traditional fast food restaurant competitors offer lower-priced menu options or meal packages or have loyalty programs. Our sales could decline due to changes in popular tastes, “fad” food regimens, such as low carbohydrate diets, and media attention on new restaurants. If we are unable to continue to compete effectively, our traffic, sales and restaurant contribution could decline which would have a material adverse effect on our business, financial condition and results of operations.

***Our business could be adversely affected by declines in discretionary spending and may be affected by changes in consumer preferences.***

Our success depends, in part, upon the popularity of our food products. Shifts in consumer preferences away from our restaurants or cuisine could harm our business. Also, our success depends to a significant extent on discretionary consumer spending, which is influenced by general economic conditions and the availability of discretionary income. Accordingly, we may experience declines in sales during economic downturns or during periods of uncertainty. A continuing decline in the amount of discretionary spending could have a material adverse effect on our sales, results of operations, and business and financial condition.

***Increases in costs, including food, labor and energy prices, will adversely affect our results of operations.***

Our profitability is dependent on our ability to anticipate and react to changes in our operating costs, including food, labor, occupancy (including utilities and energy), insurance and supply costs. Various factors beyond our control, including climatic changes and government regulations, may affect food costs. Specifically, our dependence on frequent, timely deliveries of fresh meat and produce subject us to the risks of possible shortages or interruptions in supply caused by adverse weather or other conditions which could adversely affect the availability and cost of any such items. In the past, we have been able to recover some of our higher operating costs through increased menu prices. There have been, and there may be in the future, delays in implementing such menu price increases, and competitive pressures may limit our ability to recover such cost increases in their entirety.

Our ability to maintain consistent price and quality throughout our restaurants depends in part upon our ability to acquire specified food products and supplies in sufficient quantities from third-party vendors, suppliers and distributors at a reasonable cost. We do not control the businesses of our vendors, suppliers and distributors, and our efforts to specify and monitor the standards under which they perform may not be successful. If any of our vendors or other suppliers are unable to fulfill their obligations to our standards, or if we are unable to find replacement providers in the event of a supply or service disruption, we could encounter supply shortages and incur higher costs to secure adequate supplies, which would have a material adverse effect on our business, financial condition and results of operations.

Furthermore, if our current vendors or other suppliers are unable to support our expansion into new markets, or if we are unable to find vendors to meet our supply specifications or service needs as we expand, we could likewise encounter supply shortages and incur higher costs to secure adequate supplies, which could have a material adverse effect on our business, financial condition and results of operations.

***Changes in employment laws and minimum wage standards may adversely affect our business.***

Labor is a primary component in the cost of operating our restaurants. If we face labor shortages or increased labor costs because of increased competition for employees, higher employee turnover rates, increases in the federal, state or local minimum wage or other employee benefits costs (including costs associated with health insurance coverage), our operating expenses could increase, and our growth could be negatively impacted.

In addition, our success depends in part upon our ability to attract, motivate and retain enough well-qualified restaurant operators and management personnel, as well as a sufficient number of other qualified employees, including customer service and kitchen staff, to keep pace with our expansion schedule. In addition, restaurants have traditionally experienced relatively high employee turnover rates. Although we have not yet experienced significant problems in recruiting or retaining employees, our ability to recruit and retain such individuals may delay the planned openings of new restaurants or result in higher employee turnover in existing restaurants, which could have a material adverse effect on our business, financial condition and results of operations.

Various federal and state employment laws govern the relationship with our employees and impact operating costs. These laws include employee classification as exempt or non-exempt for overtime and other purposes, minimum wage requirements, unemployment tax rates, workers' compensation rates, immigration status and other wage and benefit requirements. Significant additional government-imposed increases in the following areas could have a material adverse effect on our business, financial condition and results of operations:

- Minimum wages;
- Mandatory health benefits;
- Vacation accruals;
- Paid leaves of absence, including paid sick leave; and
- Tax reporting.

We could also become subject to fines, penalties and other costs related to claims that we did not fully comply with all recordkeeping obligations of federal and state immigration compliance laws. These factors could have a material adverse effect on our business, financial condition and results of operations.

***We are subject to risks arising under federal and state labor laws.***

We are subject to risks under federal and state labor laws, including disputes concerning whether and when a union can be organized, and once unionized, collective bargaining rights, various issues arising from union contracts, and matters relating to a labor strike. Labor laws are complex and differ vastly from state to state.

***Our business and the growth of our Company are dependent on the skills and expertise of management and key personnel.***

During the upcoming stages of our Company's anticipated growth, we are entirely dependent upon the management skills and expertise of our management and key personnel. We do not have employment agreements with many of our executive officers. The loss of services of our executive officers could dramatically affect our business prospects. Certain of our employees are particularly valuable to us because:

- they have specialized knowledge about our company and operations;
- they have specialized skills that are important to our operations; or
- they would be particularly difficult to replace.

If the services of any key management personnel ceased to be available to us, our growth prospects or future operating results may be adversely impacted.

***Our food service business, gaming revenues and the restaurant industry are subject to extensive government regulation.***

We are subject to extensive and varied country, federal, state and local government regulation, including regulations relating to public health, gambling, safety and zoning codes. We operate each of our locations in accordance with standards and procedures designed to comply with applicable codes and regulations. However, if we could not obtain or retain food or other licenses, it would adversely affect our operations. Although we have not experienced, and do not anticipate experiencing any significant difficulties, delays or failures in obtaining required licenses, permits or approvals, any such problem could delay or prevent the opening of, or adversely impact the viability of, a particular location or group of restaurants.

***We may be subject to significant foreign currency exchange controls in certain countries in which we operate.***

Certain foreign economies have experienced shortages in foreign currency reserves and their respective governments have adopted restrictions on the ability to transfer funds out of the country and convert local currencies into U.S. dollars. This may increase our costs and limit our ability to convert local currency into U.S. dollars and transfer funds out of certain countries. Any shortages or restrictions may impede our ability to convert these currencies into U.S. dollars and to transfer funds, including for the payment of dividends or interest or principal on our outstanding debt. If any of our subsidiaries are unable to transfer funds to us due to currency restrictions, we are responsible for any resulting shortfall.

***Our foreign operations subject us to risks that could negatively affect our business.***

One of our Hooters restaurants and some of our franchisee-owned restaurants operate in foreign countries and territories outside of the U.S. As a result, our business is exposed to risks inherent in foreign operations. These risks, which can vary substantially by market, include political instability, corruption, social and ethnic unrest, changes in economic conditions (including wage and commodity inflation, consumer spending and unemployment levels), the regulatory environment, tax rates and laws and consumer preferences as well as changes in the laws and policies that govern foreign investment in countries where our restaurants are operated.

In addition, our results of operations and the value of our foreign assets are affected by fluctuations in foreign currency exchange rates, which may adversely affect reported earnings. More specifically, an increase in the value of the United States Dollar relative to other currencies, such as the British Pound, could have an adverse effect on our reported earnings. There can be no assurance as to the future effect of any such changes on our results of operations, financial condition or cash flows.

***Changing conditions in the global economy and financial markets may materially adversely affect our business, results of operations and ability to raise capital.***

Our business and results of operations may be materially affected by conditions in the financial markets and the economy generally. The demand for our products could be adversely affected in an economic downturn and our revenues may decline under such circumstances. In addition, we may find it difficult, or we may not be able, to access the credit or equity markets, or we may experience higher funding costs in the event of adverse market conditions. Future instability in these markets could limit our ability to access the capital we require to fund and grow our business.

***Changes to accounting rules or regulations may adversely affect the reporting of our results of operations.***

Changes to existing accounting rules or regulations may impact the reporting of our future results of operations or cause the perception that we are more highly leveraged. Other new accounting rules or regulations and varying interpretations of existing accounting rules or regulations have occurred and may occur in the future. For instance, new accounting rules will require lessees to capitalize operating leases in their financial statements in future periods which will require us to record significant right of use assets and lease obligations on our balance sheet. This and other future changes to accounting rules or regulations could have a material adverse effect on the reporting of our business, financial condition and results of operations. In addition, many existing accounting standards require management to make subjective assumptions, such as those required for stock compensation, tax matters, franchise accounting, acquisitions, litigation, and asset impairment calculations. Changes in accounting standards or changes in underlying assumptions, estimates and judgments by our management could significantly change our reported or expected financial performance.

***We may incur costs resulting from breaches of security of confidential consumer information related to our electronic processing of credit and debit card transactions.***

Most of our restaurant sales are by credit or debit cards. Other restaurants and retailers have experienced security breaches in which credit and debit card information has been stolen. We may in the future become subject to claims for purportedly fraudulent transactions arising out of the actual or alleged theft of credit or debit card information, and we may also be subject to lawsuits or other proceedings relating to these types of incidents. In addition, most states have enacted legislation requiring notification of security breaches involving personal information, including credit and debit card information. Any such claim or proceeding could cause us to incur significant unplanned expenses, which could have a material adverse effect on our business, financial condition and results of operations. Further, adverse publicity resulting from these allegations may have a material adverse effect on our business and results of operations.

***We rely heavily on information technology, and any material failure, weakness, interruption or breach of security could prevent us from effectively operating our business.***

We rely heavily on information systems, including point-of-sale processing in our restaurants, for management of our supply chain, payment of obligations, collection of cash, credit and debit card transactions and other processes and procedures. Our ability to efficiently and effectively manage our business depends significantly on the reliability and capacity of these systems. Our operations depend upon our ability to protect our computer equipment and systems against damage from physical theft, fire, power loss, telecommunications failure or other catastrophic events, as well as from internal and external security breaches, viruses and other disruptive problems. The failure of these systems to operate effectively, maintenance problems, upgrading or transitioning to new platforms, or a breach in security of these systems could result in delays in customer service and reduce efficiency in our operations. Remediation of such problems could result in significant, unplanned capital investments.

***Adverse weather conditions could affect our sales.***

Adverse weather conditions, such as regional winter storms, floods, severe thunderstorms and hurricanes, could affect our sales at restaurants in locations that experience these weather conditions, which could materially adversely affect our business, financial condition or results of operations.

***The uncertainty surrounding the effect of Brexit may impact our UK operations.***

The uncertainty surrounding the effect of Brexit, including the uncertainty in relation to the legal and regulatory framework for the UK and its relationship with the remaining members of the EU (including, in relation to trade) after Brexit was effected in January 2020, has caused increased economic volatility and market uncertainty globally. It is too early to ascertain the long-term effects.

***Negative publicity could reduce sales at some or all our restaurants.***

We may, from time to time, be faced with negative publicity relating to food quality and integrity, the safety, sanitation and welfare of our restaurant facilities, customer complaints, labor issues, or litigation alleging illness or injury, health inspection scores, integrity of our or our suppliers' food processing and other policies, practices and procedures, employee relationships and welfare or other matters at one or more of our restaurants. Negative publicity may adversely affect us, regardless of whether the allegations are valid or whether we are held to be responsible. The risk of negative publicity is particularly great with respect to our franchised restaurants because we are limited in the manner in which we can regulate them, especially on a real-time basis and negative publicity from our franchised restaurants may also significantly impact company-operated restaurants. A similar risk exists with respect to food service businesses unrelated to us, if customers mistakenly associate such unrelated businesses with our operations. Employee claims against us based on, among other things, wage and hour violations, discrimination, harassment or wrongful termination may also create not only legal and financial liability but negative publicity that could adversely affect us and divert our financial and management resources that would otherwise be used to benefit the future performance of our operations. These types of employee claims could also be asserted against us, on a co-employer theory, by employees of our franchisees. A significant increase in the number of these claims or an increase in the number of successful claims could materially adversely affect our business, financial condition, results of operations and cash flows.

***The interests of our franchisees may conflict with ours or yours in the future and we could face liability from our franchisees or related to our relationship with our franchisees.***

Franchisees, as independent business operators, may from time to time disagree with us and our strategies regarding the business or our interpretation of our respective rights and obligations under the franchise agreement and the terms and conditions of the franchisee/franchisor relationship or have interests adverse to ours. This may lead to disputes with our franchisees and we expect such disputes to occur from time to time in the future as we continue to offer franchises. Such disputes may result in legal action against us. To the extent we have such disputes, the attention, time and financial resources of our management and our franchisees will be diverted from our restaurants, which could have a material adverse effect on our business, financial condition, results of operations and cash flows even if we have a successful outcome in the dispute.

In addition, various state and federal laws govern our relationship with our franchisees and our potential sale of a franchise. A franchisee and/or a government agency may bring legal action against us based on the franchisee/franchisor relationships that could result in the award of damages to franchisees and/or the imposition of fines or other penalties against us.

## GENERAL RISKS RELATED TO OUR COMMON STOCK

***Trading volume in our common stock is limited, which could increase price volatility for, and reduced liquidity of, our common stock.***

Trading volume in our common stock is limited and an active trading market for our shares of common stock may never develop or be maintained. The absence of an active trading market could increase price volatility and reduces the liquidity of our common stock and as a result, the sale of a significant number of shares of common stock at any particular time could be difficult to achieve at the market prices prevailing immediately before such shares are offered.

***We may need additional capital in the future; however, such capital may not be available to us on reasonable terms, if at all, when or as we require additional funding. If we issue additional shares of our common stock or other securities that may be convertible into, or exercisable or exchangeable for, our common stock, our existing stockholders would experience further dilution.***

We may need additional capital in the future, however if that need arises, we cannot be certain additional capital will be available to us on acceptable terms when required, or at all. Disruptions in the global equity and credit markets may limit our ability to access capital. To the extent that we raise additional funds by issuing equity securities, our shareholders would experience dilution, which may be significant and could cause the market price of our common stock to decline significantly. Any debt financing, if available, may restrict our operations. If we are unable to raise additional capital when required or on acceptable terms, we may have to significantly delay, scale back or discontinue certain operations. Any of these events could significantly harm our business and prospects and could cause our stock price to decline.

***Future financings could adversely affect common stock ownership interest and rights in comparison with those of other security holders.***

Our board of directors has the power to issue additional shares of common or preferred stock up to the amounts authorized in our certificate of incorporation without stockholder approval, subject to restrictive covenants contained in our existing financing agreements. If additional funds are raised through the issuance of equity or convertible debt securities, the percentage ownership of our existing stockholders will be reduced, and these newly issued securities may have rights, preferences or privileges senior to those of existing stockholders. If we issue any additional common stock or securities convertible into common stock, such issuance will reduce the proportionate ownership and voting power of each other stockholder. In addition, such stock issuances might result in a reduction of the book value of our common stock. Any increase of the number of authorized shares of common stock or preferred stock would require board and shareholder approval and subsequent amendment to our certificate of incorporation.

***If and when a larger trading market for our common stock develops, the market price of our common stock is likely to be highly volatile and subject to wide fluctuations, and you may be unable to resell your shares at or above the price at which you acquired them.***

The market price of our common stock is likely to be highly volatile and could be subject to wide fluctuations in response to a number of factors that are beyond our control, including, but not limited to:

- quarterly variations in our revenues and operating expenses;
- developments in the financial markets and worldwide or regional economies;
- announcements of innovations or new products, solutions or services by us or our competitors;
- announcements by the government relating to regulations that govern our industry;
- significant sales of our common stock or other securities in the open market;
- variations in interest rates;
- changes in the market valuations of other comparable companies; and
- changes in accounting principles.

In the past, stockholders have often instituted securities class action litigation after periods of volatility in the market price of a company's securities. If a stockholder were to file any such class action suit against us, we would incur substantial legal fees and our management's attention and resources would be diverted from operating our business to respond to the litigation, which could harm our business.

***Recent and future sales of securities by us in equity or debt financings could result in substantial dilution to our existing stockholders and have a material adverse effect on our earnings.***

Recent and future sales of common stock or derivative securities by us in private placements or public offerings could result in substantial dilution to our existing stockholders. In addition, our business strategy may include expansion through internal growth by acquiring complementary businesses. In order to do so, or to finance the cost of our other activities, we may issue additional equity securities that could dilute our stockholders' stock ownership. We may also assume additional debt and incur impairment losses related to goodwill and other tangible assets if we acquire another company and this could negatively impact our earnings and results of operations.

***Were our common stock to be considered penny stock, and therefore subject to the penny stock rules, U.S. broker-dealers may be discouraged from effecting transactions in shares of our common stock.***

The U.S. Securities and Exchange Commission (the "SEC") has adopted a number of rules to regulate "penny stock" that may restrict transactions involving shares of our common stock. Such rules include Rules 3a51-1, 15g-1, 15g-2, 15g-3, 15g-4, 15g-5, 15g-6, 15g-7, and 15g-9 under the Securities and Exchange Act of 1934, as amended. These rules may have the effect of reducing the liquidity of penny stocks. "Penny stocks" generally are equity securities with a price of less than $5.00 per share (other than securities registered on certain national securities exchanges or quoted on the NASDAQ Stock Market if current price and volume information with respect to transactions in such securities is provided by the exchange or system). Our securities have in the past constituted "penny stock" within the meaning of the rule. Were our common stock to again be considered "penny stock" and therefore become subject to the penny stock rules, the additional sales practice and disclosure requirements imposed upon U.S. broker-dealers may discourage such broker-dealers from effecting transactions in shares of our common stock, which could severely limit the market liquidity of such shares and impede their sale in the secondary market.

A U.S. broker-dealer selling a penny stock to anyone other than an established customer or "accredited investor" (generally, an individual with net worth in excess of $1,000,000 or an annual income exceeding $200,000, or $300,000 together with his or her spouse) must make a special suitability determination for the purchaser and must receive the purchaser's written consent to the transaction prior to sale, unless the broker-dealer or the transaction is otherwise exempt. In addition, the penny stock regulations require the U.S. broker-dealer to deliver, prior to any transaction involving a penny stock, a disclosure schedule prepared in accordance with SEC standards relating to the penny stock market, unless the broker-dealer or the transaction is otherwise exempt. A U.S. broker-dealer is also required to disclose commissions payable to the U.S. broker-dealer and the registered representative and current quotations for the securities. Finally, a U.S. broker-dealer is required to submit monthly statements disclosing recent price information with respect to the penny stock held in a customer's account and information with respect to the limited market in penny stocks.

Stockholders should be aware that, according to SEC, the market for penny stocks has suffered in recent years from patterns of fraud and abuse. Such patterns include (i) control of the market for the security by one or a few broker-dealers that are often related to the promoter or issuer; (ii) manipulation of prices through prearranged matching of purchases and sales and false and misleading press releases; (iii) "boiler room" practices involving high-pressure sales tactics and unrealistic price projections by inexperienced sales persons; (iv) excessive and undisclosed bid-ask differentials and markups by selling broker-dealers; and (v) the wholesale dumping of the same securities by promoters and broker-dealers after prices have been manipulated to a desired level, resulting in investor losses. Our management is aware of the abuses that have occurred historically in the penny stock market. Although we do not expect to be in a position to dictate the behavior of the market or of broker-dealers who participate in the market, management will strive within the confines of practical limitations to prevent the described patterns from being established with respect to our securities in the event our common stock were to again be considered a penny stock and therefore become subject to penny stock rules.

***We do not expect to pay dividends for the foreseeable future, and any return on investment may be limited to potential future appreciation on the value of our common stock.***

We currently intend to retain any future earnings to support the development and expansion of our business and do not anticipate paying cash dividends in the foreseeable future. We do not pay dividends on our Series 2 Preferred stock. If dividends are declared on common stock, dividends are payable on our outstanding 10% debenture and all of our outstanding warrants to the same extent that the holders would have participated in the dividend if the holders held the number of shares of common stock acquirable upon complete conversion of the debenture and/ or exercise of the warrants (as applicable) without regard to any limitations on exercise thereof, immediately before the date of which a record is taken for such dividend. Our payment of any future dividends will be at the discretion of our board of directors after taking into account various factors, including without limitation, our financial condition, operating results, cash needs, growth plans and the terms of any credit agreements that we may be a party to at the time. To the extent we do not pay dividends, our stock may be less valuable because a return on investment will only occur if and to the extent our stock price appreciates, which may never occur. In addition, investors must rely on sales of their common stock after price appreciation as the only way to realize their investment, and if the price of our stock does not appreciate, then there will be no return on investment. Investors seeking cash dividends should not purchase our common stock.

***The rights of the holders of common stock may be impaired by outstanding class of Series 2 Preferred stock and potential issuance of other class(es) of preferred stock in the future.***

Our certificate of incorporation gives our board of directors the right to create new series of preferred stock. As a result, the board of directors may, without stockholder approval, issue preferred stock with voting, dividend, conversion, liquidation or other rights which could adversely affect the voting power and equity interest of the holders of common stock. Preferred stock, which could be issued with the right to more than one vote per share, could be utilized as a method of discouraging, delaying or preventing a change of control. The possible impact on takeover attempts could adversely affect the price of our common stock. Although we have no present intention to issue any additional shares of preferred stock or to create any new series of preferred stock, we may issue such shares in the future.

***Anti-takeover provisions may limit the ability of another party to acquire us, which could cause our stock price to decline.***

We are a Delaware corporation. Delaware law contains provisions that could discourage, delay or prevent a third party from acquiring us, even if doing so may be beneficial to our stockholders, which could cause our stock price to decline. In addition, these provisions could limit the price investors would be willing to pay in the future for shares of our common stock.

***Non-U.S. investors may have difficulty effecting service of process against us or enforcing judgments against us in courts of non-U.S. jurisdictions.***

We are a company incorporated under the laws of the State of Delaware. All of our directors and officers reside in the United States. It may not be possible for non-U.S. investors to effect service of process within their own jurisdictions upon our company and our directors and officers. In addition, it may not be possible for non-U.S. investors to collect from our company, its directors and officers, judgments obtained in courts in such non-U.S. jurisdictions predicated on non-U.S. legislation.

***If securities or industry analysts do not publish or cease publishing research or reports about us, our business or our market, or if they change their recommendations regarding our stock adversely, our stock price and trading volume could decline.***

The trading market for our common stock will be influenced by the research and reports that industry or securities analysts may publish about us, our business, our market or our competitors. If any of the analysts who may cover us change their recommendation regarding our stock adversely, or provide more favorable relative recommendations about our competitors, our stock price would likely decline. If any analyst who may cover us were to cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline.

**ITEM 2: UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

On April 1, 2020, in connection with and prior to the Merger and Spin-Off, pursuant to a securities purchase agreement between Chanticleer, Amergent, Oz Rey LLC, a Texas limited liability company ("Oz Rey") and certain other purchasers dated April 1, 2020, Chanticleer was released from all of its obligations under its 8% secured debentures. The 8% debentures were cancelled. In exchange, Amergent (i) issued a 10% secured convertible debenture in principal amount of $4,037,889 in Amergent to Oz Rey, (iii) issued 10-year warrants to purchase up to 2,462,600 shares of common stock to Oz Rey and other original 8% debenture holders at an exercise price of $0.125, and (ii) issued a 10-year warrant to purchase 462,600 shares of common stock to Oz Rey at an exercise price of $0.50 ($0.50 Warrants") and (iii) remitted $2,000,000 of the proceeds of the Merger to Oz Rey (minus $650,000 previously advanced, plus expenses). The 10% secured convertible debenture was originally convertible, at any time at the option of holder, at the lower of $0.10 per share and (b) the volume weighted average price for Amergent's common stock 10 trading days immediately prior to delivery of the conversion notice. The warrants include a cashless exercise provision. The debenture and warrants include standard anti-dilution provisions as well as full-ratchet anti-dilution protection. The obligation is subject to a first priority security interest in substantially all the assets (excluding the segregated account securing the repayment of the guaranteed return on Series 2 Preferred and Spin-Off Entity Warrant) of Amergent and is guaranteed by all Amergent's subsidiaries.

Further, contingent upon the termination of Series 2 Preferred holders in the Spin-Off Entity Warrant and Oz Rey's cash exercise of $0.50 Warrants, Amergent will assign to Oz Rey, from the Spin-Off Entity Warrant, a warrant to purchase up to one share of Sonnet's common stock for each twenty-six $.50 Warrants exercised, up to a maximum of 17,792 shares of Sonnet's common stock.

For as long as Oz Rey holds 10% secured convertible debentures, it has the right, but not the obligation, to appoint two directors ("Appointees") to Amergent's board. Amergent agreed that its board or governance committee, if it has one, will re-nominate the Appointees as a directors at annual meetings and recommend that stockholders vote "for" such Appointees at annual meetings. All proxies given to management will also vote in favor of such Appointees. This right to designate the Appointees will be subject to Nasdaq Listing Rules in the event Amergent seeks listing on one of the exchanges of the Nasdaq Stock Market.

On August 17, 2020, the Company and Oz Rey entered into Amendment No. 1 to 10% Secured Convertible Debenture ("Debenture Amendment") to fix the conversion rate into common stock at $0.10 per share. Further, Oz Rey agreed not to convert any portion of the debenture that would cause the number of shares on a fully-diluted basis issued after the conversion to exceed the authorized share level. Oz Rey may however, upon reasonably notice to the Company, require the Company to include in its proxy materials, for any annual meeting of shareholders being held by the Company, a proposal to amend the Company's certificate of incorporation to increase the Company's authorized shares to a number sufficient to allow for conversion of all shares underlying the debenture, on a fully diluted basis. Oz Rey also agreed that the Company would not be required under any circumstances to require the Company to make a cash payment to settle the conversion feature not exercisable due to the authorized share cap or in an event that the Company was unable to deliver shares under the conversion feature. Oz Rey also agreed to waive any event of default under the debenture that occurred or existed prior to August 17, 2020.

In connection with the Merger and Spin-Off, all outstanding shares of Series 2 Convertible Preferred Stock of Chanticleer were automatically exchanged for substantially identical shares of preferred stock in Amergent ("Series 2 Preferred"). The board of directors approved the certificate of designations rights and preferences of Series 2 Preferred, more fully set forth in a "Certificate of Designations" filed with the Secretary of State of Delaware and authorized the designation and immediate issuance of 787 shares of Series 2 Preferred. In addition, pursuant to Chanticleer's original agreement with the investors, we issued 5-year warrants to purchase an aggregate of 350,000 shares of Amergent's common stock to the investors at $1.25 per share. Each share of Series 2 Preferred has a stated value if $1,000. In the event that the proceeds received by the investors from the sale of all the shares of common stock issued upon conversion of Series 2 Preferred in both Amergent and its former Parent ("Conversion Shares") did not equal at least $1,875,000 by August 10, 2020 ("True-Up Date"), Amergent was required to pay the investor an amount in cash equal to the difference between $1,875,000 and the proceeds previously realized by the investor from the sale of the Conversion Share, net of brokerage commissions and any other fees incurred by investor in connection with the sale of Conversion Shares. The balance will be paid by Amergent out of either (i) the proceeds from the exercise by Amergent of existing warrants to purchase shares of the common stock of Sonnet or (ii) from a segregated cash account. We were required to deposit $1,250,000 into a segregated cash account and maintain prescribed amounts in the segregated cash amount until the return is satisfied in full.

The Series 2 Preferred Stock is convertible at the option of holder at the lesser of (i) $1.00 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like) or (ii) 90% of the five day average volume weighted average price of the common, provided the conversion price has a floor of $0.50 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like) Conversion is subject to a beneficial ownership limitation of 4.99%. This limitation may be increased by the holder up to 9.99%, with 61 days' notice. No dividends shall be declared or paid on the Series 2 Preferred Stock. Upon any liquidation, dissolution or winding-up of Amergent, the holder shall be entitled to receive out of the assets, whether capital or surplus, an amount equal to 125% of the stated value plus any default interest and any other fees or liquidated damages then due and owing thereon under the Certificate of Designations, for each share of Series 2 Preferred before any distribution or payment shall be made to the holders of Amergent common stock. The holder of Series 2 Preferred will vote together with the holders of common stock as a single class on an as-converted basis on all matters presented to the holders of common stock and shall vote as a separate class on all matters presented to the holders of Series 2 Preferred. In addition, without the approval of the holder, Amergent will not, (i) sell all or substantially all of its assets, merge or consolidate with another entity or voluntarily liquidate or dissolve the corporation, (ii) alter or change the rights, preferences or privileges of the Series 2 Preferred, (iii) authorize or create any class of stock ranking as to dividends, redemption or distribution of assets upon a liquidation senior to, or otherwise pari passu with, the Series 2 Preferred Stock, (iv) amend its certificate of incorporation, as amended, or other charter documents in any manner that adversely affects any rights of the holder, (v) increase the number of authorized shares of Series 2 Preferred Stock, (vi) redeem any shares of capital stock of the company (other than any redemption of securities from officers or employees of the company pursuant to existing contractual arrangements with such officers or employees or in connection with the termination of their employment) or (vii) enter into any agreement with respect to any of the foregoing. Breach of Amergent's obligations and other circumstances set forth in the Certificate of Designation will trigger a redemption event. The Certificate of Designations provides for customary adjustments in the event of dividends or stock splits and anti-dilution protection.

If a registration statement is not available 6 months after the issuance date of the warrants, the warrants may be exercised via cashless exercise. The warrant includes customary anti-dilution protection and exercise is subject to a 9.99% beneficial ownership limitation that may be increased upon 60 days' notice from holder.

Concurrently with the transactions described above, the parties entered into a registration rights agreement for registration of shares of common stock underlying warrants and notes described above as well as shares of common stock underlying the Series 2 Preferred.

On August 17, 2020, Amergent and the holders of Series 2 Preferred entered into a Waiver, Consent and Amendment to Certificate of Designations ("COD Amendment") extending the True-Up Date to December 10, 2020. In exchange, (i) Amergent issued warrants to purchase 134,000 shares of common stock to the holders of Series 2 Preferred, (ii) issued a cash payment of $66,000 to the holders of Series 2 Preferred agreed to pay expenses of the holders of Series 2 Preferred incurred in connection with the Amendment and (iii) released the holders of Series 2 Preferred from claims related to the Certificate of Designations and the holders' investments in Amergent or its predecessor. Other than the issuance date, the new warrants are identical to the original warrants issued to the Series 2 Preferred investors. An Amended and Restated Certificate of Designations of Series 2 Convertible Preferred Stock ("Amended COD") that provides for the extension of the True-Up Date to December 10, 2020 and provides that the Amergent may not access any portion of funds held in the segregated account until the obligations under Series 2 Preferred are satisfied in full, was filed on August 17, 2020.

On February 16, 2021, the Company and the holders of the Series 2 Preferred Stock entered into a Waiver, Consent and Amendment to the Certificate of Designations (the "Waiver"). Pursuant to the Waiver, the Company filed the Second Amendment and Restated Certificate of Designations of Series 2 Convertible Preferred Stock ("Amended COD") (i) providing for the extension of the True-Up Payment to April 1, 2021, (ii) providing for the deduction of proceeds to the original holders from sales of Series 2 Preferred for the True-Up Payment, with the Delaware Secretary of State and (iii) providing for a reduction in amount required to be held in a segregated cash account from $1,250,000 to $850,000.

The transactions discussed above are exempt from registration pursuant to Section 4(a)(2) of the Securities Act, and corresponding provisions of state securities laws or, alternatively, Section 3(a)(9) of the Securities Act and corresponding provisions of state securities laws, on the basis that (i) offers were made to a limited number of existing warrant holders, (ii) each offer was made through direct communication with the offerees by Amergent, (iii) the sophistication of the offerees and financial ability to bear risks (iv) the extensive disclosure provided to the offerees, and (v) no general solicitation and no commission or remuneration was paid for solicitation.

**ITEM 1B. UNRESOLVED STAFF COMMENTS**

Not applicable.

**ITEM 2. PROPERTY**

Through our subsidiaries, we lease the land and buildings for 1 restaurant in Nottingham, United Kingdom, and 34 operating restaurant locations in the U.S. The terms for our leases vary from two to twenty years and have options to extend. We lease some of our restaurant facilities under "triple net" leases that require us to pay minimum rent, real estate taxes, maintenance costs and insurance premiums and, in some instances, percentage rent based on sales in excess of specified amounts. Our corporate employees work out of the home offices

Our office and restaurant facilities are suitable and adequate for our business as it is presently conducted.

**ITEM 3. LEGAL PROCEEDINGS**

Various subsidiaries of Amergent are delinquent in payment of payroll taxes to taxing authorities. As of December 31, 2020, approximately $3.0 million of employee and employer taxes (including estimated penalties and interest) was accrued but not remitted in years prior to 2019 to certain taxing authorities by certain of these subsidiaries for cash compensation paid. As a result, these subsidiaries are liable for such payroll taxes. These subsidiaries have received warnings and demands from the taxing authorities and management is prioritizing and working with the taxing authorities to make these payments in order to avoid further penalties and interest. Failure to remit these payments promptly could result in increased penalty fees.

Pursuant to the Merger Agreement, related Contribution Agreement and Distribution Agreement, Amergent assumed all liabilities of Chanticleer that were not paid-off at the effective time of the Merger.

Pursuant to the Indemnification Agreement, Amergent agreed to fully indemnify and hold harmless each of Chanticleer and Sonnet, and each of their respective, directors, officers, stockholders and managers who assumes such role upon or following the closing of the Merger against all actual or threatened claims, losses, liabilities, damages, judgments, fines and reasonable fees, costs and expenses, including attorneys' fees and disbursements, incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, administrative, investigative or otherwise, related to the Spin-Off Business prior to or in connection with its disposition to Amergent. In addition, Amergent acquired the Tail Policy to cover its indemnification obligations to the indemnitees under the Indemnification Agreement. The Tail Policy of up to $3.0 million was prepaid in full by Amergent, at no cost to the indemnitees, and will be effective for six years following the consummation of the disposition.

As part of the Merger, all of the assets and liabilities of Chanticleer and its subsidiaries were contributed to Amergent.

In connection with the Merger, former executive officer of Chanticleer, Richard Adams, filed a claim for damages against American Roadside Burgers, Inc., Chanticleer's wholly owned subsidiary for unpaid severance. Mr. Adams received timely notification of non-renewal of his employment agreement, which expired December 31, 2019, but argues he is entitled to severance benefits triggered by the Merger. Amergent has been advised by legal counsel that Mr. Adam's claim is frivolous and that he has a low probability of success. Mr. Adams complaint alleges damages in an amount over $25,000.

Amergent is not aware of any other claims arising from the Merger or other assumed claims that it deems as claims outside the ordinary course of business or otherwise, at this time, material.

During 2020 the Company was in arrears on rent due on several of its leases as a result of the COVID-19 pandemic. As a result, the Company has pending litigation related to 11 sites of which 5 have permanently closed. The outcome of this litigation could result in the permanent closure of additional restaurant locations as well as the possibility of the Company being required to pay interest and damages, modify certain leases on unfavorable terms and could result in material impairments to the Company's assets.

Amergent is not aware of changes to claims previously reported or other claims that it deems as claims outside the ordinary course of business or otherwise, at this time, material.

From time to time, Amergent may be involved in legal proceedings and claims that arise in the ordinary course of business, and may generally be covered by insurance or otherwise determined to be immaterial to the Company's financial condition, results of operations or cash flows.

**ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

## PART II

### ITEM 5. MARKET FOR COMMON EQUITY AND RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

As of December 31, 2020, we had 14,282,736 shares of our common stock issued and outstanding, respectively, and approximately 254 shareholders of record and approximately 2,500 shareholders. Amergent's common stock is quoted on the OTCQB market of the OTC Markets Group, Inc. under the symbol "AMGH".

We currently have no expectation to pay cash dividends to holders of our common stock in the foreseeable future.

### UNREGISTERED SALES OF EQUITY SECURITIES

In April 1, 2020, in connection with and prior to the Merger and Spin-Off, pursuant to a securities purchase agreement between Chanticleer, Amergent, Oz Rey LLC, a Texas limited liability company ("Oz Rey") and certain other purchasers dated April 1, 2020, Chanticleer was released from all of its obligations under its 8% secured debentures. The 8% debentures were cancelled. In exchange, Amergent (i) issued a 10% secured convertible debenture in principal amount of $4,037,889 in Amergent to Oz Rey, (iii) issued 10-year warrants to purchase up to 2,462,600 shares of common stock to Oz Rey and other original 8% debenture holders at an exercise price of $0.125, and (ii) issued a 10-year warrant to purchase 462,600 shares of common stock to Oz Rey at an exercise price of $0.50 ($0.50 Warrants") and (iii) remitted $2,000,000 of the proceeds of the Merger to Oz Rey (minus $650,000 previously advanced, plus expenses). The 10% secured convertible debenture was originally convertible, at any time at the option of holder, at the lower of $0.10 per share and (b) the volume weighted average price for Amergent's common stock 10 trading days immediately prior to delivery of the conversion notice. The warrants include a cashless exercise provision. The debenture and warrants include standard anti-dilution provisions as well as full-ratchet anti-dilution protection. The obligation is subject to a first priority security interest in substantially all the assets (excluding the segregated account securing the repayment of the guaranteed return on Series 2 Preferred and Spin-Off Entity Warrant) of Amergent and is guaranteed by all Amergent's subsidiaries.

Further, contingent upon the termination of Series 2 Preferred holders in the Spin-Off Entity Warrant and Oz Rey's cash exercise of $0.50 Warrants, Amergent will assign to Oz Rey, from the Spin-Off Entity Warrant, a warrant to purchase up to one share of Sonnet's common stock for each twenty-six $.50 Warrants exercised, up to a maximum of 17,792 shares of Sonnet's common stock.

For as long as Oz Rey holds 10% secured convertible debentures, it has the right, but not the obligation, to appoint two directors ("Appointees") to Amergent's board. Amergent agreed that its board or governance committee, if it has one, will re-nominate the Appointees as a directors at annual meetings and recommend that stockholders vote "for" such Appointees at annual meetings. All proxies given to management will also vote in favor of such Appointees. This right to designate the Appointees will be subject to Nasdaq Listing Rules in the event Amergent seeks listing on one of the exchanges of the Nasdaq Stock Market.

On August 17, 2020, the Company and Oz Rey entered into Amendment No. 1 to 10% Secured Convertible Debenture ("Debenture Amendment") to fix the conversion rate into common stock at $0.10 per share. Further, Oz Rey agreed not to convert any portion of the debenture that would cause the number of shares on a fully-diluted basis issued after the conversion to exceed the authorized share level. Oz Rey may however, upon reasonably notice to the Company, require the Company to include in its proxy materials, for any annual meeting of shareholders being held by the Company, a proposal to amend the Company's certificate of incorporation to increase the Company's authorized shares to a number sufficient to allow for conversion of all shares underlying the debenture, on a fully diluted basis. Oz Rey also agreed that the Company would not be required under any circumstances to require the Company to make a cash payment to settle the conversion feature not exercisable due to the authorized share cap or in an event that the Company was unable to deliver shares under the conversion feature. Oz Rey also agreed to waive any event of default under the debenture that occurred or existed prior to August 17, 2020.

In connection with the Merger and Spin-Off, all outstanding shares of Series 2 Convertible Preferred Stock of Chanticleer were automatically exchanged for substantially identical shares of preferred stock in Amergent ("Series 2 Preferred"). The board of directors approved the certificate of designations rights and preferences of Series 2 Preferred, more fully set forth in a "Certificate of Designations" filed with the Secretary of State of Delaware and authorized the designation and immediate issuance of 787 shares of Series 2 Preferred. In addition, pursuant to Chanticleer's original agreement with the investors, we issued 5-year warrants to purchase an aggregate of 350,000 shares of Amergent's common stock to the investors at $1.25 per share. Each share of Series 2 Preferred has a stated value if $1,000. In the event that the proceeds received by the investors from the sale of all the shares of common stock issued upon conversion of Series 2 Preferred in both Amergent and its former Parent ("Conversion Shares") did not equal at least $1,875,000 by August 10, 2020 ("True-Up Date"), Amergent was required to pay the investor an amount in cash equal to the difference between $1,875,000 and the proceeds previously realized by the investor from the sale of the Conversion Share, net of brokerage commissions and any other fees incurred by investor in connection with the sale of Conversion Shares. The balance will be paid by Amergent out of either (i) the proceeds from the exercise by Amergent of existing warrants to purchase shares of the common stock of Sonnet or (ii) from a segregated cash account. We were required to deposit $1,250,000 into a segregated cash account and maintain prescribed amounts in the segregated cash amount until the return is satisfied in full.

The Series 2 Preferred Stock is convertible at the option of holder at the lesser of (i) $1.00 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like) or (ii) 90% of the five day average volume weighted average price of the common, provided the conversion price has a floor of $0.50 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like) Conversion is subject to a beneficial ownership limitation of 4.99%. This limitation may be increased by the holder up to 9.99%, with 61 days' notice. No dividends shall be declared or paid on the Series 2 Preferred Stock. Upon any liquidation, dissolution or winding-up of Amergent, the holder shall be entitled to receive out of the assets, whether capital or surplus, an amount equal to 125% of the stated value plus any default interest and any other fees or liquidated damages then due and owing thereon under the Certificate of Designations, for each share of Series 2 Preferred before any distribution or payment shall be made to the holders of Amergent common stock. The holder of Series 2 Preferred will vote together with the holders of common stock as a single class on an as-converted basis on all matters presented to the holders of common stock and shall vote as a separate class on all matters presented to the holders of Series 2 Preferred. In addition, without the approval of the holder, Amergent will not, (i) sell all or substantially all of its assets, merge or consolidate with another entity or voluntarily liquidate or dissolve the corporation, (ii) alter or change the rights, preferences or privileges of the Series 2 Preferred, (iii) authorize or create any class of stock ranking as to dividends, redemption or distribution of assets upon a liquidation senior to, or otherwise pari passu with, the Series 2 Preferred Stock, (iv) amend its certificate of incorporation, as amended, or other charter documents in any manner that adversely affects any rights of the holder, (v) increase the number of authorized shares of Series 2 Preferred Stock, (vi) redeem any shares of capital stock of the company (other than any redemption of securities from officers or employees of the company pursuant to existing contractual arrangements with such officers or employees or in connection with the termination of their employment) or (vii) enter into any agreement with respect to any of the foregoing. Breach of Amergent's obligations and other circumstances set forth in the Certificate of Designation will trigger a redemption event. The Certificate of Designations provides for customary adjustments in the event of dividends or stock splits and anti-dilution protection.

If a registration statement is not available 6 months after the issuance date of the warrants, the warrants may be exercised via cashless exercise. The warrant includes customary anti-dilution protection and exercise is subject to a 9.99% beneficial ownership limitation that may be increased upon 60 days' notice from holder.

Concurrently with the transactions described above, the parties entered into a registration rights agreement for registration of shares of common stock underlying warrants and notes described above as well as shares of common stock underlying the Series 2 Preferred.

On August 17, 2020, Amergent and the holders of Series 2 Preferred entered into a Waiver, Consent and Amendment to Certificate of Designations ("COD Amendment") extending the True-Up Date to December 10, 2020. In exchange, (i) Amergent issued warrants to purchase 134,000 shares of common stock to the holders of Series 2 Preferred, (ii) issued a cash payment of $66,000 to the holders of Series 2 Preferred agreed to pay expenses of the holders of Series 2 Preferred incurred in connection with the Amendment and (iii) released the holders of Series 2 Preferred from claims related to the Certificate of Designations and the holders' investments in Amergent or its predecessor. Other than the issuance date, the new warrants are identical to the original warrants issued to the Series 2 Preferred investors. An Amended and Restated Certificate of Designations of Series 2 Convertible Preferred Stock ("Amended COD") that provides for the extension of the True-Up Date to December 10, 2020 and provides that the Amergent may not access any portion of funds held in the segregated account until the obligations under Series 2 Preferred are satisfied in full, was filed on August 17, 2020.

On February 16, 2021, the Company and the holders of the Series 2 Preferred Stock entered into a Waiver, Consent and Amendment to the Certificate of Designations (the "Waiver"). Pursuant to the Waiver, the Company filed the Second Amendment and Restated Certificate of Designations of Series 2 Convertible Preferred Stock ("Amended COD") (i) providing for the extension of the True-Up Payment to April 1, 2021, (ii) providing for the deduction of proceeds to the original holders from sales of Series 2 Preferred for the True-Up Payment, with the Delaware Secretary of State and (iii) providing for a reduction in amount required to be held in a segregated cash account from $1,250,000 to $850,000.

The transactions discussed above are exempt from registration pursuant to Section 4(a)(2) of the Securities Act, and corresponding provisions of state securities laws or, alternatively, Section 3(a)(9) of the Securities Act and corresponding provisions of state securities laws, on the basis that (i) offers were made to a limited number of existing warrant holders, (ii) each offer was made through direct communication with the offerees by Amergent, (iii) the sophistication of the offerees and financial ability to bear risks (iv) the extensive disclosure provided to the offerees, and (v) no general solicitation and no commission or remuneration was paid for solicitation.

**EQUITY COMPENSATION PLANS**

The Company does not have an equity compensation plan as of December 31, 2020.

**ITEM 6. SELECTED FINANCIAL DATA**

As a smaller reporting company, Amergent is not required to provide the information required by this Item 6.

**ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

*You should read the following discussion of our results of operations and financial condition together with our audited consolidated financial statements as of and for the year ended December 31, 2020 and 2019 including the notes thereto, included in this Report. The discussion below contains forward-looking statements and involves numerous risks and uncertainties, including, but not limited to, those described in Item 1A. "Risk Factors". Actual results may differ materially from those contained in any forward-looking statements. Forward-looking statements speak only as of the date they are made. We undertake no obligation to update or revise such statements to reflect new circumstances or unanticipated events as they occur, and you are urged to review and consider disclosures that we make in this and other reports that discuss factors germane to our business.*

**Overview**

As of December 31, 2020, we operated and franchised a system-wide total of 35 fast casual restaurants, of which 26 were company-owned and 9 were owned and operated by franchisees under franchise agreements. During the year ended December 31, 2020, we permanently closed 8 restaurants due to the COVID-19 pandemic.

American Burger Company ("ABC") is a fast-casual dining chain consisting of 3 company-owned locations as of December 31, 2020 in North Carolina and New York. During 2020, ABC permanently closed 2 locations due to the COVID-19 pandemic. ABC is known for its diverse menu featuring fresh salads, customized burgers, milk shakes, sandwiches, and beer and wine.

BGR: The Burger Joint ("BGR") was acquired in March 2015 and consists of 7 company-owned locations as of December 31, 2020 and 9 franchisee-operated locations in the United States and the Middle East. During 2020, BRG permanently closed 1 location in the United States due to the COVID-19 pandemic.

Little Big Burger ("LBB") was acquired in September 2015 and consists of 15 company-owned locations in the Portland, Oregon, Seattle, Washington, and Charlotte, North Carolina areas. During 2020, LBB permanently closed 4 locations due to the COVID-19 pandemic. Of the company-owned restaurants, 8 of those locations are operated under partnership agreements with investors where we control the management and operations of the stores and the partner supplied the capital to open the store in exchange for a noncontrolling interest.

As of December 31, 2020, we operated 1 company-owned Hooters full-service restaurant in the United Kingdom. No Hooters locations were operated in the United States as of December 31, 2020 as the Hooters Oregon location was permanently closed in 2020 as a result of COVID-19 pandemic. Hooters restaurants are casual beach-themed establishments featuring music, sports on large flat screens, and a menu that includes seafood, sandwiches, burgers, salads, and of course, Hooters original chicken wings and the "nearly world famous" Hooters Girls. The Company started initially as an investor in corporate owned Hooters and, subsequently, evolved into a franchisee operator. We hold a minority investment stake in Hooters of America.

*Recent Developments*

***Merger***

On April 1, 2020, Chanticleer completed its merger transaction with Sonnet BioTherapeutics, Inc. ("Sonnet"), in accordance with the terms of the Agreement and Plan of Merger, dated as of October 10, 2019, among the Company, Sonnet, Biosub Inc. ("Merger Sub"), and Sonnet Sub, as amended by Amendment No. 1 thereto, dated as of February 7, 2020 (as so amended, the "Merger Agreement"), pursuant to which Merger Sub merged with and into Sonnet Sub, with Sonnet Sub surviving as a wholly-owned subsidiary of Chanticleer (the "Merger"). On April 1, 2020, in connection with the Merger, Chanticleer changed its name to "Sonnet BioTherapeutics Holdings, Inc."

***Spin-Off***

In connection with and prior to the Merger, Chanticleer contributed and transferred to Amergent Hospitality Group, Inc. ("Amergent"), a newly-formed, wholly-owned subsidiary of Chanticleer, all of the assets and liabilities relating to Chanticleer's restaurant business. On March 16, 2020, the board of directors of Chanticleer declared a dividend with respect to the shares of Chanticleer's common stock outstanding at the close of business on March 26, 2020 of one share of the Amergent common stock held by Chanticleer for each outstanding share of Chanticleer common stock. The dividend, which together with the contribution and transfer of Chanticleer's restaurant business described above, is referred to as the "Spin-Off." Prior to the Spin-Off, Amergent engaged in no business or operations.

***PPP Loan***

On March 27, 2020, Congress passed "The Coronavirus Aid, Relief, and Economic Security Act" (CARES Act), which included the "Paycheck Protection Program" (PPP) for small businesses. On April 27, 2020, Amergent received a PPP loan of $2.1 million. Due to the Spin-Off and Merger, Amergent was not publicly traded at the time of the loan application or funding. The note bears interest at 1% per year, matures in April 2022, and requires monthly interest and principal payments of approximately $119,000 beginning in November 2020 and through maturity. The currently issued guidelines of the program allow for the loan proceeds to be forgiven if certain requirements are met. Any loan proceeds not forgiven will be repaid in full. The Company applied for forgiveness of the loan and the application is under review by the government agency administering the PPP. No assurance can be given as to the amount, if any, of forgiveness. The application for forgiveness allowed the Company to defer the timing of repayment until the forgiveness assessment is completed.

On February 25, 2021, we received an additional $2.0 million PPP loan. The note bears interest at 1% per year, matures on February 25, 2026, and requires monthly principal and interest payments of approximately $44,660 beginning June 25, 2022 through maturity. The loan may be forgiven if certain criteria are met.

***EIDL Loan***

On August 4, 2020, we obtained two loans under the Economic Injury Disaster Loan ("EIDL") assistance program from the Small Business Administration ("SBA") in light of the impact of the COVID-19 pandemic on the Company's business. The principal amount of the loans is $299,900, with proceeds to be used for working capital purposes. Interest accrues at the rate of 3.75% per year. Total installment payments, including principal and interest, are due monthly beginning August 4, 2021 in the amount of $1,762 monthly. The balance of principal and interest is payable over the next thirty years from the date of the promissory note. There are no penalties for prepayment. Based upon guidance issued by the SBA on June 19, 2020, the EIDL loans are not required to be refinanced by the PPP loan.

*RESULTS OF OPERATIONS FOR THE YEAR ENDED DECEMBER 31, 2020 COMPARED TO THE YEAR ENDED DECEMBER 31, 2019*

Our results of operations are summarized below:

| | Twelve Months Ended | | | | |
|---|---|---|---|---|---|
| | December 31, 2020 | | December 31, 2019 | | |
| | Amount | % of Revenue* | Amount | % of Revenue* | % Change |
| Restaurant sales, net | $ 18,131,097 | 96.6% | $ 29,055,521 | 96.4% | (37.6)% |
| Gaming income, net | 292,011 | 1.6% | 462,507 | 1.5% | (36.9)% |
| Franchise income | 340,808 | 1.8% | 575,090 | 1.9% | (40.7)% |
| Management fee income | — | —% | 50,000 | 0.2% | (100.0)% |
| Total revenue | 18,763,916 | | 30,143,118 | | |
| | | | | | |
| Expenses | | | | | |
| Restaurant cost of sales | 5,749,876 | 31.7% | 9,494,777 | 32.7% | (39.4)% |
| Restaurant operating expenses | 13,194,583 | 72.8% | 19,406,358 | 66.8% | (32.0)% |
| Restaurant pre-opening and closing expenses | 287,768 | 1.6% | 361,554 | 1.2% | (20.4)% |
| General and administrative expenses | 4,691,541 | 25.0% | 5,966,447 | 19.8% | (21.4)% |
| Asset impairment charge | 1,578,464 | 8.4% | 9,149,852 | 30.4% | (82.7)% |
| Depreciation and amortization | 1,525,367 | 8.1% | 1,842,352 | 6.1% | (17.2)% |
| Total expenses | 27,027,599 | 144.0% | 46,221,340 | 153.3% | (41.5)% |
| Operating loss | (8,263,683) | | (16,078,222) | | |
| **Other (expense) income:** | | | | | |
| Interest expense | (684,315) | (3.6)% | (673,573) | (2.2)% | 1.6% |
| Change in fair value of derivative liabilities | 616,200 | 3.3% | — | —% | —% |
| Change in the fair value of investment | (1,232,037) | (6.6)% | — | —% | —% |
| Debt extinguishment expense | (11,808,111) | (62.9)% | — | —% | —% |
| Gain on extinguishment of lease liability | 506,185 | 2.7% | — | —% | |
| Other income (expense) | 281,293 | 1.5% | (617,837) | (2.0)% | (145.5)% |
| **Total other expense** | (12,320,785) | | (1,291,410) | | |
| Loss before income taxes | (20,584,468) | | (17,369,632) | | |
| **Income tax expense** | (6,505) | —% | (73,726) | (0.2)% | (91.2)% |
| **Loss from continuing operations** | (20,590,973) | | (17,443,358) | | |
| **Discontinued operations** | | | | | |
| Loss from discontinued operations, net of tax | — | —% | (1,021,674) | (3.4)% | (100.0)% |
| **Consolidated net loss** | $ (20,590,973) | | $ (18,465,032) | | |

** Restaurant cost of sales, operating expenses and closing expense percentages are based on restaurant sales, net. Other percentages are based on total revenue.*

***Revenue***

Total revenue decreased to $18.8 million for the year ended December 31, 2020 from $30.1 million for the year ended December 31, 2019.

| | Year Ended December 31, 2020 | |
|---|---|---|
| | **Amount** | **% of Revenue*** |
| Restaurant sales, net | $ 18,131,097 | 96.6% |
| Gaming income, net | 292,011 | 1.6% |
| Franchise income | 340,808 | 1.8% |
| Management fee income | — | —% |
| Total revenue | $ 18,763,916 | 100% |

| | Year Ended December 31, 2019 | |
|---|---|---|
| | **Amount** | **% of Revenue*** |
| Restaurant sales, net | $ 29,055,521 | 96.4% |
| Gaming income, net | 462,507 | 1.5% |
| Franchise income | 575,090 | 1.9% |
| Management fee income | 50,000 | 0.2% |
| Total revenue | $ 30,143,118 | 100% |

- Revenue from Restaurant sales decreased 37.6% to $18.1 million for the year ended December 31, 2020, compared to the year ended December 31, 2019. The primary reason for the decline was due to COVID-19 pandemic restrictions, where a portion of the restaurants were temporarily closed, and the units that remained open were only able to provide take-out and delivery orders for customers due to government restrictions and mandates. Additionally, there was a decline in revenue from the closure of of non-performing stores. For the year ended December 31, 2020, the Company permanently closed 8 stores. These permanently closed stores provided revenue of $0.6 million for the year ended December 31, 2020, versus $3.6 million for the comparable 2019 period.

- Gaming income decreased 36.9% to $0.3 million for the year ended December 31, 2020, compared to the year ended December 31, 2019. The primary reason for this decline was due to the affect COVID-19 pandemic had on operations. The gaming location in Portland was totally shut down for 6 weeks in 2020 due to COVID-19 during the months of April and May.

- Franchise Income decreased 40.7% to $0.3 million for the year ended December 31, 2020, compared to the year ended December 31, 2019. The primary reason for this decline was due to the affect COVID-19 pandemic had on revenue of franchise locations.

*Restaurant cost of sales*

Restaurant cost of sales decreased to $5.7 million for the year ended December 31, 2020 from $9.5 million for the year ended December 31, 2019. The percent of restaurant sales decreased to 31.7% for the year ended December 31, 2020 from 32.7% for the year ended December 31, 2019. The overall decrease in cost of sales was due to the 37.6% decline in restaurant revenue to $18.1 million for the year ended December 31, 2020 compared to $29.1 million for the year ended December 31, 2019.

*Restaurant operating expenses*

Restaurant operating expenses decreased to $13.2 million for the year ended December 31, 2020 from $19.4 million for the year ended December 31, The overall decrease of restaurant operating expenses was driven by the overall decline of revenue as described in the revenue section above, and the corresponding adjustment of labor at the store level and tighter controls of store level operating expenses.

*Restaurant pre-opening and closing expenses*

Restaurant pre-opening and closing expenses decreased to $0.3 million for the year ended December 31, 2020 compared with $0.4 million for the year ended December 31, 2019. The decrease is primarily due to no new restaurants opening in the year ended December 31, 2020, compared to one restaurant that incurred pre-opening expenses in the year ended December 31, 2019.

*General and administrative expense ("G&A")*

G&A expenses decreased to $4.7 million for the year ended December 31, 2020, from $6.0 million for the year ended December 31, 2019. The decreased in G&A was driven by the reduction of Salaries and benefits resulting from the departure of two senior management personnel, a reduction in Advertising, insurance and other resulting from decreased expenditures due to store closures and the COVID-19 pandemic, and a reduction in travel and entertainment due to not having to manage unionization efforts that occurred in 2019, and improvements in management of operations. The decreases were slightly offset by increases in Audit, legal and other professional services resulting from the Company filing its Form-10 in 2020 for the Merger transaction. Significant components of G&A are summarized as follows:

| | Year Ended December 31, | |
|---|---|---|
| | **2020** | **2019** |
| Audit, legal an other professional services | $ 2,013,247 | $ 1,887,919 |
| Salary and benefits | 1,998,070 | 2,375,592 |
| Advertising, insurance and other | 492,672 | 1,387,719 |
| Shareholder services and fees | 169,325 | 114,864 |
| Travel and entertainment | 18,227 | 200,353 |
| Total G&A Expenses | $ 4,691,541 | $ 5,966,447 |

*Asset impairment charges*

Asset impairment charges decreased to $1.6 million for the year ended December 31, 2020, compared to $9.1 million in the year ended December 31, 2019. During 2019, we recognized impairment charges related to the closure of three BGR locations, a Hooters location, and one American Burger location. We also recognized impairment charges related to our Hooters Nottingham location of approximately $1.0 million, and an impairment of $1.0 million related to the Hooters in Portland, Oregon. Due to the adoption of ASC 842 and termination fees from the above-mentioned store closures, the Company recognized another $5.2 million impairment in the year ended December 31, 2019.

In the 2020 period, the Company recorded an impairment on tradenames/trademarks of approximately $0.3 million, property and equipment of approximately $0.8 million and right of use asset of approximately $0.5 million primarily due to the lower level of cash flow at the store level along with the permanent closures related to the impact of COVID-19 on operations.

*Depreciation and amortization*

Depreciation and amortization expense was $1.5 million for the year ended December 31, 2020, compared to $1.8 million for the year ended December 31, 2019. The Company has curtailed opening new stores in the past several years and in making acquisitions of property and equipment due to its financial condition. Recent impairments of property and equipment and intangible assets have caused a decrease in the gross value of the underlying assets thereby resulting in a decrease in depreciation and amortization expense.

*Other (expense) income*

Interest expense for the year ended December 31, 2020 of $0.7 million was comparable to the comparative period in 2019. This is consistent with the Company's debt load at the end of each period of approximately $6.7 million for the year ended December 31, 2020 and $6.6 million for the year ended December 31, 2019.

During the year ended December 31, 2020 the change in fair value of derivative liabilities was income of $0.6 million. The derivative liabilities arise from transactions in 2020 and as such, there was no amount in 2019. The derivative liabilities were marked to market at each quarter end through August 2020. An amendment was entered into on August 17, 2020 (see Note 7 in the financial statements) which eliminated the requirement to continue to mark-to-market these instruments.

In connection with the Merger, the Company obtained warrants to purchase 186,101 shares of Sonnet at $0.001 per share. The warrants were exercised in a cashless transaction in November 2020 resulting in the Company receiving 185,422 shares of Sonnet. The share price of Sonnet decreased from $8.76 at April 1, 2020 (the Merger date) to $2.23 at December 31, 2020 causing a loss on investment of $1.2 million for the year ended December 31, 2020. The shares will continue to be recorded at fair value until the securities are sold.

On April 1, 2020, the Company exchanged the then existing 8% non-convertible notes for 10% convertible notes. Warrants to purchase common stock were also issued in connection with the issuance of the new notes. The Company recorded a $11.8 million loss on the extinguishment of the 8% notes based on the difference in the carrying value of the old notes and the fair value of the new notes and warrants issued. See Note 7 to the financial statements for further discussion. There were no similar transactions in the year ended December 31, 2019.

In the year ended 2020, the Company recognized a gain on the extinguishment of lease liabilities of $0.5 million due to the derecognition of lease liabilities resulting from the Company negotiating the cancellation of its obligations under certain lease agreements. The cancellations resulted from the COVID-19 pandemic. There were no similar transactions in the year ended December 31, 2019.

Other income was $0.3 million for the year ended December 31, 2020 compared to other expense of ($0.6) million for the year ended December 31, 2019. During the year ended December 31, 2019 an expense of $0.4 million was recorded for the write down of an investment in Hooters of America. The item did not re-occur in 2020. During the year ended December 31, 2020, the Company recognized approximately $0.2 million of income related to the remeasurement of right of use lease liabilities.

**STATEMENT OF CASH FLOWS FOR THE YEAR ENDED DECEMBER 31, 2020 COMPARED TO THE YEAR ENDED DECEMBER 31, 2019**

| | Year Ended December 31, | |
|---|---|---|
| | **2020** | **2019** |
| Net cash used in operating activities | $ (5,616,136) | $ (4,046,550) |
| Net cash used in investing activities | (63,751) | 678,669 |
| Net cash provided by financing activities | 7,107,141 | 3,343,397 |
| Effect of foreign currency exchange rates | 533 | 1,390 |
| | $ 1,427,787 | $ (23,094) |

Cash used in operating activities was approximately $5.6 million for the year ended December 31, 2020 compared to cash used in operating activities of approximately $4.0 million for the year ended December 31, 2019. This use of cash was primarily driven by the net loss of $21.1 million and $17.4 million in the years ended December 31, 2020 and 2019, respectively. Losses were also offset by non-cash charges to operations of $16.2 million and $13.1 in the years ended December 31, 2020 and 2019, respectively. The balance of the change in cash flows from operating activities was related to net movements in asset and liability accounts.

Cash used in investing activities for the year ended December 31, 2020 was $0.06 million compared to cash provided of $0.7 million for the year ended December 31, 2019. Cash used in investing activities in 2020 was for the purchase of property and equipment. The cash provided from investing activities in 2019 was related to $0.5 million received from the sale of assets, $0.3 million from tenant improvement allowances offset by $0.5 million of expenditures for property and equipment.

Cash provided by financing activities for the year ended December 31, 2020 was approximately $7.1 million compared to cash provided by financing activities of approximately $3.3 million for the year ended December 31, 2019. The primary drivers of the cash provided by financing activities during 2020 was proceeds from the bridge preferred equity investment, proceeds from the exercise of warrants, and the $5.4 million of net Merger Consideration received. The primary driver of the cash provided from financing activities in 2019 were proceeds received from a rights offering and contributions received from a non-controlling interest.

**LIQUIDITY, CAPITAL RESOURCES AND GOING CONCERN**

*Liquidity, Capital Resources and Going Concern*

As of December 31, 2020, our cash balance was $1,928,804, of which $1,250,336 was restricted cash, our working capital deficiency was $12,281,398 and we had significant near-term commitments and contractual obligations. The level of additional cash needed to fund operations and our ability to conduct business for the next 12 months will be influenced primarily by the following factors:

- our ability to access the capital and debt markets to satisfy current obligations and operate the business;
- our ability to qualify for and access financial stimulus programs available through federal and state government programs;
- our ability to refinance or otherwise extend maturities of current debt obligations;
- our ability to manage our operating expenses and maintain gross margins;
- popularity of and demand for our fast-casual dining concepts; and
- general economic conditions and changes in consumer discretionary income.

We have typically funded our operating costs, acquisition activities, working capital requirements and capital expenditures with proceeds from the issuances of our common stock and other financing arrangements, including convertible debt, lines of credit, notes payable, capital leases, and other forms of external financing.

On March 10, 2020, the World Health Organization characterized the novel COVID-19 virus as a global pandemic. The COVID-19 outbreak in the United States has resulted in a significant impact throughout the hospitality industry. The Company has been impacted due to restrictions placed on them by state and local governments that caused temporary restaurant closures or significantly reduced the Company's ability to operate, restricting the Company's restaurants to take-out only. It is difficult to estimate the length or severity of this outbreak; however, the Company has made operational changes, as needed, to reduce the impact. However, there can be no certainty regarding the length and severity of the outbreak and such its ultimate financial impact on the restaurant operations.

As a result of the Merger discussed in the audited consolidated and combined financial statements, on April 1, 2020, Amergent received gross proceeds of $6,000,000 in cash and warrants to purchase 186,161 shares of the Company's common stock of Sonnet as well as paid down and refinanced certain debt obligations. Even considering the additional liquidity on April 1, 2020, proceeds from the PPP loan on April 27, 2020 and Febuary 25, 2021, and EIDL loans on April 4, 2020, the Company expects to be required to seek additional debt or equity funding to maintain ongoing operations and there can be no assurances that such funding would be available at commercially reasonable terms, if at all.

As Amergent executes its business plan over the next 12 months, it intends to carefully monitor the impact of its working capital needs and cash balances relative to the availability of cost-effective debt and equity financing. In the event that capital is not available, Amergent may then have to scale back or freeze its operations plans, sell assets on less than favorable terms, reduce expenses, and/or curtail future acquisition plans to manage its liquidity and capital resources.

The Company's current operating losses, combined with its working capital deficit and uncertainties regarding the impact of COVID-19, raise substantial doubt about our ability to continue as a going concern.

In addition, our business is subject to additional risks and uncertainties, including, but not limited to, those described in Item 1A. "Risk Factors".

The consolidated and combined financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts and classification of liabilities that might be necessary should the Company be unable to continue as a going concern.

**CRITICAL ACCOUNTING POLICIES**

Our reported results of operations and financial position are dependent upon the application of certain accounting policies and estimates that require subjective or complex judgments. Such estimates are inherently uncertain and changes in such estimates could have a significant impact on reported results and balances for the periods presented as well as future periods. The following is a description of what we consider to be our most critical accounting policies.

**Leases**

We determine if a contract contains a lease at inception. Our material operating leases consist of restaurant locations and office space. Our leases generally have remaining terms of 1-20 years and most include options to extend the leases for additional 5-year periods. Generally, the lease term is the minimum of the noncancelable period of the lease or the lease term inclusive of reasonably certain renewal periods up to a term of 20 years. If the estimate of our reasonably certain lease term was changed, our depreciation and rent expense could differ materially.

Operating lease assets and liabilities are recognized at the lease commencement date. Operating lease liabilities represent the present value of lease payments not yet paid. Operating lease assets represent our right to use an underlying asset and are based upon the operating lease liabilities adjusted for prepayments or accrued lease payments, initial direct costs, lease incentives, and impairment of operating lease assets. To determine the present value of lease payments not yet paid, we estimate incremental borrowing rates corresponding to the reasonably certain lease term. As we have no committed credit facilities, secured or otherwise, we estimate this rate based on prevailing financial market conditions, comparable company and credit analysis, and management judgment. If the estimate of our incremental borrowing rate was changed, our operating lease assets and liabilities could differ materially.

**Estimated Lease Termination and Other Closing Costs**

Once we have determined that a restaurant location is to be closed, we estimate the expected proceeds to be received from such disposal and impair the carrying value of the net assets of such locations to this estimate and report these net assets as assets held for sale. Our estimate of disposal proceeds is dependent upon multiple assumptions including our ability to identify a buyer as well as the general market for commercial real estate at the expected time of disposal. Actual results could significantly differ from these estimates, which could result in a significant impact to reported operations in future periods. Assets that have been impaired to their estimated disposal proceeds are maintained at the lower of this new carrying value or the most recently developed estimate of eventual proceeds.

**Long-Lived Assets**

Long-lived assets, such as property and equipment, operating lease assets, and purchased intangible assets subject to depreciation and amortization, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Some of the events or changes in circumstances that would trigger an impairment test include, but are not limited to:

- significant under-performance relative to expected and/or historical results (negative comparable sales growth or operating cash flows for two consecutive years);
- significant negative industry or economic trends;
- knowledge of transactions involving the sale of similar property at amounts below the Company's carrying value; or
- the Company's expectation to dispose of long-lived assets before the end of their estimated useful lives, even though the assets do not meet the criteria to be classified as "Held for Sale."

If circumstances require a long-lived asset or asset group be tested for possible impairment, the Company first compares undiscounted cash flows expected to be generated by that asset or asset group to its carrying value. If the carrying value of the long-lived asset or asset group is not recoverable on an undiscounted cash flow basis, an impairment is recognized to the extent that the carrying value exceeds its fair value. Fair value is determined through various valuation techniques, including discounted cash flow models, quoted market values and third-party independent appraisals, as considered necessary.

Due to the continued impact of this pandemic on the Company's business, management performed an impairment analysis of its long-lived assets at each quarter end in 2020, including December 31, 2020, and determined that the carrying value of the Company's trade name/trademark intangible asset, property and equipment and operating lease assets were impaired for an aggregate amount of $1.6 million. The determination was based on the best judgment of management for the future of the asset and on information known at the time of the assessment.

**Goodwill**

Goodwill is not subject to amortization but is tested at least annually or when impairment indicators are present. When evaluating goodwill for impairment, the Company may first perform a qualitative assessment to determine whether it is more likely than not that a reporting unit is impaired. If the Company does not perform a qualitative assessment, or determines that it is not more likely than not that the fair value of the reporting unit exceeds its carrying amount, a quantitative assessment is performed to calculate the estimated fair value of the reporting unit. If the carrying amount of the reporting unit exceeds the estimated fair value, an impairment charge is recorded to reduce the carrying value to the estimated fair value. The Company's decision to perform a qualitative impairment assessment is influenced by a number of factors, including the significance of the excess of the reporting unit's estimated fair value over carrying value at the last quantitative assessment date, the amount of time in between quantitative fair value assessments, and the price of our common stock. Impairment is measured as the excess of carrying value of the goodwill to its estimated fair value. Due to the ongoing impact of the COVID-19 pandemic on the Company's business, management performed an impairment analysis of goodwill as of each quarter end in 2020, including December 31, 2020. No goodwill impairment was required in 2020.

**Derivative Liability**

Accounting for the derivative liability relating to the Company's true-up payment, warrants and debt conversion feature requires Amergent's management to exercise judgment and make estimates and assumptions regarding fair value. Each derivative liability was initially recorded at fair value upon the date of issuance and is subsequently remeasured to fair value at each reporting date, with changes recognized in the consolidated statement of operations until the liability expires or qualifies for equity classification. See note 11 to the combined consolidated financial statements for a discussion of these liabilities. At December 31, 2020, the only remaining derivative liability was related to a true-up payment. Changes in the fair value of the true-up payment will continue to be recognized until it is settled.

**Modification of Debt**

When we change the terms of existing notes payable, we evaluate the amendments under ASC 470-50, *Debt Modification and Extinguishment* to determine whether the change should be treated as a modification or as a debt extinguishment. This evaluation includes analyzing whether there are significant and consequential changes to the economic substance of the note. If the change is deemed insignificant then the change is considered a debt modification, whereas if the change is substantial the change is reflected as a debt extinguishment.

**Off-Balance Sheet Arrangements**

We do not have any relationships with unconsolidated entities or financial partnerships, including entities sometimes referred to as structured finance or special purpose entities that were established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. We do not engage in off-balance sheet financing arrangements. In addition, we do not engage in trading activities involving non-exchange traded contracts. We therefore believe that we are not materially exposed to any financing, liquidity, market or credit risk that could arise if it had engaged in these relationships.

**Recently Issued Accounting Pronouncements**

A description of recently issued accounting pronouncements that may potentially impact the our financial position and results of operations is disclosed in Note 2 to the consolidated and combined financial statements included elsewhere in this Form 10-K.

**ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

As a smaller reporting company, Amergent is not required to provide the information required by this Item 7A.

**ITEM 8. FINANCIAL STATEMENTS**

**Amergent Hospitality Group, Inc and Subsidiaries**
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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
Amergent Hospitality Group Inc. and Subsidiaries
Charlotte, North Carolina

**Opinion on the Financial Statements**

We have audited the accompanying consolidated and combined balance sheets of Amergent Hospitality Group Inc. and Subsidiaries (the "Company") as of December 31, 2020 and 2019, the related consolidated and combined statements of operations, comprehensive loss, equity (deficit), and cash flows for the years then ended, and the related notes, (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2020 and 2019, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

**Substantial Doubt about the Company's Ability to Continue as a Going Concern**

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company incurred $20.6 million in losses for the year ended December 31, 2020, that included $1.6 million in asset impairments, and the Company has a working capital deficit of approximately $12.3 million as of December 31, 2020. These conditions raise substantial doubt about the Company's ability to continue as a going concern. Management's evaluations of the events and conditions and management's plans regarding those matters are also described in Note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

**Basis for Opinion**

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

**Critical Audit Matters**

The critical audit matters communicated below are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing a separate opinion on the critical audit matters or on the accounts or disclosures to which they relate.

***Impairment of Long-Lived Assets and Operating Lease Assets***

*Critical Audit Matter Description*

The Company periodically evaluates the carrying amount of long-lived assets when events and circumstances warrant such a review to ascertain if any assets have been impaired. As a result of the material reduction in net revenues during fiscal 2020, the Company performed its impairment analysis at the store-level, which represents the lowest level for which identifiable cash flows are independent of the cash flows of other assets. The carrying amount of long-lived assets and operating lease assets, is considered impaired when the carrying value of the asset group exceeds the expected future cash flows from the asset group. As of December 31, 2020, long-lived assets aggregated to $4.5 million and operating lease assets aggregated to $9.5 million. During fiscal year 2020, the Company recorded impairment charges of $833,000 and $486,000 to long-lived assets and operating lease assets, respectively.

Inherent in the impairment analysis of long-lived assets and operating lease assets are certain significant judgments and estimates related to forecasted cash flows and revenues. As disclosed by management, changes in these assumptions can significantly impact the valuation of long-lived assets and operating lease assets, and the impairment charge that is recorded.

*How the Critical Audit Matter Was Addressed in the Audit*

Our audit procedures related to the forecasted cash flows and sales used in the long-lived asset and operating lease asset impairment analyses included the following:

- We obtained an understanding of the relevant controls related to management's evaluation of long-lived asset impairment analyses.

- We performed procedures including reviewing the sensitivity over the assumptions used in the impairment analysis to assess their impact on the determination of fair value.

- We evaluated the reasonableness of management's cash flow forecasts by comparing the forecasts to historical performance, considering industry-wide trends in current year actual financial performance and management expectations for future performance.

- Testing completeness and accuracy of the assets that were tested for impairment.

***Impairment Assessment of Goodwill and Indefinite-Lived Intangible Assets***

*Critical Audit Matter Description*

As described in Note 6 to the consolidated financial statements, the Company had a goodwill balance of $8.6 million, and an indefinite lived tradename balance of $2.3 million at December 31, 2020.

- Goodwill and indefinite-lived intangible assets are tested for impairment at least annually at the reporting unit level or more frequently when events occur, or circumstances change. The evaluation requires a comparison of the estimated fair value of the asset to the carrying value of the asset. If the carrying value of the asset exceeds its fair value, an impairment charge is recorded.

The Company utilized a third-party consultant to perform an impairment test on both goodwill and indefinite-lived intangible assets. As the Company has a single reporting unit, management utilized a market capitalization approach in determining the fair value of the entity as part of the impairment assessment of goodwill. The Company utilized a relief from royalty method to estimate the fair value of indefinite-lived tradenames. As disclosed by management, changes in key assumptions in the relief from royalty approach could have a significant impact on the estimate of future cash flows and therefore, on the amount of any impairment charge. The determination of an impairment indicator on goodwill and finite-lived intangible assets requires management judgments and involves significant assumptions.

*How the Critical Matter Was Addressed in the Audit*

The primary audit procedures we performed to address this critical audit matter included:

- We obtained an understanding of the relevant controls related to management's evaluation of goodwill and other indefinite-lived asset impairment analyses.
- Reviewing and independently corroborating management's estimate of the fair value of the Company, which consists of a single reporting unit, utilizing a market capitalization approach.
- Evaluated management's determination of reporting units and segments
- Reviewing management's inputs, assumptions and projections utilized in the estimation of the fair value of the Company's indefinite-lived tradenames.
- Testing completeness and accuracy of the data used in impairment analyses.
- Performed sensitivity analyses over the Company's annual goodwill and indefinite-lived tradename impairment analyses.

***Complex Debt and Equity Transactions***

*Critical Audit Matter Description*

As described in Note 11 of the consolidated financial statements, the Company entered into multiple complex debt and equity transactions during the year ended December 31, 2020. During the first quarter of 2020, the Company issued Preferred Series 2 instruments that included a provision guaranteeing holders to a minimum investment return to be settled in cash, if necessary, at a future date. This provision was determined to be a derivative liability and has been included on the consolidated balance sheet as a liability and reported at fair value each reporting period. During the second quarter of 2020, the Company restructured its non-convertible debt to convertible debt. The restructuring arrangement also resulted in the Company issuing warrants to the debtholder. The restructuring was determined to be an extinguishment of the original debt, resulting in a recognized loss on extinguishment of $11.8 million on the consolidated statement of operations for the year ended December 31, 2020. Additionally, management determined that the conversion feature and attached warrants associated with the new debt should be recorded as derivative liabilities. These derivative liabilities were carried at fair value on the consolidated balance sheet until the third quarter, when the convertible debt was amended to remedy the conditions that originally gave rise to the derivative liability classification. Management utilized outside valuation specialists to assist them in the development of the fair value of these instruments.

We identified these complex debt and equity instruments as a critical audit matter because of the judgments necessary to determine the periodic fair values of the underlying derivative liability instruments. This required extensive audit effort due to the complexity of the instruments. Additionally, there was considerable judgment on the part of management in determining the initial and subsequent classification of these instruments as liabilities, temporary equity or permanent equity.

*How the Critical Audit Matter Was Addressed in the Audit*

- We obtained an understanding of the relevant controls related to management's identification and valuation of derivative liabilities.
- With the assistance of fair value specialists, we independently evaluated the reasonableness of the inputs and methodologies utilized to develop the estimated periodic fair values of the underlying derivative instruments.
- We reviewed management's analysis of proper classification of complex instruments and assessed their compliance with relevant accounting guidance.

*/s/ Cherry Bekaert LLP*

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

Charlotte, North Carolina
April 15, 2021

**Amergent Hospitality Group, Inc and Subsidiaries**
**Consolidated and Combined Balance Sheets**

| | December 31, 2020 | December 31, 2019 |
|---|---|---|
| **ASSETS** | | |
| Current assets: | | |
| Cash | $ 678,468 | $ 500,681 |
| Restricted cash | 1,250,336 | 336 |
| Investments | 413,268 | — |
| Accounts and other receivables | 314,043 | 131,887 |
| Inventories | 172,695 | 287,111 |
| Prepaid expenses and other current assets | 290,227 | 249,579 |
| **TOTAL CURRENT ASSETS** | **3,119,037** | **1,169,594** |
| Property and equipment, net | 3,702,894 | 5,630,490 |
| Operating lease assets | 9,529,443 | 11,668,026 |
| Intangible assets, net | 3,043,885 | 3,656,995 |
| Goodwill | 8,591,149 | 8,567,888 |
| Investments | 365,001 | 381,397 |
| Deposits and other assets | 295,930 | 309,462 |
| Assets of discontinued operations | — | 149,000 |
| **TOTAL ASSETS** | **$ 28,647,339** | **$ 31,532,852** |
| | | |
| **LIABILITIES, REDEEMABLE SHARES, AND STOCKHOLDERS' DEFICIT** | | |
| Current liabilities: | | |
| Accounts payable and accrued expenses | $ 8,667,268 | $ 8,165,195 |
| Current maturities of long-term debt and notes payable | 2,338,978 | 6,630,961 |
| Current operating lease liabilities | 4,209,389 | 3,299,309 |
| Derivative liabilities | 184,800 | — |
| **TOTAL CURRENT LIABILITIES** | **15,400,435** | **18,095,465** |
| | | |
| Redeemable preferred stock Series 1: no par value; 0 and 62,876 shares issued and outstanding, net of discount of $0 and $139,131 at December 31, 2020 and December 31, 2019, respectively | — | 709,695 |
| Long-term operating lease liabilities | 10,677,862 | 14,382,354 |
| Contract liabilities | 794,989 | 959,445 |
| Deferred tax liabilities | 108,809 | 102,304 |
| Long-term debt and notes payable, net of current maturities | 539,734 | — |
| Convertible debt, net of debt discount of $223,681 at December 31, 2020 | 3,814,208 | — |
| Liabilities of discontinued operations | — | 435,600 |
| **TOTAL LIABILITIES** | **31,336,037** | **34,684,863** |
| | | |
| Commitments and contingencies (see Note 12) | | |
| | | |
| Convertible Preferred Stock: Series 2: $1,000 stated value; authorized 1,500 and no shares; 787 and no shares issued and outstanding at December 31, 2020 and December 31, 2019, respectively | 459,608 | — |
| | | |
| Stockholders' Deficit: | | |
| Common stock: $0.0001 par value; authorized 50,000,000 and 45,000,000 shares; 14,282,736 and 10,404,347 shares issued and outstanding at December 31, 2020 and December 31, 2019, respectively | 1,428 | 1,041 |
| Additional paid-in-capital | 92,433,344 | 71,505,989 |
| Accumulated deficit | (94,587,482) | (75,068,385) |
| Accumulated other comprehensive loss | (25,916) | (46,437) |
| **Total Amergent Hospitality Group, Inc., Stockholders' Deficit** | **(2,178,626)** | **(3,607,792)** |
| Non-controlling interests | (969,680) | 455,781 |
| **TOTAL STOCKHOLDERS' DEFICIT** | **(3,148,306)** | **(3,152,011)** |
| **TOTAL LIABILITIES, REDEEMABLE SHARES AND STOCKHOLDERS' DEFICIT** | **$ 28,647,339** | **$ 31,532,852** |

See accompanying notes to the consolidated and combined financial statements

**Amergent Hospitality Group, Inc and Subsidiaries**
**Consolidated and Combined Statements of Operations**

| | Year Ended | |
|---|---|---|
| | **December 31, 2020** | **December 31, 2019** |
| **Revenue:** | | |
| Restaurant sales, net | $ 18,131,097 | $ 29,055,521 |
| Gaming income, net | 292,011 | 462,507 |
| Franchise income | 340,808 | 575,090 |
| Management fee income | — | 50,000 |
| **Total revenue** | 18,763,916 | 30,143,118 |
| **Expenses:** | | |
| Restaurant cost of sales | 5,749,876 | 9,494,777 |
| Restaurant operating expenses | 13,194,583 | 19,406,358 |
| Restaurant pre-opening and closing expenses | 287,768 | 361,554 |
| General and administrative expenses | 4,691,541 | 5,966,447 |
| Asset impairment charge | 1,578,464 | 9,149,852 |
| Depreciation and amortization | 1,525,367 | 1,842,352 |
| **Total expenses** | 27,027,599 | 46,221,340 |
| **Operating loss** | (8,263,683) | (16,078,222) |
| **Other (expense) income:** | | |
| Interest expense | (684,315) | (673,573) |
| Change in fair value of derivative liabilities | 616,200 | — |
| Change in the fair value of investment | (1,232,037) | — |
| Debt extinguishment expense | (11,808,111) | — |
| Gain on extinguished lease liabilities | 506,185 | — |
| Other income (expense) | 281,293 | (617,837) |
| **Total other expense** | (12,320,785) | (1,291,410) |
| Loss before income taxes | (20,584,468) | (17,369,632) |
| **Income tax expense** | (6,505) | (73,726) |
| **Loss from continuing operations** | (20,590,973) | (17,443,358) |
| **Discontinued operations** | | |
| Loss from discontinued operations, net of tax | — | (1,021,674) |
| **Consolidated net loss** | (20,590,973) | (18,465,032) |
| Less: Net loss attributable to non-controlling interests | 619,552 | 402,386 |
| Less: Net loss attributable to non-controlling interest of discontinued operations | — | 336,262 |
| **Net loss attributable to Amergent Hospitality Group Inc.** | (19,971,421) | (17,726,384) |
| Dividends on redeemable preferred stock | (28,219) | (112,238) |
| **Net loss attributable to common shareholders of Amergent Hospitality Group Inc.** | $ (19,999,640) | $ (17,838,622) |
| **Net loss attributable to Amergent Hospitality Group, Inc. per common share, basic and diluted** | **$ (1.46)** | **$ (2.56)** |
| **Net loss attributable to Amergent Hospitality Group, Inc. before discontinued operations per common share, basic and diluted** | $ (1.46) | $ (2.46) |
| Weighted average shares outstanding, basic and diluted | 13,708,985 | 6,978,848 |

See accompanying notes to the consolidated and combined financial statements

**Amergent Hospitality Group, Inc and Subsidiaries**
**Consolidated and Combined Statements of Comprehensive Loss**

| | Year Ended | |
|---|---|---|
| | **December 31, 2020** | **December 31, 2019** |
| **Net loss attributable to Amergent Hospitality Group** | $ (19,971,421) | $ (17,726,384) |
| Foreign currency translation gain | 20,521 | 155,678 |
| **Comprehensive loss** | $ (19,950,900) | $ (17,570,706) |

See accompanying notes to the consolidated and combined financial statements

**Amergent Hospitality Group, Inc and Subsidiaries**
**Consolidated and Combined Statements of Stockholders' Deficit**
**Year Ended December 31, 2020**

| | (Temporary equity) Preferred Series 2 | | Common Stock | | Additional Paid-in | Accumulated | Accumulated Other Comprehensive | Non-Controlling | |
|---|---|---|---|---|---|---|---|---|---|
| | Shares | Amount | Shares | Amount | Capital | Deficit | Loss | Interest | Total |
| **Balance, December 31, 2019** | — | $ — | 10,404,347 | $ 1,041 | $71,505,989 | $ (75,068,385) | $ (46,437) | $ 455,781 | $ (3,152,011) |
| Common stock: | | | | | | | | | |
| Preferred unit dividend | — | — | 37,518 | 4 | 19,519 | (28,219) | — | — | (8,696) |
| Exercise of warrants | — | — | 2,414,022 | 241 | 1,528,867 | (325,366) | — | — | 1,203,742 |
| Preferred shares - Series 2: | | | | | | | | | — |
| Issuance of shares, net of transaction costs of $95,000 | 1,500 | 1,405,000 | — | — | — | — | — | — | — |
| Bifurcation of derivative liability | — | (529,000) | — | — | — | — | — | — | — |
| Beneficial conversion feature | — | (729,000) | — | — | 729,000 | — | — | — | 729,000 |
| Preferred stock deemed dividend | — | 729,000 | — | — | (729,000) | — | — | — | (729,000) |
| Conversion of Series 2 preferred to common | (713) | (416,392) | 1,426,849 | 142 | 416,255 | — | — | — | 416,397 |
| Reclassification of warrants and conversion feature | — | — | — | — | 11,894,000 | — | — | — | 11,894,000 |
| Warrant issued for True-Up Payment extension | — | — | — | — | 28,060 | — | — | — | 28,060 |
| Cash consideration of merger consideration, net of transaction costs of $588,255 | — | — | — | — | 5,411,745 | — | — | — | 5,411,745 |
| Contribution of warrant portion of merger consideration | — | — | — | — | 1,628,909 | — | — | — | 1,628,909 |
| Foreign currency translation | — | — | — | — | — | — | 20,521 | — | 20,521 |
| Reclassification of non-controlling interest | — | — | — | — | — | 805,909 | — | (805,909) | — |
| Net loss | — | — | — | — | — | (19,971,421) | — | (619,552) | (20,590,973) |
| **Balance, December 31, 2020** | 787 | $ 459,608 | 14,282,736 | $ 1,428 | $92,433,344 | $ (94,587,482) | $ (25,916) | $ (969,680) | $ (3,148,306) |

See accompanying notes to the consolidated and combined financial statements

**Amergent Hospitality Group, Inc and Subsidiaries**
**Consolidated and Combined Statements of Stockholders' Equity (Deficit)**
**Year ended December 31, 2019**

| | (Temporary equity) Preferred Series 2 | | Common Stock | | Additional Paid-in | Accumulated | Accumulated Other Comprehensive | Non-Controlling | |
|---|---|---|---|---|---|---|---|---|---|
| | Shares | Amount | Shares | Amount | Capital | Deficit | Loss | Interest | Total |
| **Balance, December 31, 2018** | — | $ — | 3,715,444 | $ 373 | $64,756,903 | $ (57,124,673) | $ (202,115) | $ 827,037 | $ 8,257,525 |
| Common stock and warrants issued for: | | | | | | | | | |
| Preferred unit dividend | — | — | 77,975 | 7 | 77,144 | (112,238) | — | — | (35,087) |
| Director fees | — | — | 194,475 | 19 | 336,940 | — | — | — | 336,959 |
| Consulting services | — | — | 36,765 | 4 | 117,087 | — | — | — | 117,091 |
| Subscriptions pursuant to rights offerings, net | — | — | 3,009,733 | 300 | 2,614,315 | — | — | — | 2,614,615 |
| Accrued interest on note payable | — | — | 10,400 | 1 | 13,839 | — | — | — | 13,840 |
| Exercise of warrants at reduced price | — | — | 239,555 | 24 | 258,144 | (105,090) | — | — | 153,078 |
| Share-based compensation | — | — | 45,000 | 5 | 126,829 | — | — | — | 126,834 |
| Stock issued to settle convertible debt and note payable | — | — | 3,075,000 | 308 | 3,074,692 | — | — | — | 3,075,000 |
| Foreign currency translation | — | — | — | — | — | — | 155,678 | — | 155,678 |
| Shareholder payment for short swing | — | — | — | — | 1,676 | — | — | — | 1,676 |
| Non-controlling interest contributions | — | — | — | — | — | — | — | 575,000 | 575,000 |
| Non-controlling interest distributions | — | — | — | — | — | — | — | (79,188) | (79,188) |
| Reclassification of non-controlling interest | — | — | — | — | 128,420 | — | — | (128,420) | — |
| Net loss | — | — | — | — | — | (17,726,384) | — | (738,648) | (18,465,032) |
| **Balance, December 31, 2019** | — | $ — | 10,404,347 | $ 1,041 | $71,505,989 | $ (75,068,385) | $ (46,437) | $ 455,781 | $ (3,152,011) |

See accompanying notes to the consolidated and combined financial statements

**Amergent Hospitality Group, Inc and Subsidiaries**
**Consolidated and Combined Statements of Cash Flows**

| | Year Ended | |
|---|---|---|
| | **December 31, 2020** | **December 31, 2019** |
| **Cash flows from operating activities:** | | |
| Net loss from continuing operations | $ (20,590,973) | $ (18,465,032) |
| Net income from discontinued operations | — | 1,021,674 |
| Net loss | (20,590,973) | (17,443,358) |
| | | |
| Adjustments to reconcile net loss to net cash flows from continuing operations | | |
| Depreciation and amortization | 1,525,367 | 1,842,352 |
| Amortization of operating lease assets | 1,081,052 | 1,701,962 |
| Asset impairment charges | 1,578,466 | 9,149,852 |
| Gain from extinguished lease liabilities | (506,185) | — |
| ROU liability remeasurement | (224,317) | — |
| Warrant issued for True-Up Payment extension | 28,060 | — |
| Write down of investment | — | 435,000 |
| Common stock and warrants issued for services | — | 24,507 |
| Stock-based compensation | — | 126,829 |
| Loss on warrant inducement | — | 105,089 |
| Loss (gain) on investments | 1,232,037 | (21,616) |
| Gain on tax settlements | — | (195,982) |
| Amortization of debt discount | 134,208 | — |
| Loss on extinguishment of redeemable Series 1 Preferred | 161,900 | — |
| Loss on debt extinguishment | 11,808,111 | — |
| Gain on derivative liabilities revaluation | (616,200) | — |
| Change in assets and liabilities | | |
| Accounts and other receivables | (33,444) | 180,431 |
| Prepaid and other assets | (29,302) | (152,588) |
| Inventories | 107,686 | (68,163) |
| Accounts payable and accrued expenses | 377,248 | 2,134,821 |
| Change in amounts payable to related parties | — | (185,726) |
| Deferred income taxes | 6,505 | 25,539 |
| Operating lease liabilities | (1,491,899) | (1,793,197) |
| Contract liabilities | (164,456) | (215,061) |
| Net cash flows from operating activities | (5,616,136) | (4,349,309) |
| Net cash used in operating activities from discontinued operations | — | 302,759 |
| Net cash used in operations | (5,616,136) | (4,046,550) |
| | | |
| **Cash flows from investing activities:** | | |
| Purchase of property and equipment | (63,751) | (472,882) |
| Proceeds from tenant improvement allowances | — | 335,075 |
| Proceeds from sale of assets | — | 525,872 |
| Net cash flows provided by (used in) investing activities | (63,751) | 388,065 |
| Net cash used in investing activities from discontinued operations | — | 290,604 |
| Net cash provided by (used in) investing activities | (63,751) | 678,669 |
| | | |
| **Cash flows from financing activities:** | | |
| Proceeds from the sale of common stock and warrants | — | 153,055 |
| Proceeds from rights offerings, net | — | 2,694,530 |
| Proceeds from Series 2 Preferred | 1,405,000 | — |
| Proceeds from warrant exercises | 885,046 | — |
| Redemption of Series 1 Preferred | (880,290) | — |
| Loan proceeds | 2,991,676 | — |
| Loan repayments | (2,706,036) | — |
| Merger consideration, net | 5,411,745 | — |
| Distributions to non-controlling interests | — | (79,188) |
| Contributions from non-controlling interests | — | 575,000 |
| Net cash flows provided by financing activities | 7,107,141 | 3,343,397 |
| Net cash used in financing activities from discontinued operations | — | — |
| Net cash flows provided by financing activities | 7,107,141 | 3,343,397 |
| **Effect of exchange rate of cash** | 533 | 1,390 |
| **Net increase (decrease) in cash and restricted cash** | 1,427,787 | (23,094) |
| **Cash and restricted cash, beginning of year** | 501,017 | 524,111 |
| **Cash and restricted cash, end of year** | $ 1,928,804 | $ 501,017 |

See accompanying notes to the consolidated and combined financial statements

**Amergent Hospitality Group, Inc and Subsidiaries**
**Consolidated and Combined Statements of Cash Flows**

| | Year Ended | |
|---|---|---|
| | **December 31, 2020** | **December 31, 2019** |
| **Supplemental cash flow information:** | | |
| Cash paid for interest and income taxes | | |
| Interest | $ 471,707 | $ 556,352 |
| Income taxes | $ 25,956 | $ 110,707 |
| | | |
| **Non-cash investing and financing activities** | | |
| Preferred stock dividends paid through issuance of common stock | $ 19,523 | $ 77,144 |
| Common stock issued for the payment of directors fees | $ — | $ 444,119 |
| Convertible debt and notes payable settled through subscriptions in the rights offerings | $ — | $ 3,075,000 |
| Fixed asset additions included in accounts payable and accrued expenses at year end | $ — | $ 330,771 |
| Conversion of Preferred stock - Series 2 to common stock | $ 416,392 | $ — |
| Accrued interest paid through warrant exercise | $ 318,700 | $ — |
| Bifurcation of derivative liability from Preferred Stock - Series 2 | $ 529,000 | $ — |
| Warrant portion of merger consideration | $ 1,628,909 | $ — |
| Reclassification of warrants and conversion feature from liability to equity | $ 11,894,000 | $ — |

See accompanying notes to the consolidated and combined financial statements

## 1. NATURE OF BUSINESS

### BASIS OF PRESENTATION

Amergent Hospitality Group, Inc. ("Amergent") was incorporated on February 18, 2020 as a wholly-owned subsidiary of Chanticleer Holdings, Inc. ("Chanticleer") for the purpose of conducting the business of Chanticleer and its subsidiaries after completion of the spin-off of Amergent to the shareholders of Chanticleer. The spin-off transaction was completed on April 1, 2020. Amergent is in the business of owning, operating and franchising fast casual dining concepts domestically and internationally.

On March 31, 2020, Chanticleer contributed all its assets and liabilities, including the stock interest in all its subsidiaries (other than Amergent), to Amergent. Based on this being a transaction between entities under common control the carryover basis of accounting was used to record the assets and liabilities contributed to Amergent. Further, as a common control transaction the consolidated and combined financial statements of Amergent reflect the transaction as if the contribution had occurred as of the earliest period presented herein.

As such, the accompanying consolidated and combined financial statements include the accounts of Amergent and its subsidiaries along with Chanticleer and its subsidiaries (collectively "we," "us," "our," or the "Company"). All intercompany and inter-entity balances have been eliminated in consolidation and combination.

### ORGANIZATION, MERGER, SPIN-OFF, REVERSE SPLIT

On April 1, 2020, Chanticleer completed its merger transaction with Sonnet BioTherapeutics, Inc. ("Sonnet"), in accordance with the terms of the Agreement and Plan of Merger, dated as of October 10, 2019, among Chanticleer, Sonnet, Biosub Inc. ("Merger Sub"), and Sonnet Sub, as amended by Amendment No. 1 thereto, dated as of February 7, 2020 (as so amended, the "Merger Agreement"), pursuant to which Merger Sub merged with and into Sonnet Sub, with Sonnet Sub surviving as a wholly-owned subsidiary of Chanticleer (the "Merger"). On April 1, 2020, in connection with the Merger, Chanticleer changed its name to "Sonnet BioTherapeutics Holdings, Inc."

In connection with and prior to the Merger, Chanticleer contributed and transferred to Amergent, a newly-formed, wholly-owned subsidiary of Chanticleer, all of the assets and liabilities relating to Chanticleer's restaurant business. On March 16, 2020, the board of directors of Chanticleer declared a dividend with respect to the shares of Chanticleer's common stock outstanding at the close of business on March 26, 2020 of one share of the Amergent common stock held by Chanticleer for each outstanding share of Chanticleer common stock. The dividend, which together with the contribution and transfer of Chanticleer's restaurant business described above, is referred to as the "Spin-Off." Prior to the Spin-Off, Amergent engaged in no business or operations.

The Spin-Off of Amergent to the stockholders of record on March 26, 2020 occurred prior to the Merger on April 1, 2020 ("Spin-Off Date"). As a result of the Spin-Off, Amergent emerged as successor to the business, operations, assets and liabilities of pre-merger Chanticleer. Additionally, Amergent's shareholder base and their holdings (on a pro-rata basis) are substantially identical to that of pre-merger Chanticleer.

In connection with the Merger on April 1, 2020, Amergent received proceeds from Sonnet of $6,000,000 as well as a warrant to purchase 2% of the outstanding common shares of Sonnet (186,161 shares) for $0.01 per share ("Merger Consideration"). Amergent simultaneously entered into agreements to refinance a note payable and issue warrants to the note holder. See Note 7 for additional information on the note refinancing.

The consolidated and combined financial statements include the accounts of Amergent and its subsidiaries presented below:

| Amergent Hospitality Group,. Inc | Jurisdiction of Incorporation | Percent owned |
|---|---|---|
| American Roadside Burgers, Inc. | DE, USA | |
| American Burger Ally, LLC | NC, USA | 100% |
| American Burger Morehead, LLC | NC, USA | 100% |
| American Burger Prosperity, LLC | NC, USA | 50% |
| American Roadside Burgers Smithtown, Inc. | DE, USA | 100% |
| BGR Acquisition, LLC | NC, USA | 100% |
| BGR Franchising, LLC | VA, USA | 100% |
| BGR Operations, LLC | VA, USA | 100% |
| BGR Acquisition 1, LLC | NC, USA | 100% |
| BGR Annapolis, LLC | MD, USA | 100% |
| BGR Arlington, LLC | VA, USA | 46% |
| BGR Columbia, LLC | MD, USA | 100% |
| BGR Michigan Ave, LLC | DC, USA | 100% |
| BGR Mosaic, LLC | VA, USA | 100% |
| BGR Old Keene Mill, LLC | VA, USA | 100% |
| BGR Washingtonian, LLC | MD, USA | 46% |
| Capitol Burger, LLC | MD, USA | 100% |
| BT Burger Acquisition, LLC | NC, USA | 100% |
| BT's Burgerjoint Rivergate LLC | NC, USA | 100% |
| BT's Burgerjoint Sun Valley, LLC | NC, USA | 100% |
| LBB Acquisition, LLC | NC, USA | 100% |
| Cuarto LLC | OR, USA | 100% |
| LBB Acquisition 1 LLC | OR, USA | 100% |
| LBB Hassalo LLC | OR, USA | 80% |
| LBB Platform LLC | OR, USA | 80% |
| LBB Capitol Hill LLC | WA, USA | 50% |
| LBB Franchising LLC | NC, USA | 100% |
| LBB Green Lake LLC | OR, USA | 50% |
| LBB Lake Oswego LLC | OR, USA | 100% |
| LBB Magnolia Plaza LLC | NC, USA | 50% |
| LBB Multnomah Village LLC | OR, USA | 50% |
| LBB Progress Ridge LLC | OR, USA | 50% |
| LBB Rea Farms LLC | NC, USA | 50% |
| LBB Wallingford LLC | WA, USA | 50% |
| LBB Downtown PDX LLC | WA, USA | 100% |
| Noveno LLC | OR, USA | 100% |
| Octavo LLC | OR, USA | 100% |
| Primero LLC | OR, USA | 100% |
| Quinto LLC | OR, USA | 100% |
| Segundo LLC | OR, USA | 100% |
| Septimo LLC | OR, USA | 100% |
| Sexto LLC | OR, USA | 100% |
| Jantzen Beach Wings, LLC | OR, USA | 100% |
| Oregon Owl's Nest, LLC | OR, USA | 100% |
| West End Wings LTD | United Kingdom | 100% |

**LIQUIDITY, CAPITAL RESOURCES AND GOING CONCERN**

*Liquidity, Capital Resources and Going Concern*

As of December 31, 2020, the Company's cash balance was $1,928,804, of which $1,250,336 was restricted cash, its working capital deficiency was $12,281,398 and it had significant near-term commitments and contractual obligations. The level of additional cash needed to fund operations and our ability to conduct business for the next 12 months will be influenced primarily by the following factors:

- our ability to access the capital and debt markets to satisfy current obligations and operate the business;
- our ability to qualify for and access financial stimulus programs available through federal and state government programs;
- our ability to refinance or otherwise extend maturities of current debt obligations;
- our ability to manage our operating expenses and maintain gross margins;
- popularity of and demand for our fast-casual dining concepts; and
- general economic conditions and changes in consumer discretionary income.

We have typically funded our operating costs, acquisition activities, working capital requirements and capital expenditures with proceeds from the issuances of our common stock and other financing arrangements, including convertible debt, lines of credit, notes payable, capital leases, and other forms of external financing.

On February 7, 2020, the Company entered into a Securities Purchase Agreement for the sale (the "Bridge Financing") of up to 1,500 shares of a new series of convertible preferred stock of the Company (the "Series 2 Preferred Stock") with an institutional investor for gross proceeds to the Company of up to $1,500,000 (the "Preferred Securities Purchase Agreement"). The transaction occurred in two closings, the first of which, for 1,000 shares, occurred in mid-February 2020, and the second of which, for 500 shares, occurred in March 2020. In March 2020, an aggregate of 713 shares of Series 2 Preferred Stock were converted into 1,426,849 shares of common stock. In connection with the Merger, all outstanding shares of the Series 2 Preferred Stock were automatically cancelled and exchanged for substantially similar shares of preferred stock in Amergent. At December 31,2021, 787 shares of Series 2 Preferred Stock were outstanding.

On March 10, 2020, the World Health Organization characterized the novel COVID-19 virus as a global pandemic. The COVID-19 outbreak in the United States has resulted in a significant impact throughout the hospitality industry. The Company has been impacted due to restrictions placed by state and local governments that caused temporary restaurant closures or significantly reduced the Company's ability to operate, restricting the Company's restaurants to take-out only. It is difficult to estimate the length or severity of this outbreak; however, the Company has made operational changes, as needed, to reduce the impact. However, there can be no certainty regarding the length and severity of the outbreak and as such its ultimate financial impact on the Company's operations.

On March 27, 2020, Congress passed "The Coronavirus Aid, Relief, and Economic Security Act" (CARES Act), which included the "Paycheck Protection Program" (PPP) for small businesses. On April 27, 2020, Amergent received a PPP loan in the amount of $2.1 million. Due to the Spin-Off and Merger, Amergent was not publicly traded at the time of the loan application or funding. On February 25, 2021, the Company received an additional $2.0 million PPP loan (see Note 13).

The $2.1 million note bears interest at 1% per year, matures in April 2022, and requires monthly interest and principal payments of approximately $119,000 beginning in November 2020 and through maturity. The currently issued guidelines of the program allow for the loan proceeds to be forgiven if certain requirements are met. Any loan proceeds not forgiven will be repaid in full. The Company applied for forgiveness of the loan and the application is under review by the government agency administering the PPP. No assurance can be given as to the amount, if any, of forgiveness. The application for forgiveness allowed the Company to defer the timing of repayment until the forgiveness assessment is completed.

As a result of the Merger on April 1, 2020, Amergent received $6,000,000 in gross proceeds from Sonnet and a warrant to purchase 186,161 shares of Sonnet's common stock, as well as paid down and refinanced certain debt obligations. On November 17, 2020, the Company exercised its warrant to purchase Sonnet common stock and sold 100 shares in 2020. The remaining shares are held as investments and are carried at fair value at December 31, 2020 (see Note 4).

Even considering the additional liquidity obtained on April 1, 2020 in connection with the Merger and through the PPP loan proceeds received on April 27, 2020 and February 25, 2021, among other financing events, the Company expects to have to seek additional debt or equity funding to support operations and there can be no assurances that such funding would be available at commercially reasonable terms, if at all.

As Amergent executes its business plan over the next 12 months, it intends to carefully monitor its working capital needs and cash balances relative to the availability of cost-effective debt and equity financing. In the event that capital is not available, Amergent may then have to scale back or freeze its growth plans, sell assets on less than favorable terms, reduce expenses, and/or curtail future acquisition plans to manage its liquidity and capital resources.

The Company's current operating losses, combined with its working capital deficit and uncertainties regarding the impact of COVID-19, raise substantial doubt about our ability to continue as a going concern.

The accompanying consolidated and combined financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts and classification of liabilities that might be necessary should the Company be unable to continue as a going concern.

## 2. SIGNIFICANT ACCOUNTING POLICIES

### BASIS OF PRESENTATION

The accompanying consolidated and combined financial statements have been prepared in conformity with U.S. generally accepted accounting principles ("U.S. GAAP"). Any reference in these notes to applicable guidance is meant to refer to U.S. GAAP as found in the Accounting Standards Codification ("ASC") and Accounting Standards Updates ("ASU") promulgated by the Financial Accounting Standards Board ("FASB"). The consolidated and combined financial statements include accounts of the Company and its wholly-owned subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation.

### USE OF ESTIMATES

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Significant estimates include valuing derivatives, options and warrants using the Binomial Lattice and Black-Scholes models, and analysis of the recoverability of goodwill and long-lived assets. Actual results could differ from those estimates, particularly given the significant social and economic disruptions and uncertainties associated with the ongoing COVID-19 pandemic and the COVID-19 control responses.

### FAIR VALUE OF FINANCIAL INSTRUMENTS

The Company measures and records certain financial assets and liabilities at fair value on a recurring basis. U.S. GAAP provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority, referred to as Level 1, to quoted prices in active markets for identical assets and liabilities. The next priority, referred to as Level 2, is given to quoted prices for similar assets or liabilities in active markets or quoted prices for identical or similar assets or liabilities in markets that are not active; that is, markets in which there are few transactions for the asset or liability. The lowest priority, referred to as Level 3, is given to unobservable inputs. The table below reflects the level of the inputs used in the Company's fair value calculations:

| | Quoted Prices in Active Markets (Level 1) | Significant Observable Inputs (Level 2) | Significant Unobservable Inputs (Level 3) | Total Fair Value |
|---|---|---|---|---|
| **December 31, 2020** | | | | |
| **Assets (Note 4)** | | | | |
| Common stock of Sonnet | $ 413,268 | | $ — | $ 413,268 |
| **Liabilities (Note 11)** | | | | |
| True-up provision of Convertible Preferred Series 2 | $ — | $ — | $ 184,800 | $ 184,800 |

Inputs used in the Company's Level 3 calculation of fair value are discussed in Note 11.

There were no assets or liabilities recorded at fair value on a recurring basis at December 31, 2019.

The Company is required to disclose fair value information about financial instruments when it is practicable to estimate that value. The carrying amounts of the Company's cash, accounts receivable, other receivables, accounts payable, other current liabilities, convertible notes payable and notes payable approximate fair value due to the short-term maturities of these financial instruments and/or because related interest rates offered to the Company approximate current rates.

**CASH**

Cash consists of deposits held at financial institutions and is stated at fair value. The Company limits its credit risk associated with cash by maintaining its bank accounts at major financial institutions.

**RESTRICTED CASH**

As of December 31, 2020 and 2019, the Company maintained restricted cash of $1,250,336 and $336, respectively. The $1,250,000 of restricted cash held at December 31, 2020 is collateral for the true-up provision discussed in Note 11. The restricted cash is maintained in a segregated bank account.

For purposes of the cash flow statements, the restricted cash is aggregated with cash of $678,468 and $500,681 to arrive at total cash and restricted cash of $1,928,804 and $501,017 at December 31, 2020 and 2019, respectively.

**ACCOUNTS AND OTHER RECEIVABLES**

The Company monitors its exposure for credit losses on its receivable balances and the credit worthiness of its receivables on an ongoing basis and records related allowances for doubtful accounts. Allowances are estimated based upon specific customer and other balances where a risk of default has been identified, and also include a provision for non-customer specific defaults based upon historical experience. The majority of the Company's accounts are from customer credit card transactions with minimal historical credit risk. As of December 31, 2020 and 2019, the Company has not recorded an allowance for doubtful accounts. If circumstances related to specific customers change, estimates of the recoverability of receivables could also change.

**INVENTORIES**

Inventories are recorded at the lower of cost (first-in, first-out method) or net realizable value, and consist primarily of restaurant food items, supplies, beverages and merchandise.

**PROPERTY AND EQUIPMENT**

Property and equipment are stated at cost, less accumulated depreciation. Depreciation and amortization, which includes amortization of assets held under capital leases, are recorded generally using the straight-line method over the estimated useful lives of the respective assets or, if shorter, the term of the lease for certain assets held under a capital lease. Leasehold improvements are amortized over the lesser of the expected lease term or the estimated useful lives of the related assets using the straight-line method. Maintenance and repairs that do not improve or extend the useful lives of the assets are not considered assets and are charged to expense when incurred.

The estimated useful lives used to compute depreciation and amortization are as follows:

| | |
|---|---|
| Leasehold improvements | 5-15 years |
| Restaurant furnishings and equipment | 3-10 years |
| Furniture and fixtures | 3-10 years |
| Office and computer equipment | 3-7 years |

**INTANGIBLE ASSETS**

*Trade Name/Trademark*

The fair value of trade name/trademarks are estimated and compared to the carrying value. The Company estimates the fair value of trademarks using the relief-from-royalty method, which requires assumptions related to projected sales from its annual long-range plan; assumed royalty rates that could be payable if the Company did not own the trademarks; and a discount rate. Certain of the Company's trade name/trademarks have been determined to have a definite-lived life and are being amortized on a straight-line basis over estimated useful lives of 10 years. The amortization expense of these definite-lived intangibles is included in depreciation and amortization in the Company's consolidated and combined statements of operations and comprehensive loss. Certain of the Company's trade name/trademarks have been classified as indefinite-lived intangible assets and are not amortized, but instead are reviewed for impairment at least annually or more frequently if indicators of impairment exist.

*Franchise Costs*

Intangible assets are recorded for the initial franchise fees for our Hooter's restaurants. The Company amortizes these amounts over a 20-year period, which is the life of the franchise agreement. The Company also has intangible assets representing the acquisition date fair value of customer contracts acquired in connection with BGR's franchise business. The Company also amortizes these amounts over its estimated useful life of the related intangible asset and amortizes the related asset over the weighted average life of the underlying franchise agreements.

**LONG-LIVED ASSETS**

Long-lived assets, such as property and equipment, operating lease assets, and purchased intangible assets subject to depreciation and amortization, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Some of the events or changes in circumstances that would trigger an impairment test include, but are not limited to:

- significant under-performance relative to expected and/or historical results (negative comparable sales growth or operating cash flows for two consecutive years);
- significant negative industry or economic trends;
- knowledge of transactions involving the sale of similar property at amounts below the Company's carrying value; or
- the Company's expectation to dispose of long-lived assets before the end of their estimated useful lives, even though the assets do not meet the criteria to be classified as "Held for Sale."

If circumstances require a long-lived asset or asset group be tested for possible impairment, the Company first compares undiscounted cash flows expected to be generated by that asset or asset group to its carrying value. If the carrying value of the long-lived asset or asset group is not recoverable on an undiscounted cash flow basis, an impairment is recognized to the extent that the carrying value exceeds its fair value. Fair value is determined through various valuation techniques, including discounted cash flow models, quoted market values and third-party independent appraisals, as considered necessary.

During the third quarter of 2019 and continuing in 2020, the Company determined that triggering events occurred some of which were related to the COVID-19 outbreak requiring management to review the certain long-lived assets for impairment. As discussed in Note 1, in March 2020, the World Health Organization declared coronavirus COVID-19 a global pandemic. Due to the continued impact of this pandemic on the Company's business, management has performed an impairment analysis of its long-lived assets at each quarter end in 2020 including December 31, 2020 and determined that the carrying value of the Company's trade name/trademark intangible asset, property and equipment and operating lease assets (see notes 5,6, and 12 for further discussion) were impaired. The determination was based on the best judgment of management for the future of the asset and on information known at the time of the assessment.

**GOODWILL**

Goodwill, which is not subject to amortization, is evaluated for impairment annually as of the end of the Company's year-end, or more frequently if an event occurs or circumstances change, such as material deterioration in performance or a significant number of store closures, that would indicate an impairment may exist. Goodwill is tested for impairment at a level of reporting referred to as a reporting unit. Management determined that the Company has one reporting unit.

As discussed in Note 1, in March 2020, the World Health Organization declared coronavirus COVID-19 a global pandemic. Due to the continued impact of this pandemic on the Company's business, management has performed an impairment analysis of goodwill as of each quarter end in 2020, including December 31, 2020.

When evaluating goodwill for impairment, the Company may first perform a qualitative assessment to determine whether it is more likely than not that a reporting unit is impaired. If the Company does not perform a qualitative assessment, or determines that it is not more likely than not that the fair value of the reporting unit exceeds its carrying amount, a quantitative assessment is performed to calculate the estimated fair value of the reporting unit. If the carrying amount of the reporting unit exceeds the estimated fair value, an impairment charge is recorded to reduce the carrying value to the estimated fair value. The Company's decision to perform a qualitative impairment assessment is influenced by a number of factors, including the significance of the excess of the reporting unit's estimated fair value over carrying value at the last quantitative assessment date, the amount of time in between quantitative fair value assessments, and the price of our common stock.

Step one of the impairment test is based upon a comparison of the carrying value of net assets, including goodwill balances, to the fair value of net assets. The Company performed a quantitative assessment at each quarter end and determined that goodwill was not impaired due to the excess fair value of the reporting unit over its carrying value based on the best judgement of management for the future of the reporting unit and on information known at the time of the assessment.

**FOREIGN CURRENCY TRANSLATION**

Assets and liabilities denominated in local currency are translated to U.S. dollars using the exchange rates as in effect at the balance sheet date. Results of operations are translated using average exchange rates prevailing throughout the period. Adjustments resulting from the process of translating foreign currency financial statements from functional currency into U.S. dollars are included in accumulated other comprehensive loss within stockholders' equity. Foreign currency transaction gains and losses are included in current earnings. The Company has determined that local currency is the functional currency for its foreign operations.

**REVENUE RECOGNITION**

The Company generates revenues from the following sources: (i) restaurant sales; (ii) management fee income; (iii) gaming income; and (iv) franchise revenues, consisting of royalties based on a percentage of sales reported by franchise restaurants and initial signing fees.

*Restaurant Sales, Net*

The Company records revenue from restaurant sales at the time of sale, net of discounts, coupons, employee meals, and complimentary meals. Sales tax and value added tax ("VAT") collected from customers and remitted to governmental authorities are presented on a net basis within revenue in our consolidated and combined statements of operations.

*Management Fee Income*

The Company received revenue from management fees from certain non-affiliated companies in 2019, including from managing its investment in Hooters of America, which are generally earned and recognized over the performance period. No management fee income has been recognized during the year ended December 31, 2020.

*Gaming Income*

The Company receives revenue from operating a gaming facility adjacent to its Hooters restaurant in Jantzen Beach, Oregon. Revenue from gaming is recognized as earned from gaming activities, net of payouts to customers, taxes and government fees. These fees are recognized as they are earned based on the terms of the agreements.

*Franchise Income*

The Company grants franchises to operators in exchange for initial franchise license fees and continuing royalty payments. The license granted for each restaurant or area is considered a performance obligation. All other obligations (such as providing assistance during the opening of a restaurant) are combined with the license and were determined to be a single performance obligation. Accordingly, the total transaction price (comprised of the restaurant opening and territory fees) is allocated to each restaurant expected to be opened by the licensee under the contract. There are significant judgments regarding the estimated total transaction price, including the number of stores expected to be opened. We recognize the fee allocated to each restaurant as revenue on a straight-line basis over the restaurant's license term, which generally begins upon the signing of the contract for area development agreements and upon the signing of a store lease for franchise agreements. The payments for these upfront fees are generally received upon contract execution. Continuing fees, which are based upon a percentage of franchisee revenues and are not subject to any constraints, are recognized on the accrual basis as those sales occur. The payments for these continuing fees are generally made on a weekly basis.

*Contract Liabilities*

Contract liabilities consist of deferred revenue resulting from initial and renewal franchise license fees paid by franchisees, which are generally recognized on a straight-line basis over the term of the underlying franchise agreement, as well as upfront development fees paid by franchisees, which are generally recognized on a straight-line basis over the term of the underlying franchise agreement once it is executed. The recognition of initial and renewal license fees are accelerated if the development agreement is terminated. Approximately $165,000 and $215,000 of revenue related to contract liabilities was recognized during the years ended December 31, 2020 and 2019, respectively.

**RESTAURANT PRE-OPENING AND CLOSING EXPENSES**

Restaurant pre-opening expenses consist of the costs of hiring and training the initial hourly work force for each new restaurant, travel, the cost of food and supplies used in training, grand opening promotional costs, the cost of the initial stocking of operating supplies and other direct costs related to the opening of a restaurant, including rent during the construction and in-restaurant training period. Restaurant opening expenses are expensed as incurred.

Restaurant closing expenses consist of costs related to closing a restaurant location and include, among other things lease termination costs and franchise breakage fees directly related to the closure. Impairment charges associated with closed locations are recorded as a component of asset impairment charges. Restaurant closing costs are expensed as incurred.

**LIQUOR LICENSES**

The costs of obtaining non-transferable liquor licenses that are directly issued by local government agencies for nominal fees are expensed as incurred. The costs of purchasing transferable liquor licenses through open markets in jurisdictions with a limited number of authorized liquor licenses are capitalized as indefinite-lived intangible assets and included in other assets. Liquor licenses are reviewed for impairment annually or when events or changes in circumstances indicate that the carrying amount may not be recoverable. Annual liquor license renewal fees are expensed over the renewal term.

**ADVERTISING**

Advertising costs are expensed as incurred. Advertising expenses which are included in restaurant operating expenses and general and administrative expenses in the accompanying consolidated and combined statements of operations, totaled approximately $273,000 and $500,000 for the years ended December 31, 2020 and 2019, respectively.

**LEASES**

We determine if a contract contains a lease at inception. Our material operating leases consist of restaurant locations and office space. Our leases generally have remaining terms of 1-20 years and most include options to extend the leases for additional 5-year periods. Generally, the lease term is the minimum of the non-cancelable period of the lease or the lease term inclusive of reasonably certain renewal periods up to a term of 20 years. If the estimate of our reasonably certain lease term was changed, our depreciation and rent expense could differ materially.

Operating lease assets and liabilities are recognized at the lease commencement date. Operating lease liabilities represent the present value of lease payments not yet paid. Operating lease assets represent our right to use an underlying asset and are based upon the operating lease liabilities adjusted for prepayments or accrued lease payments, initial direct costs, lease incentives, and impairment of operating lease assets. To determine the present value of lease payments not yet paid, we estimate incremental borrowing rates corresponding to the reasonably certain lease term. We estimated this rate based on prevailing financial market conditions, comparable company and credit analysis, and management judgment. If the estimate of our incremental borrowing rate was changed, our operating lease assets and liabilities could differ materially.

In April 2020, the FASB staff issued a question and answer document ("FASB Q&A") focused on the application of lease accounting guidance to lease concessions provided as a result of the COVID-19 pandemic. Under existing lease guidance, the Company would have to determine, on a lease-by-lease basis, if a lease concession was the result of a new arrangement reached with the tenant or if a lease concession was under the enforceable rights and obligations within the existing lease agreement. The FASB Q&A allows the Company, if certain criteria have been met, to bypass the lease-by-lease analysis, and instead elect to either apply the lease modification accounting framework or not, with such election applied consistently to leases with similar characteristics and similar circumstances. The Company elected to apply such relief and availed itself of the election to avoid performing a lease-by-lease analysis for the lease concessions received as the concessions granted as relief were due to the COVID-19 pandemic and result in the cash flows to the landlord remaining substantially the same or less.

**STOCK-BASED COMPENSATION**

The compensation cost relating to share-based payment transactions (including the cost of all employee stock options) is required to be recognized in the consolidated and combined financial statements. That cost is measured based on the estimated fair value of the equity or liability instruments issued. A wide range of share-based compensation arrangements including share options, restricted share plans, performance-based awards, share appreciation rights and employee share purchase plans are included.

The Company did not have an active stock-based compensation plan in 2020.

**INCOME TAXES**

Deferred income taxes are provided on the liability method whereby deferred tax assets are recognized for deductible temporary differences and operating loss and tax credit carryforwards and deferred tax liabilities are recognized for taxable temporary differences. Temporary differences are the differences between the reported amounts of assets and liabilities and their tax basis. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. Deferred tax assets and liabilities are adjusted for the effects of changes in tax laws and rates on the date of enactment.

In connection with the Merger and Spin-Off, Amergent performed an analysis of the existing net operating loss carryforwards of Chanticleer and, based on the rules of the Internal Revenue Code ("IRC"), has determined that Amergent has approximately $18,960,000 of net operating loss carryforwards available to the Company as of April 1, 2020 to offset future taxable income of the Company. Approximately $7,245,000 of the net operating loss carryforwards available will be limited by section 382 of the IRC. There were no other income tax implications to Amergent as a result of the Merger and Spin-off.

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

As of December 31, 2020 and 2019, the Company had no accrued interest or penalties relating to any income tax obligations. The Company currently has no federal or state examinations in progress, nor has it had any federal or state tax examinations since its inception. The last three years of the Company's tax years are subject to federal and state tax examination.

**LOSS PER COMMON SHARE**

The Company computes net loss per share using the weighted-average number of common shares outstanding during the period. Basic and diluted net loss per share are the same because the conversion, exercise or issuance of all potential common stock equivalents, which comprise the entire amount of the Company's outstanding warrants, as described in Note 10, and the potential conversion of the convertible debt, as described in Note 7, would be anti-dilutive.

**COMPREHENSIVE INCOME (LOSS)**

Standards for reporting and displaying comprehensive income (loss) and its components (revenues, expenses, gains and losses) in a full set of general-purpose financial statements requires that all items that are required to be recognized under accounting standards as components of comprehensive income (loss) be reported in a financial statement that is displayed with the same prominence as other financial statements. We are required to (a) classify items of other comprehensive income (loss) by their nature in financial statements, and (b) display the accumulated balance of other comprehensive income (loss) separately in the equity section of the balance sheet for all periods presented. Other comprehensive income (loss) represents foreign currency translation adjustments.

**RECENTLY ADOPTED ACCOUNTING PRONOUNCEMENTS**

On January 1, 2019, the Company adopted ASU 2016-02, "Leases (Topic 842)," along with related clarifications and improvements. This pronouncement requires lessees to recognize a liability for lease obligations, which represents the discounted obligation to make future lease payments, and a corresponding right-of-use asset on the balance sheet. The guidance requires disclosure of key information about leasing arrangements that is intended to give financial statement users the ability to assess the amount, timing, and potential uncertainty of cash flows related to leases. The Company elected the optional transition method to apply the standard as of the effective date and therefore, the Company has not applied the standard to the comparative period presented in its condensed consolidated financial statements.

The practical expedients elected in connection with the adoption of Leases Topic 842 were as follows:

| | **Implications as of January 1, 2019** |
|---|---|
| **Practical expedient package** | The Company has not reassessed whether any expired or existing contracts are, or contain, leases.<br>The Company has not reassessed the lease classification for any expired or existing leases.<br>The Company has not reassessed initial direct costs for any expired or existing leases. |
| **Hindsight practical expedient** | The Company has not elected the hindsight practical expedient, which permits the use of hindsight when determining lease term and impairment of operating lease asset |

Upon adoption of Leases (Topic 842), the Company recorded operating lease right-of-use assets and operating lease liabilities and derecognized deferred rent liabilities (including unamortized tenant improvement allowances) and favorable/unfavorable lease assets and liabilities upon transition. Upon adoption, the Company recorded operating lease liabilities of approximately $22.1 million based on the present value of the remaining rental payments using discount rates as of the effective date. In addition, the Company recorded corresponding operating lease right-of-use assets of approximately $19.8 million, calculated as the initial amount of the Company's operating lease liabilities adjusted for deferred rent (including unamortized tenant improvement allowances) and unamortized favorable/unfavorable lease assets and lease liabilities. As of December 31, 2020, the Company maintained an operating lease right-of-use assets of approximately $9.9 million, and operating lease liabilities (current and long-term) of approximately $16.2 million.

In June 2016, the Financial Accounting Standards Board "FASB" issued Accounting Standards Update "ASU" 2016-13, Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments ("ASU 2016-13"). ASU 2016-13 requires companies to measure credit losses utilizing a methodology that reflects expected credit losses and requires a consideration of a broader range of reasonable and supportable information to inform credit loss estimates. The adoption of ASU 2016-13 as of January 1, 2020 did not result in a material change to our consolidated and combined financial statements.

In August 2018, the FASB issued ASU 2018-15, "Intangibles—Goodwill and Other—Internal-Use Software (Subtopic 350-40)": Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract ("ASU 2018-15"), which clarifies the accounting for implementation costs in cloud computing arrangements. The adoption of ASU 2018-15 as of January 1, 2020 did not result in a material change to our consolidated and combined financial statements.

In August 2018, the FASB issued ASU No. 2018-13, "Fair Value Measurement (Topic 820) - Disclosure Framework - Changes to the Disclosure Requirements for Fair Value Measurement". The new guidance improves and clarifies the fair value measurement disclosure requirement of ASC 820 ("ASU 2018-13"). ASU 2018-13 provides new disclosure requirements that include the changes in unrealized gains or losses included in other comprehensive income for recurring Level 3 fair value measurement held at the end of the reporting period and the explicit requirement to disclose the range and weighted average used to develop significant unobservable inputs for Level 3 fair value measurements. The other provisions of ASU 2018-13 also include eliminated and modified disclosure requirements. The guidance is effective for fiscal years beginning after December 15, 2019, with early adoption permitted. The adoption of ASU 2018-13 as of January 1, 2020 did not have a material impact on the consolidated and combined financial statements.

In January 2017, the FASB issued ASU No. 2017-04, "Intangibles—Goodwill and Other: Simplifying the Test for Goodwill Impairment (Topic 350)" which provides for the elimination of Step 2 from the goodwill impairment test. If impairment charges are recognized, the amount recorded will be the amount by which the carrying amount exceeds the reporting unit's fair value with certain limitations. The guidance is effective for the Company for fiscal years beginning after December 15, 2022, with early adoption permitted. The adoption of ASU 2017-04 as of January 1, 2020 did not have a material impact on the consolidated and combined financial statements.

**RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS**

In August 2020, the FASB issued ASU 2020-06, "Debt—Debt with Conversion and Other Options*"* to address the complexity associated with applying U.S. GAAP to certain financial instruments with characteristics of liabilities and equity. ASU 2020-06 includes amendments to the guidance on convertible instruments and the derivative scope exception for contracts in an entity's own equity and simplifies the accounting for convertible instruments which include beneficial conversion features or cash conversion features by removing certain separation models in Subtopic 470-20. Additionally, ASU 2020-06 will require entities to use the "if-converted" method when calculating diluted earnings per share for convertible instruments. ASU 2020-06 is effective for fiscal years beginning after December 15, 2021 (fiscal year 2022 for the Company), including interim periods within those fiscal years. The Company is currently evaluating the new standard to determine the potential impact on its financial condition, results of operations, cash flows, and financial statement disclosures.

In December 2019, the FASB issued ASU No. 2019-12, "Simplifying the Accounting for Income Taxes (Topic 740)". The objective of the standard is to improve areas of GAAP by removing certain exceptions permitted by ASC 740 and clarifying existing guidance to facilitate consistent application. The standard will become effective for the Company beginning on January 1, 2021. The Company is currently evaluating the new standard but does not expect adoption to have a material impact on its financial condition, results of operations, cash flows, and financial statement disclosures.

We reviewed all other recently issued accounting pronouncements and concluded that they were either not applicable or not expected to have a significant impact to the condensed consolidated and combined financial statements.

**3. DISCONTINUED OPERATIONS**

In October 2019, the Company entered into a sale of business agreement for three of its South Africa Hooters locations. The total purchase price was approximately $385,000. The net proceeds received by the Company was approximately $220,000. In December 2019, the Company entered into a sale of business agreement for its two remaining South Africa Hooters locations. The total purchase price was approximately $265,000. The net proceeds received by the Company was approximately $130,000.

On November 6, 2019, the Company sold Just Fresh through the sale of 100% of the Company membership interest of JF Restaurants, LLC. The purchase price was $500,000 with $125,000 due at closing and the remaining $375,000 in the form of a promissory note to be paid in full by December 31, 2019. The sale agreement included the assumption of trade payables at the closing date. The Company also entered into a Management Services Agreement whereby the Company would continue to act as the manager of JF Restaurants, LLC until the note was repaid in full. As manager, the Company would be entitled to a management fee of 5% of the monthly net cash flow from the operation of the restaurants. As of December 31, 2019, $149,000 remained outstanding on the note and the Company gave the buyer an extension to pay the remaining balance owed. When the outstanding balance of the note was paid, the Company was to distribute to the non-controlling interest holders their portion of the proceeds. The note was repaid in 2020 and the Company accrued the distribution to the non-controlling interest holders at the time of repayment. That liability of approximately $20,000 remains outstanding at December 31, 2020.

As noted above, during the year ended December 31, 2019, the Company completed two transactions in which eight Just Fresh franchise restaurants and one Hooters franchised restaurant located in South Africa were sold. Because of the sale, the Company has reclassified the operations of Just Fresh and the South Africa Hooters locations to discontinued operations. As of December 31, 2020, all underlying assets and liabilities of discontinued operations were eliminated and settled.

The carrying amount of major classes of assets and liabilities included as part of discontinued operations are as follows:

| | December 31, 2020 | December 31, 2019 |
|---|---|---|
| Other receivable | $ — | $ 149,000 |
| Total assets | — | 149,000 |
| | | |
| Accounts payable and accrued expenses | — | 435,600 |
| Total liabilities | — | 435,600 |
| | | |
| Net assets of discontinued operations | $ — | $ (286,600) |

The major line items comprising the loss of discontinued operations are as follows:

| | Year Ended | |
|---|---|---|
| | December 31, 2020 | December 31, 2019 |
| Restaurant revenues | $ — | $ 8,203,692 |
| Expenses: | | |
| Administration expenses | — | 588,368 |
| Cost of sales | — | 3,067,867 |
| Depreciation and amortization | — | 252,234 |
| Asset impairment charge | — | 857,357 |
| Restaurant operating expenses | — | 4,460,078 |
| Other (income) expense | — | (538) |
| | — | 9,225,366 |
| Income (Loss) of discontinued operations | — | $ (1,021,674) |

Cash flows from discontinued operations is as follows:

| | Year Ended | |
|---|---|---|
| | December 31, 2020 | December 31, 2019 |
| Cash flows provided by (used in) Operations Activities | $ — | $ 302,759 |
| Cash flows provided by (used in) Investing Activities | — | 290,604 |
| Cash flows provided by (used in) Financing Activities | — | — |
| Net Cash provided by (used in) Discontinued Operations | $ — | $ 593,363 |

**4. INVESTMENTS**

Investments consist of the following:

| | December 31, 2020 | December 31, 2019 |
|---|---|---|
| Common stock of Sonnet, at fair value | $ 413,268 | $ — |
| Chanticleer Investors, LLC, at cost | 365,001 | 381,397 |
| Total | $ 778,269 | $ 381,397 |

**Common stock of Sonnet**

Upon consummation of the Merger discussed in Note 1, the Company received a warrant to purchase 2% of the common stock of Sonnet as part of the Merger Consideration. Amergent could not exercise the warrant until 180 days after the closing of the Merger. On November 17, 2020, the Company exercised the warrant in a cashless exercise and received 185,422 shares of Sonnet common stock.

The estimated fair value of the warrant to purchase 2% of the common stock of Sonnet (186,161 shares) was $1,628,909 as of April 1, 2020 and was recognized as a capital contribution in accompanying 2020 consolidated and combined statement of stockholders' deficit. The warrant had an exercise price of $0.01 per share and was exercisable beginning on September 28, 2020 through April 1, 2025. The estimated fair value of the warrant was determined based on the $8.76 closing stock price of a common share of Sonnet as of April 1, 2020, net of the $0.01 exercise price multiplied by the 186,161 shares issuable upon exercise of the warrant. This value is also equal to the value under the Black-Scholes option pricing model with the following inputs:

| | As of April 1, 2020 |
|---|---|
| Fair value of Sonnet common stock | $ 8.76 |
| Exercise price | $ 0.01 |
| Term | 5 years |
| Volatility | 103% |
| Risk-free interest rate | 0.37% |

On December 4, 2020, the Company sold 100 shares of Sonnet common stock for net proceeds of $244. As of December 31, 2020, the remaining 185,322 shares of Sonnet common stock held by the Company were marked to market using the Sonnet closing trading price of $2.23 per share.

**Chanticleer Investors LLC**

The Company invested $800,000 during 2011 and 2012 in exchange for a 22% ownership stake in Chanticleer Investors, LLC, which in turn held a 3% interest in Hooters of America, the operator and franchisor of the Hooters Brand worldwide. As a result, the Company's effective economic interest in Hooters of America was approximately 0.6%. Effective June 28, 2019, Hooters of America closed on the sale of a controlling interest in the company. The consideration paid in the sale transaction was a combination of cash proceeds and equity in the newly formed company. The Company netted approximately $48,000 in cash upon the transaction and retained a non-controlling interest in the equity of the newly-formed company.

In June 2019, an analysis of the transaction and the value of the cash received and retained non-controlling interest was performed. The Company concluded that its investment was impaired as of June 30, 2019 and recorded a $435,000 write down of the investment during the year ended December 31, 2019. No further impairment charges were recognized for the year ended December 31, 2020.

**5. PROPERTY AND EQUIPMENT, NET**

Property and equipment, net consists of the following at December 31, 2020 and 2019:

| | December 31, 2020 | December 31, 2019 |
|---|---|---|
| Leasehold improvements | $ 7,301,908 | $ 7,926,789 |
| Restaurant furniture and equipment | 2,132,726 | 3,032,859 |
| Construction in progress | 5,450 | 650 |
| Office and computer equipment | 125,535 | 62,304 |
| Office furniture and fixtures | 59,635 | 169,034 |
| | 9,625,254 | 11,191,636 |
| Accumulated depreciation and amortization | (5,922,360) | (5,561,146) |
| | $ 3,702,894 | $ 5,630,490 |

As discussed in Note 1, the COVID-19 outbreak in the United States has resulted in a significant impact throughout the hospitality industry. The impact has varied by state/geographical area within the United States at various intervals since the pandemic has been declared. Accordingly, the operating results and cash flows at the store level have varied significantly leading to an analysis of impairment at the store level for each quarter end in 2020, including December 31, 2020. Several stores were permanently or temporarily closed during 2020 while others are operating at reduced capacity. Based on the assessment of recoverability, an impairment charge of $832,821 for property and equipment was recorded during the year ended December 31, 2020.

During the year ended December 31, 2019, the Company recorded an impairment of property and equipment of $1,231,282.

Depreciation expense was $1,158,915 and $1,468,576 for the years ended December 31, 2020 and 2019, respectively.

**6. INTANGIBLE ASSETS, NET**

**GOODWILL**

A roll-forward of goodwill is as follows:

| | Year Ended | |
|---|---|---|
| | December 31, 2020 | December 31, 2019 |
| Beginning balance | $ 8,567,888 | $ 10,564,353 |
| Impairment | — | (2,025,720) |
| Foreign currency translation gain (loss) | 23,261 | 29,255 |
| Ending balance | $ 8,591,149 | $ 8,567,888 |

**OTHER INTANGIBLE ASSETS**

Franchise and trademark/tradename intangible assets consist of the following at December 31, 2020 and 2019:

| | | December 31, 2020 | December 31, 2019 |
|---|---|---|---|
| **Trademark, Tradenames:** | | | |
| American Roadside Burger | 10 years | 1,786,930 | $ 1,786,930 |
| BGR: The Burger Joint | Indefinite | 739,245 | 985,996 |
| Little Big Burger | Indefinite | 1,550,000 | 1,550,000 |
| | | 4,076,175 | 4,322,926 |
| **Acquired Franchise Rights:** | | | |
| BGR: The Burger Joint | 7 years | 827,757 | 827,757 |
| | | | |
| **Franchise License Fees:** | | | |
| Hooters Pacific NW | 20 years | 74,507 | 74,507 |
| Hooters UK | 5 years | 11,001 | 12,917 |
| | | 85,508 | 87,424 |
| Total intangibles at cost | | 4,989,440 | 5,238,107 |
| Accumulated amortization | | (1,945,555) | (1,581,112) |
| Intangible assets, net | | $ 3,043,885 | $ 3,656,995 |

Based on an analysis of the recoverability of the carrying value at each quarter end during 2020 including December 31, 2020, an impairment charge of approximately $247,000 was recorded to trademarks/tradenames for BRG: The Burger Joint. No other intangible assets were impaired during the year ended December 31, 2020.

Management also tested its long-lived assets for impairment as of December 31, 2019 comparing each brand's fair value to its carrying value. Based on this analysis, management determined there was a tradename/trademark impairment of BGR: The Burger Joint of approximately $440,000.

Amortization of intangible assets was $366,452 and $373,776 for the year ended December 31, 2020 and 2019, respectively. Amortization expense for the next five years is as follows:

| Year ended: | |
|---|---|
| 2021 | $ 361,182 |
| 2022 | 251,720 |
| 2023 | 133,121 |
| 2024 | 3,725 |
| 2025 | 3,725 |
| Thereafter: | 1,167 |
| | $ 754,640 |

**7. DEBT AND NOTES PAYABLE**

Debt and notes payable are summarized as follows at December 31, 2020 and 2019:

| | December 31, 2020 | December 31, 2019 |
|---|---|---|
| Notes Payable (a) | $ — | $ 6,000,000 |
| Notes Payable TowneBank (b) | — | 142,746 |
| Receivables financing facilities (c) | — | 23,688 |
| Notes payable (d) | 25,850 | 25,850 |
| Notes payable (e) | 27,048 | 90,408 |
| Contractor note (f) | 348,269 | 348,269 |
| PPP loan (g) | 2,109,400 | — |
| UK Bounce Back loan (h) | 68,245 | — |
| EIDI loans (i) | 299,900 | — |
| Convertible debt (j) | 4,037,889 | — |
| **Total Debt** | **6,916,601** | **6,630,961** |
| Less: discount on convertible debt (j) | (223,681) | — |
| **Total Debt, net of discount** | **$ 6,692,920** | **$ 6,630,961** |
| | | |
| Current portion of long-term debt | $ 2,338,978 | $ 6,630,961 |
| Long-term debt, less current portion | $ 4,353,942 | $ — |

**(a)** On May 4, 2017, pursuant to a Securities Purchase Agreement, the Company issued 8% non-convertible secured debentures in the principal amount of $6,000,000 and warrants to purchase 1,199,978 shares of common stock to accredited investors. The debentures bore interest at a rate of 8% per year and were payable in cash quarterly in arrears.

The Company lowered the strike price for several classes of warrants to $0.50 to allow for warrant holders to exercise their warrants in order to induce the exercise thereof and raise capital for the Company. See Note 10 for further discussion of warrant modification.

In connection with and prior to the Merger and Spin-Off, on April 1, 2020, pursuant to an agreement among Chanticleer, Oz Rey LLC, a Texas limited liability company ("Oz Rey"), the Company and certain other original holders of the 8% non-convertible secured debentures, the Company was released from all of its obligations under the 8% non-convertible secured debentures, and the 8% non-convertible secured debentures were cancelled. In exchange, Amergent (i) issued a 10% convertible secured debenture in principal amount of $4,037,889 to Oz Rey, (ii) issued warrants to purchase 2,925,200 of shares of common stock of Amergent to Oz Rey and certain of the original holders of the 8% non-convertible secured debentures, and (iii) remitted payment of $650,000 prior to March 31, 2020 and an additional $1,350,000 plus reimbursement of certain expenses to the purchasers on April 1, 2020. See further discussion in (i) below.

**(b)** The Company had one outstanding term loan with TowneBank, all of which was collateralized by all assets of the Company and personally guaranteed by our Chief Executive Officer. In connection with and prior to the Merger and Spin-Off, on April 1, 2020, the Company paid off the outstanding balance owed to TowneBank in full.

**(c)** During May 2019, the Company agreed to make payments of $585 per day for 220 days. During January 2020, in consideration for proceeds of $191,190, the Company agreed to make payments of $1,180 per day on two separate agreements for 220 days. The Company granted a security interest in the credit card receivables of the specified restaurants in connection with each of the Receivables Financing Agreements. Total outstanding on these advances is $0 and $23,688 at December 31, 2020 and 2019, respectively. In connection with and prior to the Merger and Spin-Off, on April 1, 2020, these notes were assumed by Amergent.

**(d)** In connection with the assets acquired from the two BGR franchisees, the Company entered into notes payable of $9,600 and $187,000 during 2018. The notes bear interest at 4% and were due within 12 months of each acquisition date. Principal and interest payments are due monthly. The total outstanding on these two notes is $25,850 at both December 31, 2020 and 2019. In connection with and prior to the Merger and Spin-Off, on April 1, 2020, these notes were assumed by Amergent.

**(e)** During September 2019 and October 2019, the Company entered into two merchant capital advances in the amount of $46,000 and $84,700, respectively. The Company agreed to repay these advances through daily payments until those amounts are repaid with the specified interest rate per those agreements. Total outstanding on these advances is $27,048 and $90,408 as of December 31, 2020 and 2019, respectively. In connection with and prior to the Merger and Spin-Off, on April 1, 2020, these notes were assumed by Amergent.

**(f)** The Company entered into a promissory note to repay a contractor for the build-out of a new Little Big Burger location. The note had a balance of $348,269 as of both December 31, 2020 and 2019, and a stated interest rate of 12% per year. In connection with and prior to the Merger and Spin-Off, on April 1, 2020, this note was assumed by Amergent. The Company is currently in default on this loan and a writ of garnishment was ordered against the Company in 2020 for approximately $445,000. The additional $95,000 is included in accounts payable and accrued expenses at December 31, 2020.

**(g)** On April 27, 2020, Amergent received a PPP loan in the amount of approximately $2.1 million. Due to the Spin-Off and Merger, Amergent was not publicly traded at the time of the loan application or funding. The note bears interest at 1% per year, matures in April 2022, and requires monthly interest and principal payments of approximately $119,000 beginning in November 2020 and through maturity. The currently issued guidelines of the program allow for the loan proceeds to be forgiven if certain requirements are met. Any loan proceeds not forgiven will be repaid in full. The Company has currently applied for loan forgiveness in the full amount of the loan, but no assurance can be given as to the amount, if any, of forgiveness. The application for forgiveness allowed the Company to defer the timing of repayment until the forgiveness assessment is completed. See Note 12 for additional information.

**(h)** On November 24, 2020 Amergent received approximately $68,200 through the Bounce Back Loan Scheme in the United Kingdom. The loan has a term of six years that can be extended to 10 years. No payments are required and no interest is accrued for the first twelve months after the loan is received. After the first year, the loan accrues interest at 2.5% per year.

**(i)** On August 4, 2020, the Company obtained two loans under the Economic Injury Disaster Loan (“EIDL”) assistance program from the Small Business Administration (“SBA”) in light of the impact of the COVID-19 pandemic on the Company’s business. The principal amount of the loans is $299,900, with proceeds to be used for working capital purposes. Interest accrues at the rate of 3.75% per year. Total installment payments, including principal and interest, are due monthly beginning August 4, 2021 in the amount of $1,762. The balance of principal and interest is payable over the next thirty years from the date of the promissory note (August 2050). There are no penalties for prepayment. Based upon guidance issued by the SBA on June 19, 2020, the EIDL loans are not required to be refinanced by the PPP loan.

**(j)** In connection with and prior to the Spin-Off and Merger, on April 1, 2020, pursuant to an agreement among Chanticleer, Oz Rey and certain original holders of the 8% non-convertible debentures (see (a) above), the Company issued a 10% secured convertible debenture to Oz Rey in exchange for the 8% non-convertible debentures. The principal amount of the 10% secured convertible debenture is $4,037,889, payable in full on April 1, 2022, subject to extension by the holders in two-year intervals for up to 10 years from the issuance date upon Amergent meeting certain conditions. Interest is payable quarterly in cash. Prior to August 17, 2020, the 10% secured convertible debenture was convertible at any time by Oz Rey into common stock at the lower of $0.10 per share and the volume weighted average price on the last 10 trading days immediately prior to conversion. The 10% secured convertible debenture is also subject to adjustment if Amergent sells securities below this price (down round protection), among other triggers. In connection with the exchange of the debentures, Amergent issued warrants to Oz Rey and the original 8% non-convertible debenture holders to purchase 2,925,200 shares of common stock. The exercise price is $0.125 for 2,462,600 warrants and $0.50 for 462,500 warrants. The warrants can be exercised on a cashless basis and expire 10 years from the issuance date.

Through August 16, 2020, Amergent did not have an adequate amount of authorized common stock to cover shares issuable upon exercise of the warrants and conversion of the 10% convertible notes. As such, the warrants were liability classified and the conversion feature was bifurcated from the host debt instrument and accounted for as a derivative and recorded as a liability in the accompanying consolidated and combined balance sheets through August 16, 2020, with the change in the liability for the warrants and the conversion feature from the April 1, 2020 issuance date through August 16, 2020 recorded in the accompanying consolidated and combined statements of operations.

The warrants issued had an estimated fair value of $935,000 as of April 1, 2020 using a Monte Carlo simulation to determine the value. The fair value of the conversion feature was $11,231,000 as of April 1, 2020 using a Monte Carlo simulation to determine the value. The estimated carrying value of the 10% convertible secured debentures without the conversion feature was $3,680,000, and with the conversion feature was $14,911,000.

On August 17, 2020, the Company and Oz Rey amended the 10% secured convertible debenture to fix the conversion rate into common stock at $0.10 per share. Further, the amendment provides a limitation on Oz Rey's ability to convert the debenture into common stock so that the conversion would not result in the issuance of common stock exceeding the amount of authorized shares. Oz Rey may; however, upon reasonably notice to the Company, require the Company to include in its proxy materials, for any annual meeting of shareholders being held by the Company, a proposal to amend the Company's certificate of incorporation to increase the Company's authorized shares to a number sufficient to allow for conversion of all shares underlying the debenture, on a fully diluted basis. Oz Rey also agreed that the Company would not be required under any circumstances to make a cash payment to settle the conversion feature not exercisable due to the authorized share cap or in an event that the Company was unable to deliver shares under the conversion feature. Oz Rey also agreed to waive any event of default under the debenture that occurred or existed prior to August 17, 2020. As a result of these modifications, the warrants are no longer liability classified and the conversion feature is no longer required to be bifurcated from the debt host as of the date of the amendment.

Through the date of the amendment, the warrants and the conversion feature were marked to fair value with the change in the liability recorded in the accompanying consolidated and combined statements of operations. The liabilities for the warrants and conversion feature were reclassified into additional paid in-capital at the amendment date. The estimated fair value of the warrants and conversion feature at August 16, 2020 were $924,000 and $10,970,000, respectively. The change in value of these instruments from the issuance date through August 16, 2020 of ($11,000) and ($261,000) has been recorded as a component of other expense (income) and included in change in fair value of derivative liabilities and warrants in the accompanying consolidated statements of operations for the year ended December 31, 2020. See note 11 for further discussion of determining the estimated fair value of these instruments.

The exchange of the notes has been accounted for as the extinguishment of the 8% non-convertible notes with the difference in the carrying value of the 8% non-convertible notes, $4,037,889, and the fair value of the 10% convertible notes and warrants, $15,846,000, at the date of the exchange recorded as a debt extinguishment charge of $11,808,111 in the accompanying consolidated and combined statements of operations for the year ended December 31, 2020.

The Company recorded a debt discount of approximately $358,000 for the difference between the face value of the 10% secured convertible debenture and the estimated fair value at the April 1, 2020 issuance date and is amortizing this discount over the two-year period of the notes. Amortization of $134,208 was recorded as interest expense during the year ended December 31, 2020.

The Company's various loan agreements contain financial and non-financial covenants and provisions providing for cross-default. The evaluation of compliance with these provisions is subject to interpretation and the exercise of judgment. The Company's lender has provided a waiver of certain financial covenants through March 31, 2021.

8. **ACCOUNTS PAYABLE AND ACCRUED EXPENSES**

Accounts payable and accrued expenses are summarized as follows:

| | December 31, 2020 | December 31, 2019 |
|---|---|---|
| Accounts payable | $ 3,752,036 | $ 1,265,435 |
| Accrued expenses | 1,436,679 | 2,965,205 |
| Accrued taxes (VAT, Sales, Payroll, etc.) | 3,356,496 | 3,318,022 |
| Accrued interest | 122,057 | 616,533 |
| | $ 8,667,268 | $ 8,165,195 |

As of December 31, 2020 and 2019, approximately $3.0 million and $2.9 million, respectively, of employee and employer taxes and associated interest and penalties have been accrued but not remitted to certain taxing authorities by the Company. These accruals are for periods prior to 2019 for cash compensation paid and are reflected as a component of the accrued taxes line above. As a result, the Company is liable for such payroll taxes and any related penalties and interest.

**9. INCOME TAXES**

The income tax expense for the years ended December 31, 2020 and 2019 consists of the following:

| | December 31, 2020 | December 31, 2019 |
|---|---|---|
| Foreign | | |
| Current | $ — | $ 48,187 |
| Deferred | (36,443) | 653,790 |
| Change in valuation allowance | 36,443 | (652,679) |
| U.S. Federal | | |
| Current | — | — |
| Deferred | 5,765,837 | (4,683,141) |
| Change in valuation allowance | (5,815,197) | 4,662,699 |
| State and local | | |
| Current | — | — |
| Deferred | (103,357) | (272,656) |
| Change in valuation allowance | 159,222 | 317,526 |
| | $ 6,505 | $ 73,726 |

The income tax expense using statutory U.S. federal tax rate of 21% is reconciled to the Company's effective tax rate as of December 31, 2020 and 2019 is as follows:

| | 2020 | 2019 |
|---|---|---|
| Computed "expected" income tax benefit | $ (4,325,270) | $ (3,647,623) |
| State income taxes, net of federal benefit | (57,543) | (367,974) |
| Non-controlling interest | — | 185,031 |
| Prior year true-ups other deferred tax balances | 24,549 | (323,763) |
| Permanent items | 2,500,281 | 37,480 |
| Foreign tax expense | — | 48,187 |
| Rate change | (142,085) | — |
| Other | (248,955) | 59,421 |
| Adjustment to NOLs due to Merger | 8,350,360 | — |
| Change in valuation allowance | (6,094,832) | 4,082,967 |
| | $ 6,505 | $ 73,726 |

Deferred income taxes reflect the net tax effect of temporary differences between the carrying amounts of assets and liabilities for financial reporting and the amounts used for tax purposes. Major components of deferred tax assets at December 31, 2020 and 2019 were:

| | 2020 | 2019 |
|---|---|---|
| Net operating loss carryforwards | $ 6,802,404 | $ 13,099,412 |
| Capital loss carryforwards | 369,447 | — |
| Fixed assets and intangibles | 1,118,850 | 1,058,814 |
| Section 1231 loss carryforwards | 39,491 | 103,230 |
| Charitable contribution carryforwards | 12,474 | 23,731 |
| Section 163(j) limitation | 789,007 | 648,074 |
| Other | — | 45,801 |
| Restaurant startup expenses | 5,293 | — |
| Accrued expenses | 915,177 | 946,040 |
| Deferred occupancy liabilities | — | 37,044 |
| Contract liabilities | 226,671 | 240,333 |
| Total deferred tax assets | 10,278,814 | 16,202,479 |
| | | |
| Deferred occupancy liabilities | (38,390) | — |
| Investments | (202,307) | (328,825) |
| Other | (30,833) | — |
| Total deferred tax liabilities | (271,530) | (328,825) |
| | | |
| Net deferred tax assets | 10,007,284 | 15,873,654 |
| Valuation allowance | (10,116,093) | (15,975,958) |
| | $ (108,809) | $ (102,304) |

As of December 31, 2020, Company has U.S. federal and state net operating loss carryovers of approximately $26,200,000, which will expire at various dates beginning in 2031 through 2036, if not utilized with exception of loss carryovers generated in tax years after 2017. As a result of Tax Cut and Jobs Act of 2017, net operating losses generated in 2018 and beyond have indefinite lives. In accordance with Section 382 of the internal revenue code, deductibility of the Company's U.S. net operating loss carryovers may be subject to an annual limitation in the event of a change of control as defined under the Section 382 regulations.

Based on prior acquisitions and ownership changes, the Company expects approximately $7.2 million of net operating loss carryforwards to be limited based on section 382.

In assessing the realization of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Management considers the scheduled reversal of deferred tax liabilities, projected future taxable income and tax planning strategies in making this assessment. After consideration of all of the information available, management believes that significant uncertainty exists with respect to future realization of the deferred tax assets and has therefore established a full valuation allowance. For the years ended December 31, 2020 and December 31, 2019 the change in valuation allowance was approximately $(5,860,000) and $4,083,000, respectively.

The Company evaluated the provisions of ASC 740 related to the accounting for uncertainty in income taxes recognized in their financial statements. ASC 740 prescribes a comprehensive model for how a company should recognize, present, and disclose uncertain positions that the company has taken or expects to take in its return. For those benefits to be recognized, a tax position must be more-likely-than- not to be sustained upon examination by taxing authorities. Differences between two positions taken or expected to be taken in a tax return and the benefit recognized and measured pursuant to the interpretation are referred to as “unrecognized benefits”. A liability is recognized for an unrecognized tax benefit because it represents an enterprise’s potential future obligation to the taxing-authority for a tax position that was not recognized as a result of applying the provisions of ASC 740.

Interest related to uncertain tax positions are required to be calculated, if applicable, and would be classified as “interest expense” in the consolidated and combined statements of operations. Penalties would be recognized as a component of “general and administrative expenses”. As of December 31, 2020 and 2019, no interest or penalties were required to be reported.

The Company previously did not record a provision for taxes on undistributed foreign earnings based on an intention and ability to permanently reinvest the earnings of its foreign subsidiaries in those operations. Under the Tax Cuts and Jobs Act, the Company has re-assessed its strategies by evaluating the impact of the Tax Cuts and Jobs Act on its operations. As a result of the Act, the Company analyzed if a liability needed to be recorded for the deemed repatriation of undistributed earnings. It was determined that there is no outstanding liability associated with this based on overall negative undistributed earnings (accumulated deficit) in the consolidated foreign group.

An additional provision of the TJCA is the implementation of the Global Intangible-Low Taxed Income Tax, or “GILTI.” The Company has elected to account for the impact of GILTI in the period in which the tax actually applies to the Company. During fiscal 2019, the Company incurred $157,000 of additional taxable income as a result of this provision. This increase of taxable income was incorporated into the overall net operating loss and valuation. Due to foreign losses in 2020, the impact of GILTI on taxable income is nil.

**10. STOCKHOLDER’S EQUITY**

*Redeemable Preferred Stock – Series 1*

Beginning in December 2016, the Company conducted a rights offering of units, each unit consisting of one share of 9% Redeemable Series 1 Preferred Stock (“Series 1 Preferred”) and one Series 1 Warrant (“Series 1 Warrant”) to purchase 10 shares of common stock. Preferred unit dividends of 37,518 shares and 77,975 shares were paid in 2020 and 2019, respectively. In connection with the Merger, on April 1, 2020, all outstanding Series 1 Preferred units, comprised of shares of Series 1 Preferred and Series 1 Warrants, were redeemed and extinguished for their cash redemption price of $0.50 per unit. The difference between the carrying value of the Series 1 Preferred and the cash redemption amount of $161,900 was recognized as a loss on extinguishment and included in other expense during the year ended December 31, 2020.

*2019 Rights Offering*

In 2019 the Company conducted a rights offering of units to its stockholders of record to purchase common stock at a subscription price of $1.00 per share. The rights offering was made pursuant to Chanticleer's effective registration statement on Form S-1 on file with the U.S. Securities and Exchange Commission (the "SEC") and accompanying prospectus filed with the SEC on June 12, 2019.

Upon closing of the rights offering in July 2019, a total of 1,894,311 shares of common stock were issued pursuant to record holders' basic subscription privilege and a total of 4,190,524 shares of common stock were issued pursuant to record holders' over subscription. The Company accepted subscriptions to purchase 6,084,733 shares in the rights offering upon expiration of the rights offering on June 28, 2019. The Company received $6,009,733 in gross proceeds from the rights offering and $3,075,000 was subscribed by certain record holders' through the reduction in outstanding debt obligations of the Company. The shares associated with the reduction in outstanding debt obligations were deemed issued at June 30, 2019. The remaining proceeds of approximately $2.7 million, which is net of fees owed to the dealer-managers and other offering costs, were received in early July 2019 after the closing of the rights offering.

Chardan Capital Markets, LLC and The Oak Ridge Financial Services Group Inc. were the co-dealer-managers on the transaction and the Company agreed to pay the dealer-managers a fee equal to 7% of the gross proceeds of the rights offering (excluding proceeds from the reduction of the debt obligations) and to reimburse the dealer-managers for their expenses up to $75,000 for an aggregate commission of approximately $286,000. Additional offering costs were incurred for legal, accounting and transfer agent services.

*2020 Bridge Financing*

Pursuant to a Securities Purchase Agreement dated February 7, 2020, the Company sold 1,500 shares of a new series of convertible preferred stock of Chanticleer (the "Series 2 Preferred Stock") to an institutional investor for gross proceeds to the Company of $1,500,000 less transaction costs of $95,000. In addition, pursuant to the original agreement with the investors, the Company issued 5-year warrants to purchase an aggregate of 350,000 shares of common stock to the investors at $1.25 per share. Each share of Series 2 Preferred has a stated value of $1,000. Upon issuance, the Company bifurcated and recorded, as a liability, an embedded derivative (more fully described below and in Note 10) in the amount of $529,000. The effective conversion price of the Series 2 Preferred Stock after the bifurcation of the derivative resulted a beneficial conversion feature of $729,000, which was then immediately recorded as a deemed dividend as the preferred stock is immediately convertible. In March 2020, an aggregate of 713 shares of Series 2 Preferred Stock were converted into 1,426,849 shares of common stock. In connection with the Merger, all remaining outstanding shares of the Series 2 Preferred Stock were automatically cancelled and exchanged for substantially similar shares of preferred stock in Amergent, the shareholders of Chanticleer common stock received shares of Amergent on a 1 for 1 basis (spin-off shares) and received 1 share of Sonnet common stock for 26 shares of Chanticleer common stock held at the time of the Merger. At December 31, 2020, 787 shares of Series 2 Preferred Stock were outstanding.

On August 17, 2020, the Company and the holders of the Series 2 Preferred Stock entered into a Waiver, Consent, and Amendment to the Certificate of Designations (the "Extension Agreement") which included provisions for an extension of the true-up payment discussed below from August 7, 2020 to December 10, 2020 and permitted the shares of Amergent obtained by the investor in the Spin-off to be included in the determination of the True-Up Payment discussed below, with the Company paying all expenses incurred by the institutional investor in connection with the Extension Agreement and certain consideration for the institutional in investor's willingness to extend the date of the true-up payment. The consideration included $66,000 of cash and warrants to purchase 134,000 shares of the Company's common stock with a value of $28,060 (see below).

On February 16, 2021, the Company and the holders of the Series 2 Preferred Stock entered into a Waiver, Consent and Amendment to the Certificate of Designations (the "Waiver"). This Waiver further extended the settlement date to April 1, 2021. See Note 13 for further discussion.

The Series 2 Preferred Stock is classified in the accompanying consolidated and combined balance sheet at December 31, 2020 as temporary equity due to certain contingent redemption features which are outside the control of the Company.

Designations, rights and preferences of Series 2 Preferred Stock:

Stated value*:* Each share of Series 2 Preferred Stock had a stated value of $1,000.

*True-Up Payment:* Amergent is required to pay the holder an amount in cash equal to the dollar value of 125% of the stated value of the Series 2 Preferred Stock less the proceeds previously realized by the holder from the sale of all conversion and spin-off shares received by holder in Amergent, net of brokerage commissions and any other fees incurred by the holder in connection with the sale of any conversion shares or spin-off shares on December 10, 2020. Subsequent to December 31, 2020, the settlement date has been extended to April 1, 2021 (see Note 13). The True-Up Payment will be paid by Amergent out of (i) the proceeds from the exercise by Amergent of the warrants to purchase shares of Sonnet's common stock held by the Spin-Off Entity after the consummation of the transactions contemplated by the Merger or (ii) the segregated cash account of $1,250,000. Non-payment of the True-Up Payment when it is due will trigger default interest rate of 18% per year.

The Company determined that the True-Up Payment constituted a "make-whole" provision as defined by U.S. GAAP that is required to be settled in cash and as such, was bifurcated from the host instrument, the Series 2 Preferred Stock, and is accounted for as a derivative liability. The fair value of the derivative was estimated using a Monte Carlo model and a liability of $529,000 was recorded at the Series 2 Preferred Stock issuance date. The fair value at December 31, 2020 was a liability of $184,800. The $344,200 decrease in the liability from the issuance date through December 31, 2020 is recorded as a component of the change in derivative liabilities in the accompanying consolidated statements of operations for the year ended December 31, 2020. See Note 11 for further information.

*Redemption:* If the Merger was not completed within six months of issuance of the Series 2 Preferred Stock, the Company would have been required to redeem all the outstanding Series 2 Preferred Stock for 125% of the aggregate stated value of the Series 2 Preferred Stock then outstanding plus any default interest and any other fees or liquidated damages then due and owing thereon under the Certificate of Designations. Additionally, there are other triggering events, as defined, that can cause the Series 2 Preferred Stock to be redeemable at the option of the holder of which some are outside of the control of the Company.

*Conversion at option of holder/ beneficial ownership limitation* The Series 2 Preferred Stock is convertible at the option of holder at the lesser of (i) $1.00 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like) or (ii) 90% of the five day average volume weighted average price of the common, provided the conversion price has a floor of $0.50 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like). Conversion is subject to a beneficial ownership limitation of 4.99%. This limitation was increased by the holder to 9.99% prior to the Merger.

*Forced conversion:* The Company had the right to require the holder to convert up to 1,400 shares of Series 2 Preferred Stock upon delivery of notice three days prior to the Merger, subject to the beneficial ownership limitation and applicable Nasdaq rules. Unconverted shares of Series 2 Preferred Stock automatically were exchanged for an equal number of shares of Series 2 Preferred Stock in Amergent on substantially the same terms.

*Liquidation preference* Upon any liquidation, dissolution or winding-up of the Company, the holder is entitled to receive out of the assets, whether capital or surplus, an amount equal to 125% of the stated value plus any default interest and any other fees or liquidated damages then due and owing thereon under the Certificate of Designations, for each share of Series 2 Preferred Stock before any distribution or payment to the holders of common stock.

*Voting rights:* The holder of Series 2 Preferred Stock has the right to vote together with the holders of common stock as a single class on an as-converted basis on all matters presented to the holders of common stock and shall vote as a separate class on all matters presented to the holders of Series 2 Preferred Stock. In addition, without the approval of the holder, the Company is required to obtain the approval of Series 2 Preferred Stock, as is customary, for certain events and transactions not contemplated by the Merger.

*Triggering Events:* Breach of Company's obligations will trigger a redemption event.

*Anti-Dilution:* Customary adjustments in the event of dividends or stock splits and anti-dilution protection. Concurrently with the Preferred Securities Purchase Agreement, the parties entered into a registration rights agreement (the "Preferred Registration Rights Agreement"). Pursuant to the Preferred Registration Rights Agreement, the Company was required to file a registration statement registering the conversion shares no later than 15 days from the closing of this transaction.

*2020 Merger Transaction*

As a result of the Merger, the following reflects the net equity contribution of Merger Consideration to the Company which reflects the gross proceeds received, offset of the direct costs incurred for the transaction, the difference between the redemption payment and carrying value of the Redeemable Preferred Stock - Series 1, and redemption of certain warrants.

| | | |
|---|---|---|
| Contributed cash portion of Merger Consideration | $ | 6,000,000 |
| Contribution of Sonnet warrant portion of Merger Consideration | | 1,628,909 |
| Transaction cost incurred | | (588,255) |
| | $ | 7,040,654 |

**Options and Warrants**

The Company's shareholders approved the Chanticleer Holdings, Inc. 2014 Stock Incentive Plan (the "2014 Plan") authorizing the issuance of options, stock appreciation rights, restricted stock awards and units, performance shares and units, phantom stock and other stock-based and dividend equivalent awards. Pursuant to the approved 2014 Plan, 400,010 were approved for grant. This Plan did not survive the Merger. Amergent intends to adopt a new equity incentive plan subject to shareholder approval in the near future.

As of and in connection with the Merger and Spin-Off, all restricted and unrestricted stock options were cancelled and no awards have been granted since that date.

In March 2020, the Company lowered the strike price for certain warrants from within several classes of warrants to $0.50 as an inducement to incentivize the warrant holders to exercise their warrants. The Company accounted for the warrant inducement as a deemed dividend based on the difference in the Black-Scholes value of the warrants immediately before and immediately after the inducement. The significant assumptions used by the Company included common stock volatility of between 88% - 95%, risk free rate between 1.7% and 0.84%, a weighted average term between 6.5 and 8 years and the stock price of the Company as of the date of inducement. Based on the Black-Scholes values calculated the Company recorded a deemed dividend to additional paid in capital and retained earnings on the inducement of approximately $325,000 and received proceeds from the warrants exercised of approximately $1.2 million.

In connection with the Merger and Spin-Off on April 1, 2020, 261,050 warrants were redeemed by the Company for $66,900 and 525,554 warrants remained with the Company. Additionally, 3,275,200 warrants were issued of which 2,925,200 warrants were issued with an exercise price ranging between $.125 and $.50 in connection with the issuance of the Company's 10% convertible note agreement and 350,000 warrants with an exercise price of $1.25 were issued to the Company's bridge financing investor.

On August 17, 2020, warrants for 134,000 shares of common stock were issued in connection with the extension of the True-Up Payment provision. See Note 11. The warrants are immediately exercisable at $1.25 per share and expire in August 2025. The value of these warrants was $28,060.

A summary of the warrant activity during the year ended December 31, 2020 is presented below:

| | Number of Warrants | Weighted Average Exercise Price | Weighted Average Remaining Life |
|---|---|---|---|
| Outstanding at December 31, 2019 | 3,306,238 | $ 6.00 | 6.8 |
| Granted | 3,409,200 | 0.34 | 8.8 |
| Exercised | (2,414,022) | 0.50 | — |
| Forfeited/Other Adjustments | (892,216) | — | — |
| Outstanding at December 31, 2020 | 3,409,200 | $ 0.34 | 8.6 |
| | | | |
| Exercisable December 31, 2020 | 3,409,200 | $ 0.34 | 8.6 |

**11. DERIVATIVE LIABILITIES**

The derivative liabilities at December 31, 2020 consist of a True-Up Payment provision of the Series 2 Preferred Stock (See Note 10). There were no derivative liabilities at December 31, 2019.

As discussed in Note 7(j), warrants were issued in connection with the 10% convertible note. The Company did not have an adequate amount of authorized common shares issuable upon exercise of the warrants and conversion of the 10% convertible note. As such, the warrants were liability classified and the conversion feature was bifurcated from the host debt instrument and both instruments were accounted for as derivatives. As a result of the amendment to the note discussed in Note 7(i), the warrant and conversion feature no longer required liability classification and were reclassified to equity.

The table presented below is a summary of changes in the fair market value of the Company's Level 3 valuations for the year ended December 31, 2020.

| | True-Up Payment | Warrants | Debt Conversion Feature | Total |
|---|---|---|---|---|
| Balance at December 31, 2019 | $ — | $ — | $ — | $ — |
| Inception of the instrument | 529,000 | 935,000 | 11,231,000 | 12,695,000 |
| Change in fair value during the period | (344,200) | (11,000) | (261,000) | (616,200) |
| Instruments no longer meeting liability classification | $ — | $ (924,000) | $ (10,970,000) | $ (11,894,000) |
| Balance at December 31, 2020 | $ 184,800 | $ — | $ — | $ 184,800 |

Assumptions used in calculating the fair value of the warrants at the issuance date and as of August 16, 2020 include the following:

| | As of April 1, 2020 |
|---|---|
| Stock price per share | $ 0.34 |
| Term | 10.0 years |
| Expected volatility | 102% |
| Dividend yield | —% |
| Risk-free interest rate | 0.62% |

| As of August 16, 2020 | | |
|---|---|---|
| Stock price per share | $ | 0.34 |
| Term | | 9.63 years |
| Expected volatility | | 102% |
| Dividend yield | | —% |
| Risk-free interest rate | | 0.51% |

The Company also considered the probability, timing and amount of future capital raises.

Assumptions used in calculating the fair value of the convertible notes at the issuance date and as of August 16, 2020 include the following:

| As of April 1, 2020 | | |
|---|---|---|
| Face value | $ | 4,037,889 |
| Term | | 2.0 years |
| Expected volatility | | 120% |
| Risk-free interest rate | | 0.23% |
| Coupon | | 10.00% |
| Conversion price | $ | 0.10 |
| Credit spread | | 15.0% |

| As of August 16, 2020 | | |
|---|---|---|
| Face value | $ | 4,037,889 |
| Term | | 1.63 years |
| Expected volatility | | 127% |
| Risk-free interest rate | | 0.23% |
| Coupon | | 10.00% |
| Conversion price | $ | 0.10 |
| Credit spread | | 15.0% |

The Company also considered the probability, timing and amount of future capital raises.

Assumptions used in calculating the fair value of the True-Up Payment provision at the issuance date and as of December 31, 2020 include the following:

| Issuance Date | |
|---|---|
| Term | .5 years |
| Expected volatility | 83% |
| Dividend yield | —% |
| Risk-free interest rate | 1.56% |

| | |
|---|---|
| Term | .25 years |
| Expected volatility | 89% |
| Dividend yield | —% |
| Risk-free interest rate | 0.09% |

**12. COMMITMENTS AND CONTINGENCIES**

***Legal proceedings***

*South Africa matter*

On March 26, 2013, our South African operations received Notice of Motion filed in the Kwazulu-Natal High Court, Durban, Republic of South Africa, filed against Rolalor (PTY) LTD ("Rolalor") and Labyrinth Trading 18 (PTY) LTD ("Labyrinth") by Jennifer Catherine Mary Shaw ("Shaw"). It was requested that the Respondents, Rolalor and Labyrinth, be wound up in satisfaction of an alleged debt owed in the total amount of R4,082,636 (approximately $480,000). The outcome of the case resulted in the proposed liquidation of Rolalor in which the Company did not object as the entity has no assets. The Company does not expect there to be a material impact as a result of the proceedings, as the South African entities were sold and the buyers retained any and all liabilities.

*Employee matter*

In connection with the Merger, a former executive officer filed a claim for damages against a wholly owned subsidiary of the Company for unpaid severance. The former executive received timely notification of non-renewal of his employment agreement, which expired December 31, 2019, but argues he is entitled to severance benefits triggered by the Merger. Amergent has been advised by legal counsel that there is a low probability that the claim will result in any damages payable by the Company.

*Indemnification agreement and tail policy*

On March 25, 2020, pursuant to the requirements of the Merger Agreement, Chanticleer, Sonnet and Amergent entered into an indemnification agreement ("Indemnification Agreement") providing that Amergent will fully indemnify and hold harmless each of Chanticleer and Sonnet, and each of their respective, directors, officers, stockholders and managers who assumes such role upon or following the closing of the merger against all actual or threatened claims, losses, liabilities, damages, judgments, fines and reasonable fees, costs and expenses, including attorneys' fees and disbursements, incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, administrative, investigative or otherwise, related to the Spin-Off Business prior to or in connection with its disposition to Amergent.

In addition, pursuant to Merger Agreement, prior to closing of the Merger, the Spin-Off Entity acquired a tail insurance policy in a coverage amount of $3.0 million, prepaid in full by the Spin-Off Entity, at no cost to the indemnitees, and effective for at least six years following the consummation of the disposition, covering the Spin-Off Entity's indemnification obligations to the indemnitees (referred to herein as the "Tail Policy"). The Company does not anticipate that any potential liability would exceed the insured amount.

*Litigation related to leased properties*

During 2020 the Company was in arrears on rent due on several of its leases as a result of the COVID-19 pandemic. As a result, the Company has pending litigation related to 11 sites of which 5 have permanently closed. The outcome of this litigation could result in the permanent closure of additional restaurant locations as well as the possibility of the Company being required to pay interest and damages, modify certain leases on unfavorable terms and could result in material impairments to the Company's assets.

No amounts have been accrued as of December31, 2020 and December 31, 2019 in the accompanying condensed consolidated and combined balance sheets as management does not believe the outcome will result in additional liabilities to the Company; however, there can be no guarantees.

From time to time, the Company may be involved in other legal proceedings and claims that have arisen in the ordinary course of business are generally covered by insurance. As of December 31, 2020, the Company does not expect the amount of ultimate liability with respect to these matters to be material to the Company's financial condition, results of operations or cash flows.

*Leases*

The Company's leases typically contain rent escalations over the lease term. The Company recognizes expense for these leases on a straight-line basis over the lease term. Additionally, tenant incentives used to fund leasehold improvements are recognized when earned and reduce our right-of-use asset related to the lease. These are amortized through the right-of-use asset as reductions of expense over the lease term.

Some of the Company's leases include rent escalations based on inflation indexes and fair market value adjustments. Certain leases contain contingent rental provisions that include a fixed base rent plus an additional percentage of the restaurant's sales in excess of stipulated amounts. Operating lease liabilities are calculated using the prevailing index or rate at lease commencement. Subsequent escalations in the index or rate and contingent rental payments are recognized as variable lease expenses. The Company's lease agreements do not contain any material residual value guarantees or material restrictive covenants. As part of the lease agreements, the Company is also responsible for payments regarding non-lease components (common area maintenance, operating expenses, etc.) and percentage rent payments based on monthly or annual restaurant sales amounts which are considered variable costs and are not included as part of the lease liabilities.

Related to the adoption of Leases Topic 842, our policy elections were as follows:

**Separation of lease and non-lease components**

The Company elected this expedient to account for lease and non-lease components as a single component for the entire population of operating lease assets.

**Short-term policy**

The Company has elected the short-term lease recognition exemption for all applicable classes of underlying assets. Leases with an initial term of 12 months or less, that do not include an option to purchase the underlying asset that we are reasonably certain to exercise, are not recorded on the balance sheet.

Supplemental balance sheet information related to leases was as follows:

| Operating Leases | Classification | December 31, 2020 | December 31, 2019 |
|---|---|---|---|
| Right-of-use assets | Operating lease assets | $ 9,529,443 | $ 11,668,026 |
| | | | |
| Current lease liabilities | Current operating lease liabilities | 4,209,389 | 3,299,309 |
| Non-current lease liabilities | Long-term operating lease liabilities | 10,667,862 | 14,382,354 |
| | | $ 14,877,251 | $ 17,681,663 |

Lease term and discount rate were as follows:

| | December 31, 2020 | December 31, 2019 |
|---|---|---|
| Weighted average remaining lease term (years) | 7.7 | 8.19 |
| Weighted average discount rate | 10% | 10% |

As discussed in Note 5, COVID-19 has negatively impacted operating results and cash flows at significantly varying amounts at the store level. Several stores were permanently closed during the year ended December 31, 2020 while others operated at a reduced capacity. Based on an assessment of the recoverability of the right-of-use asset as of December 31, 2020 an impairment charge of $486,000 was recorded for the year then ended.

During 2020, $506,185 of lease liabilities were derecognized due to modifications resulting from the COVID-19 pandemic. The Company had lease liabilities of $3,136,223 related to abandoned leases. These lease liabilities are presented as part of current operating lease liabilities.

Rent expense of approximately $2.5 million was incurred in the year ended December 31, 2020, of which approximately $0.1 million was variable. Rent expense of approximately $4.5 million was recognized the year ended December 31, 2019, of which approximately $0.7 was variable.

*PPP Loan*

The Company received a PPP loan for an amount of $2.1 million, which was established under the CARES Act and administered by the Small Business Administration ("SBA"). The application for the PPP loan requires the Company to, in good faith, certify that the current economic uncertainty made the loan request necessary to support the ongoing operation of the Company. This certification further requires the Company to take into account current business activity and the Company's ability to access other sources of liquidity sufficient to support the ongoing operations in a manner that is not significantly detrimental to the business. The receipt of funds from the PPP loans and forgiveness of the PPP loans is dependent on the Company having initially qualified for the PPP loans and qualifying for the forgiveness of such PPP loans based on funds being used for certain expenditures such as payroll costs and rent, as required by the terms of the PPP loans. There is no assurance that the Company's obligation under the PPP loans will be forgiven. If the PPP loans are not forgiven, the Company will need to repay the PPP loans over the applicable deferral period.

Presently, the SBA and other governmental communications have indicated that all loans in excess of $2.0 million will be subject to audit and that those audits could take up to seven years to complete. If the SBA determines that the PPP loan was not properly obtained and/or expenditures supporting forgiveness were not appropriate, the Company would need to repay some or all of the PPP loan and record additional expense which could have a material adverse impact on the business, financial condition and results of operations in a future period.

**13. SUBSEQUENT EVENTS**

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

*PPP Loan*

On February 25, 2021, the Company received a second loan of $2,000,000 under the Paycheck Protection Program PPP discussed in Note 7(g). The note bears interest at 1% per year, matures on February 25, 2026, and requires monthly principal and interest payments of approximately $44,660 beginning June 25, 2022 through maturity. The loan may be forgiven if certain criteria are met.

*True-up payment*

On February 16, 2021, the Company and the holders of the Series 2 Preferred Stock entered into a Waiver, Consent and Amendment to the Certificate of Designations (the "Waiver"). Pursuant to the Waiver, the Company filed the Second Amendment and Restated Certificate of Designations of Series 2 Convertible Preferred Stock ("Amended COD") (i) providing for the extension of the True-Up Payment to April 1, 2021, (ii) providing for the deduction of proceeds to the original holders from sales of Series 2 Preferred for the True-Up Payment, with the Delaware Secretary of State and (iii) providing for a reduction in amount required to be held in a segregated cash account as discussed in Note 10 from $1,250,000 to $850,000. The Company is in negotiations with investors to purchase the Series 2 Preferred Stock from the original holders and convert the Series 2 Preferred Stock to Common Stock. These negotiations are ongoing and may or may not conclude in a favourable manner for the Company.

*Subsequent Settlement of Delinquent Leases*

After December 31, 2020, the Company has reached agreements to be released from one lease contracts for stores that have been closed due to the Covid-19 pandemic. The Company has agreed to pay approximately $26,250 to the landlords in the agreements to be released from making future lease payments.

**14. RESTATEMENTS OF PREVIOUSLY ISSUED INTERIM FINANCIAL STATEMENTS (UNAUDITED)**

The Company, while undergoing the audit of its consolidated and combined financial statements as of December 31, 2020 and for the year then ended, re-evaluated the lease term for three restaurants that were permanently closed in 2020 due to the pandemic and determined that the lease terms should no longer have included periods subject to renewal options. Impairment charges had been recorded for these restaurants during the respective quarter that the restaurants were closed, but the 2020 interim unaudited financial statements did not reflect the revised lease terms. This impacted the previously reported amounts for operating lease assets, operating lease liabilities, and rent expense, among other line items in the condensed consolidated and combined interim financial statements.

In addition to the above, in the third quarter of 2020 the Company and the holders of the Series 2 Preferred Stock entered into the Extension Agreement (see Note 10). This agreement provided for the extension of the True-Up Payment date and for the inclusion of certain "spin-off" shares obtained by the holder of the Series 2 Preferred Stock in the settlement of the Series 2 Preferred for the True-Up Payment. The derivative liability recorded as of September 30, 2020 did not reflect this change in calculation of the True-Up Payment resulting in an overstatement of the derivative liability by approximately $695,000 and the associated change in fair value of derivative liabilities for the three months ended September 30, 2020.

The following tables sets forth the effects of the adjustments on affected items within the Company's previously reported Condensed Consolidated and Combined Interim Balance Sheets as of March 31, 2020, June 30, 2020, and September 30, 2020, had the adjustments been made in the corresponding quarters:

| | March 31, 2020 | | |
|---|---|---|---|
| | As reported | Adjustment | As restated |
| Operating lease assets | $ 11,256,497 | $ (216,681) | $ 11,039,816 |
| Long-term operating lease liabilities | $ 14,064,517 | $ (440,998) | $ 13,623,519 |
| Accumulated deficit | $ (77,343,539) | $ 149,955 | $ (77,193,584) |
| Non-controlling interests | $ 584,824 | $ 74,362 | $ 659,186 |

| | June 30, 2020 | | |
|---|---|---|---|
| | As reported | Adjustment | As restated |
| Operating lease assets | $ 11,007,038 | $ (98,944) | $ 10,908,094 |
| Long-term operating lease liabilities | $ 13,832,826 | $ (458,154) | $ 13,374,672 |
| Accumulated deficit | $ (85,658,825) | $ 284,848 | $ (85,373,977) |
| Non-controlling interests | $ (310,801) | $ 74,362 | $ (236,439) |

| | September 30, 2020 | | |
|---|---|---|---|
| | As reported | Adjustment | As restated |
| Operating lease assets | $ 10,117,900 | $ - | $ 10,117,900 |
| Derivative liabilities | $ 1,195,724 | $ (694,724) | $ 501,000 |
| Long-term operating lease liabilities | $ 15,115,651 | $ (479,855) | $ 14,635,796 |
| Accumulated deficit | $ (95,208,526) | $ 1,048,450 | $ (94,160,076) |
| Non-controlling interests | $ (764,097) | $ 126,129 | $ (637,968) |

The following tables sets forth the effects of the adjustments on affected items within the Company's previously reported Condensed Consolidated and Combined Interim Statements of Operations for the three months ended March 31, 2020, June 30, 2020, and September 30, 2020:

| | Three Months Ended March 31, 2020 | | |
|---|---|---|---|
| | As reported | Adjustment | As restated |
| Restaurant operating expenses | $ 3,625,844 | $ - | $ 3,625,844 |
| Asset impairment charge | $ - | $ - | $ - |
| Operating loss | $ (1,354,090) | $ - | $ (1,354,090) |
| Other income (expense) | $ 17,876 | $ 224,317 | $ 242,193 |
| Consolidated and combined net loss | $ (1,792,526) | $ 224,317 | $ (1,568,209) |
| Net income attributable to non-controlling interests | $ (129,043) | $ (74,362) | $ (203,405) |
| Net loss attributable to Amergent Hospitality Group Inc | $ (1,921,569) | $ 149,955 | $ (1,771,614) |
| Net loss per common share, basic and diluted | $ (0.16) | $ 0.01 | $ (0.15) |

| | Three Months Ended June 30, 2020 | | |
|---|---|---|---|
| | As reported | Adjustment | As restated |
| Restaurant operating expenses | $ 3,261,393 | $ (13,436) | $ 3,247,957 |
| Asset impairment charge | $ 273,927 | $ (121,457) | $ 152,470 |
| Operating loss | $ (2,655,587) | $ 134,893 | $ (2,520,694) |
| Other income (expense) | $ (70,748) | $ - | $ (70,748) |
| Consolidated and combined net loss | $ (9,210,911) | $ 134,893 | $ (9,076,018) |
| Net loss attributable to non-controlling interests | $ 89,716 | $ - | $ 89,716 |
| Net loss attributable to Amergent Hospitality Group Inc | $ (9,121,195) | $ 134,893 | $ (8,986,302) |
| Net loss per common share, basic and diluted | $ (0.64) | $ 0.01 | $ (0.63) |

| | Three Months Ended September 30, 2020 | | |
|---|---|---|---|
| | As reported | Adjustment | As restated |
| Restaurant operating expenses | $ 3,462,279 | $ (13,436) | $ 3,448,843 |
| Asset impairment charge | $ 1,231,352 | $ (95,223) | $ 1,136,129 |
| Operating loss | $ (3,024,319) | $ 108,659 | $ (2,915,660) |
| Change in fair value of derivative liabilities | $ (199,154) | $ 694,724 | $ 495,570 |
| Other income (expense) | $ (37,390) | $ 11,986 | $ (25,404) |
| Consolidated and combined net loss | $ (10,002,997) | $ 815,369 | $ (9,187,628) |
| Net loss attributable to non-controlling interests | $ 453,296 | $ (51,767) | $ 401,529 |
| Net loss attributable to Amergent Hospitality Group Inc | $ (9,549,701) | $ 763,602 | $ (8,786,099) |
| Net loss per common share, basic and diluted | $ (0.67) | $ 0.05 | $ (0.62) |

The following tables sets forth the effects of the adjustments on affected items within the Company's previously reported Condensed Consolidated and Combined Interim Statements of Operations for the six months ended June 30, 2020 and nine months ended September 30, 2020:

| | Six Months Ended June 30, 2020 | | |
|---|---|---|---|
| | As reported | Adjustment | As restated |
| Restaurant operating expenses | $ 6,887,237 | $ (13,436) | $ 6,873,801 |
| Asset impairment charge | $ 273,927 | $ (121,457) | $ 152,470 |
| Operating loss | $ (4,009,677) | $ 134.893 | $ (3,874,784) |
| Other income (expense) | $ (48,009) | $ 224,317 | $ 176,308 |
| Consolidated and combined net loss | $ (11,003,437) | $ 359,210 | $ (10,644,227) |
| Net income attributable to non-controlling interests | $ (39,327) | $ (74,362) | $ (113,689) |
| Net loss attributable to Amergent Hospitality Group Inc | $ (11,042,764) | $ 284,848 | $ (10,757,916) |
| Net loss per common share, basic and diluted | $ (0.85) | $ 0.03 | $ (0.82) |

| | Nine Months Ended September 30, 2020 | | |
|---|---|---|---|
| | As reported | Adjustment | As restated |
| Restaurant operating expenses | $ 10,349,516 | $ (26,872) | $ 10,322,644 |
| Asset impairment charge | $ 1,505,279 | $ (216,680) | $ 1,288,599 |
| Operating loss | $ (7,033,996) | $ 243,552 | $ (6,790,444) |
| Change in fair value of derivative liabilities | $ (1,152,185) | $ 694,724 | $ (457,461) |
| Other income (expense) | $ (85,399) | $ 236,303 | $ 150,904 |
| Consolidated and combined net loss | $ (21,006,434) | $ 1,174,579 | $ (19,831,855) |
| Net loss attributable to non-controlling interests | $ 413,969 | $ (126,129) | $ 287,840 |
| Net loss attributable to Amergent Hospitality Group Inc | $ (20,592,465) | $ 1,048,450 | $ (19,544,015) |
| Net loss per common share, basic and diluted | $ (1.53) | $ 0.08 | $ (1.45) |

There was no impact to the Company's cash flows from operating, investing, or financing activities for the periods ended March 31, 2020, June 30, 2020, or September 30, 2020 as a result of these restatements.

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

There are not and have not been any disagreements between us and our accountant on any matter of accounting principles, practices or financial statement disclosure.

**ITEM 9A. CONTROLS AND PROCEDURES**

*Evaluation of Disclosure Controls and Procedures*

We evaluated, under the supervision and with the participation of the principal executive officer and principal financial officer, the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities and Exchange Act of 1934, as amended ("Exchange Act")) as of December 31, 2020, the end of the period covered by this Report. Based on this evaluation, our Chairman, President and Chief Executive Officer (principal executive officer) and our Chief Financial Officer (principal financial officer) have concluded that our disclosure controls and procedures were not effective at the reasonable assurance level at December 31, 2020 because of the material weakness in the Company's internal control over financial reporting that existed at December 31, 2019 that has not been fully remediated by the end of this period.

Disclosure controls and procedures are designed to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act (i) is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and (ii) is accumulated and communicated to management, including the principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosures. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. Due to the inherent limitations of control systems, not all misstatements may be detected. These inherent limitations include the realities that judgments in decision-making can be faulty and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. Controls and procedures can only provide reasonable, not absolute, assurance that the above objectives have been met.

*Changes in Internal Control over Financial Reporting*

Other than the material weakness and remediation activities discussed below, there were no changes in our internal control over financial reporting during the quarter ended December 31, 2020 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

*Material Weakness in Internal Control over Financial Reporting*

Material Weaknesses. A material weakness is a control deficiency, or a combination of control deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

Management identified the following deficiency in its internal control over financial reporting:

- We identified a deficiency related to our financial close process including maintaining a sufficient compliment of personnel commensurate with our accounting and financial reporting requirements, as well as development and extension of controls over the recording of journal entries and proper cutoff of accounts payable and accrued expenses at period end and in assessing agreements and the accounting treatment required to record the agreements correctly in the financial records.

Management determined that the deficiency could potentially result in a material misstatement of the consolidated and combined financial statements in a future annual or interim period that would not be prevented or detected. Therefore, the deficiency constitutes a material weakness in internal control.

Remediation Plans

We initiated several steps to evaluate and implement measures designed to improve our internal control over financial reporting in order to remediate the control deficiencies noted above, including recruitment of an accounting consultant and seeking outside advice from other third party consultants to assist in improving the Company's internal control, simplify its reporting processes and reduced the risk of undetected errors. In June, 2020, the Company hired an accounting consultant that has appropriate expertise in accounting and reporting under U.S. GAAP and SEC regulations and has allowed the Company to be better aligned with segregation of duties. With the hiring of this consultant, the Company will be instituting monthly and quarterly meetings to identify significant, infrequent and unusual transactions as well as ensure timely reporting. Additionally, in September, 2020 the Company engaged a third party accounting and advisory firm to assist with, among other areas, the analysis of complex, infrequent and unusual transactions as well as provide valuation services to the Company.

The Chief Financial Officer has initiated a preliminary assessment of management's internal control over financial reporting in accordance with the 2013 integrated framework, as prescribed by the Committee of Sponsoring Organizations of the Treadway Commission, or COSO.

***Inherent Limitations on Effectiveness of Controls***

An effective internal control system, no matter how well designed, has inherent limitations, including the possibility of human error or overriding of controls, and, therefore, can provide only reasonable assurance with respect to reliable financial reporting. Because of its inherent limitations, our internal control over financial reporting may not prevent or detect all misstatements, including the possibility of human error, the circumvention or overriding of controls, or fraud. Effective internal control can provide only reasonable assurance with respect to the preparation and fair presentation of financial statements.

**Item 9B. Other Information**

**None.**

## PART III

### ITEM 10. DIRECTORS, EXECUTIVE OFFICERS, AND CORPORATE GOVERNANCE.

The following section sets forth the names, ages and current positions with the Company held by our directors and executive officers, together with certain biographical information. There is no immediate family relationship between or among any of our directors and our executive officers, and the Company is not aware of any arrangement or understanding between any director or executive officer and any other person pursuant to which he was elected to his current position.

Each director and executive officer will serve until he or she resigns or is removed or otherwise disqualified to serve or until his or her successor is elected. Each director was appointed to the board of Amergent concurrently with the Merger and Spin-Off.

Our bylaws give the board authority to expand or reduce the number of available board seats between five and nine, provided reduction may not be implemented below number of occupied seats. For as long as Oz Rey, LLC holds 10% debentures, it has the right, but not the obligation, to appoint two directors ("Appointees") to Amergent's board. Amergent agreed that its board or governance committee, if it has one, will re-nominate the Appointees as a directors at annual meetings. and recommend that stockholders vote "for" such Appointees at annual meetings. All proxies given to management will also vote in favor of such Appointees. This right to designate the Appointees will be subject to Nasdaq Listing Rules in the event Amergent seeks listing on one of the exchanges of the Nasdaq Stock Market. Oz Rey, LLC has not yet submitted any Appointees to Amergent.

**DIRECTORS**

| Name | Age | Position |
|---|---|---|
| Frederick L. Glick | 54 | President, Director |
| Keith J. Johnson | 61 | Independent Director |
| Neil G. Kiefer | 67 | Independent Director |
| Michael D. Pruitt | 58 | Chairman and Chief Executive Officer |
| J. Eric Wagoner | 68 | Independent Director |

***Frederick L. Glick*** was appointed to serve as President of Chanticleer on November 16, 2018 and subsequently appointed as director effective May 10, 2019. Mr. Glick was the Vice President of Brewery Restaurants for the Karl Strauss Brewing Company brand in San Diego, California from 2013 to the present. Prior, from 2008 to 2013, Mr. Glick was the VP of Operations for Phil's BBQ in San Diego, California. From 1991 to 2008, Mr. Glick was the President, CEO, Operating Partner of Hootwine, Inc., a Hooters franchise, in Oceanside, California. Mr. Glick graduated with a B.S. in Business Administration from Lehigh University in 1986. Each year, Mr. Glick volunteers with local service and charitable organizations and serves on the state board of directors of the California Restaurant Association and CRAF (California Restaurant Association Foundation).

***Keith J. Johnson*** is the Chief Financial Officer of Watertech Equipment & Sales. He served as the Manager of Business Development for Hudson Technologies from November 2012 through September 2013. From August 2010 through November 2012, Mr. Johnson was President of Efficiency Technologies, Inc., the wholly owned operating subsidiary of Efftec International, Inc. He was the President and Chief Executive Officer of YRT² (Your Residential Technology Team) in Charlotte, North Carolina since 2004. Mr. Johnson has a BS in Accounting from Fairfield University in Fairfield, Connecticut. Mr. Johnson served on the board of directors of Chanticleer from April 2007 through March 31, 2020 and also served as the Chairman of its Audit Committee and a member of its Compensation Committee. Mr. Johnson was asked to serve as director based in part on his financial expertise and general proven success in business.

***Neil G. Kiefer*** is the Chief Executive Officer of Hooters Management Corporation, Hooters, Inc., and all its affiliated companies, a position he has held since May 1992. In 1994, Mr. Kiefer was appointed to the boards of those entities, and he continues to serve on those boards. He was also Chief Executive Officer of the Hooters Casino Hotel in Las Vegas, Nevada from 2006 to 2012. Mr. Kiefer received his bachelor's degree from Bethany College in Bethany, West Virginia and received his law degree from Hofstra University in Hempstead, New York. He was admitted to the Florida Bar in 1979. Mr. Kiefer served on the board of Chanticleer from January 2017 through March 31, 2020 and was a member of its compensation committee. He possesses extensive knowledge of the casual dining industry and is an experienced having served on the boards of numerous companies.

***Michael D. Pruitt*** founded Avenel Financial Group, a boutique financial services firm concentrating on emerging technology company investments, in 1999. In 2001, he formed Avenel Ventures, a technology investment and private venture capital firm. In February 2005, Mr. Pruitt formed Chanticleer Holdings, Inc., which commenced operations in June 2005 with him as Chairman and Chief Executive Officer, roles he continued to serve through the Merger and Spin-Off. In January 2011, Mr. Pruitt became a director of the board of Hooters of America, LLC. Mr. Pruitt received a Bachelor of Arts degree from Coastal Carolina University in Conway, South Carolina, where he sits on the Board of Visitors of the E. Craig Wall Sr. College of Business Administration, the Coastal Education Foundation Board, and the Athletic Committee of the Board of Trustees.

***J. Eric Wagoner*** has served as a Managing Director and Head of the High-Yield & Distressed Securities division of Source Capital Group since 1995. Mr. Wagoner has over 35 years of investment securities experience and has developed specialized expertise in high yield and distressed debt instruments. He serves as a member of the board of directors of Argus Research Group, a leading independent equity research firm, and is a member of the Board of Visitors at Wake Forest University. Mr. Wagoner is a graduate of the University of North Carolina and received his MBA from the Babcock Graduate School of Management at Wake Forest University. Mr. Wagoner holds NASD Series 7, 24 and 63 licenses. Mr. Wagoner served on Chanticleer's board of directors from March 2018 through the Merger and Spin-Off and was a member of its audit committee and compensation committee. He was asked to serve as director based in part on his extensive securities knowledge and general proven success in business.

**EXECUTIVE OFFICERS**

| Name | Age | Position |
|---|---|---|
| Michael D. Pruitt | 58 | Chairman and Chief Executive Officer |
| Frederick L. Glick | 54 | President |
| Steven J. Hoelscher | 62 | Chief Financial Officer |

Biographies for Mr. Pruitt and Mr. Glick are included with the director profiles above Mr. Pruitt and Mr. Glick were appointed to their respective positions concurrently with the Merger and Spin-Off.

***Steven J. Hoelscher*** was appointed Chief Financial Officer on January 19, 2021. Mr. Hoelscher is a Certified Public Accountant and has 40 years of accounting and auditing experience. Prior to joining the Company, Mr. Hoelscher was and continues to be the Chief Financial Officer for Mastodon Ventures, Inc., a strategic restaurant advisory firm in Austin, Texas since June 2000. Mr. Hoelscher oversaw investments in a number of companies owning a variety of restaurant assets including over 100 KFC restaurants, and various other fast casual, casual, fine dining, franchisee and franchisor concepts. Mr. Hoelscher previously occupied the roles Chief Financial Officer and Chief Accounting Officer at two public companies, serving as Chief Financial Officer and a member of the Board of Directors of Anpath Group Inc., from 2006 to 2015, and as Chief Financial Officer on part-time basis for Enxnet Inc., from 2004 to 2019. Mr. Hoelscher also served as controller and Chief Accounting Officer for Aperian from 1996 to 2000. Mr. Hoelscher serves on several board of directors for non-profit organizations. He received a Bachelor of Business Administration Degree from West Texas A&M University.

Mr. Hoelscher's engagement with Amergent is on a part-time basis. Mr Hoelscher serves as an officer of entities affiliated with Oz Rey, LLC (a related party and Amergent's largest beneficial owner, which entity beneficially owning in excess 71% of Amergent's outstanding common stock). Oz Rey, LLC holds a first priority secured note with a principal balance of $4,037,889, guaranteed by all of Amergent's subsidiaries. Mr. Hoelscher serves as (a) a Manager and also the Chief Financial Officer of Oz Rey, LLC; (b) Chief Financial Officer of Mastodon Ventures, Inc., an affiliate of Oz Rey, LLC; and (c) as Manager and Chief Financial Officer of MV Amanth LLC and its subsidiaries, also affiliates of Oz Rey, LLC. Mr. Hoelscher may engage in other positions and pursuits from time to time during his employment; provided however, Mr. Hoelscher will notify the Company in advance of accepting new positions or embarking on new pursuits.

**Legal Proceedings**

To the best of our knowledge, none of our executive officers or directors are parties to any material proceedings adverse to Amergent, have any material interest adverse to Amergent or have, during the past ten years been subject to legal or regulatory proceedings required to be disclosed hereunder.

**Family Relationships**

There are no family relationships between any of our executive officers and directors.

**Corporate Governance**

**Audit Committee of the Board**

The Audit Committee was formed on July 6, 2020. The board has determined that each member of our Audit Committee is an "independent director" as defined by Rule 5605(a)(2) of The NASDAQ Stock Market Rules and that members of the Audit Committee are independent under the additional requirements of Rule 10A-3(b)(1) under the Securities Exchange Act of 1934 (the "Exchange Act"). The board has determined J. Eric Wagoner meets SEC requirements of an "audit committee financial expert" within the meaning of the Sarbanes Oxley Act of 2002, Section 407(b). In addition, the board determined that (i) none of the Audit Committee members have participated in the preparation of the financial statements of the company at any time during the past three years and (2) Audit Committee members are able to read and understand fundamental financial statements. Additionally, we intend to continue to have at least one member of the Audit Committee whose experience or background results in the individual's financial sophistication. The Audit Committee charter is posted on our website at www.amergenthg.com.

**Code of Ethics**

Our Chief Executive Officer and all senior financial officers, including the Chief Financial Officer, are bound by a Code of Ethics that complies with Item 406 of Regulation S-B of the Exchange Act. Our Code of Ethics is posted on our website at www.amergenthg.com.

**Compliance with Section 16(a) of the Exchange Act**

Section 16(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") requires our directors and executive officers and beneficial holders of more than 10% of our common stock to file with the SEC initial reports of ownership and reports of changes in ownership of our equity securities.

To our knowledge, based solely upon a review of Forms 3 and 4 and amendments thereto furnished to Amergent under 17 CFR 240.16a-3(e) during our fiscal year ended December 31, 2020 none of our officers or directors filed late Forms 3 or 4. None of our officers or directors filed Form 5.

**Stockholder Director Nomination Procedures**

There have not been any material changes to the procedures by which stockholders may recommend nominees to our board of directors.

**ITEM 11. EXECUTIVE COMPENSATION**

**Overview of Compensation Practices**

Our executive compensation program will be administered by the board of directors until the compensation committee is formed.

Generally, we intend to compensate our executive officers with a compensation package that is designed to drive Company performance to maximize stockholder value while meeting our needs and the needs of our executives. The following are objectives we consider:

- Alignment — to align the interests of executives and stockholders through equity-based compensation awards;
- Retention — to attract, retain and motivate highly qualified, high performing executives to lead our growth and success; and
- Performance — to provide, when appropriate, compensation that is dependent upon the executive's achievements and the Company's performance.

In order to achieve the above objectives, our executive compensation philosophy is guided by the following principles:

- Rewards under incentive plans are based upon our short-term and longer-term financial results and increasing stockholder value;
- Executive pay is set at sufficiently competitive levels to attract, retain and motivate highly talented individuals who are necessary for us to achieve our goals, objectives and overall financial success;
- Compensation of an executive is based on such individual's role, responsibilities, performance and experience; and
- Annual performance of the Company and the executive are taken into account in determining annual bonuses with the goal of fostering a pay-for-performance culture.

*Compensation Elements*

We intend to compensate our executives through a variety of components, which may include a base salary, annual performance-based incentive bonuses, equity incentives, and benefits and perquisites, in order to provide our executives with a competitive overall compensation package. The mix and value of these components are impacted by a variety of factors, such as responsibility level, individual negotiations and performance and market practice.

*Accounting and Tax Considerations*

We consider the accounting and tax implications of all aspects of our executive compensation strategy and, so long as doing so does not conflict with our general performance objectives described above, we strive to achieve the most favorable accounting and tax treatment possible to the Company and our executive officers.

*Process for Setting Executive Compensation; Factors Considered*

When making pay determinations for named executive officers, the board will considers a variety of factors including, among others: (1) actual Company performance as compared to pre-established goals, (2) individual executive performance and expected contribution to our future success, (3) changes in economic conditions and the external marketplace, (4) prior years' bonuses and long-term incentive awards, and (5) in the case of executive officers, other than Chief Executive Officer, the recommendation of our Chief Executive Officer, and in the case of our Chief Executive Officer, his negotiations with our board. No specific weighting is assigned to these factors nor are particular targets set for any particular factor. Ultimately, the board will use its judgment and discretion when determining how much to pay our executive officers and will 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, 2020 and 2019 by each person serving in capacities of a named executive officer.

| Name and Principal Position | Year | Salary | Bonus | Stock Awards | All Other Compensation | Total |
|---|---|---|---|---|---|---|
| Michael D. Pruitt (1) | 2020 | $ 287,003 | - | - | - | $ 287,003 |
| Chief Executive Officer | 2019 | $ 264,997 | - | - | - | $ 264,997 |
| | | | | | | |
| Frederick L. Glick (2) | 2020 | $ 260,291 | - | - | - | $ 260,291 |
| President | 2019 | $ 247,554 | - | - | - | 247,554 |
| | | | | | | |
| Patrick Harkleroad (3) | 2020 | $ 160,961 | - | - | - | $ 160,961 |
| Chief Financial Officer | 2019 | $ 152,462 | - | - | - | $ 152,462 |

(1) Mr. Pruitt sat on the Hooters of America, LLC board of directors until July 2019. The Company received annual payments of $100,000 from Hooters of America, LLC while Mr. Pruitt served on its board.
(2) Mr. Glick was appointed to serve as President effective November 16, 2018.
(3) Mr. Harkleroad was appointed to serve as Chief Financial Officer effective January 21, 2019 and resigned effective December 31, 2020.

**Employment Agreements**

**Frederick L. Glick, President**

Mr. Glick's at-will employment agreement continues through December 31, 2020, at which point it renews automatically for additional one-year terms unless terminated by either Amergent or Mr. Glick with or without notice, and with or without cause, pursuant to the terms of the agreement. Pursuant to the agreement, Mr. Glick receives a base salary at the rate of $250,000 per year. The agreement contains confidentiality, invention assignment and non-solicitation covenants. Mr. Glick is also entitled to participate in customary benefits that the Company offers to its executive officers. If Mr. Glick is terminated without cause or resigns with good reason, he will be entitled to 12 months of severance benefits. If Mr. Glick is terminated or resigns within 12 months of a "Change of Control", he will be entitled to 12 months of severance benefits.

**Steven J. Hoelscher, Chief Financial Officer**

On February 4, 2021 we entered into an at will employment agreement and non-solicitation and confidentiality agreement with Steven J. Hoelscher, which agreements govern the terms of the engagement of Mr. Hoelscher as Amergent's new Chief Financial Officer. Either party may terminate the employment agreement with or without cause and with or without advance notice, at any time. Mr. Hoelscher receives a base salary of $120,000 and has the opportunity to earn an annual bonus of $30,000 based on metrics to be determined by the board of directors of Amergent. The non-solicitation and confidentiality agreement contains customary restrictions on the use of confidential information, protecting Amergent's trade secrets, as well as protective covenants governing non-solicitation of customers and employees and restricting interference with Amergent's business.

**Patrick Harkleroad, Former Chief Financial Officer**

Mr. Harkleroad's at-will employment agreement was terminated December 31, 2020.

Under his employment agreement, Mr. Harkleroad received a base salary at a rate of $155,000 per year. The agreement contained confidentiality, invention assignment and non-solicitation covenants. Mr. Harkleroad was also be entitled to participate in customary benefits that the Company offers to its executive officers.

On March 26, 2021, we entered into a separation and release agreement with Mr. Harkleroad. Pursuant to the Agreement, Mr. Harkleroad will be paid $15,000 for transition services through March 31, 2021. Amergent reaffirmed its indemnification obligations to Mr. Harkleroad in the Agreement, pursuant to the terms of that certain Indemnification Agreement by and between the parties dated July 10, 2020. The Agreement also contains customary general releases by the parties as well as confidentiality, non-disparagement and cooperation provisions.

**Change-in-Control Provisions**

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

**Director Compensation Table**

The following table reflects compensation earned for services performed in 2020 by members of Amergent's board who were not employees; provided however Amergent has agreed to assume any accrued and unpaid fees. Any director who is also an employee, such as Mr. Pruitt, does not receive any compensation for service as a director. The compensation received by Mr. Pruitt as an employee is shown above in the Summary Compensation Table. Amergent reimbursed all directors for expenses incurred in their capacity as directors.

| Name | Director Fees Earned or Paid in Cash (1) | Stock Awards | Option Awards | Total |
|---|---|---|---|---|
| Keith J. Johnson | $ 28,000 | - | - | $ 28,000 |
| Neil G. Kiefer | $ 28,000 | - | - | $ 28,000 |
| J. Eric Wagoner | $ 28,000 | - | - | $ 28,000 |

(1) Director fees earned in 2020 are accrued and unpaid.

**Outstanding Equity Awards at Year-End**

**None.**

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

**Security ownership of certain beneficial owners and management**

To our knowledge, the following table sets forth information with respect to beneficial ownership of outstanding common stock as of March 17, 2020 by:

- each person known by the Company to beneficially own more than 5% of the outstanding shares of the common stock;
- each of our Named Executive Officers;
- each of our directors; and
- all of our directors and executive officers as a group.

Beneficial ownership is determined in accordance with the rules of the SEC and includes voting or investment power with respect to the securities as well as securities which the individual or group has the right to acquire within 60 days of the determination date. Unless otherwise indicated, the address for those listed below is c/o Amergent Hospitality Group, Inc., PO Box 460695 Charlotte, NC 28247. Except as indicated by footnote, and subject to applicable community property laws, the persons named in the table have sole voting and investment power with respect to all shares of common stock shown as beneficially owned by them. The number of shares of the common stock outstanding used in calculating the percentage for each listed person includes the shares of common stock underlying warrants, options or other convertible securities held by such persons that are exercisable within 60 days of March 17, 2021 but excludes shares of common stock underlying warrants, options or other convertible securities held by any other person. The number of shares of common stock issued and outstanding as of March 17, 2021 was 14,541,120. Except as noted otherwise, the amounts reflected below are based upon information provided to the Company and filings with the SEC.

| Name of Beneficial Owner | Number of Shares Beneficially Owned | Percent of Class |
|---|---|---|
| Michael D. Pruitt [1] | 74,717 | * |
| Frederick L. Glick [2] | 50,764 | * |
| Stephen J. Hoelscher | 0 | * |
| Keith J. Johnson | 45,569 | * |
| Neil G. Kiefer [3] | 40,091 | * |
| J. Eric Wagoner [4] | 41,336 | * |
| **Directors and Executive Officers as a Group (6 persons)** | **252,477** | **1.74%** |
| Oz Rey, LLC [5] | 41,941,490 | 74.30% |
| Arena Origination Co., LLC [6] | 1,020,437 | 6.56%** |
| Arena Special Opportunities Fund, LP [7] | 670,713 | 4.41%** |

* less than 1%

**contractual beneficial ownership limitation of 9.99% for Arena Origination Co., LLC, Arena Special Opportunities Fund, LP and their affiliates, ***collectively***.

(1) Includes 20,429 shares held directly by Mr. Pruitt's individual IRA account; 19,326 shares held directly, and 34,962 shares held directly by Avenel Financial Group. Mr. Pruitt exercises voting and dispositive control over these shares.
(2) Includes 20,769 shares held directly by Mr. Glick's individual IRA account. Mr. Glick exercises voting and dispositive control over these shares.
(3) Includes 2,000 shares held directly by Mr. Kiefer's individual IRA account. Mr. Kiefer exercises voting and dispositive control over these shares.
(4) Includes 10,690 shares held directly by Mr. Wagoner's individual IRA account. Mr. Wagoner exercises voting and dispositive control over these shares.
(5) Includes 40,378,890 shares issuable upon conversion of outstanding 10% debenture and 1,562,600 shares issuable upon exercise of currently exercisable warrants.
(6) Includes up to 800,000 shares issuable upon conversion of 400 shares of Series 2 Preferred and up to 220,437 shares underlying currently exercisable warrants. Arena Investors, LP is the investment adviser of, and may be deemed to beneficially own securities owned by, Arena Origination Co., LLC, or "Originating Fund". Westaim Origination Holdings, Inc is the managing member of, and may be deemed to beneficially own securities owned by, Originating Fund. Arena Investors GP, LLC is the general partner of, and may be deemed to beneficially own securities owned by, Arena Investors, LP. Each of Arena Investors, LP and Westaim Origination Holdings, Inc. or, together, Arena, shares voting and disposal power over the shares held by Originating Fund. Each of the persons set forth above other than Originating Fund disclaims beneficial ownership of the shares beneficially owned by Originating Fund and this prospectus shall not be construed as an admission that any such person or entity is the beneficial owner of any such securities. The address for Originating Fund is c/o Arena Investors LP, 405 Lexington Avenue, 59th Floor, New York, New York 10174.
(7) Includes up to 524,000 shares issuable upon conversion of 262 shares of Series 2 Preferred and 146,713 shares underlying currently exercisable warrants. Arena Investors, LP is the investment adviser of, and may be deemed to beneficially own securities owned by Arena Special Opportunities Fund, LP, Arena Special Opportunities Fund (Onshore) GP, LLC is the general partner of, and may be deemed to beneficially own securities owned by, Opportunities Fund. Arena Investors GP, LLC is the general partner of, and may be deemed to beneficially own securities owned by, Arena Investors, LP. Each of Arena Investors, LP and Arena Special Opportunities Fund (Onshore) GP, LLC, or, together, Arena, shares voting and disposal power over the shares held by Opportunities Fund. Each of the persons set forth above other than Opportunities Fund disclaims beneficial ownership of the shares beneficially owned by Opportunities Fund and this prospectus shall not be construed as an admission that any such person or entity is the beneficial owner of any such securities. The address for Opportunities Fund is c/o Arena Investors LP, 405 Lexington Avenue, 59th Floor, New York, New York 10174.

**Securities Authorized for Issuance under Equity Compensation Plans**

The Company does not have active equity compensation plans and no options or other equity awards outstanding.

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

**RELATED PERSON TRANSACTIONS**

***Due to Related Parties***

As of December 31, 2020 and December 31, 2019 the Company owed amounts pursuant to non-interest-bearing loans from Chanticleer Investors, LLC. The amounts owed by the Company are as follows:

| | December 31, 2020 | December 31, 2019 |
|---|---|---|
| Chanticleer Investors, LLC | $ 0 | $ 16,000 |
| **Total** | **$ 0** | **$ 16,000** |

The amount from Chanticleer Investors, LLC is related to cash distributions received from Chanticleer Investors, LLC's interest in Hooters of America which is payable to the Company's co-investors in that investment.

***Steven J. Hoelscher***

Steven J. Hoelscher was appointed Chief Financial Officer on January 19, 2021. Mr. Hoelscher's engagement with Amergent is on a part-time basis. Mr Hoelscher serves as an officer of entities affiliated with Oz Rey, LLC (a related party and Amergent's largest beneficial owner, which entity beneficially owning in excess 71% of Amergent's outstanding common stock). Oz Rey, LLC holds a first priority secured note with a principal balance of $4,037,889, guaranteed by all of Amergent's subsidiaries. Mr. Hoelscher serves as (a) a Manager and also the Chief Financial Officer of Oz Rey, LLC; (b) Chief Financial Officer of Mastodon Ventures, Inc., an affiliate of Oz Rey, LLC; and (c) as Manager and Chief Financial Officer of MV Amanth LLC and its subsidiaries, also affiliates of Oz Rey, LLC. Mr. Hoelscher may engage in other positions and pursuits from time to time during his employment; provided however, Mr. Hoelscher will notify the Company in advance of accepting new positions or embarking on new pursuits.

**DIRECTOR INDEPENDENCE**

Our board determined that Messrs. Johnson, Kiefer and Wagoner are "independent directors" as defined under NASDAQ rules.

As of the date of this Annual Report, our board has five directors and the following three standing committees: an Audit Committee, a Compensation Committee, and a Governance Committee. The board determined through 2020, each of that Messrs. Johnson, Kiefer and Wagoner is an "independent director" as defined by Rule 5605(a)(2) of The NASDAQ Stock Market Rules (the "NASDAQ Rules"). Independence of board members is re-evaluated by the board annually.

Our board of directors has adopted written policies and procedures for the review of any transaction, arrangement or relationship between Amergent and one of our executive officers, directors, director nominees or 5% or greater stockholders (or their immediate family members), each of whom we refer to as a "related person," in which such related person has a direct or indirect material interest. If a related person proposes to enter into such a transaction, arrangement or relationship, defined as a "related party transaction," the related party must report the proposed related party transaction to our Chief Financial Officer. The policy calls for the proposed related party transaction to be reviewed and, if deemed appropriate, approved by the Governance Committee. Our Governance Committee is comprised of Neil Kiefer and J. Eric Wagoner. Mr. Wagoner serves as Chairman. The board of directors has determined all of the members of the Governance Committee are independent under the rules of the Nasdaq Stock Market, LLC. If practicable, the reporting, review and approval will occur prior to entry into the transaction. If advance review and approval is not practicable, the Governance Committee will review, and, in its discretion, may ratify the related party transaction. Any related party transactions that are ongoing in nature will be reviewed annually at a minimum.

**Item 14. Principal Accounting Fees and Services.**

The following table summarizes the fees for professional services rendered by Cherry Bekaert LLP, the Company's (and Chanticleer's prior to the Merger) independent registered public accounting firms, for each of the respective last two fiscal years:

| Fee Category | 2020 | 2019 |
|---|---|---|
| Audit Fees | $ 512,033 | $ 292,905 |
| Audit-Related Fees | 67,650 | 69,300 |
| Tax Fees | 0 | 11,500 |
| Total Fees | $ 578,683 | $ 373,705 |

***Audit Fees***

Represents fees for professional services provided in connection with the audit of the Company's annual consolidated financial statements and reviews of the Company's quarterly interim consolidated and combined financial statements.

***Audit-Related Fees***

Fees related to review of registration statements and statutory audits.

***Tax Fees***

Tax fees are associated with advice.

***Audit Committee Pre-Approval Policies and Procedures***

The Audit Committee is responsible for appointing, setting compensation and overseeing the work of the independent auditors. The Audit Committee is required to review and approve the proposed retention of independent auditors to perform any proposed auditing and non-auditing services as outlined in its charter. The Audit Committee has not established policies and procedures separate from its charter concerning the pre-approval of auditing and non-auditing related services. As required by Section 10A of the Exchange Act, our Audit Committee has authorized all auditing and non-auditing services provided by Cherry Bekaert LLP during 2020 and 2019 and the fees paid for such services. However, the pre-approval requirement may be waived with respect to the provision of non-audit services for the Company if the "de minimis" provisions of Section 10A(i)(1)(B) of the Exchange Act are satisfied.

The Audit Committee has considered whether the provision of Audit-Related Fees, Tax Fees, and all other fees as described above is compatible with maintaining Cherry Bekaert LLP's independence and has determined that such services for fiscal years 2020 and 2019 were compatible. All such services were approved by the Audit Committee pursuant to Rule 2-01 of Regulation S-X under the Exchange Act to the extent that rule was applicable.

The Audit Committee is responsible for reviewing and discussing the audited consolidated financial statements with management, discussing with the independent registered public accountants the matters required by Public Company Accounting Oversight Board Auditing Standard No. 1301 *Communications with Audit Committees*, receiving written disclosures from the independent registered public accountants required by the applicable requirements of the Public Company Accounting Oversight Board regarding the independent registered public accountants' communications with the Audit Committee concerning independence and discussing with the independent registered public accountants their independence, and recommending to the Board that the audited consolidated financial statements be included in the Company's Annual Report on Form 10-K.

There were no hours expended on the principal accountant's engagement to audit the registrant's financial statements for the most recent fiscal year that were attributed to work performed by persons other than the principal accountant's full-time, permanent employees.

## PART IV

### ITEM 15. EXHIBITS AND FINANCIAL STATEMENTS

*(a) 1. Financial Statements*

See Index to Financial Statements in Item 8 of this Annual Report on Form 10-K, which is incorporated herein by reference.

*2. Financial Statement Schedules*

All other financial statement schedules have been omitted because they are either not applicable or the required information is shown in the financial statements or notes thereto.

*3. Exhibits*

See the Exhibit Index, which follows the signature page of this Annual Report on Form 10-K, which is incorporated herein by reference.

*(b) Exhibits*

See Item 15(a) (3) above.

*(c) Financial Statement Schedules*

See Item 15(a) (2) above.

### ITEM 16. FORM 10K SUMMARY

Not applicable.

**SIGNATURES**

In accordance with Section 13 or 15(d) of the Exchange Act, the registrant caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: April 15, 2021

**AMERGENT HOSPITALITY GROUP INC.**
a Delaware corporation

By: */s/ Michael D. Pruitt*
Michael D. Pruitt
Chief Executive Officer

In accordance with the Exchange Act, this Report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

| Signature | Title | Date |
|---|---|---|
| */s/ Michael D. Pruitt.*<br>Michael D. Pruitt | Chief Executive Officer,<br>(Principal Executive Officer), Director | April 15, 2021 |
| */s/ Steven J. Hoelscher*<br>Steven J. Hoelscher | Chief Financial Officer<br>(Principal Financial Officer) | April 15, 2021 |
| */s/ Keith J Johnson*<br>Keith J. Johnson | Chairman of the Board | April 15, 2021 |
| */s/ Frederick L. Glick*<br>Frederick L. Glick | President, Director | April, 15, 2021 |
| */s/ J. Eric Wagoner*<br>J. Eric Wagoner | Director | April 15, 2021 |
| */s/ Neil J. Kiefer*<br>Neil J. Kiefer | Director | April 15, 2021 |

**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 tom 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, filed herewith |
| 3.5 | 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, filed herewith |
| 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** | Employment Agreement by and between Patrick Harkleroad and Chanticleer, dated January 7, 2019 as assigned to Amergent, incorporated by reference to Exhibit 10.6 to Form 10-12G/A, filed July 2, 2020 |
| 10.7** | Employment Agreement by and between Chanticleer and Frederick L. Glick dated November 16, 2018 as assigned to Amergent, incorporated by reference to Exhibit 10.7 to Form 10-12G/A, filed July 2, 2020 |

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| 10.8 | Form of Franchise Agreement between Chanticleer and Hooters of America, LLC, incorporated by reference to Exhibit 10.8 to Form 10-12G/A, filed July 2, 2020 |
| 10.9 | Lease Agreement between Redus NC Commercial, LLC and Chanticleer, incorporated by reference to Exhibit 10.9 to Form 10-12G/A, filed July 2, 2020 |
| 10.10 | Gaming Assignment dated July 1, 2014, incorporated by reference to Exhibit 10.10 to Form 10-12G/A, filed July 2, 2020 |
| 10.11 | Form of Indemnification Agreement, incorporated by reference to Exhibit 10.11 to Form 10-12G/A, filed July 2, 2020 |
| 10.12 | Securities Purchase Agreement, dated as of February 7, 2020, by and among Chanticleer and the investors party thereto, incorporated by reference to Exhibit 10.12 to Form 10-12G/A, filed July 2, 2020 |
| 10.13 | Note in favor of TowneBank in amount of $2,000,000 dated February 25, 2021 filed herewith |
| 10.14 | [RESERVED] |
| 10.15** | Separation and Release Agreement by and between Amergent and Patrick Harkleroad, dated March 26, 2021, filed herewith |
| 10.16 | Waiver, Consent and Amendment to Certificate of Designations by and between Amergent and holders of Series 2 Convertible Preferred Stock dated August 17, 2020, filed herewith |
| 10.17 | Waiver, Consent and Amendment to Certificate of Designations by and between Amergent and holders of Series 2 Convertible Preferred Stock dated February 16, 2021, filed herewith |
| 10.18** | Employment Agreement by and between Amergent and Steve J. Hoelscher dated February 4, 2021, filed herewith |
| 10.19** | Non-Solicitation and Confidentiality Agreement by and between Amergent and Steve J. Hoelscher dated February 4, 2021, filed herewith |
| 14.1 | Code of Ethics, filed herewith |
| 21 | Subsidiaries of Amergent Hospitality Group Inc., filed herewith |
| 22(ii) | Affiliate Guarantor, filed herewith |
| 31.1 | Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, filed herewith. |
| 31.2 | Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, filed herewith. |
| 32.1 | Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 filed herewith. |
| 32.2 | Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 filed herewith. |
| 101.INS | XBRL Instance Document |
| 101.SCH | XBRL Taxonomy Extension Schema Document |
| 101.CAL | XBRL Taxonomy Extension Calculation Linkbase Document |
| 101.DEF | XBRL Taxonomy Extension Label Linkbase Document |
| 101.LAB | XBRL Taxonomy Extension Presentation Linkbase Document |
| 101.PRE | XBRL Taxonomy Extension Label Linkbase Document |

** Management Compensatory Contract or Arrangement

# The schedules and exhibits to this agreement have been omitted pursuant to Item 601(b)(2) of Regulation S-K. A copy of any omitted schedule and/or exhibit will be furnished to the Securities and Exchange Commission upon request.

State of Delaware
Secretary of State
Division of Corporations
Delivered 06:51 PM 02/16/2021
FILED 06:51 PM 02/16/2021
SR 20210483758 - FileNumber 7858114

**AMERGENT HOSPITALITY GROUP INC.**

**SECOND AMENDED AND RESTATED CERTIFICATE OF DESIGNATION OF SERIES 2 CONVERTIBLE PREFERRED STOCK, SETTING FORTH THE POWERS, PREFERENCES, RIGHTS, QUALIFICATIONS, LIMITATIONS AND RESTRICTIONS OF SUCH SERIES OF PREFERRED STOCK**

Pursuant to Section **151** of the Delaware General Corporation Law ("DGCL"), Amergent Hospitality Group Inc., a Delaware corporation (the "Corporation"), DOES HEREBY CERTIFY:

The Certificate of Incorporation of the Corporation (the "Certificate of Incorporation") confers upon the Board of Directors of the Corporation (the "Board of Directors") the authority to provide for the issuance of shares of preferred stock in series and to establish the number of shares to be included in each such series and to fix the powers, preferences, rights, qualifications, limitations and restrictions of the shares of each such series and any qualifications, limitations or restrictions thereof. The Board of Directors previously adopted a resolution creating a series of preferred stock designated as the Series 2 Convertible Preferred Stock ("Series 2 Preferred Stock"), and the Certificate of Designations for the Series 2 Preferred Stock was filed with the Secretary of State of the State of Delaware on April 1, 2020 and amended on August **14,** 2020. On February 16, 2021, the Board of Directors approved and adopted the following resolution (this **"Certificate of Designations"** or this **"Certificate")** for purposes of amending certain provisions of the Series 2 Preferred Stock. On February 16, 2021, the holders of 100% of the shares of Series 2 Preferred Stock then outstanding (the **"Requisite Series 2 Holders"),** voting separately as a class, approved the following resolution to amend the Certificate of Designations for the Series 2 Preferred Stock:

RESOLVED that, pursuant to the authority vested in the Board of Directors in accordance with the provisions of the Certificate of Incorporation, and in accordance with the provisions of the Certificate oflncorporation and the DGCL, the Certificate of Designations for the Series 2 Preferred Stock shall, subject to approval of the Requisite Series 2 Holders, be amended and the designation and amount thereof and the voting powers, preferences and relative, participating, optional and otherspecial rights of the shares of such series and thequalifications, limitations or restrictions thereofare as follows:

Section I. Definitions. For the purposes hereof, the following terms shall have the following meanmgs:

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act.

"Alternate Consideration" shall have the meaning set forth in Section 7(e).

"Bankruptcy Event" means any of the following events: (a) the Corporation or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation **S-X)** thereof commences a case or other proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction relating to the Corporation or any Significant Subsidiary thereof, (b) there is commenced against the Corporation or any Significant Subsidiary thereof any such case or proceeding that is not dismissed within 60 days after commencement, (c) the Corporation or any Significant Subsidiary thereof is adjudicated insolvent or bankrupt or any order of relief or other order approving any such case or proceeding is entered, (d) the Corporation or any Significant Subsidiary thereof suffers any appointment of any custodian or the like for it or any substantial part of its property that is not discharged or stayed within 60 calendar days after such appointment, (e) the Corporation or any Significant Subsidiary thereof makes a general assignment for the benefit of creditors, (f) the Corporation or any Significant Subsidiary thereof calls a meeting of its creditors with a view to arranging a composition, adjustment or restructuring of its debts, or (g) the Corporation or any Significant Subsidiary thereof, by any act or failure to act, expressly indicates its consent to, approval of or acquiescence in any of the foregoing or takes any corporate or other action for the purpose of effecting any of the foregoing.

"Base Conversion Price" shall have the meaning set forth in Section 7(b).

"Beneficial Ownership Limitation" shall have the meaning set forth in Section 6(d).

"Business Day" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"Buy-In" shall have the meaning set forth in Section 6(c)(iv).

"Change of Control Transaction" means the occurrence after the date hereof of any of (a) an acquisition after the date hereof by an individual or legal entity or "group" (as described in Rule 13d5(b)(!) promulgated under the Exchange Act) of effective control (whether through legal or beneficial ownership of capital stock of the Corporation, by contract or otherwise) ofin excess of33% of the voting securities of the Corporation (other than by means of conversion or exercise of Preferred Stock and the Securities issued together with the Preferred Stock), (b) the Corporation merges into or consolidates with any other Person, or any Person merges into or consolidates with the Corporation and, after giving effect to such transaction, the stockholders of the Corporation immediately prior to such transaction own less than 66% of the aggregate voting power of the Corporation or the successor entity of such transaction, (c) the Corporation sells or transfers all or substantially all of its assets to another Person and the stockholders of the Corporation immediately prior to such transaction own less than 66% of the aggregate voting power of the acquiring entity immediately after the transaction, (d) a replacement at one time or within a one year period of more than one-half of the members of the Board of Directors which is not approved by a majority of those individuals who are members of the Board of Directors on the Original Issue Date (or by those individuals who are serving as members of the Board of Directors on any date whose nomination to the Board of Directors was approved by a majority of the members of the Board of Directors who are members on the Original Issue Date), or (e) the execution by the Corporation of an agreement to which the Corporation is a party or by which it is bound, providing for any of the events set forth in clauses (a) through (d) above.

"Chanticleer Conversion Shares" means any shares of Chanticleer Holdings Inc. held by the Original Holders as of the date of the Original Closing Date.

"Closing Date" means February 7, 2020.

"Closing Price" means on any particular date (a) the last reported closing bid price per share of Common Stock on such date on the Trading Market (as reported by Bloomberg L.P. at 4:15 p.m. (New York City time)), (b) if there is no such price on such date, then the closing bid price on the Trading Market on the date nearest preceding such date (as reported by Bloomberg L.P. at 4:15 p.m. (New York City time)), (c) if the Common Stock is not then listed or quoted on a Trading Market and if prices for the Common Stock are then reported in the "pink sheets" published by Pink OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) if the shares of Common Stock are not then publicly traded the fair market value as of such date of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the shares then outstanding and reasonably acceptable to the Corporation, the fees and expenses of which shall be paid by the Corporation. "Commission" means the United States Securities and Exchange Commission.

"Common Stock" means the Corporation's common stock, par value $0.0001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed.

"Common Stock Equivalents" means any securities of the Corporation or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

"Conversion Amount" means the sum of the Stated Value at issue.

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

"Conversion Price" shall have the meaning set forth in Section 6(b).

"Conversion Shares" means, collectively, the shares of Common Stock issuable upon conversion of the shares of Preferred Stock in accordance with the terms hereof.

"Dilutive Issuance" shall have the meaning set forth in Section 7(b).

"Dilutive Issuance Notice" shall have the meaning set forth in Section 7(b).

"Equity Conditions" means, during the period in question, (a) the Corporation shall have duly honored all conversions scheduled to occur or occurring by virtue of one or more Notices of Conversion of the applicable Holder on or prior to the dates so requested or required, if any, (b) the Corporation shall have paid all liquidated damages and other amounts owing to the applicable Holder in respect of the Preferred Stock, (c)(i) there is an effective registration statement pursuant to which either (A) the Corporation may issue Conversion Shares or (B) the Original Holders are permitted to utilize the prospectus thereunder to resell all of the shares of Common Stock issuable pursuant to the Transaction Documents (and the Corporation believes, in good faith, that such effectiveness will continue uninterrupted for the foreseeable future) or (ii) all of the Conversion Shares issuable pursuant to the Transaction Documents (and shares issuable in lieu of cash payments of dividends) may be resold pursuant to Rule 144 without volume or manner-of- sale restrictions or current public information requirements as determined by the counsel to the Corporation as set forth in a written opinion letter to such effect, addressed and acceptable to the Transfer Agent and the affected Holders or (iii) all of the Conversion Shares may be issued to the Holder pursuant to Section 3(a)(9) of the Securities Act and immediately resold without restriction, (d) the Common Stock is trading on a Trading Market and all of the shares issuable pursuant to the Transaction Documents are listed or quoted for trading on such Trading Market (and the Corporation believes, in good faith, that trading of the Common Stock on a Trading Market will continue uninterrupted for the foreseeable future), (e) there is a sufficient number of authorized, but unissued and otherwise unreserved, shares of Common Stock for the issuance of all of the shares then issuable pursuant to the Transaction Documents, (f) there is no existing Triggering Event and no existing event which, with the passage of time or the giving of notice, would constitute a Triggering Event, (g) the issuance of the shares in question (or, in the case of a redemption, the shares issuable upon conversion in full of the redemption amount) to the applicable Holder would not violate the limitations set forth in Section 6(d) and Section 6(e) herein, (h) there has been no public announcement of a pending or proposed Fundamental Transaction or Change of Control Transaction that has not been consummated, (i) the applicable Holder is not in possession of any information provided by the Corporation, any of its Subsidiaries, or any of their officers, directors, employees, agents or Affiliates, that constitutes, or may constitute, material non-public information.

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

"Exempt Issuance" means the issuance of (a) shares of Common Stock or options to employees, officers or directors of the Corporation pursuant to any stock or option plan duly adopted by a majority of the non-employee members of the Board of Directors of the Corporation or a majority of the members of a committee of non-employee directors established for such purpose and (b) securities upon the exercise or exchange of or conversion of any securities issued to the Holders and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the Original Issue Date, provided that such securities have not been amended since the Original Issue Date to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of any such securities. "Fundamental Transaction" shall have the meaning set forth in Section 7(e).

"GAAP" means United States generally accepted accounting principles.

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

"Indebtedness" means (a) any liabilities for borrowed money or amounts owed in excess of $50,000 (other than trade accounts payable incurred in the ordinary course of business), (b) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Corporation's balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business, and (c) the present value of any lease payments in excess of $50,000 due under leases required to be capitalized in accordance with GAAP.

"Issuable Maximum" shall have the meaning set forth in Section 6(e).

"Junior Securities" means the Common Stock and all other Common Stock Equivalents of the Corporation other than those securities which are explicitly senior or pari passu to the Preferred Stock in dividend rights or liquidation preference.

"Liens" means a lien, charge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

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

"Material Adverse Effect" means a material adverse effect on (a) the business, assets, property, operations, or condition (financial or otherwise) of the Corporation, (b) the validity or enforceability of this Certificate of Designations or any of the other Transaction Documents or (c) the rights or remedies of the Holder hereunder.

"New York Courts" shall have the meaning set forth in Section 11(d).

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

"Original Holders" means the Holders of the Preferred Stock as of the Second Amendment Filing Date"

"Original Issue Date" means March 31, 2020.

Permitted Indebtedness" means the Indebtedness existing on the Original Issue Date and related to the restructuring of the Corporation's outstanding secured 8% debentures in the aggregate principal amount of$6,000,000.

Permitted Lien" means the individual and collective reference to the following: (a) Liens for taxes, assessments and other governmental charges or levies not yet due or Liens for taxes, assessments and other governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves (in the good faith judgment of the management of the Corporation) have been established in accordance with GAAP, (b) Liens imposed by law which were incurred in the ordinary course of the Corporation's business, such as carriers', warehousemen's and mechanics' Liens, statutory landlords' Liens, and other similar Liens arising in the ordinary course of the Corporation's business, and which (x) do not individually or in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of the Corporation and its consolidated Subsidiaries or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing for the foreseeable future the forfeiture or sale of the property or asset subject to such Lien, and (c) Liens incurred in connection with Permitted Indebtedness under clause (a) thereunder.

"Person" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

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

"Registration Rights Agreement" means the Registration Rights Agreement dated March 31, 2020 by and among the Company, the Original Holders and certain other holders of securities of the company.

"Registration Statement" means a registration statement meeting the requirements set forth in the Registration Rights Agreement and covering the resale of the Conversion Shares issuable upon conversion of the Preferred Stock as provided for in the Registration Rights Agreement.

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

"Second Amendment Filing Date" means date this Second Amended and Restated Certificate of Designations is filed with the Delaware Secretary of State.

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

"Segregated Cash Account" means $850,000.00 of cash proceeds which is held is a segregated control account for the Original Holders that is bankruptcy remote and not subject to any security interest of the Company.

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

"Stated Value" shall have the meaning set forth in Section 2, as the same may be increased pursuant to Section 3.

"Subsidiary" means any direct or indirect subsidiary of the Corporation formed or acquired after the date of the Closing Date.

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

"Trading Day" means a day on which the principal Trading Market is open for business.

"Trading Market" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE MKT, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, OTCQB or OTCQX (or any successors to any of the foregoing).

"Transaction Documents" means this Certificate of Designation, the Registration Rights Agreement with the Original Holders, all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions consummated on the Original Issue Date.

"Triggering Event" shall have the meaning set forth in Section I 0(a).

"Triggering Redemption Amount" means, for each share of Preferred Stock, 125% of the Stated Value.

"Triggering Redemption Payment Date" shall have the meaning set forth in Section I0(b).

Underlying Shares" means the shares of Common Stock issued and issuable upon conversion or redemption of the Preferred Stock in accordance with the terms of this Certificate of Designation.

"Variable Rate Transaction" means a transaction in which the Company (i) issues or sells any debt or equity securities that are convertible into, exchangeable or exercisable for, or include the right to receive additional shares of Common Stock either (A) at a conversion price, exercise price or exchange rate or other price that is based upon and/or varies with the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such debt or equity securities, or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such debt or equity security or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock or (ii) enters into, or effects a transaction under, any agreement, including, but not limited to, an equity line of credit, whereby the Company may issue securities at a future determined price. Any Purchaser shall be entitled to obtain injunctive relief against the Company to preclude any such issuance, which remedy shall be in addition to any right to collect damages.

"VWAP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported in the "Pink Sheets" published by OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Securities then outstanding and reasonably acceptable to the Corporation, the fees and expenses of which shall be paid by the Corporation.

Section 2. Designation. Amount and Par Value. The series of preferred stock shall be designated as its Series 2 Convertible Preferred Stock (the "Preferred Stock") and the number of shares so designated shall be up to 787 (which shall not be subject to increase without the written consent of all of the holders of the Preferred Stock (each, a "Holder" and collectively, the "Holders")). Each share of Preferred Stock shall have $0.0001 per share and a stated value equal to $1,000, subject to increase set forth in Section 3 below (the "Stated Value").

Section 3. Dividends. Except as otherwise required by law, no dividends shall be declared or paid on the Preferred Stock. So long as any Preferred Stock shall remain outstanding, neither the Corporation nor any Subsidiary thereof shall redeem, purchase or otherwise acquire directly or indirectly any Junior Securities except as expressly permitted by Section 10. So long as any Preferred Stock shall remain outstanding, neither the Corporation nor any Subsidiary thereof shall directly or indirectly pay or declare any dividend or make any distribution upon nor shall any distribution be made in respect of, any Junior Securities as long as any dividends due on the Preferred Stock remain unpaid, nor shall any monies be set aside for or applied to the purchase or redemption (through a sinking fund or otherwise) of any Junior Securities or shares pari passu with the Preferred Stock.

Section 4. Voting Rights. Except as otherwise provided herein or as otherwise required by law, the Preferred Stock shall have no voting rights. However, as long as any shares of Preferred Stock are outstanding, the Corporation shall not, without the approval of the Holder, the Corporation will not, among other things, (i) sell all or substantially all of its assets, merge or consolidate with another entity or voluntarily liquidate or dissolve the Corporation, (ii) alter or change the rights, preferences or privileges of the Preferred Stock, (iii) authorize or create any class of stock ranking as to dividends, redemption or distribution of assets upon a Liquidation (as defined in Section 5) senior to, or otherwise pari passu with, the Preferred Stock, (iv) amend its certificate of incorporation or other charter documents in any manner that adversely affects any rights of the Holder, (v) increase the number of authorized shares of Preferred Stock, (vi) redeem any shares of capital stock of the Corporation (other than any redemption of securities from officers or employees of the Corporation pursuant to existing contractual arrangements with such officers or employees or in connection with the termination of their employment) or (vii) enter into any agreement with respect to any of the foregoing.

Section 5. Liguidation. Upon any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary (a "Liguidation"), the Holders shall be entitled to receive out of the assets, whether capital or surplus, of the Corporation an amount equal to the sum of (a) 125% of the aggregate Stated Value of the Preferred Stock then outstanding (b) all liquidated damages and other amounts due in respect of the Preferred Stock and (iii) any Default Interest and any other fees or liquidated damages then due and owing thereon under this Certificate of Designation, for each share of Preferred Stock before any distribution or payment shall be made to the holders of any Junior Securities, and if the assets of the Corporation shall be insufficient to pay in full such amounts, then the entire assets to be distributed to the Holders shall be ratably distributed among the Holders in accordance with the respective amounts that would be payable on such shares if all amounts payable thereon were paid in full. The Corporation shall mail written notice of any such Liquidation, not less than 45 days prior to the payment date stated therein, to each Holder.

Section 6. Conversion.

a) Conversions at Option of Holder. Each share of Preferred Stock shall be convertible, at any time and from time to time from and after the Original Issue Date at the option of the Holder thereof, into that number of shares of Common Stock (subject to the limitations set forth in Section 6(d) and Section 6(e)) determined by dividing the Stated Value of such share of Preferred Stock by the Conversion Price. Holders shall effect conversions by providing the Corporation with the form of conversion notice attached hereto as Annex A (a "Notice of Conversion"). Each Notice of Conversion shall specify the number of shares of Preferred Stock to be converted, the number of shares of Preferred Stock owned prior to the conversion at issue, the number of shares of Preferred Stock owned subsequent to the conversion at issue and the date on which such conversion is to be effected, which date may not be prior to the date the applicable Holder delivers by facsimile such Notice of Conversion to the Corporation (such date, the "Conversion Date"). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion to the Corporation is deemed delivered hereunder. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. To effect conversions of shares of Preferred Stock, a Holder shall not be required to surrender the certificate(s) representing the shares of Preferred Stock to the Corporation unless all of the shares of Preferred Stock represented thereby are so converted, in which case such Holder shall deliver the certificate representing such shares of Preferred Stock promptly following the Conversion Date at issue. Shares of Preferred Stock converted into Common Stock or redeemed in accordance with the terms hereof shall be canceled and shall not be reissued.

b) Conversion Price. The conversion price for the Preferred Stock shall equal the lesser of (i) $1.00 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like) or (ii) 90% of the five day average VWAP of the Common Stock (which period ends on the Trading Day prior to the Conversion Date), subject to adjustment herein (the "Conversion Price"); *provided,* that if the amount calculated pursuant to the foregoing clause (ii) is less than $0.50 per share (subject to adjustment for forward and reverse stock splits, recapitalizations and the like), then the Conversion Price shall be $0.50 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like). Notwithstanding the foregoing, no adjustment pursuant to this Certificate of Designations shall cause the Conversion Price of the Preferred Stock to be less than $0.50 per share (subject to adjustment for forward and reverse stock splits, recapitalizations and the like).

c) Mechanics of Conversion

i. Delivery of Conversion Shares Upon Conversion. Not later than two (2) Trading Days after each Conversion Date (the "Share Delivery Date"), the Corporation shall deliver, or cause to be delivered, to the converting Holder the number of Conversion Shares being acquired upon the conversion of the Preferred Stock, which Conversion Shares shall be free of restrictive legends and trading restrictions. The Corporation shall deliver the Conversion Shares electronically through the Depository Trust Company or another established clearing corporation performing similar functions.

ii. Failure to Deliver Conversion Shares. If, in the case of any Notice of Conversion, such Conversion Shares are not delivered to or as directed by the applicable Holder by the Share Delivery Date, the Holder shall be entitled to elect by written notice to the Corporation at any time on or before its receipt of such Conversion Shares, to rescind such Conversion, in which event the Corporation shall promptly return to the Holder any original Preferred Stock certificate delivered to the Corporation and the Holder shall promptly return to the Corporation the Conversion Shares issued to such Holder pursuant to the rescinded Conversion Notice.

111. Obligation Absolute: Partial Liquidated Damages. The Corporation's obligation to issue and deliver the Conversion Shares upon conversion of Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by such Holder or any other person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to such Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Corporation of any such action that the Corporation may have against such Holder. In the event a Holder shall elect to convert any or all of the Stated Value of its Preferred Stock, the Corporation may not refuse conversion based on any claim that such Holder or any one associated or affiliated with such Holder has been engaged in any violation oflaw, agreement or for any other reason, unless an injunction from a court, on notice to Holder, restraining and/or enjoining conversion of all or part of the Preferred Stock of such Holder shall have been sought and obtained, and the Corporation posts a surety bond for the benefit of such Holder in the amount of 150% of the Stated Value of Preferred Stock which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to such Holder to the extent it obtains judgment. In the absence of such injunction, the Corporation shall issue Conversion Shares and, if applicable, cash, upon a properly noticed conversion. If the Corporation fails to deliver to a Holder such Conversion Shares pursuant to Section 6(c)(i) by the Share Delivery Date applicable to such conversion, the Corporation shall pay to such Holder, in cash, as liquidated damages and not as a penalty, for each $5,000 of Stated Value of Preferred Stock being converted, $50 per Trading Day (increasing to $100 per Trading Day on the third Trading Day and increasing to $200 per Trading Day on the sixth Trading Day after such damages begin to accrue) for each Trading Day after the Share Delivery Date until such Conversion Shares are delivered or Holder rescinds such conversion. Nothing herein shall limit a Holder's right to pursue actual damages or declare a Triggering Event pursuant to Section 10 hereof for the Corporation's failure to deliver Conversion Shares within the period specified herein and such Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit a Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

iv. Compensation for Buy-In on Failure to Timely Deliver Conversion Shares Upon Conversion. In addition to any other rights available to the Holder, if the Corporation fails for any reason to deliver to a Holder the applicable Conversion Shares by the Share Delivery Date pursuant to Section 6(c)(i), and if after such Share Delivery Date such Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by such Holder of the Conversion Shares which such Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "Buy-In"), then the Corporation shall (A) pay in cash to such Holder (in addition to any other remedies available to or elected by such Holder) the amount, if any, by which (x) such Holder's total purchase price (including any brokerage commissions) for the Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that such Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) at the option of such Holder, either reissue (if surrendered) the shares of Preferred Stock equal to the number of shares of Preferred Stock submitted for conversion (in which case, such conversion shall be deemed rescinded) or deliver to such Holder the number of shares of Common Stock that would have been issued if the Corporation had timely complied with its delivery requirements under Section 6(c)(i). For example, if a Holder purchases shares of Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted conversion of shares of Preferred Stock with respect to which the actual sale price of the Conversion Shares (including any brokerage commissions) giving rise to such purchase obligation was a total of $10,000 under clause (A) of the immediately preceding sentence, the Corporation shall be required to pay such Holder $1,000. The Holder shall provide the Corporation written notice indicating the amounts payable to such Holder in respect of the Buy-In and, upon request of the Corporation, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to timely deliver the Conversion Shares upon conversion of the shares of Preferred Stock as required pursuant to the terms hereof.

v. Reservation of Shares Issuable Upon Conversion. The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Preferred Stock and payment of dividends on the Preferred Stock, each as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and the other holders of the Preferred Stock), not less than such aggregate number of shares of the Common Stock as shall be issuable (taking into account the adjustments and restrictions of Section 7) upon the conversion of the then outstanding shares of Preferred Stock and payment of dividends hereunder. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable.

vi. Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Preferred Stock. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such conversion, the Corporation shall at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Conversion Price or round up to the next whole share.

vii. Transfer Taxes and Expenses. The issuance of Conversion Shares on conversion of this Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in aname other than that of the Holders of such shares of Preferred Stock and the Corporation shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid. The Corporation shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Conversion Shares.

d) Beneficial Ownership Limitation. The Corporation shall not effect any conversion of the Preferred Stock, and a Holder shall not have the right to convert any portion of the Preferred Stock, to the extent that, after giving effect to the conversion set forth on the applicable Notice of Conversion, such Holder (together with such Holder's Affiliates, and any Persons acting as a group together with such Holder or any of such Holder's Affiliates (such Persons, "Attribution Parties")) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon conversion of the Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Stated Value of Preferred Stock beneficially owned by such Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Corporation subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by such Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 6(d), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. To the extent that the limitation contained in this Section 6(d) applies, the determination of whether the Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and of how many shares of Preferred Stock are convertible shall be in the sole discretion of such Holder, and the submission of a Notice of Conversion shall be deemed to be such Holder's determination of whether the shares of Preferred Stock may be converted (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and how many shares of the Preferred Stock are convertible, in each case subject to the Beneficial Ownership Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Corporation each time it delivers a Notice of Conversion that such Notice of Conversion has not violated the restrictions set forth in this paragraph and the Corporation shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 6(d), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Corporation's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Corporation or (iii) a more recent written notice by the Corporation or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Corporation shall within two Trading Days confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Corporation, including the Preferred Stock, by such Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of Preferred Stock held by the applicable Holder. A Holder, upon notice to the Corporation, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 6(d) applicable to its Preferred Stock provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon conversion of this Preferred Stock held by the Holder and the provisions of this Section 6(d) shall continue to apply. Any such increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Corporation and shall only apply to such Holder and no other Holder. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 6(d) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation contained herein or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of Preferred Stock.

Section 7. Certain Adjustments.

a) Stock Dividends and Stock Splits. If the Corporation, at any time while this Preferred Stock is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Corporation upon conversion of, or payment of a dividend on, this Preferred Stock), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 7(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Subsequent Equity Sales. If, at any time while this Preferred Stock is outstanding, the Corporation or any Subsidiary, as applicable sells or grants any option to purchase or sells or grants any right to reprice, or otherwise disposes of or issues (or announces any sale, grant or any option to purchase or other disposition), any Common Stock or Common Stock Equivalents entitling any Person to acquire shares of Common Stock at an effective price per share that is lower than the then Conversion Price (such lower price, the "Base Conversion Price" and such issuances, collectively, a "Dilutive Issuance") (if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive shares of Common Stock at an effective price per share that is lower than the Conversion Price, such issuance shall be deemed to have occurred for less than the Conversion Price on such date of the Dilutive Issuance), then the Conversion Price shall be reduced to equal the Base Conversion Price and only reduced to equal the Base Share Price and the number of Conversion Shares issuable hereunder shall be increased such that the aggregate Conversion Price payable hereunder, after taking into account the decrease in the Conversion Price, shall be equal to the aggregate Conversion Price prior to such adjustment. Such adjustment shall be made whenever such Common Stock or Common Stock Equivalents are issued. Notwithstanding the foregoing, no adjustment will be made under this Section 7(b) in respect of an Exempt Issuance. If the Corporation enters into a Variable Rate Transaction, despite the prohibition set forth herein, the Corporation shall be deemed to have issued Common Stock or Common Stock Equivalents at the lowest possible conversion price at which such securities may be converted or exercised. The Corporation shall notify the Holders in writing, no later than the Trading Day following the issuance of any Common Stock or Common Stock Equivalents subject to this Section 7(b), indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the "Dilutive Issuance Notice"). For purposes of clarification, whether or not the Corporation provides a Dilutive Issuance Notice pursuant to this Section 5(b), upon the occurrence of any Dilutive Issuance, the Holder is entitled to receive a number of Conversion Shares based upon the Base Conversion Price on or after the date of such Dilutive Issuance, regardless of whether the Holder accurately refers to the Base Conversion Price in the Notice of Conversion.

c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 7(a) above, if at any time the Corporation grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder of will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of such Holder's Preferred Stock (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

d) Pro Rata Distributions. During such time as this Preferred Stock is outstanding, if the Corporation shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Preferred Stock, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Preferred Stock (without regard to any limitations on conversion hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution *(* provided, however, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

e) Fundamental Transaction. If, at any time while this Preferred Stock is outstanding, (i) the Corporation, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Corporation with or into another Person, (ii) the Corporation, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Corporation, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Corporation, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent conversion of this Preferred Stock, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction (without regard to any limitation in Section 6(d) and Section 6(e) on the conversion of this Preferred Stock), the number of shares of Common Stock of the successor or acquiring corporation or of the Corporation, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Preferred Stock is convertible immediately prior to such Fundamental Transaction (without regard to any limitation in Section 6(d) and Section 6(e) on the conversion of this Preferred Stock). For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders' right to convert such preferred stock into Alternate Consideration. The Corporation shall cause any successor entity in a Fundamental Transaction in which the Corporation is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Corporation under this Certificate of Designation and the other Transaction Documents in accordance with the provisions of this Section 7(e) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the holder of this Preferred Stock, deliver to the Holder in exchange for this Preferred Stock a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Preferred Stock which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Preferred Stock (without regard to any limitations on the conversion of this Preferred Stock) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of this Preferred Stock immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designation and the other Transaction Documents referring to the "Corporation" shall refer instead to the Successor Entity), and may exercise every right and power of the Corporation and shall assume all of the obligations of the Corporation under this Certificate of Designation and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Corporation herein.

t) Calculations. All calculations under this Section 7 shall be made to the nearest cent or the nearest 11100th of a share, as the case may be. For purposes of this Section 7, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

g) Notice to the Holders.

i. Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 7, the Corporation shall promptly deliver to each Holder by facsimile or email a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Conversion by Holder. If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, then, in each case, the Corporation shall cause to be filed at each office or agency maintained for the purpose of conversion of this Preferred Stock, and shall cause to be delivered by facsimile or email to each Holder at its last facsimile number or email address as it shall appear upon the stock books of the Corporation, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non- public information regarding the Corporation or any of the Subsidiaries, the Corporation shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to convert the Conversion Amount of this Preferred Stock (or any part hereof) during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 8.Intentionally Omitted.

Section 9.Negative Covenants. As long as any shares of Preferred Stock are outstanding, unless the holders of the then outstanding shares of Preferred Stock shall have otherwise given prior written consent, the Corporation shall not, and shall not permit any of the Subsidiaries to, directly or indirectly:

a) other than Permitted Indebtedness, enter into, create, incur, assume, guarantee or suffer to exist any indebtedness for borrowed money of any kind, including but not limited to, a guarantee, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

b) other than Permitted Liens, enter into, create, incur, assume or suffer to exist any Liens of any kind, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

c) amend its charter documents, including, without limitation, its certificate of incorporation and bylaws, in any manner that materially and adversely affects any rights of the Holder;

d) repay, repurchase or offer to repay, repurchase or otherwise acquire more than a de minimis number of shares of its Common Stock, Common Stock Equivalents or Junior Securities, other than as to (i) the Conversion Shares and (ii) repurchases of Common Stock or Common Stock Equivalents of departing officers and directors of the Corporation, provided that such repurchases shall not exceed an aggregate of$100,000 for all officers and directors for so long as the Preferred Stock is outstanding;

e) pay cash dividends or distributions on Junior Securities of the Corporation;

f) enter into any transaction with any Affiliate of the Corporation which would be required to be disclosed in any public filing with the Commission, unless such transaction is made on an arm's-length basis and expressly approved by a majority of the disinterested directors of the Corporation (even ifless than a quorum otherwise required for board approval); or

g) enter into any agreement with respect to any of the foregoing.

Section 10.Redemption Upon Triggering Events.

a) "Triggering Event" means, wherever used herein any of the following events (whatever the reason for such event and whether such event shall be voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court, or any order, rule or regulation of any administrative or governmental body):

i. if the Corporation fails to provide at all times after the effective date the Registration Statement or usable prospectus that permits the Corporation to issue the Conversion Shares or which allows the Original Holder to sell the Conversion Shares pursuant thereto, subject to a grace period of 20 calendar days in the aggregate in any 365-day period or the Corporation cannot issue the Conversion Shares pursuant to Section 3(a)(9) of the Securities Act;

ii. the Corporation shall fail to deliver Conversion Shares issuable upon a conversion hereunder that comply with the provisions hereof prior to the fifth Trading Day after such shares are required to be delivered hereunder, or the Corporation shall provide written notice to any Holder, including by way of public announcement, at any time, of its intention not to comply with requests for conversion of any shares of Preferred Stock in accordance with the terms hereof;

iii. the Corporation shall fail for any reason to pay in full the amount of cash due pursuant to a Buy-In within five calendar days after notice therefor is delivered hereunder;

iv. the Corporation shall fail to have available a sufficient number of authorized and unreserved shares of Common Stock to issue to such Holder upon a conversion hereunder;

v. unless specifically addressed elsewhere in this Certificate of Designation as a Triggering Event, the Corporation shall fail to observe or perform any other covenant, agreement or warranty contained in, or otherwise commit any breach of the Transaction Documents, and such failure or breach shall not, if subject to the possibility of a cure by the Corporation, have been cured within 30 calendar days after the date on which written notice of such failure or breach shall have been delivered;

vi. the Corporation shall redeem more than a de minimis number of Junior Securities other than as to repurchases of Common Stock or Common Stock Equivalents from departing officers and directors, provided that, while any of the Preferred Stock remains outstanding, such repurchases shall not exceed an aggregate of$ I 00,000 from all officers and directors;

vii. the Corporation shall be party to a Change of Control Transaction; viii.there shall have occurred a Bankruptcy Event;

ix. the Corporation experiences a Material Adverse Effect;

x. the Common Stock shall fail to be listed or quoted for trading on a Trading Market for more than five Trading Days, which need not be consecutive Trading Days;

xi. any monetary judgment, writ or similar final process shall be entered or filed against the Corporation, any subsidiary or any of their respective property or other assets for more than $100,000, and such judgment, writ or similar final process shall remain unvacated, unbonded or unstayed for a period of 45 calendar days;

xii. any representation or warranty made in this Certificate of Designations,, any other Transaction Documents, any written statement pursuant hereto or thereto or any other report, financial statement or certificate made or delivered to the Holder or any other Holder shall be untrue or incorrect in any material respect as of the date when made or deemed made;

xiii. the electronic transfer by the Corporation of shares of Common Stock through the Depository Trust Company or another established clearing corporation is no longer available or is subject to a "chill";

xiv. the Corporation fails to file with the Commission any required reports under Section 13 or 15(d) of the Exchange Act such that it is not in compliance with Rule 144(c)(l) (or Rule 144(i)(2), if applicable);

xv. the occurrence of any levy upon or seizure or attachment of, or any uninsured loss of or damage to, any property of the Corporation or any Subsidiary having an aggregate fair value or repair cost (as the case may be) in excess of $100,000 individually or in the aggregate, and any such levy, seizure or attachment shall not be set aside, bonded or discharged within forty-five (45) days after the date thereof;

xvi. enter into a Variable Rate Transaction;

xvii. any attempt by the Borrower or its officers, directors, and/or affiliates to transmit, convey, disclose, or any actual transmittal, conveyance, or disclosure by the Borrower or its officers, directors, and/or affiliates of, material non-public information concerning the Borrower, to the Holder or its successors and assigns, which is not immediately cured by Borrower's filing of a Form 8-K pursuant to Regulation FD on that same date;

xviii. If, at any time on or after the date which is six (6) months after the Original Issue Date, the Holder is unable to (i) obtain a standard "144 legal opinion letter" from an attorney reasonably acceptable to the Holder, the Holder's brokerage firm (and respective clearing firm), and the Borrower's transfer agent in order to facilitate the Holder's conversion of any portion of the Note into free trading shares of the Borrower's Common Stock pursuant to Rule 144, and/or (ii) thereupon deposit such shares into the Holder's brokerage account;

xix. if either (a) the effectiveness of the Registration Statement lapses for any reason or (b) the Holder shall not be permitted to resell Registrable Securities (as defined in the Registration Rights Agreement) under the Registration Statement for a period of more than 20 consecutive Trading Days or 30 non-consecutive Trading Days during any 12 month period: provided, however, that if the Corporation is negotiating a merger, consolidation, acquisition or sale of all or substantially all of its assets or a similar transaction and, in the written opinion of counsel to the Corporation, the Registration Statement would be required to be amended to include information concerning such pending transaction(s) or the parties thereto which information is not available or may not be publicly disclosed at the time, the Corporation shall be permitted an additional IO consecutive Trading Days during any 12 month period pursuant to this Section;

xxi. the Corporation fails to pay the True Up Amount when due;

b) Upon the occurrence of a Triggering Event, the Holder shall (in addition to all other rights it may have hereunder or under applicable law) have the right, exercisable at the sole option of such Holder, to require the Corporation to redeem all of the Preferred Stock then held by such Holder for a redemption price, equal the Triggering Redemption Amount. The Triggering Redemption Amount, shall be due and payable within three Trading Days of the date on which the notice for the payment therefor is provided by a Holder (the "Triggering Redemption Payment Date"). If the Company shall fail for any reason to pay in full the Triggering Redemption Amount hereunder on the date such amount is due in accordance with this Section then, in addition to Holder's other available remedies, the Company shall pay to the Holder, in cash, as partial liquidated damages and not as a penalty, by reason of any such delay in or reduction of its ability to, among other things, sell the Securities, an amount in cash equal to ten percent (10.0%) of the aggregate Stated Value of such Holder's Preferred Stock on the first Business Day after the Triggering Redemption Payment Date and on every thirtieth (30th) day (pro rated for periods totaling less than thirty days) thereafter until the earlier of (a) the date such Triggering Redemption Amount, plus all such interest thereon, is paid in full. In addition, if the Corporation fails to pay in full the Triggering Redemption Amount and all other amounts set forth in this Section hereunder on the date such amount is due in accordance with this Section, the Corporation will pay interest thereon at a rate equal to the lesser of 18% per annum or the maximum rate permitted by applicable law, accruing daily from such date until the Triggering Redemption Amount, plus all such interest and liquidated damages thereon, is paid in full. For purposes of this Section, a share of Preferred Stock is outstanding until such date as the applicable Holder shall have received Conversion Shares upon a conversion (or attempted conversion) thereof that meets the requirements hereof or has been paid the Triggering Redemption Amount in cash.

Section 11. Miscellaneous.

a) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Conversion, shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service, addressed to the Corporation, at the address set forth above **Attention:** Chief Financial Officer, facsimile number 704- 366-2463, or such other facsimile number or address as the Corporation may specify for such purposes by notice to the Holders delivered in accordance with this Section 11. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number or address of such Holder appearing on the books of the Corporation, or if no such facsimile number or address appears on the books of the Corporation, at the principal place of business of such Holder. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

b) Absolute Obligation. Except as expressly provided herein, no provision of this Certificate of Designation shall alter or impair the obligation of the Corporation, which is absolute and unconditional, to pay liquidated damages, accrued dividends and accrued interest, as applicable, on the shares of Preferred Stock at the time, place, and rate, and in the coin or currency, herein prescribed.

c) Lost or Mutilated Preferred Stock Certificate. If a Holder's Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership hereof reasonably satisfactory to the Corporation.

d) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Certificate of Designation shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by any of the Transaction Documents (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the "New York Courts"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such New York Courts, or such New York Courts are improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Certificate of Designation and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Certificate of Designation or the transactions contemplated hereby. If any party shall commence an action or proceeding to enforce any provisions of this Certificate of Designation, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

e) Waiver. Any waiver by the Corporation, an Original Holder or a Holder (if not an Original Holder) of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation or a waiver by any other Holders. The failure of the Corporation, the Original Holders or a Holder (if not an Original Holder) to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation on any other occasion. Any waiver by the Corporation, the Original Holders or a Holder (if not an Original Holder) must be in writing.

f) Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

g) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

h) Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

i) Status of Converted or Redeemed Preferred Stock. If any shares of Preferred Stock shall be converted, redeemed or reacquired by the Corporation, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Class 2 Preferred Stock.

j) True-Up.

i. In the event that the proceeds received by the Original Holders from the sale of all the Preferred Stock, Conversion Shares, shares of the Common Stock of the Corporation received by the Original Holders in connection with the spinoff of the Corporation from Sonnet Biotherapeutics Holdings, Inc. (f/k/a Chanticleer Holdings, Inc.) (the "Spinoff Shares") and the proceeds of the Chanticleer Conversion Shares do not equal at least $1,875,000 on April 1, 2021 (the "True-Up Payment Date"), the Corporation shall pay the Holder an amount in cash (the "True-Up Payment") equal to $1,875,000 less the proceeds previously realized by the Original Holders from the sale of the Preferred Stock, the Conversion Shares, the Spinoff Shares and Chanticleer Conversion Shares, net of brokerage commissions and any other fees incurred by Holder in connection with the sale of any Conversion Shares ("Net Proceeds"). For purposes of clarity, Net Proceeds shall not include any proceeds received by the Original Holders upon the receipt of any shares of Common Stock of the Corporation issued upon exercise of warrants of the Corporation held by the Original Holders or any shares of Common Stock of the Corporation held or acquired by Original Holders which are not SpinoffShares.

ii. The True-Up Payment will be paid by Corporation out of either (i) the proceeds from the exercise by Corporation of existing warrants to purchase shares of the common stock of Sonnet Biotherapeutics Holdings, Inc. (f/k/a Chanticleer Holdings, Inc.) held by Corporation or (ii) the Segregated Cash Account. If any portion of the True-Up Payment has not been paid by Corporation, on the True-Up Payment Date, interest shall accrue on such unpaid amount until such amount is paid in full at a rate equal to the lesser of (i) 18% per annum or (ii) the maximum rate permitted by applicable law. Upon payment in full of the True-Up Payment and all unpaid liquidated damages and other amounts due in respect of the Preferred Stock, any portion of the Segregated Cash Account not used to pay the True-Up Payment will be transferred to the Corporation and any remaining outstanding shares of Preferred Stock held by the Original Holders will be cancelled with no further obligations of the Corporation to the Original Holders thereunder, without any further action on behalf of the Corporation, Original Holders or the Holders.

iii. The Segregated Cash Account will be maintained until the True-Up Payment is paid in full.

IN WITNESS WHEREOF, the undersigned has executed this Certificate on February 16, 2021.

AMERGENT HOSPITALITY GROUP INC.

**r-:-DocuSigned by:**

By: */s/ Michael D. Pruitt*
Name: Michael D. Pruitt
Title: Chief Executive Officer

**ANNEXA**

NOTICE OF CONVERSION

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

The undersigned hereby elects to convert the number of shares of Series 2 Convertible Preferred Stock indicated below into shares of common stock, par value $0.0001 per share (the "Common Stock"), of Amergent Hospitality Group Inc., a Delaware corporation (the "Cot:poration"), 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 truces payable with respect thereto and is delivering herewith such certificates and opinions as may be required under applicable laws. No fee will be charged to the Holders for any conversion, except for any such transfer taxes.

Conversion calculations:

Date to Effect Conversion:_____

Number of shares of Preferred Stock owned prior to Conversion:_____

Number of shares of Preferred Stock to be Converted:_____

Stated Value of shares of Preferred Stock to be Converted:_____

Number of shares of Common Stock to be Issued:_____

Applicable Conversion Price:_____

Number of shares of Preferred Stock subsequent to Conversion:_____

Address for Delivery:_____=or DWAC
Instructions:
Broker no: _____
Account no:_____

HOLDER

By: _____
Name:
Title:

**Exhibit 4(vi)**

AMERGENT HOSPITALITY GROUP INC.

DESCRIPTION OF COMMON STOCK

The following is a summary of the material terms of our common stock. This summary does not purport to be exhaustive and is qualified in its entirety by reference to our amended and restated certificate of incorporation, amended and restated bylaws and to the applicable provisions of Delaware law.

We are authorized to issue 50,000,000 shares of common stock, $0.0001 par value. Holders of common stock are each entitled to cast one vote for each share held of record on all matters presented to shareholders. Cumulative voting is authorized; the holders of a majority of our outstanding shares of common stock may elect all directors. Holders of common stock are entitled to receive such dividends as may be declared by our board out of funds legally available and, in the event of liquidation, to share pro rata in any distribution of our assets after payment of liabilities. Our directors are not obligated to declare a dividend. It is not anticipated that dividends will be paid in the foreseeable future. Holders of common stock do not have preemptive rights to subscribe to any additional shares we may issue in the future. There are no conversion, redemption, sinking fund or similar provisions regarding the common stock. All outstanding shares of common stock are fully paid and nonassessable.

As of March 31, 2020, we had 14,282,736 shares of common stock issued and outstanding.

Anti-Takeover Effects of Certain Provisions of Delaware Law and Our Certificate of Incorporation and Bylaws

We are subject to the provisions of Section 203 of the Delaware General Corporation Law (the "DGCL"), an anti-takeover law. Subject to certain exceptions, the statute prohibits a publicly held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years after the date of the transaction in which the person became an interested stockholder unless:

- prior to such date, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;

- upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding those shares owned (1) by persons who are directors and also officers and (2) by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

- on or after such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock that is not owned by the interested stockholder.

For purposes of Section 203, a "business combination" includes a merger, asset sale or other transaction resulting in a financial benefit to the interested stockholder, and an "interested stockholder" is a person who, together with affiliates and associates, owns, or within three years prior to the date of determination whether the person is an "Interested Stockholder" did own, 15% or more of the corporation's voting stock. In addition, our authorized but unissued shares of common stock are available for our board to issue without stockholder approval. We may use these additional shares for a variety of corporate purposes, including future public or private offerings to raise additional capital, corporate acquisitions and employee benefit plans The existence of our authorized but unissued shares of common stock could render more difficult or discourage an attempt to obtain control of our company by means of a proxy contest, tender offer, merger or other transaction. Our authorized but unissued shares may be used to delay, defer or prevent a tender offer or takeover attempt that a stockholder might consider in its best interest, including those attempts that might result in a premium over the market price for the shares held by our stockholders. The board of directors is also authorized to adopt, amend or repeal our bylaws, which could delay, defer or prevent a change in control.

**Exhibit 10.15**

## SEPARATION AND RELEASE AGREEMENT

This Separation and Release Agreement (this "Agreement") is by and between Patrick Harkleroad ("Individual"), and Amergent Hospitality Group, Inc., a Delaware corporation (the "Company").

## RECITALS

WHEREAS, Individual has been employed by the Company as the position of Chief Financial Officer, and in that capacity, has provided services to the Company.

WHEREAS, the initial term of the Individual's Employment Contract, dated January 7, 2019, ended December 31, 2020 ("Employment Contract").

WHEREAS, Individual provided written Resignation Notice to the Board of the Company on November 24, 2020. As stated in this Resignation notice, though Individual did not provide the required 90-day notice period under his Employment Contract, Individual provided the Company the option to retain his services for a period of up to six months upon mutually agreeable terms between the Company and the Individual after December 31, 2020.

WHEREAS, the Company's board of directors waived the 90-day notice of non-renewal required pursuant to the Employment Contract, at Individual's request, and accepted Individual's resignation of employment effective December 31, 2020.

WHEREAS, Individual provided a transition list of items to the Company via email on November 24, 2020 to help define what duties need to be transitioned to a new Chief Financial Officer and Controller for the Company ("Transition List");

WHEREAS, the parties desire to enter into this Agreement to reflect their mutual undertakings, promises, and agreements concerning the post-termination services Individual will provide to the Company and the separation benefits to be provided to Individual upon or by reason of such separation from employment.

NOW, THEREFORE, in exchange for the valuable consideration paid or given under this Agreement and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the parties knowingly and voluntarily agree to the following terms:

## TERMS

1. Separation Date and Effect of Separation. The parties hereby agree that Individual's employment with the Company terminated effective December 31, 2020 ("the Separation Date"), which was the end date of the Individual's Employment Contract (provided notice of non-renewal was timely provided by Individual to the Company). Effective as of the Separation Date, Individual does hereby accept such termination, from all corporate, board, and other offices and positions he held with the Company and all of its affiliates.

2. Final Pay and Benefits. Individual acknowledges he has received the following payments in accordance with the ending of his employment with the Company:

a. Final Pay. Individual acknowledges and agrees that he has received payment of his regular base salary, minus applicable taxes and withholdings, through the Separation Date and that such payment was received on or within six days after the Separation Date. Individual shall not receive from the Company or its affiliates any other base salary, wages, commissions, bonuses, or other forms of remuneration or compensation relating to employment after the Separation Date other than as provided for in this Agreement.

b. Reimbursement of Business Expenses. Individual acknowledges and agrees that he has received reimbursement of all reasonable business expenses properly incurred by him in accordance with Company policy before the Separation Date.

3. Separation Benefits. Contingent upon Individual's timely execution and return to the Company of this Agreement and its non-revocation, the Company shall provide Individual, or cause Individual to receive, the separation benefits set forth below in this paragraph (the "Separation Pay").

Severance Pay. The Company has paid Individual "Separation Pay" in the amount of (i.) $6,236.29 (less applicable withholding) on January 15th, and (ii) $6,238.29 on January 29th , represents a sum equal to the Individual's regular pay through and including, January 24th 2021, plus the Company shall pay Individual (ii) the sum of twenty two thousand five hundred dollars ($22,500.00) (less applicable withholding), payable in equal installments consistent with the Company's regular payroll periods, beginning with the payroll period ending on or about February 12th through and including the April 9th payroll period. In addition, and provided Individual has supplied the Transition Services (as defined below) to the Company's reasonable satisfaction and has signed after April 1, 2021 and left unrevoked the Supplemental Release attached hereto as Exhibit A, The Company will pay Individual an additional fifteen thousand dollars ($15,000.00) on May 15th. Unless the Company provides written notification to the Individual that the Individual has not provided the Transition Services to the reasonable satisfaction of the Company with specifics as to what issues need to be addressed, with the ability for the Individual to cure said issues within a reasonable timeframe, the above Severance Payments will be paid.

4. Transition Services. As Individual provided in his Transition List to the Company on November 24, 2020, Individual agrees that, during the period beginning with the execution of this Agreement and through March 31, 2021, Individual will, as an independent contractor and in consideration for the Severance Pay, provide the following "Transition Services" to the Company upon reasonable request from the Company:

A. Assist the Company with transitioning current bank accounts and setting up new bank accounts

B. Assist the Company with transitioning all ACH payments to the new bank accounts

C. Assist the Company, its CFO and third-party advisors with the preparation and filing of the lOK due by 3/31/21, with applicable extensions as required by the Company

D. Assist the Company, its CFO and third-party advisors with the preparation and filing of the lOQ due by 5/15/21, with applicable extensions as required by the Company

E. Assist the Company and its CFO and third-party advisors with the preparation and filing of the 2020 tax return, with applicable extensions as required by the Company

F. Assist the Company and its CFO and third party advisors with the preparation of the 2020 Audit, with applicable extensions as required by the Company

G. Assist the Company and its new Controller and third party advisors with transition services for the preparation of the 13 week rolling cash flow forecast

H. Assist the Company and its new Controller with the process of reviewing from Provident Hospitality weekly check runs, which includes being available on check cutting day, which is typically Thursday

I. Assist the company with issues relating to franchisee, franchisor, and lease agreements, and other material agreements as requested

J. Assist the company and its new Controller with the transition of Provident Hospitality monthly reporting, with Provident's assistance, as the monthly reporting is currently being completed by Provident

K. Process including the reconciliation of bank balances with assistance of Provident, who handles this task for the Company currently

L. Assist the company with the resolution of its historical pay roll tax issues

M. Assist the company with is preparation application and processing of PPP (1 and 2) and EIDL loans including the application for forgiveness of both

N. All other services reasonably requested by company to continue its operations and financial reporting

5. Return of Property and Information. On or before April 1, 2021, Individual shall return to the Company or the Company Parties any and all items of its or their property, including without limitation keys, all copies of work product, or business records, badge/access card, laptop and other computers, software, cellular telephones and personal digital assistants, equipment, credit cards, forms, files, manuals, correspondence, business records, personnel data, lists of employees, salary and benefits information, customer files, lists of suppliers and vendors, price lists, contracts, contract information, marketing plans, brochures, catalogs, training materials, computer tapes and diskettes or other portable media, computer-readable files and data stored on any hard drive or other installed device, and data processing reports, and any and all other documents or property belonging to them which he has had possession of or control over during his employment with the Company.

By signing below, Individual hereby certifies that Individual has migrated all work product to the Company's server and has not retained any copies on Individual's devices or laptop computer.

By signing below, Individual represents and warrants that he has provided the Company with a list of all passwords related to Company related accounts and/or password protected information.

6. General Release by Individual. Individual agrees to and does hereby, for himself and his heirs, executors, administrators, successors and assigns, forever release and discharge the Company and its subsidiaries, related companies, parents, successors and assigns, and each of their officers, directors, agents, employees and former employees, including without limitation each and every subsidiary and affiliate of the Company (herein collectively, "Released Parties"), from any and all claims, debts, promises, agreements, demands, causes of action, attorneys' fees, losses and expenses of every nature whatsoever, known or unknown, suspected or unsuspected, filed or unfiled, arising prior to the Effective Date of this Agreement or arising out of or in connection with Individual's employment and termination of employment from the Company or any affiliate of the Company. This total release to the extent permitted by law includes, but is not limited to, all claims arising directly or indirectly from Individual's employment with the Company and the termination of that employment; all claims for unpaid wages, including overtime wages, claims or demands related to salary, bonuses, commissions, stock, stock options, claims under any severance or change in control plan, any stock or stock option or other equity or phantom equity grant, agreement or plan, vacation pay, fringe benefits and expense reimbursements pursuant to any federal, North Carolina state or other state or local law or cause of action, including, but not limited to, breach of contract, breach of the implied covenant of good faith and fair dealing, infliction of emotional harm, wrongful discharge, violation of public policy, defamation and impairment of economic opportunity and any claims for violation of the Age Discrimination in Employment Act, the Civil Rights Act of 1866, Title VII of the Civil Rights Act of 1964, the Employee Retirement Income Security Act, the Equal Pay Act, the Fair Labor Standards Act, the Rehabilitation Act of 1974, and the Americans With Disabilities Act of 1990.

7. General Release by Company. Company agrees to and does hereby forever release and discharge the Individual and his heirs and assigns, from any and all claims, debts, promises, agreements, demands, causes of action, attorneys' fees, losses and expenses of every nature whatsoever, known or unknown, suspected or unsuspected, filed or unfiled, arising prior to the Effective Date of this Agreement or arising out of or in connection with Individual's employment and termination of employment from the Company or any affiliate of the Company. This total release to the extent permitted by law includes, but is not limited to, all claims or liability arising directly or indirectly from Individual's employment with the Company, service as an officer of the Company and the termination of that employment and from payroll tax deficiencies and penalties that the IRS may impose on any "Responsible Party" in his individual capacity.

The parties acknowledge and agree that it was the responsibility of previous CFO, Eric Lederer, to process payroll prior to his termination Individual was not given full access to process the Company's payroll until after Eric Lederer's termination date.

8. Permitted Activities. Notwithstanding any other provision of this Agreement but subject to Individual's waiver in subparagraph l0(a) below, nothing in this Agreement is intended to, or does, preclude Individual from (i) contacting, reporting to, responding to an inquiry from, filing a charge or complaint with, communicating with, or otherwise participating in an investigation conducted by, the Equal Employment Opportunity Commission, the Department of Labor, the National Labor Relations Board, the Occupational Safety and Health Administration, or any other federal, state, or local governmental agency, commission, or regulatory body; (ii) giving truthful testimony or making statements under oath in response to a subpoena or other valid legal process or in any legal proceeding; (iii) otherwise making truthful statements as required by law or valid legal process; (iv) engaging in any concerted or other legally protected activities; or (v) disclosing a trade secret in confidence to a governmental official, directly or indirectly, or to an attorney, if the disclosure is made solely for the purpose of reporting or investigating a suspected violation of law. Accordingly, Individual understands that he will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that (i) is made (A) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and (B) solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in sworn testimony, a lawsuit or complaint, or document filed in a lawsuit or other proceeding, if such filing is made under seal. Individual likewise understands that, if he files a lawsuit for retaliation by the Company for reporting a suspected violation of law, he may disclose the Company's trade secret(s) to his attorney and use the trade secret information in the court proceeding, if he (i) files any document containing the trade secret under seal; and (ii) does not disclose the trade secret, except pursuant to court order.

9. Confidentiality, Cooperation, Non-Prosecution, and Non-Disparagement.

a. Confidentiality. Except as requested by the Company, as permitted above, as permitted by law that supersedes the terms of this Agreement, or as compelled by valid legal process, the Company and the Individual shall treat as confidential the fact and terms of this Agreement and circumstances surrounding his separation from employment and shall not disclose such information to any party other than to his spouse or any attorney, accountant, or tax advisor of Individual, if such persons have agreed to keep such information confidential.

b. Cooperation. Individual shall cooperate fully and completely with the Company or any of the other Released Parties or their successors, at their request and at reasonable times and without unreasonable interference to Individual's personal or professional endeavors, in all pending and future litigation, investigations, arbitrations, and/or other fact-finding or adjudicative proceedings, public or private, involving the Company or any of the other Released Parties. This obligation includes without limitation Individual promptly meeting with counsel for the Company or the other Released Parties at reasonable times upon their request, and providing testimony in court, before an arbitrator or other convening authority, or upon deposition that is truthful, accurate, and complete, according to information known to him. If Individual appears as a witness in any pending or future litigation, arbitration, or other fact-finding or adjudicative proceeding at the request of the Company or any of the other Released Parties, the Company or the other Released Parties shall reimburse him, upon submission of substantiating documentation, for necessary and reasonable expenses (other than attorneys' fees) incurred by him as a result of testifying.

c. Non-Prosecution. Except as requested by the Company, as permitted above, as permitted by law that supersedes the terms of this Agreement, or as compelled by valid legal process, Individual shall not (i) assist, cooperate with, or supply information of any kind to any individual or private-party litigant or their agents or attorneys concerning (A) the employment, terms and conditions, or ending of Individual's or any other employee's employment with the Company or any of the other Released Parties or the employment practices of any of the Released Parties; or (B) the business or operations of any of the Released Parties; or (ii) initiate or assist any other person in connection with any investigation, inquiry, or any other action of any kind with respect to any of the Released Parties' employment practices, businesses, or operations.

d. Non-Disparagement and Waiver of Related Rights. Except as requested by the Company, as permitted above or by applicable law that may supersede the terms of this Agreement, or as compelled by valid legal process, Individual shall not make to any other party any statement (whether oral, written, electronic, anonymous, on the Internet, or otherwise), which directly or indirectly impugns the quality or integrity of the Company's or any of the other Released Parties' business or employment practices, or any other disparaging or derogatory remarks about them. In executing this Agreement, Individual acknowledges and agrees that he has knowingly, voluntarily, and intelligently waived any (i) free speech, free association, free press, or First Amendment to the United States Constitution (including, without limitation, any counterpart or similar provision or right under any State Constitution) rights to disclose, communicate, or publish any statements prohibited by this subparagraph and (ii) right to file a motion to dismiss or pursue any other relief under the North Carolina Citizens Participation Act or similar state law in connection with any Claim filed against him by the Company or any of the other Released Parties, including without limitation any Claim arising from any alleged breach of this Agreement.

Individual agrees that the confidentiality and non-disparagement provision in this Agreement prevent him from discussing matters related to the Company with vendors, press, or others and he shall direct all inquiries to Mike Pruitt for response.

10. Waiver of Certain Rights.

a. Right to Relief Not Provided in this Agreement. Individual waives any right to monetary recovery from the Company or the other Released Parties, whether sought directly by him or in the event any administrative agency or other public authority, individual, or group of individuals should pursue any Claim on his behalf; and he shall not request or accept from the Company or the other Released Parties, as compensation or damages related to his employment or the ending of his employment with the Company or the employment practices of any of the other Released Parties, anything of monetary value that is not provided for in this Agreement.

b. Right to Class- or Collective-Action Initiation or Participation. Individual waives the right to initiate or participate in any class or collective action with respect to any Claim against the Company or the other Released Parties, including without limitation any Claim arising from the formation, continuation, or ending of his employment relationship with the Company or the employment practices of any of the other Released Parties.

11. No Violations. Individual represents and warrants that he has no knowledge that the Company or any of the other Released Parties has committed or is suspected of committing any act which is or may be in violation of any federal or state law or regulation or has acted in a manner which requires corrective action of any kind. Individual further represents and warrants that he has not informed the Company or any of the other Released Parties of, and that he is unaware of, any alleged violations of their standards of business conduct or personnel policies, of their integrity or ethics policies (or similar policies), or other misconduct by the Company or any of the other Released Parties, that have not been resolved satisfactorily by the Company or the other Released Parties.

12. Non-Use and Non-Disclosure of Confidential Information. Except as permitted above, Individual shall not at any time use or disclose to any third party any confidential or proprietary information. If it appears Individual will be compelled by law or judicial process to disclose any Confidential Information following the Separation Date, he shall notify Mike Pruitt in writing or email timely upon receipt of a subpoena or other legal process or otherwise act to protect the Confidential Information to the greatest extent reasonably possible. The obligations of Individual under this paragraph shall supplement, rather than supplant, Individual's obligations concerning Confidential Information under the common law.

13. Nonadmission of Liability or Wrongdoing. Individual and the Company acknowledge that

(a) this Agreement shall not in any manner constitute an admission of liability or wrongdoing on the part of Individual, the Company or any of the other Released Parties;

(b) Individual and the Company and the other Released Parties expressly deny any such liability or wrongdoing; and, (c) except to the extent necessary to enforce this Agreement, neither this Agreement nor any part of it may be construed, used, or admitted into evidence in any judicial, administrative, or arbitral proceedings as an admission of any kind by Individual, the Company or any of the other Released Parties.

14. Jury Trial Waiver. THE RELEASING PARTIES HEREBY WAIVE THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM AGAINST ANY RELEASED PARTY, INCLUDING WITHOUT LIMITATION ANY CLAIM FOR BREACH OR ENFORCEMENT OF THIS AGREEMENT.

15. Authority to Execute. Individual and the Company represent and warrant that they have the authority to execute this Agreement on behalf of all the Releasing Parties.

16. Governing Law; Forum; Venue; Severability; Interpretation. This Agreement and the rights and duties of the parties under it shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to any conflicts of laws principles. The parties consent to the exclusive jurisdiction of the state and federal courts in the State of North Carolina and agree that the exclusive forum for any dispute arising out of or relating in any way to this Agreement or to Individual's employment or services to the Company shall be in the courts of the State of North Carolina. The parties agree that this Agreement is performable in Travis County, North Carolina and agree any dispute arising out of or relating in any way to this Agreement or to Individual's employment or services to the Company shall be brought and maintained only in a court of competent jurisdiction in Travis County, North Carolina. If any provision of this Agreement is held by any court of competent jurisdiction to be unenforceable, such provision shall be considered separate, distinct, and severable from the other remaining provisions of this Agreement, and shall not affect the validity or enforceability of such other remaining provisions; and in all other respects, this Agreement shall remain in full force and effect. If any provision of this Agreement is held by any court of competent jurisdiction to be unenforceable as written but may be made to be enforceable by limitation, then such provision shall be enforceable to the maximum extent permitted by applicable law. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties.

17. Assignment. The obligations, rights, and benefits of Individual and under this Agreement are personal to him and shall not be assigned to any person or entity, including without limitation his spouse, without written permission from the Company's Board of Directors. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors, and permitted assigns. The Company may assign its obligations, rights and benefits under this Agreement.

18. Nonassignment of Claims and Indemnification. Individual and the Company represent and warrant that they have not assigned or transferred any part of the Claims or rights covered by this Agreement to anyone, including without limitation to Individual's spouse.

19. Effective Date. This Agreement shall become effective and enforceable upon the date that Individual signs it (the "Effective Date"), provided that he signs this Agreement on or before the Expiration Date.

20. Knowing and Voluntary Agreement; Right to Consult an Attorney. Individual acknowledges that (a) he has been advised of his right, and encouraged by this paragraph, to consult with an attorney of his choice before signing this Agreement; (b) he has had a reasonable period in which to consider whether to sign this Agreement; (c) he fully understands the meaning and effect of signing this Agreement; and (d) his signing of this Agreement is knowing and voluntary.

21. Time To Consider. Individual has twenty-one (21) days to consider whether to sign this Agreement. If Individual signs this Agreement, Individual may revoke the agreement anytime within seven (7) days of signing the agreement by providing written notice of such revocation to Mike Pruitt. If Individual signs this Agreement, this Agreement becomes effective after the end of the seven-day revocation period ("Effective Date"). In the event that the Individual does not sign this Agreement with 21 one days, or revokes this Agreement within 7 days of signing, The individual will immediately refund any amounts paid to him pursuant to this Agreement.

22. Intended Third-Party Beneficiaries; Definition of Affiliate The Company and each and every subsidiary or affiliate of these entities and the Company are intended to be third-party beneficiaries of this Agreement. For purposes of this Agreement, "affiliate" means, with respect to the person or entity at issue, any person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such person or entity.

23. Entire Agreement. This Agreement contains and represents the entire agreement of the parties with respect to its subject matters, and supersedes all prior agreements and understandings, written and oral, between the parties with respect to its subject matters. The Releasing Parties agree that neither Individual, the Company, nor any of the other Released Parties or their representatives has made any promise or representation concerning this Agreement not expressed in this Agreement, and that, in signing this Agreement, they are not relying on any prior oral or written statement or representation by the Releasing Parties, or any of the other Released Parties or their representatives outside of this Agreement and the Company Documents but is instead relying solely on his own judgment and his legal and tax advisors, if any. Notwithstanding anything to the contrary contained herein, the Indemnification Agreement by and between the parties dated July 10, 2020 remains in full force and effect in accordance with its terms.

24. Modification; Waiver. No provision of this Agreement shall be amended, modified, or waived unless such amendment, modification, or waiver is agreed to in writing and signed by Individual and a duly authorized representative of the Company.

25. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same agreement. The delivery of this Agreement in the form of a clearly legible facsimile or electronically scanned version by e-mail shall have the same force and effect as delivery of the originally executed document.

*[Signature Page Follows]*

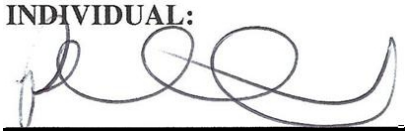
AGREED as of the Effective Date:

**COMPANY:**

**Amergent Hospitality Group, Inc.**

By: Michael D. Pruitt
Name: Michael D. Pruitt
Title: CEO
Date: March 26, 2021

**INDIVIDUAL:**



Patrick Harkleroad
Date:

**Exhibit A (This is to Be Signed ON OR AFTER 4/1/2021**

**SUPPLEMENTAL RELEASE AGREEMENT**

This Supplemental Release Agreement (this "Agreement") is by and between Patrick Harkleroad ( "Individual"), and Amergent Hospitality Group, Inc., a Delaware corporation (the "Company").

**RECITALS**

WHEREAS, Individual was employed by the Company as the position of Chief Financial Officer, and in that capacity, has provided services to the Company.

WHEREAS, the parties then entered into a Separation and Release Agreement to reflect their mutual undertakings, promises, and agreements concerning the post-termination services Individual will provide to the Company and the separation benefits to be provided to Individual upon or by reason of such separation from employment.

NOW, THEREFORE, the post-termination services having concluded, and in consideration for payment to Individual of fifteen thousand dollars ($15,000.00), and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, Individual hereby agrees as follows:

**TERMS**

1. Individual agrees to and does hereby, for himself and his heirs, executors, administrators, successors and assigns, forever release and discharge the Company and its subsidiaries, related companies, parents, successors and assigns, and each of their officers, directors, agents, employees and former employees, including without limitation Amergent Hospitality and its Board of Directors (herein collectively, "Released Parties"), from any and all claims, debts, promises, agreements, demands, causes of action, attorneys' fees, losses and expenses of every nature whatsoever, known or unknown, suspected or unsuspected, filed or unfiled, arising after the date of the Separation and Release Agreement and prior to the Effective Date of this Agreement or arising out of or in connection with Individual's post separation services to the Company. This total release to the extent permitted by law includes, but is not limited to, all claims arising directly or indirectly from Individual's post-separation services with the Company and the termination of those services; all claims for unpaid wages, including overtime wages, claims or demands related to salary, bonuses, commissions, stock, stock options, claims under any severance or change in control plan, any stock or stock option or other equity or phantom equity grant, agreement or plan, vacation pay, fringe benefits and expense reimbursements pursuant to any federal, North Carolina state or other state or local law or cause of action, including, but not limited to, breach of contract, breach of the implied covenant of good faith and fair dealing, infliction of emotional harm, wrongful discharge, violation of public policy, defamation and impairment of economic opportunity and any claims for violation of the Age Discrimination in Employment Act, the Civil Rights Act of 1866, Title VII of the Civil Rights Act of 1964, the Employee Retirement Income Security Act, the Equal Pay Act, the Fair Labor Standards Act, the Rehabilitation Act of 1974, and the Americans With Disabilities Act of 1990.

Notwithstanding any other provision of this Agreement but subject to Individual's waiver in subparagraph 2(a) below, nothing in this Agreement is intended to, or does, preclude Individual from (i) contacting, reporting to, responding to an inquiry from, filing a charge or complaint with, communicating with, or otherwise participating in an investigation conducted by, the Equal Employment Opportunity Commission, the Department of Labor, the National Labor Relations Board, the Occupational Safety and Health Administration, or any other federal, state, or local governmental agency, commi ssion, or regulatory body; (ii) giving truthful testimony or making statements under oath in response to a subpoena or other valid legal process or in any legal proceeding; (iii) otherwise making truthful statements as required by law or valid legal process; (iv) engaging in any concerted or other legally protected activities; or (v) disclosing a trade secret in confidence to a governmental official, directly or indirectly, or to an attorney, if the disclosure is made solely for the purpose ofreporting or investigating a suspected violation oflaw. Accordingly, Individual understands that he will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that (i) is made (A) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and (B) solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in sworn testimony, a lawsuit or complaint, or document filed in a lawsuit or other proceeding, if such filing is made under seal. Individual likewise understands that, if he files a lawsuit for retaliation by the Company for reporting a suspected violation of law, he may disclose the Company's trade secret(s) to his attorney and use the trade secret information in the court proceeding, if he (i) files any document containing the trade secret under seal; and (ii) does not disclose the trade secret, except pursuant to court order.

2. Waiver of Certain Rights.

a. Right to Relief Not Provided in this Agreement. Individual waives any right to monetary recovery from the Company or the other Released Parties, whether sought directly by him or in the event any administrative agency or other public authority, individual, or group of individuals should pursue any Claim on his behalf; and he shall not request or accept from the Company or the other Released Parties, as compensation or damages related to his post-separation services or the ending of his post-separation services with the Company or the employment practices of any of the other Released Parties, anything of monetary value that is not provided for in this Agreement.

b. Right to Class- or Collective-Action Initiation or Participation. Individual waives the right to initiate or participate in any class or collective action with respect to any Claim against the Company or the other Released Parties, including without limitation any Claim arising from the formation, continuation, or ending of his post separation services and relationship with the Company or the employment practices of any of the other Released Parties.

3. No Violations. Individual represents and warrants that he has no knowledge that the Company or any of the other Released Parties has committed or is suspected of committing any act which is or may be in violation of any federal or state law or regulation or has acted in a manner which requires corrective action of any kind. Individual further represents and warrants that he has not informed the Company or any of the other Released Parties of, and that he is unaware of, any alleged violations of their standards of business conduct or personnel policies, of their integrity or ethics policies (or similar policies), or other misconduct by the Company or any of the other Released Parties, that have not been resolved satisfactorily by the Company or the other Released Parties.

4. Jury Trial Waiver. THE RELEASING PARTIES HEREBY WAIVE THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM AGAINST ANY RELEASED PARTY, INCLUDING WITHOUT LIMITATION ANY CLAIM FOR BREACH OR ENFORCEMENT OF THIS AGREEMENT.

5. Authority to Execute. Individual and the Company represent and warrant that they have the authority to execute this Agreement on behalf of all the Releasing Parties.

6. Governing Law; Forum; Venue; Severability; Interpretation. This Agreement and the rights and duties of the parties under it shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to any conflicts of laws principles. The parties consent to the exclusive jurisdiction of the state and federal courts in the State of North Carolina and agree that the exclusive forum for any dispute arising out of or relating in any way to this Agreement or to Individual's employment or services to the Company shall be in the courts of the State of North Carolina. The parties agree that this Agreement is performable in Travis County, North Carolina and agree any dispute arising out of or relating in any way to this Agreement or to Individual's employment or services to the Company shall be brought and maintained only in a court of competent jurisdiction in Travis County, North Carolina. If any provision of this Agreement is held by any court of competent jurisdiction to be unenforceable, such provision shall be considered separate, distinct, and severable from the other remaining provisions of this Agreement, and shall not affect the validity or enforceability of such other remaining provisions; and in all other respects, this Agreement shall remain in full force and effect. If any provision of this Agreement is held by any court of competent jurisdiction to be unenforceable as written but may be made to be enforceable by limitation, then such provision shall be enforceable to the maximum extent permitted by applicable law. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties.

7. Assignment. The obligations, rights, and benefits of Individual and under this Agreement are personal to him and shall not be assigned to any person or entity, including without limitation his spouse, without written permission from the Company's Board of Directors. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors, and permitted assigns. The Company may assign its obligations, rights and benefits under this Agreement.

8. Effective Date. This Agreement shall become effective and enforceable upon the date that Individual signs it (the "Effective Date"), provided that he signs this Agreement on or before the Expiration Date.

9. Knowing and Voluntary Agreement; Right to Consult an Attorney. Individual acknowledges that (a) he has been advised of his right, and encouraged by this paragraph, to consult with an attorney of his choice before signing this Agreement; (b) he has had a reasonable period in which to consider whether to sign this Agreement; (c) he fully understands the meaning and effect of signing this Agreement; and (d) his signing of this Agreement is knowing and voluntary.

10. Time To Consider. Individual has twenty-one (21) days to consider whether to sign this Agreement. If Individual signs this Agreement, Individual may revoke the agreement anytime within seven (7) days of signing the agreement by providing written notice of such revocation to Michael D. Pruitt, the Company's CEO.IfIndividual signs this Agreement, this Agreement becomes effective after the end of the seven-day revocation period ("Effective Date").

11. This Agreement Supplements the Severance and Release Agreement. This Agreement supplements but does not supersede or amend or extinguish that certain Severance and Release Agreement between the parties. Notwithstanding anything to the contrary contained herein, the Indemnification Agreement by and between the parties dated July 10, 2020 remains in full force and effect in accordance with its terms.

12. Modification; Waiver. No provision of this Agreement shall be amended, modified, or waived unless such amendment, modification, or waiver is agreed to in writing and signed by Individual and a duly authorized representative of the Company.

13. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same agreement. The delivery of this Agreement in the form of a clearly legible facsimile or electronically scanned version by e-mail shall have the same force **and** effect as delivery of the originally executed document.

*[Signature Page Follows]*

AGREED as of the Effective Date:

**Exhibit 10.16**

***Execution Version***

WAIVER, CONSENT AND AMENDMENT TO CERTIFICATE OF DESIGNATIONS

This WAIVER, CONSENT AND AMENDMENT TO CERTIFICATE OF DESIGNATIONS (this"Amendment") is entered into as of August 17, 2020 (the "Effective Date"), by and among the following: (a) Amergent Hospitality Group, Inc. a Delaware corporation (the "Company"); (b) Arena Special Opportunities Fund, LP, a Delaware limited partnership ("Opportunities Fund"); and (c) Arena Origination Co.,LLC, a Delaware limited liability company ("Origination Co." and collectively with "Opportunities Fund," the "Arena Entities").

RECITALS:

A. The Arena Entities are holders of 100% of the Company's Series 2 Convertible Preferred Stock (the "Preferred Stock") issued pursuant to the terms of that certain certificate of designation setting forth the powers, preference, rights, qualifications, limitations and restrictions of such Preferred Stock as filed with the Delaware Secretary of State on April 1, 2020 (as the same may from time to time be amended, restated or otherwise modified, the "Certificate of Designations").

B. In accordance with Section 11(j) of the Certificate of Designations, the Company is required to make a true-up payment to the Arena Entities on August 10, 2020.

C. The Company has requested that the Arena Entities agree to amend the Certificate of Designations to extend the requirement for the true-up payment until December 10, 2020;

D. The Arena Entities and the Company desire to amend the Certificate of Designations to modify certain provisions thereof in accordance with, and subject to, the terms and conditions set forth herein.

AGREEMENT:

In consideration of the premises and mutual covenants herein and for other valuable consideration, the Company and the Arena Entities agree as follows:

Section 1. Definitions. Unless otherwise defined herein, each capitalized term used in this Amendment and not defined herein shall be defined in accordance with the Certificate of Designations.

Section 2. Amendments.

2.1 Amendment to Section 11(j). Section 11(j) of the Certificate of Designations is hereby amended and restated to read in its entirety as follows:

j) True-Up.

i. In the event that the proceeds received by the Holder from the sale of all the Conversion Shares, shares of the Common Stock of the Corporation received by the Holder in connection with the spinoff of the Corporation from Sonnet Biotherapeutics Holdings, Inc. (f/k/a Chanticleer Holdings, Inc.) (the "Spinoff Shares") and the proceeds of the Chanticleer Conversion Shares do not equal at least $1,875,000 on December 10, 2020 (the "True-Up Payment Date"), the Corporation shall pay the Holder an amount in cash (the "True-Up Payment") equal to $1,875,000 less the proceeds previously realized by the Holder from the sale of the Conversion Shares, the Spinoff Shares and Chanticleer Conversion Shares, net of brokerage commissions and any other fees incurred by Holder in connection with the sale of any Conversion Shares ("Net Proceeds"). For purposes of clarity, Net Proceeds shall not include any proceeds received by the Holder upon the receipt of any shares of Common Stock of the Corporation issued upon exercise of warrants of the Corporation held by the Holder or any shares of Common Stock of the Corporation held or acquired by a Holder which are not Spinoff Shares.

ii. The True-Up Payment will be paid by Corporation out of either (i) the proceeds from the exercise by Corporation of existing warrants to purchase shares of the common stock of Sonnet Biotherapeutics Holdings, Inc. (f/k/a Chanticleer Holdings, Inc.) held by Corporation or (ii) the Segregated Cash Account. If any portion of the True-Up Payment has not been paid by Corporation, on the True-Up Payment Date, interest shall accrue on such unpaid amount until such amount is paid in full at a rate equal to the lesser of (i) 18% per annum or (ii) the maximum rate permitted by applicable law. Upon payment in full of the True-Up Payment and all unpaid liquidated damages and other amounts due in respect of the Preferred Stock, any portion of the Segregated Cash Account not used to pay the True-Up Payment will be transferred to the Corporation and any remaining outstanding shares of Preferred Stock will be cancelled with no further obligations of the Corporation to the Holders thereunder, without any further action on behalf of the Corporation or the Holders.

iii. The Segregated Cash Account will be maintained until the True-Up Payment is paid in full.

Section 3. Expenses. The Company agrees to pay on demand all expenses of the Arena Entities (including, without limitation, the fees and out-of-pocket expenses of Sheppard, Mullin, Richter & Hampton LLP, counsel to the Arena Entities) incurred in connection with the negotiation, preparation, execution and delivery of this Amendment.

Section 4. Consent. Subject to the satisfactions of the conditions set forth in Section 5 below, the Arena Entities hereby consent to the amendments to the Certificate of Designations set forth in this Amendment and the filing of an amendment as set forth in Section 5(ii) below.

Section 5. Effectiveness. This Amendment shall be effective upon the satisfaction of the following conditions:

(i) Amendment Executed. This Amendment shall have been executed by the Company and the Arena Entities.

(ii) Filing of an Amendment to the Certificate of Designations. The Company shall have filed an amendment to the Certificate of Designations with the Delaware Secretary of State.

(iii) Segregated Cash Account. The Arena Entities shall receive written confirmation that the amount set forth in the Segregated Cash Account is equal to $1,250,000.

(iv) Amendment Fee. In consideration of the Arena Entities willingness to enter into this Amendment, the Company shall have provided the following to the Arena Entities: (i) a cash fee of $66,000, to such accounts as designated in writing by the Arena Entities and (ii) issued to the Arena Entities five-year warrants to purchase 134,000 shares of the Company's common stock on the same terms and conditions as the warrants issued to the Arena Entities on April 1, 2020 except the termination date of such warrants shall be five years from the date of this Amendment. The amounts set forth above shall be issued to each Arena Entity pro rata based on their initial investment in Sonnet Biotherapeutics Holdings, Inc. (f/k/a Chanticleer Holdings, Inc.).

Section 6. Miscellaneous.

6.1 Representations and Warranties. The Company, by signing below, hereby represents and warrants to each Arena Entity that:

(i) the Company has the legal power and authority to execute and deliver this Amendment;

(ii) the officer executing this Amendment on behalf of the Company has been duly authorized to execute and deliver the same and bind the Company with respect to the provisions hereof;

(iii) the execution and delivery hereof by the Company and the performance and observance by the Company of the provisions hereof do not violate or conflict with the organizational documents of the Company or any law applicable to the Company or result in a breach of any provision of or constitute a default under any other agreement, instrument or document binding upon or enforceable against the Company;

(iv) no Triggering Event exists under the Certificate of Designations, nor will any occur immediately after the execution and delivery of this Amendment or by the performance or observance of any provision hereof;

(v) the Segregated Cash Account is currently held in the name of Chanticleer SPE, LLC, a wholly owned subsidiary of the Company, is segregated from all other assets of the Company free and clear of any liens, charges or encumbrances of the Company and has a balance of $1,250,000 as of the date hereof; and

(vi) this Amendment constitutes a valid and binding obligation of the Company in every respect, enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors' rights or by general principles of equity limiting the availability of equitable remedies.

6.2 Certificate of Designations Unaffected. Each reference to the Certificate of Designations shall hereafter be construed as a reference to the Certificate of Designations as amended hereby. Except as herein otherwise specifically provided, all provisions of the Certificate of Designations shall remain in full force and effect and be unaffected hereby.

6.3 No Implied Amendment or Waiver. Except as expressly set forth in this Amendment, this Amendment shall not, by implication or otherwise, limit, impair, constitute a waiver of or otherwise affect any rights or remedies of the Arena Entities under the Certificate of Designations, or alter, modify, amend or in any way affect any of the terms, obligations or covenants contained in the Certificate of Designations, which shall continue in full force and effect. Nothing in this Amendment shall be construed to imply any willingness on the part of the Arena Entities to agree to or grant any similar or future amendment, consent or waiver of any of the terms and conditions of the Certificate of Designations.

6.4 Entire Agreement. This Amendment, together with the Certificate of Designations integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral representations and negotiations and prior writings with respect to the subject matter hereof.

6.5 Counterparts This Amendment may be executed in any number of counterparts, by different parties hereto in separate counterparts and by facsimile signature, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement. Delivery of an executed counterpart of a signature page of this Amendment by e-mail (e.g., "pdf" or "tiff") or fax transmission shall be effective as delivery of a manually executed counterpart of this Amendment.

6.6 Release of Claims. To induce the Arena Entities to agree to the terms of this Amendment, the Company hereby (i) represents and warrants that as of the date of this Amendment there are no claims or offsets against or defenses or counterclaims to its obligations under the Certificate of Designations and waives any and all such claims, offsets, defenses, or counterclaims, whether known or unknown, arising prior to the date of this Agreement and (ii) releases and forever discharges each Arena Entity, together with their respective partners, managers, parents, subsidiaries, affiliates, employees, agents, attorneys, officers, and directors (all of the foregoing hereinafter called the "Released Parties"), from any and all actions and causes of action, judgments, executions, suits, debts, claims, demands, liabilities, obligations, damages and expenses of any and every character, known or unknown, direct or indirect, at law or in equity, of whatsoever kind or nature, ***whether heretofore or hereafter accruing, for or because of any matter or things done, omitted or suffered to be done by any of the Released Parties prior to and including the date hereof to the extent in any way directly or indirectly arising out of or in any way connected to the Certificate of Designations or the Arena Entities investment in the Company or its predecessor***, (all of the foregoing hereinafter called the "Released Matters"). The Company acknowledges that the agreements in this Section are intended to cover and be in full satisfaction for all or any alleged injuries or damages arising in connection with the Released Matters herein compromised and settled. The Company understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release. The Company agrees that no fact, event, circumstance, evidence or transaction that could now be asserted or that may hereafter be discovered shall affect in any manner the final, absolute and unconditional nature of the release set forth above.

6.7 Governing Law. THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF DELAWARE WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES.

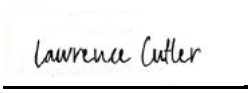
[Signature pages follow.]

IN WITNESS WHEREOF, this Amendment has been duly executed and delivered as of the date first above written.

**AMERGENT HOSPITALITY GROUP, INC.**

By: 
Name:
Title: CEO

**ARENA SPECIAL OPPORTUNITIES FUND, LP**

By: 
Name: Lawrence Cutler
Title: Authorized Signatory

**ARENA ORIGINATING CO., LLC**

By: 
Name: Lawrence Cutler
Title: Authorized Signatory

**Exhibit 10.17**

WAIVER, CONSENT AND AMENDMENT TO CERTIFICATE OF DESIGNATIONS

This WAIVER, CONSENT AND AMENDMENT TO CERTIFICATE OF DESIGNATIONS (this "Amendment") is entered into as of February 16th, 2021 (the "Effective Date"), by and among the following:

(a) Amergent Hospitality Group, Inc. a Delaware corporation (the "Company"); (b) Arena Special Opportunities Fund, LP, a Delaware limited partnership ("Opportunities Fund"); and (c) Arena Origination Co., LLC, a Delaware limited liability company ("Origination Co." and collectively with "Opportunities Fund," the "Arena Entities").

RECITALS:

A. The Arena Entities are holders of 100% of the Company's Series 2 Convertible Preferred Stock (the "Preferred Stock") issued pursuant to the terms of that certain certificate of designation setting forth the powers, preference, rights, qualifications, limitations and restrictions of such Preferred Stock as filed with the Delaware Secretary of State on April 1, 2020 and amended on August 14, 2020 (as the same may from time to time be amended, restated or otherwise modified, the "Certificate of Designations").

B. In accordance with Section 11(j) of the Certificate of Designations, the Company was required to make a true-up payment to the Arena Entities on December 10, 2020.

C. The Arena Entities orally agreed to waive the true-up payment date in anticipation of entering into this Amendment.

D. The Company has requested that the Arena Entities agree to amend the Certificate of Designations to extend the requirement for the true-up payment until April 1, 2021.

E. The Arena Entities and the Company desire to amend the Certificate of Designations to modify certain provisions thereof in accordance with, and subject to, the terms and conditions set forth herein.

AGREEMENT:

In consideration of the premises and mutual covenants herein and for other valuable consideration, the Company and the Arena Entities agree as follows:

Section 1. Definitions. Unless otherwise defined herein, each capitalized term used in this Amendment and not defined herein shall be defined in accordance with the Certificate of Designations.

Section 2. Amendment. The Certificate of Designations is hereby amended and restated to read in its entirety as set forth on Appendix 1, attached hereto and incorporated herein by this reference.

Section 3. Expenses. The Company agrees to pay on demand all expenses of the Arena Entities (including, without limitation, the fees and out-of-pocket expenses of Sheppard, Mullin, Richter & Hampton LLP, counsel to the Arena Entities) incurred in connection with the negotiation, preparation, execution and delivery of this Amendment.

Section 4. Consent. Subject to the satisfactions of the conditions set forth in Section 5 below, the Arena Entities hereby consent to the amendments to the Certificate of Designations set forth in this Amendment and the filing of an amendment as set forth in Section 5(ii) below.

Section 5. Effectiveness. This Amendment shall be effective upon the satisfaction of the following conditions:

(i) Amendment Executed. This Amendment shall have been executed by the Company and the Arena Entities.

(ii) Filing of an Amendment to the Certificate of Designations. The Company shall have filed an amendment to the Certificate of Designations with the Delaware Secretary of State.

(iii) Segregated Cash Account. The Arena Entities shall receive written confirmation that the amount set forth in the Segregated Cash Account is equal to $850,000.00.

Section 6. Miscellaneous.

6.1 Representations and Warranties. The Company, by signing below, hereby represents and warrants to each Arena Entity that:

(i) the Company has the legal power and authority to execute and deliver this Amendment;

(ii) the officer executing this Amendment on behalf of the Company has been duly authorized to execute and deliver the same and bind the Company with respect to the provisions hereof;

(iii) the execution and delivery hereof by the Company and the performance and observance by the Company of the provisions hereof do not violate or conflict with the organizational documents of the Company or any law applicable to the Company or result in a breach of any provision of or constitute a default under any other agreement, instrument or document binding upon or enforceable against the Company;

(iv) no Triggering Event exists under the Certificate of Designations, nor will any occur immediately after the execution and delivery of this Amendment or by the performance or observance of any provision hereof;

(v) the Segregated Cash Account is currently held in the name of Chanticleer SPE, LLC, a wholly owned subsidiary of the Company, is segregated from all other assets of the Company free and clear of any liens, charges or encumbrances of the Company and has a balance of $850,000.00 as of the date hereof; and

(vi) this Amendment constitutes a valid and binding obligation of the Company in every respect, enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors' rights or by general principles of equity limiting the availability of equitable remedies.

6.2 Certificate of Designations Unaffected. Each reference to the Certificate of Designations shall hereafter be construed as a reference to the Certificate of Designations as amended hereby. Except as herein otherwise specifically provided, all provisions of the Certificate of Designations shall remain in full force and effect and be unaffected hereby.

6.3 No Implied Amendment or Waiver. Except as expressly set forth in this Amendment, this Amendment shall not, by implication or otherwise, limit, impair, constitute a waiver of or otherwise affect any rights or remedies of the Arena Entities under the Certificate of Designations, or alter, modify, amend or in any way affect any of the terms, obligations or covenants contained in the Certificate of Designations, which shall continue in full force and effect. Nothing in this Amendment shall be construed to imply any willingness on the part of the Arena Entities to agree to or grant any similar or future amendment, consent or waiver of any of the terms and conditions of the Certificate of Designations.

6.4 Entire Agreement. This Amendment, together with the Certificate of Designations integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral representations and negotiations and prior writings with respect to the subject matter hereof.

6.5 Counterparts This Amendment may be executed in any number of counterparts, by different parties hereto in separate counterparts and by facsimile signature, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement. Delivery of an executed counterpart of a signature page of this Amendment by e-mail (e.g., "pdf" or "tiff") or fax transmission shall be effective as delivery of a manually executed counterpart of this Amendment.

6.6 Release of Claims. To induce the Arena Entities to agree to the terms of this Amendment, the Company hereby (i) represents and warrants that as of the date of this Amendment there are no claims or offsets against or defenses or counterclaims to its obligations under the Certificate of Designations and waives any and all such claims, offsets, defenses, or counterclaims, whether known or unknown, arising prior to the date of this Agreement and (ii) releases and forever discharges each Arena Entity, together with their respective partners, managers, parents, subsidiaries, affiliates, employees, agents, attorneys, officers, and directors (all of the foregoing hereinafter called the "Released Parties"), from any and all actions and causes of action, judgments, executions, suits, debts, claims, demands, liabilities, obligations, damages and expenses of any and every character, known or unknown, direct or indirect, at law or in equity, of whatsoever kind or nature, ***whether heretofore or hereafter accruing, for or because of any matter or things done, omitted or suffered to be done by any of the Released Parties prior to and including the date hereof to the extent in any way directly or indirectly arising out of or in any way connected to the Certificate of Designations or the Arena Entities investment in the Company or its predecessor***, (all of the foregoing hereinafter called the "Released Matters"). The Company acknowledges that the agreements in this Section are intended to cover and be in full satisfaction for all or any alleged injuries or damages arising in connection with the Released Matters herein compromised and settled. The Company understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release. The Company agrees that no fact, event, circumstance, evidence or transaction that could now be asserted or that may hereafter be discovered shall affect in any manner the final, absolute and unconditional nature of the release set forth above.

6.7 Governing Law. THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF DELAWARE WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES.

[Signature pages follow.]

IN WITNESS WHEREOF, this Amendment has been duly executed and delivered as of the date first above written.

**AMERGENT HOSPITALITY GROUP, INC.**

By: Michael D. Pruitt
Name: Michael D. Pruitt
Title: February 16, 2021

**ARENA SPECIAL OPPORTUNITIES FUND, LP**

By: Lawrence Cutler
Name: Lawrence Cutler
Title: Authorized Signatory

**ARENA ORIGINATING CO., LLC**

By: Lawrence Cutler
Name: Lawrence Cutler
Title: Authorized Signatory

**APPENDIX 1**

**AMERGENT HOSPITALITY GROUP, INC.**

**SECOND AMENDED AND RESTATED CERTIFICATE OF DESIGNATION OF SERIES 2 CONVERTIBLE PREFERRED STOCK, SETTING FORTH THE POWERS, PREFERENCES, RIGHTS, QUALIFICATIONS, LIMITATIONS AND RESTRICTIONS OF SUCH SERIES OF PREFERRED STOCK**

Pursuant to Section 151 of the Delaware General Corporation Law ("DGCL"), Amergent Hospitality Group, Inc., a Delaware corporation (the "Corporation"), DOES HEREBY CERTIFY:

The Certificate of Incorporation of the Corporation (the "Certificate of Incorporation") confers upon the Board of Directors of the Corporation (the "Board of Directors") the authority to provide for the issuance of shares of preferred stock in series and to establish the number of shares to be included in each such series and to fix the powers, preferences, rights, qualifications, limitations and restrictions of the shares of each such series and any qualifications, limitations or restrictions thereof. The Board of Directors previously adopted a resolution creating a series of preferred stock designated as the Series 2 Convertible Preferred Stock ("Series 2 Preferred Stock"), and the Certificate of Designations for the Series 2 Preferred Stock was filed with the Secretary of State of the State of Delaware on April 1, 2020 and amended on August 14, 2020. On February [ ], 2021, the Board of Directors approved and adopted the following resolution (this **"Certificate of Designations"** or this **"Certificate")** for purposes of amending certain provisions of the Series 2 Preferred Stock. On February [ ], 2021, the holders of 100% of the shares of Series 2 Preferred Stock then outstanding (the **"Requisite Series 2 Holders"),** voting separately as a class, approved the following resolution to amend the Certificate of Designations for the Series 2 Preferred Stock:

RESOLVED that, pursuant to the authority vested in the Board of Directors in accordance with the provisions of the Certificate of Incorporation, and in accordance with the provisions of the Certificate of Incorporation and the DGCL, the Certificate of Designations for the Series 2 Preferred Stock shall, subject to approval of the Requisite Series 2 Holders, be amended and the designation and amount thereof and the voting powers, preferences and relative, participating, optional and other special rights of the shares of such series and the qualifications, limitations or restrictions thereof are as follows:

Section 1. Definitions. For the purposes hereof, the following terms shall have the following meanings:

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act.

"Alternate Consideration" shall have the meaning set forth in Section 7(e).

"Bankruptcy Event" means any of the following events: (a) the Corporation or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation S-X) thereof commences a case or other proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction relating to the Corporation or any Significant Subsidiary thereof, (b) there is commenced against the Corporation or any Significant Subsidiary thereof any such case or proceeding that is not dismissed within 60 days after commencement, (c) the Corporation or any Significant Subsidiary thereof is adjudicated insolvent or bankrupt or any order of relief or other order approving any such case or proceeding is entered, (d) the Corporation or any Significant Subsidiary thereof suffers any appointment of any custodian or the like for it or any substantial part of its property that is not discharged or stayed within 60 calendar days after such appointment, (e) the Corporation or any Significant Subsidiary thereof makes a general assignment for the benefit of creditors, (f) the Corporation or any Significant Subsidiary thereof calls a meeting of its creditors with a view to arranging a composition, adjustment or restructuring of its debts, or (g) the Corporation or any Significant Subsidiary thereof, by any act or failure to act, expressly indicates its consent to, approval of or acquiescence in any of the foregoing or takes any corporate or other action for the purpose of effecting any of the foregoing.

"Base Conversion Price" shall have the meaning set forth in Section 7(b).

"Beneficial Ownership Limitation" shall have the meaning set forth in Section 6(d).

"Business Day" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"Buy-In" shall have the meaning set forth in Section 6(c)(iv).

"Change of Control Transaction" means the occurrence after the date hereof of any of (a) an acquisition after the date hereof by an individual or legal entity or "group" (as described in Rule 13d5(b)(1) promulgated under the Exchange Act) of effective control (whether through legal or beneficial ownership of capital stock of the Corporation, by contract or otherwise) of in excess of 33% of the voting securities of the Corporation (other than by means of conversion or exercise of Preferred Stock and the Securities issued together with the Preferred Stock), (b) the Corporation merges into or consolidates with any other Person, or any Person merges into or consolidates with the Corporation and, after giving effect to such transaction, the stockholders of the Corporation immediately prior to such transaction own less than 66% of the aggregate voting power of the Corporation or the successor entity of such transaction, (c) the Corporation sells or transfers all or substantially all of its assets to another Person and the stockholders of the Corporation immediately prior to such transaction own less than 66% of the aggregate voting power of the acquiring entity immediately after the transaction, (d) a replacement at one time or within a one year period of more than one-half of the members of the Board of Directors which is not approved by a majority of those individuals who are members of the Board of Directors on the Original Issue Date (or by those individuals who are serving as members of the Board of Directors on any date whose nomination to the Board of Directors was approved by a majority of the members of the Board of Directors who are members on the Original Issue Date), or (e) the execution by the Corporation of an agreement to which the Corporation is a party or by which it is bound, providing for any of the events set forth in clauses (a) through (d) above.

"Chanticleer Conversion Shares" means any shares of Chanticleer Holdings Inc. held by the Original Holders as of the date of the Original Closing Date.

"Closing Date" means February 7, 2020.

"Closing Price" means on any particular date (a) the last reported closing bid price per share of Common Stock on such date on the Trading Market (as reported by Bloomberg L.P. at 4:15 p.m. (New York City time)), (b) if there is no such price on such date, then the closing bid price on the Trading Market on the date nearest preceding such date (as reported by Bloomberg L.P. at 4:15 p.m. (New York City time)), (c) if the Common Stock is not then listed or quoted on a Trading Market and if prices for the Common Stock are then reported in the "pink sheets" published by Pink OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) if the shares of Common Stock are not then publicly traded the fair market value as of such date of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the shares then outstanding and reasonably acceptable to the Corporation, the fees and expenses of which shall be paid by the Corporation. "Commission" means the United States Securities and Exchange Commission.

"Common Stock" means the Corporation's common stock, par value $0.0001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed.

"Common Stock Equivalents" means any securities of the Corporation or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

"Conversion Amount" means the sum of the Stated Value at issue.

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

"Conversion Price" shall have the meaning set forth in Section 6(b).

"Conversion Shares" means, collectively, the shares of Common Stock issuable upon conversion of the shares of Preferred Stock in accordance with the terms hereof.

"Dilutive Issuance" shall have the meaning set forth in Section 7(b).

"Dilutive Issuance Notice" shall have the meaning set forth in Section 7(b).

"Equity Conditions" means, during the period in question, (a) the Corporation shall have duly honored all conversions scheduled to occur or occurring by virtue of one or more Notices of Conversion of the applicable Holder on or prior to the dates so requested or required, if any, (b) the Corporation shall have paid all liquidated damages and other amounts owing to the applicable Holder in respect of the Preferred Stock, (c)(i) there is an effective registration statement pursuant to which either (A) the Corporation may issue Conversion Shares or (B) the Original Holders are permitted to utilize the prospectus thereunder to resell all of the shares of Common Stock issuable pursuant to the Transaction Documents (and the Corporation believes, in good faith, that such effectiveness will continue uninterrupted for the foreseeable future) or (ii) all of the Conversion Shares issuable pursuant to the Transaction Documents (and shares issuable in lieu of cash payments of dividends) may be resold pursuant to Rule 144 without volume or manner-of- sale restrictions or current public information requirements as determined by the counsel to the Corporation as set forth in a written opinion letter to such effect, addressed and acceptable to the Transfer Agent and the affected Holders or (iii) all of the Conversion Shares may be issued to the Holder pursuant to Section 3(a)(9) of the Securities Act and immediately resold without restriction, (d) the Common Stock is trading on a Trading Market and all of the shares issuable pursuant to the Transaction Documents are listed or quoted for trading on such Trading Market (and the Corporation believes, in good faith, that trading of the Common Stock on a Trading Market will continue uninterrupted for the foreseeable future), (e) there is a sufficient number of authorized, but unissued and otherwise unreserved, shares of Common Stock for the issuance of all of the shares then issuable pursuant to the Transaction Documents, (f) there is no existing Triggering Event and no existing event which, with the passage of time or the giving of notice, would constitute a Triggering Event, (g) the issuance of the shares in question (or, in the case of a redemption, the shares issuable upon conversion in full of the redemption amount) to the applicable Holder would not violate the limitations set forth in Section 6(d) and Section 6(e) herein, (h) there has been no public announcement of a pending or proposed Fundamental Transaction or Change of Control Transaction that has not been consummated, (i) the applicable Holder is not in possession of any information provided by the Corporation, any of its Subsidiaries, or any of their officers, directors, employees, agents or Affiliates, that constitutes, or may constitute, material non-public information.

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

"Exempt Issuance" means the issuance of (a) shares of Common Stock or options to employees, officers or directors of the Corporation pursuant to any stock or option plan duly adopted by a majority of the non-employee members of the Board of Directors of the Corporation or a majority of the members of a committee of non-employee directors established for such purpose and (b) securities upon the exercise or exchange of or conversion of any securities issued to the Holders and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the Original Issue Date, provided that such securities have not been amended since the Original Issue Date to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of any such securities. "Fundamental Transaction" shall have the meaning set forth in Section 7(e).

"GAAP" means United States generally accepted accounting principles.

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

"Indebtedness" means (a) any liabilities for borrowed money or amounts owed in excess of $50,000 (other than trade accounts payable incurred in the ordinary course of business), (b) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Corporation's balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business, and (c) the present value of any lease payments in excess of $50,000 due under leases required to be capitalized in accordance with GAAP.

"Issuable Maximum" shall have the meaning set forth in Section 6(e).

"Junior Securities" means the Common Stock and all other Common Stock Equivalents of the Corporation other than those securities which are explicitly senior or pari passu to the Preferred Stock in dividend rights or liquidation preference.

"Liens" means a lien, charge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

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

"Material Adverse Effect" means a material adverse effect on (a) the business, assets, property, operations, or condition (financial or otherwise) of the Corporation, (b) the validity or enforceability of this Certificate of Designations or any of the other Transaction Documents or (c) the rights or remedies of the Holder hereunder.

"New York Courts" shall have the meaning set forth in Section 11(d).

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

"Original Holders" means the Holders of the Preferred Stock as of the Second Amendment Filing Date"

"Original Issue Date" means March 31, 2020.

"Permitted Indebtedness" means the Indebtedness existing on the Original Issue Date and related to the restructuring of the Corporation's outstanding secured 8% debentures in the aggregate principal amount of $6,000,000.

Permitted Lien" means the individual and collective reference to the following: (a) Liens for taxes, assessments and other governmental charges or levies not yet due or Liens for taxes, assessments and other governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves (in the good faith judgment of the management of the Corporation) have been established in accordance with GAAP, (b) Liens imposed by law which were incurred in the ordinary course of the Corporation's business, such as carriers', warehousemen's and mechanics' Liens, statutory landlords' Liens, and other similar Liens arising in the ordinary course of the Corporation's business, and which (x) do not individually or in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of the Corporation and its consolidated Subsidiaries or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing for the foreseeable future the forfeiture or sale of the property or asset subject to such Lien, and (c) Liens incurred in connection with Permitted Indebtedness under clause (a) thereunder.

"Person" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

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

"Registration Rights Agreement" means the Registration Rights Agreement dated March 31, 2020 by and among the Company, the Original Holders and certain other holders of securities of the company.

"Registration Statement" means a registration statement meeting the requirements set forth in the Registration Rights Agreement and covering the resale of the Conversion Shares issuable upon conversion of the Preferred Stock as provided for in the Registration Rights Agreement.

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

"Second Amendment Filing Date" means date this Second Amended and Restated Certificate of Designations is filed with the Delaware Secretary of State.

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

"Segregated Cash Account" means $850,000.00 of cash proceeds which is held is a segregated control account for the Original Holders that is bankruptcy remote and not subject to any security interest of the Company.

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

"Stated Value" shall have the meaning set forth in Section 2, as the same may be increased pursuant to Section 3.

"Subsidiary" means any direct or indirect subsidiary of the Corporation formed or acquired after the date of the Closing Date.

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

"Trading Day" means a day on which the principal Trading Market is open for business.

"Trading Market" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE MKT, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, OTCQB or OTCQX (or any successors to any of the foregoing).

"Transaction Documents" means this Certificate of Designation, the Registration Rights Agreement with the Original Holders, all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions consummated on the Original Issue Date.

"Triggering Event" shall have the meaning set forth in Section 10(a).

"Triggering Redemption Amount" means, for each share of Preferred Stock, 125% of the Stated Value.

"Triggering Redemption Payment Date" shall have the meaning set forth in Section 10(b).

"Underlying Shares" means the shares of Common Stock issued and issuable upon conversion or redemption of the Preferred Stock in accordance with the terms of this Certificate of Designation.

"Variable Rate Transaction" means a transaction in which the Company (i) issues or sells any debt or equity securities that are convertible into, exchangeable or exercisable for, or include the right to receive additional shares of Common Stock either (A) at a conversion price, exercise price or exchange rate or other price that is based upon and/or varies with the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such debt or equity securities, or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such debt or equity security or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock or (ii) enters into, or effects a transaction under, any agreement, including, but not limited to, an equity line of credit, whereby the Company may issue securities at a future determined price. Any Purchaser shall be entitled to obtain injunctive relief against the Company to preclude any such issuance, which remedy shall be in addition to any right to collect damages.

"VWAP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported in the "Pink Sheets" published by OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Securities then outstanding and reasonably acceptable to the Corporation, the fees and expenses of which shall be paid by the Corporation.

Section 2. Designation, Amount and Par Value. The series of preferred stock shall be designated as its Series 2 Convertible Preferred Stock (the "Preferred Stock") and the number of shares so designated shall be up to 787 (which shall not be subject to increase without the written consent of all of the holders of the Preferred Stock (each, a "Holder" and collectively, the "Holders")). Each share of Preferred Stock shall have $0.0001 per share and a stated value equal to $1,000, subject to increase set forth in Section 3 below (the "Stated Value").

Section 3. Dividends. Except as otherwise required by law, no dividends shall be declared or paid on the Preferred Stock. So long as any Preferred Stock shall remain outstanding, neither the Corporation nor any Subsidiary thereof shall redeem, purchase or otherwise acquire directly or indirectly any Junior Securities except as expressly permitted by Section 10. So long as any Preferred Stock shall remain outstanding, neither the Corporation nor any Subsidiary thereof shall directly or indirectly pay or declare any dividend or make any distribution upon nor shall any distribution be made in respect of, any Junior Securities as long as any dividends due on the Preferred Stock remain unpaid, nor shall any monies be set aside for or applied to the purchase or redemption (through a sinking fund or otherwise) of any Junior Securities or shares pari passu with the Preferred Stock.

Section 4. Voting Rights. Except as otherwise provided herein or as otherwise required by law, the Preferred Stock shall have no voting rights. However, as long as any shares of Preferred Stock are outstanding, the Corporation shall not, without the approval of the Holder, the Corporation will not, among other things, (i) sell all or substantially all of its assets, merge or consolidate with another entity or voluntarily liquidate or dissolve the Corporation, (ii) alter or change the rights, preferences or privileges of the Preferred Stock, (iii) authorize or create any class of stock ranking as to dividends, redemption or distribution of assets upon a Liquidation (as defined in Section 5) senior to, or otherwise pari passu with, the Preferred Stock, (iv) amend its certificate of incorporation or other charter documents in any manner that adversely affects any rights of the Holder, (v) increase the number of authorized shares of Preferred Stock, (vi) redeem any shares of capital stock of the Corporation (other than any redemption of securities from officers or employees of the Corporation pursuant to existing contractual arrangements with such officers or employees or in connection with the termination of their employment) or (vii) enter into any agreement with respect to any of the foregoing.

Section 5. Liquidation. Upon any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary (a "Liquidation"), the Holders shall be entitled to receive out of the assets, whether capital or surplus, of the Corporation an amount equal to the sum of (a) 125% of the aggregate Stated Value of the Preferred Stock then outstanding (b) all liquidated damages and other amounts due in respect of the Preferred Stock and (iii) any Default Interest and any other fees or liquidated damages then due and owing thereon under this Certificate of Designation, for each share of Preferred Stock before any distribution or payment shall be made to the holders of any Junior Securities, and if the assets of the Corporation shall be insufficient to pay in full such amounts, then the entire assets to be distributed to the Holders shall be ratably distributed among the Holders in accordance with the respective amounts that would be payable on such shares if all amounts payable thereon were paid in full. The Corporation shall mail written notice of any such Liquidation, not less than 45 days prior to the payment date stated therein, to each Holder.

Section 6. Conversion.

a) Conversions at Option of Holder. Each share of Preferred Stock shall be convertible, at any time and from time to time from and after the Original Issue Date at the option of the Holder thereof, into that number of shares of Common Stock (subject to the limitations set forth in Section 6(d) and Section 6(e)) determined by dividing the Stated Value of such share of Preferred Stock by the Conversion Price. Holders shall effect conversions by providing the Corporation with the form of conversion notice attached hereto as Annex A (a "Notice of Conversion"). Each Notice of Conversion shall specify the number of shares of Preferred Stock to be converted, the number of shares of Preferred Stock owned prior to the conversion at issue, the number of shares of Preferred Stock owned subsequent to the conversion at issue and the date on which such conversion is to be effected, which date may not be prior to the date the applicable Holder delivers by facsimile such Notice of Conversion to the Corporation (such date, the "Conversion Date"). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion to the Corporation is deemed delivered hereunder. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. To effect conversions of shares of Preferred Stock, a Holder shall not be required to surrender the certificate(s) representing the shares of Preferred Stock to the Corporation unless all of the shares of Preferred Stock represented thereby are so converted, in which case such Holder shall deliver the certificate representing such shares of Preferred Stock promptly following the Conversion Date at issue. Shares of Preferred Stock converted into Common Stock or redeemed in accordance with the terms hereof shall be canceled and shall not be reissued.

b) Conversion Price. The conversion price for the Preferred Stock shall equal the lesser of (i) $1.00 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like) or (ii) 90% of the five day average VWAP of the Common Stock (which period ends on the Trading Day prior to the Conversion Date), subject to adjustment herein (the "Conversion Price"); *provided*, that if the amount calculated pursuant to the foregoing clause (ii) is less than $0.50 per share (subject to adjustment for forward and reverse stock splits, recapitalizations and the like), then the Conversion Price shall be $0.50 (subject to adjustment for forward and reverse stock splits, recapitalizations and the like). Notwithstanding the foregoing, no adjustment pursuant to this Certificate of Designations shall cause the Conversion Price of the Preferred Stock to be less than $0.50 per share (subject to adjustment for forward and reverse stock splits, recapitalizations and the like).

c) Mechanics of Conversion

i. Delivery of Conversion Shares Upon Conversion. Not later than two (2) Trading Days after each Conversion Date (the "Share Delivery Date"), the Corporation shall deliver, or cause to be delivered, to the converting Holder the number of Conversion Shares being acquired upon the conversion of the Preferred Stock, which Conversion Shares shall be free of restrictive legends and trading restrictions. The Corporation shall deliver the Conversion Shares electronically through the Depository Trust Company or another established clearing corporation performing similar functions.

ii. Failure to Deliver Conversion Shares. If, in the case of any Notice of Conversion, such Conversion Shares are not delivered to or as directed by the applicable Holder by the Share Delivery Date, the Holder shall be entitled to elect by written notice to the Corporation at any time on or before its receipt of such Conversion Shares, to rescind such Conversion, in which event the Corporation shall promptly return to the Holder any original Preferred Stock certificate delivered to the Corporation and the Holder shall promptly return to the Corporation the Conversion Shares issued to such Holder pursuant to the rescinded Conversion Notice.

iii. Obligation Absolute; Partial Liquidated Damages. The Corporation's obligation to issue and deliver the Conversion Shares upon conversion of Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by such Holder or any other person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to such Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Corporation of any such action that the Corporation may have against such Holder. In the event a Holder shall elect to convert any or all of the Stated Value of its Preferred Stock, the Corporation may not refuse conversion based on any claim that such Holder or any one associated or affiliated with such Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to Holder, restraining and/or enjoining conversion of all or part of the Preferred Stock of such Holder shall have been sought and obtained, and the Corporation posts a surety bond for the benefit of such Holder in the amount of 150% of the Stated Value of Preferred Stock which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to such Holder to the extent it obtains judgment. In the absence of such injunction, the Corporation shall issue Conversion Shares and, if applicable, cash, upon a properly noticed conversion. If the Corporation fails to deliver to a Holder such Conversion Shares pursuant to Section 6(c)(i) by the Share Delivery Date applicable to such conversion, the Corporation shall pay to such Holder, in cash, as liquidated damages and not as a penalty, for each $5,000 of Stated Value of Preferred Stock being converted, $50 per Trading Day (increasing to $100 per Trading Day on the third Trading Day and increasing to $200 per Trading Day on the sixth Trading Day after such damages begin to accrue) for each Trading Day after the Share Delivery Date until such Conversion Shares are delivered or Holder rescinds such conversion. Nothing herein shall limit a Holder's right to pursue actual damages or declare a Triggering Event pursuant to Section 10 hereof for the Corporation's failure to deliver Conversion Shares within the period specified herein and such Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit a Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

iv. Compensation for Buy-In on Failure to Timely Deliver Conversion Shares Upon Conversion. In addition to any other rights available to the Holder, if the Corporation fails for any reason to deliver to a Holder the applicable Conversion Shares by the Share Delivery Date pursuant to Section 6(c)(i), and if after such Share Delivery Date such Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by such Holder of the Conversion Shares which such Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "Buy-In"), then the Corporation shall (A) pay in cash to such Holder (in addition to any other remedies available to or elected by such Holder) the amount, if any, by which (x) such Holder's total purchase price (including any brokerage commissions) for the Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that such Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) at the option of such Holder, either reissue (if surrendered) the shares of Preferred Stock equal to the number of shares of Preferred Stock submitted for conversion (in which case, such conversion shall be deemed rescinded) or deliver to such Holder the number of shares of Common Stock that would have been issued if the Corporation had timely complied with its delivery requirements under Section 6(c)(i). For example, if a Holder purchases shares of Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted conversion of shares of Preferred Stock with respect to which the actual sale price of the Conversion Shares (including any brokerage commissions) giving rise to such purchase obligation was a total of $10,000 under clause (A) of the immediately preceding sentence, the Corporation shall be required to pay such Holder $1,000. The Holder shall provide the Corporation written notice indicating the amounts payable to such Holder in respect of the Buy-In and, upon request of the Corporation, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to timely deliver the Conversion Shares upon conversion of the shares of Preferred Stock as required pursuant to the terms hereof.

v. Reservation of Shares Issuable Upon Conversion. The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Preferred Stock and payment of dividends on the Preferred Stock, each as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and the other holders of the Preferred Stock), not less than such aggregate number of shares of the Common Stock as shall be issuable (taking into account the adjustments and restrictions of Section 7) upon the conversion of the then outstanding shares of Preferred Stock and payment of dividends hereunder. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable.

vi. Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Preferred Stock. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such conversion, the Corporation shall at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Conversion Price or round up to the next whole share.

vii. Transfer Taxes and Expenses. The issuance of Conversion Shares on conversion of this Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holders of such shares of Preferred Stock and the Corporation shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid. The Corporation shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Conversion Shares.

d) Beneficial Ownership Limitation. The Corporation shall not effect any conversion of the Preferred Stock, and a Holder shall not have the right to convert any portion of the Preferred Stock, to the extent that, after giving effect to the conversion set forth on the applicable Notice of Conversion, such Holder (together with such Holder's Affiliates, and any Persons acting as a group together with such Holder or any of such Holder's Affiliates (such Persons, "Attribution Parties")) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon conversion of the Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Stated Value of Preferred Stock beneficially owned by such Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Corporation subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by such Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 6(d), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. To the extent that the limitation contained in this Section 6(d) applies, the determination of whether the Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and of how many shares of Preferred Stock are convertible shall be in the sole discretion of such Holder, and the submission of a Notice of Conversion shall be deemed to be such Holder's determination of whether the shares of Preferred Stock may be converted (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and how many shares of the Preferred Stock are convertible, in each case subject to the Beneficial Ownership Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Corporation each time it delivers a Notice of Conversion that such Notice of Conversion has not violated the restrictions set forth in this paragraph and the Corporation shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 6(d), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Corporation's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Corporation or (iii) a more recent written notice by the Corporation or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Corporation shall within two Trading Days confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Corporation, including the Preferred Stock, by such Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of Preferred Stock held by the applicable Holder. A Holder, upon notice to the Corporation, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 6(d) applicable to its Preferred Stock provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon conversion of this Preferred Stock held by the Holder and the provisions of this Section 6(d) shall continue to apply. Any such increase in the Beneficial Ownership Limitation will not be effective until the 61$^{st}$ day after such notice is delivered to the Corporation and shall only apply to such Holder and no other Holder. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 6(d) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation contained herein or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of Preferred Stock.

Section 7. Certain Adjustments.

a) Stock Dividends and Stock Splits. If the Corporation, at any time while this Preferred Stock is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Corporation upon conversion of, or payment of a dividend on, this Preferred Stock), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 7(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Subsequent Equity Sales. If, at any time while this Preferred Stock is outstanding, the Corporation or any Subsidiary, as applicable sells or grants any option to purchase or sells or grants any right to reprice, or otherwise disposes of or issues (or announces any sale, grant or any option to purchase or other disposition), any Common Stock or Common Stock Equivalents entitling any Person to acquire shares of Common Stock at an effective price per share that is lower than the then Conversion Price (such lower price, the "Base Conversion Price" and such issuances, collectively, a "Dilutive Issuance") (if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive shares of Common Stock at an effective price per share that is lower than the Conversion Price, such issuance shall be deemed to have occurred for less than the Conversion Price on such date of the Dilutive Issuance), then the Conversion Price shall be reduced to equal the Base Conversion Price and only reduced to equal the Base Share Price and the number of Conversion Shares issuable hereunder shall be increased such that the aggregate Conversion Price payable hereunder, after taking into account the decrease in the Conversion Price, shall be equal to the aggregate Conversion Price prior to such adjustment. Such adjustment shall be made whenever such Common Stock or Common Stock Equivalents are issued. Notwithstanding the foregoing, no adjustment will be made under this Section 7(b) in respect of an Exempt Issuance. If the Corporation enters into a Variable Rate Transaction, despite the prohibition set forth herein, the Corporation shall be deemed to have issued Common Stock or Common Stock Equivalents at the lowest possible conversion price at which such securities may be converted or exercised. The Corporation shall notify the Holders in writing, no later than the Trading Day following the issuance of any Common Stock or Common Stock Equivalents subject to this Section 7(b), indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the "Dilutive Issuance Notice"). For purposes of clarification, whether or not the Corporation provides a Dilutive Issuance Notice pursuant to this Section 5(b), upon the occurrence of any Dilutive Issuance, the Holder is entitled to receive a number of Conversion Shares based upon the Base Conversion Price on or after the date of such Dilutive Issuance, regardless of whether the Holder accurately refers to the Base Conversion Price in the Notice of Conversion.

c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 7(a) above, if at any time the Corporation grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder of will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of such Holder's Preferred Stock (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

d) Pro Rata Distributions. During such time as this Preferred Stock is outstanding, if the Corporation shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Preferred Stock, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Preferred Stock (without regard to any limitations on conversion hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

e) Fundamental Transaction. If, at any time while this Preferred Stock is outstanding, (i) the Corporation, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Corporation with or into another Person, (ii) the Corporation, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Corporation, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Corporation, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent conversion of this Preferred Stock, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction (without regard to any limitation in Section 6(d) and Section 6(e) on the conversion of this Preferred Stock), the number of shares of Common Stock of the successor or acquiring corporation or of the Corporation, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Preferred Stock is convertible immediately prior to such Fundamental Transaction (without regard to any limitation in Section 6(d) and Section 6(e) on the conversion of this Preferred Stock). For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders' right to convert such preferred stock into Alternate Consideration. The Corporation shall cause any successor entity in a Fundamental Transaction in which the Corporation is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Corporation under this Certificate of Designation and the other Transaction Documents in accordance with the provisions of this Section 7(e) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the holder of this Preferred Stock, deliver to the Holder in exchange for this Preferred Stock a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Preferred Stock which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Preferred Stock (without regard to any limitations on the conversion of this Preferred Stock) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of this Preferred Stock immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designation and the other Transaction Documents referring to the "Corporation" shall refer instead to the Successor Entity), and may exercise every right and power of the Corporation and shall assume all of the obligations of the Corporation under this Certificate of Designation and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Corporation herein.

f) Calculations. All calculations under this Section 7 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 7, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

g) Notice to the Holders.

i. Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 7, the Corporation shall promptly deliver to each Holder by facsimile or email a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Conversion by Holder. If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, then, in each case, the Corporation shall cause to be filed at each office or agency maintained for the purpose of conversion of this Preferred Stock, and shall cause to be delivered by facsimile or email to each Holder at its last facsimile number or email address as it shall appear upon the stock books of the Corporation, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non- public information regarding the Corporation or any of the Subsidiaries, the Corporation shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to convert the Conversion Amount of this Preferred Stock (or any part hereof) during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 8. Intentionally Omitted.

Section 9. Negative Covenants. As long as any shares of Preferred Stock are outstanding, unless the holders of the then outstanding shares of Preferred Stock shall have otherwise given prior written consent, the Corporation shall not, and shall not permit any of the Subsidiaries to, directly or indirectly:

a) other than Permitted Indebtedness, enter into, create, incur, assume, guarantee or suffer to exist any indebtedness for borrowed money of any kind, including but not limited to, a guarantee, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

b) other than Permitted Liens, enter into, create, incur, assume or suffer to exist any Liens of any kind, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

c) amend its charter documents, including, without limitation, its certificate of incorporation and bylaws, in any manner that materially and adversely affects any rights of the Holder;

d) repay, repurchase or offer to repay, repurchase or otherwise acquire more than a de minimis number of shares of its Common Stock, Common Stock Equivalents or Junior Securities, other than as to (i) the Conversion Shares and (ii) repurchases of Common Stock or Common Stock Equivalents of departing officers and directors of the Corporation, provided that such repurchases shall not exceed an aggregate of $100,000 for all officers and directors for so long as the Preferred Stock is outstanding;

e) pay cash dividends or distributions on Junior Securities of the Corporation;

f) enter into any transaction with any Affiliate of the Corporation which would be required to be disclosed in any public filing with the Commission, unless such transaction is made on an arm's-length basis and expressly approved by a majority of the disinterested directors of the Corporation (even if less than a quorum otherwise required for board approval); or

g) enter into any agreement with respect to any of the foregoing.

Section 10. Redemption Upon Triggering Events.

a) "Triggering Event" means, wherever used herein any of the following events (whatever the reason for such event and whether such event shall be voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court, or any order, rule or regulation of any administrative or governmental body):

i. if the Corporation fails to provide at all times after the effective date the Registration Statement or usable prospectus that permits the Corporation to issue the Conversion Shares or which allows the Original Holder to sell the Conversion Shares pursuant thereto, subject to a grace period of 20 calendar days in the aggregate in any 365-day period or the Corporation cannot issue the Conversion Shares pursuant to Section 3(a)(9) of the Securities Act;

ii. the Corporation shall fail to deliver Conversion Shares issuable upon a conversion hereunder that comply with the provisions hereof prior to the fifth Trading Day after such shares are required to be delivered hereunder, or the Corporation shall provide written notice to any Holder, including by way of public announcement, at any time, of its intention not to comply with requests for conversion of any shares of Preferred Stock in accordance with the terms hereof;

iii. the Corporation shall fail for any reason to pay in full the amount of cash due pursuant to a Buy-In within five calendar days after notice therefor is delivered hereunder;

iv. the Corporation shall fail to have available a sufficient number of authorized and unreserved shares of Common Stock to issue to such Holder upon a conversion hereunder;

v. unless specifically addressed elsewhere in this Certificate of Designation as a Triggering Event, the Corporation shall fail to observe or perform any other covenant, agreement or warranty contained in, or otherwise commit any breach of the Transaction Documents, and such failure or breach shall not, if subject to the possibility of a cure by the Corporation, have been cured within 30 calendar days after the date on which written notice of such failure or breach shall have been delivered;

vi. the Corporation shall redeem more than a de minimis number of Junior Securities other than as to repurchases of Common Stock or Common Stock Equivalents from departing officers and directors, provided that, while any of the Preferred Stock remains outstanding, such repurchases shall not exceed an aggregate of $100,000 from all officers and directors;

vii. the Corporation shall be party to a Change of Control Transaction;

viii. there shall have occurred a Bankruptcy Event;

ix. the Corporation experiences a Material Adverse Effect;

x. the Common Stock shall fail to be listed or quoted for trading on a Trading Market for more than five Trading Days, which need not be consecutive Trading Days;

xi. any monetary judgment, writ or similar final process shall be entered or filed against the Corporation, any subsidiary or any of their respective property or other assets for more than $100,000, and such judgment, writ or similar final process shall remain unvacated, unbonded or unstayed for a period of 45 calendar days;

xii. any representation or warranty made in this Certificate of Designations,, any other Transaction Documents, any written statement pursuant hereto or thereto or any other report, financial statement or certificate made or delivered to the Holder or any other Holder shall be untrue or incorrect in any material respect as of the date when made or deemed made;

xiii. the electronic transfer by the Corporation of shares of Common Stock through the Depository Trust Company or another established clearing corporation is no longer available or is subject to a "chill";

xiv. the Corporation fails to file with the Commission any required reports under Section 13 or 15(d) of the Exchange Act such that it is not in compliance with Rule 144(c)(1) (or Rule 144(i)(2), if applicable);

xv. the occurrence of any levy upon or seizure or attachment of, or any uninsured loss of or damage to, any property of the Corporation or any Subsidiary having an aggregate fair value or repair cost (as the case may be) in excess of $100,000 individually or in the aggregate, and any such levy, seizure or attachment shall not be set aside, bonded or discharged within forty-five (45) days after the date thereof;

xvi. enter into a Variable Rate Transaction;

xvii. any attempt by the Borrower or its officers, directors, and/or affiliates to transmit, convey, disclose, or any actual transmittal, conveyance, or disclosure by the Borrower or its officers, directors, and/or affiliates of, material non-public information concerning the Borrower, to the Holder or its successors and assigns, which is not immediately cured by Borrower's filing of a Form 8-K pursuant to Regulation FD on that same date;

xviii. If, at any time on or after the date which is six (6) months after the Original Issue Date, the Holder is unable to (i) obtain a standard "144 legal opinion letter" from an attorney reasonably acceptable to the Holder, the Holder's brokerage firm (and respective clearing firm), and the Borrower's transfer agent in order to facilitate the Holder's conversion of any portion of the Note into free trading shares of the Borrower's Common Stock pursuant to Rule 144, and/or (ii) thereupon deposit such shares into the Holder's brokerage account;

xix. if either (a) the effectiveness of the Registration Statement lapses for any reason or (b) the Holder shall not be permitted to resell Registrable Securities (as defined in the Registration Rights Agreement) under the Registration Statement for a period of more than 20 consecutive Trading Days or 30 non-consecutive Trading Days during any 12 month period; provided, however, that if the Corporation is negotiating a merger, consolidation, acquisition or sale of all or substantially all of its assets or a similar transaction and, in the written opinion of counsel to the Corporation, the Registration Statement would be required to be amended to include information concerning such pending transaction(s) or the parties thereto which information is not available or may not be publicly disclosed at the time, the Corporation shall be permitted an additional 10 consecutive Trading Days during any 12 month period pursuant to this Section;

xxi. the Corporation fails to pay the True Up Amount when due;

b) Upon the occurrence of a Triggering Event, the Holder shall (in addition to all other rights it may have hereunder or under applicable law) have the right, exercisable at the sole option of such Holder, to require the Corporation to redeem all of the Preferred Stock then held by such Holder for a redemption price, equal the Triggering Redemption Amount. The Triggering Redemption Amount, shall be due and payable within three Trading Days of the date on which the notice for the payment therefor is provided by a Holder (the "Triggering Redemption Payment Date"). If the Company shall fail for any reason to pay in full the Triggering Redemption Amount hereunder on the date such amount is due in accordance with this Section then, in addition to Holder's other available remedies, the Company shall pay to the Holder, in cash, as partial liquidated damages and not as a penalty, by reason of any such delay in or reduction of its ability to, among other things, sell the Securities, an amount in cash equal to ten percent (10.0%) of the aggregate Stated Value of such Holder's Preferred Stock on the first Business Day after the Triggering Redemption Payment Date and on every thirtieth ($30^{th}$) day (pro rated for periods totaling less than thirty days) thereafter until the earlier of (a) the date such Triggering Redemption Amount, plus all such interest thereon, is paid in full. In addition, if the Corporation fails to pay in full the Triggering Redemption Amount and all other amounts set forth in this Section hereunder on the date such amount is due in accordance with this Section, the Corporation will pay interest thereon at a rate equal to the lesser of 18% per annum or the maximum rate permitted by applicable law, accruing daily from such date until the Triggering Redemption Amount, plus all such interest and liquidated damages thereon, is paid in full. For purposes of this Section, a share of Preferred Stock is outstanding until such date as the applicable Holder shall have received Conversion Shares upon a conversion (or attempted conversion) thereof that meets the requirements hereof or has been paid the Triggering Redemption Amount in cash.

Section 11. Miscellaneous.

a) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Conversion, shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service, addressed to the Corporation, at the address set forth above **Attention:** Chief Financial Officer, facsimile number 704- 366-2463, or such other facsimile number or address as the Corporation may specify for such purposes by notice to the Holders delivered in accordance with this Section 11. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number or address of such Holder appearing on the books of the Corporation, or if no such facsimile number or address appears on the books of the Corporation, at the principal place of business of such Holder. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

b) Absolute Obligation. Except as expressly provided herein, no provision of this Certificate of Designation shall alter or impair the obligation of the Corporation, which is absolute and unconditional, to pay liquidated damages, accrued dividends and accrued interest, as applicable, on the shares of Preferred Stock at the time, place, and rate, and in the coin or currency, herein prescribed.

c) Lost or Mutilated Preferred Stock Certificate. If a Holder's Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership hereof reasonably satisfactory to the Corporation.

d) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Certificate of Designation shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by any of the Transaction Documents (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the "New York Courts"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such New York Courts, or such New York Courts are improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Certificate of Designation and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Certificate of Designation or the transactions contemplated hereby. If any party shall commence an action or proceeding to enforce any provisions of this Certificate of Designation, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

e) Waiver. Any waiver by the Corporation, an Original Holder or a Holder (if not an Original Holder) of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation or a waiver by any other Holders. The failure of the Corporation, the Original Holders or a Holder (if not an Original Holder) to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation on any other occasion. Any waiver by the Corporation, the Original Holders or a Holder (if not an Original Holder) must be in writing.

f) Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

g) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

h) Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

i) Status of Converted or Redeemed Preferred Stock. If any shares of Preferred Stock shall be converted, redeemed or reacquired by the Corporation, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Class 2 Preferred Stock.

j) True-Up.

i. In the event that the proceeds received by the Original Holders from the sale of all the Preferred Stock, Conversion Shares, shares of the Common Stock of the Corporation received by the Original Holders in connection with the spinoff of the Corporation from Sonnet Biotherapeutics Holdings, Inc. (f/k/a Chanticleer Holdings, Inc.) (the "Spinoff Shares") and the proceeds of the Chanticleer Conversion Shares do not equal at least $1,875,000 on April 1, 2021 (the "True-Up Payment Date"), the Corporation shall pay the Holder an amount in cash (the "True-Up Payment") equal to $1,875,000 less the proceeds previously realized by the Original Holders from the sale of the Preferred Stock, the Conversion Shares, the Spinoff Shares and Chanticleer Conversion Shares, net of brokerage commissions and any other fees incurred by Holder in connection with the sale of any Conversion Shares ("Net Proceeds"). For purposes of clarity, Net Proceeds shall not include any proceeds received by the Original Holders upon the receipt of any shares of Common Stock of the Corporation issued upon exercise of warrants of the Corporation held by the Original Holders or any shares of Common Stock of the Corporation held or acquired by Original Holders which are not Spinoff Shares.

ii. The True-Up Payment will be paid by Corporation out of either (i) the proceeds from the exercise by Corporation of existing warrants to purchase shares of the common stock of Sonnet Biotherapeutics Holdings, Inc. (f/k/a Chanticleer Holdings, Inc.) held by Corporation or (ii) the Segregated Cash Account. If any portion of the True-Up Payment has not been paid by Corporation, on the True-Up Payment Date, interest shall accrue on such unpaid amount until such amount is paid in full at a rate equal to the lesser of (i) 18% per annum or (ii) the maximum rate permitted by applicable law. Upon payment in full of the True-Up Payment and all unpaid liquidated damages and other amounts due in respect of the Preferred Stock, any portion of the Segregated Cash Account not used to pay the True-Up Payment will be transferred to the Corporation and any remaining outstanding shares of Preferred Stock held by the Original Holders will be cancelled with no further obligations of the Corporation to the Original Holders thereunder, without any further action on behalf of the Corporation, Original Holders or the Holders.

iii. The Segregated Cash Account will be maintained until the True-Up Payment is paid in full.

IN WITNESS WHEREOF, the undersigned has executed this Certificate on February [ ], 2021.

AMERGENT HOSPITALITY GROUP, INC.

By: _____
Name: Michael D. Pruitt
Title: Chief Executive Officer

**ANNEX A**

NOTICE OF CONVERSION

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

The undersigned hereby elects to convert the number of shares of Series 2 Convertible Preferred Stock indicated below into shares of common stock, par value $0.0001 per share (the "Common Stock"), of Amergent Hospitality Group Inc., a Delaware corporation (the "Corporation"), according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and opinions as may be required under applicable laws. No fee will be charged to the Holders for any conversion, except for any such transfer taxes.

Conversion calculations:

Date to Effect Conversion: _____

Number of shares of Preferred Stock owned prior to Conversion: _____

Number of shares of Preferred Stock to be Converted: _____

Stated Value of shares of Preferred Stock to be Converted: _____

Number of shares of Common Stock to be Issued: _____

Applicable Conversion Price: _____

Number of shares of Preferred Stock subsequent to Conversion: _____

Address for Delivery:_____

or

DWAC Instructions:_____

Broker no: _____

Account no: _____

HOLDER

By: _____
Name:
Title:

**OFFER AND EMPLOYMENT AGREEMENT**

This Offer and Employment Agreement ("Agreement") is made this 4th day of February 2021, by and between **Amergent Hospitality Group, Inc.** (hereinafter called "Amergent") and **Stephen Hoelscher** (hereinafter called "Hoelscher").

**RECITALS:**

WHEREAS, Amergent desires to employ Hoelscher as Chief Financial Officer and Hoelscher desires to accept Amergent's offer of employment; and

WHEREAS, Hoelscher and Amergent desire for Hoelscher's employment to be terminable at-will; and

WHEREAS Amergent understands and acknowledges that Hoelscher has served and will continue during his employment with Amergent to serve as an employee, officer, member, and/or manager of other companies, including without limitation Mastodon Ventures, Inc., and Oz Rey, LLC, which is a lender and creditor and warrant holder of Amergent; and

WHEREAS Amergent and Hoelscher to commemorate the terms under which Hoelscher will accept at-will employment with Amergent.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. **Employment.** Amergent has employed Hoelscher as its Chief Financial Officer effective January 19, 2021.
2. **At-Will Employment.** This Agreement does not constitute a contract of employment for any specific period of time Hoelscher's employment with Amergent is terminable at-will, meaning that either Hoelscher or Amergent may terminate Hoelscher's employment at any time with or without cause and with or without advance notice.
3. **Compensation and Benefits.** Amergent agrees to pay Hoelscher at a salary rate of $120,000.00 (one hundred twenty thousand and xx/100 dollars) per year. In addition, Amergent agrees to offer Hoelscher participation in any stock option, restricted stock or other equity or incentive compensation programs on terms reasonable comparable to other similarly-situation executive officers of Amergent, either in existence currently or that may hereafter be instituted. In addition, Hoelscher shall be provided with the opportunity to elect such health, dental, insurance and other benefits as are made available to executive officers.
4. **Bonus.** For each calendar year during which Hoelscher is employed by Amergent, including partial calendar year 2021, Amergent agrees to provide Hoelscher with an

opportunity to earn a bonus of $30,000.00 (thirty thousand and xx/100 dollars) based on metrics reasonably established by Amergent's Board of Directors.

5. **Other Employment and Activites.** Amergent acknowledges that Hoelscher currently serves in a variety of capacities for companies other than Amergent. Amergent and Hoelscher represent and acknowledge that Hoelscher intends to continue to serve in those capacities and similar capacities during Hoelscher's employment with Amergent. For example, and not by way of limitation, the parties acknowledge and agree that Hoelscher currently serves and intends to continue serving for entities whose majority principal is Robert Hersch (a related party) including as (a) A Manager and also the Chief Financial Officer of Oz Rey, LLC, which is a creditor of Amergent and holds common stock and warrants in Amergent; (b) as Chief Financial Officer in Mastodon Ventures, Inc.; and (c) as Manager and Chief Financial Officer of MV Amanth LLC and its subsidiaries. Amergent acknowledges and agrees that Hoelscher will continue to engage in these positions with related parties. Hoelscher may engage in other similar positions and pursuits from time to time during his employment; provided however, Hoelscher will notify the Company in advance of accepting new positions or embarking on new pursuits.

6. **Only Agreement / No Modification.** Other than the Amergent Hospitality Group, Inc. Indemnification Agreement and the Non-Solicitation and Confidentiality Agreement by and between the parties, which remain in full force and effect, this Agreement is the only agreement between the parties. No provision of this Agreement may be amended or waived unless such amendment or waiver is in writing and signed by the parties. No amendment or waiver of any provision of this Agreement may be implied from any course of dealing between the parties or from the failure of either party to assert its rights under this Agreement on any occasion or series of occasions

7. **Texas Law. Texas Forum. Travis County, Texas Venue.** This Agreement shall be deemed to have been made under, and shall be governed by and construed and enforced in accordance with, the laws of the State of Texas. The parties agree that any dispute arising out of or relating in any way to this Agreement or to Hoelscher's employment with Amergent shall be filed and maintained only in a court of competent jurisdiction in the State of Texas, and both parties hereby consent to the jurisdiction of the courts in the State of Texas for any such dispute. This Agreement is performable in Travis County, Texas, and the parties agree that any dispute arising out of or relating in any way to this Agreement or to Hoelscher's employment with Amergent will be brought only in a court in Travis County, Texas.

8. **Executive Representations.** By accepting this Agreement, Hoelscher acknowledges and represents and warrants that he is not a party to or bound by any agreement with a third party that would or could reasonably be interpreted to prohibit or restrict him from being employed by Amergent or from performing any of his duties in the contemplated position. Hoelscher also agrees to provide Amergent with copies of all agreements relating to employment with a third party under which you he has an ongoing obligation of confidentiality, non-competition, non-solicitation, or similar restrictive covenants of whatever kind.

AGREED:

Stephen Hoelscher

Date 2/4/2021

Amergent Hospitality Group Inc.

Date February 4, 2021

By: Michael D. Pruitt

Name: Michael D. Pruitt
Its: Chief Executive Officer

## NON-SOLICITATION AND CONFIDENTIALITY AGREEMENT

This Non-Solicitation and Confidentiality Agreement ("Agreement"), effective as of February 4, 2021, is made by and between Amergent Hospitality Group Inc., a Delaware corporation ("Company"), and Stephen Hoelscher ("Employee"). In consideration of Employee's employment with the Company and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Employee agrees as follows:

1. **Background.** The Company is engaged in the business of owning, operating and franchising fast casual dining concepts domestically and internationally ("Business"). The Company owns controls and has exclusive access to Confidential and Proprietary Information (as defined in Section 2 below) concerning its operations, methods and accumulated experience incidental to the operations and development of its Business. Employee acknowledges that by executing this Agreement and by reason of Employee's employment by the Company, Employee will receive specialized training with respect to the Business and come into possession of, have knowledge of and contribute to Confidential and Proprietary Information and may establish substantial goodwill on behalf of the Company. Employee further acknowledges and agrees that the Company's Confidential and Proprietary Information is valuable, is not known to others in the relevant industry and gives the Company a substantial competitive advantage. Employee represents and acknowledges that the consideration received and to be received, is sufficient to compensate Employee for the restrictions imposed under this Agreement.

2. **Definition of "Confidential and Proprietary Information."** The term "Confidential and Proprietary Information" shall mean any and all confidential and/or proprietary knowledge, data or information of the Company. By way of illustration but not limitation, Confidential and Proprietary Information includes tangible and intangible information relating to formulations, products, processes, know-how, designs, formulas, methods, developmental or experimental work, data, drawings, worksheets, blueprints, concepts, samples, inventions, improvements, discoveries, research, marketing plans, business plans, budgets and unpublished financial statements, licenses, prices, and suppliers and customers and personnel. All Confidential and Proprietary Information owned, developed, or acquired by the Company shall remain the sole and exclusive property of the Company. Confidential and Proprietary Information also includes any information described above that the Company obtains from its clients or any other third party and that the Company treats as confidential, whether or not owned or developed by the Company.

3. **Non-Disclosure of Confidential and Proprietary Information.**

   (a) **Non-Disclosure.** At all times during and after Employee's employment, Employee will hold in strictest confidence and will not disclose, use, lecture upon or publish any of the Company's Confidential and Proprietary Information (defined in Section 2 above), except as such disclosure, use, or publication may be required in connection with Employee's work for the Company, unless recipient is party to a non-disclosure agreement with the Company or unless the Chief Executive Officer of the Company expressly authorizes such in writing (electronic mail authorization deemed sufficient).

Employee will obtain Company's written approval before publishing or submitting for publication any material (written, verbal, or otherwise) that relates to Employee's work at the Company and/or incorporates any Confidential and Proprietary Information. Employee hereby assigns to the Company any rights Employee may have or acquire in such Confidential and Proprietary Information and recognizes that all Confidential and Proprietary Information is and shall be the sole property of the Company and its assigns.

**(b)** **No Improper Use of Information of Prior Employers and Others.** During Employee's employment by the Company, Employee will not improperly use or disclose any confidential information or trade secrets, if any, of any former employer or any other person to whom Employee has an obligation of confidentiality, and Employee will not bring onto the premises of the Company any unpublished documents or any property belonging to any former employer or any other person to whom Employee has an obligation of confidentiality unless consented to in writing by that former employer or person. Employee will use in the performance of Employee's duties only information that is generally known and used by persons with training and experience comparable to Employee, that is common knowledge in the industry or otherwise legally in the public domain, or that is otherwise provided or developed by the Company.

**(c)** **Return of Company Documents.** Upon termination of Employee's employment with the Company, or upon the Company's earlier request, Employee will promptly (1) deliver to the Company any and all drawings, notes, memoranda, specifications, devices, formulas, and documents, together with all copies thereof, and any other material (whether in hard copy, digitally stored, or in any other format or medium) containing or disclosing any Confidential and Proprietary Information of the Company (and will cooperate with the Company to ensure that no electronic copies thereof have been retained in or are retrievable from any personal property not belonging to the Company), and (2) return all Company property issued to Employee or otherwise in Employee's possession or control, including, without limitation, computers and computer equipment, phones and other mobile devices, and digital storage devices. Employee further agrees that any property situated on the Company's premises and owned by the Company, including, but not limited to, disks and other storage media, filing cabinets or other work areas, is subject to inspection by the Company personnel at any time with or without notice. Prior to leaving, Employee will cooperate with the Company in completing and signing a termination statement.

**(d)** **No Interference with NLRA or Reporting Rights.** This Section 3, and all other provisions in this Agreement, are not intended to interfere with or restrain employee communications regarding wages, hours, or other terms and conditions of employment or to otherwise interfere with any rights Employee has under the National Labor Relations Act. This Section 3, and all other provisions in this Agreement, do not prohibit Employee from reporting possible legal violations to the government or from making other disclosures to the government that are protected under federal or state whistleblower provisions.

**(e)** **Defend Trade Secrets Act.** Employee is advised that pursuant to the Defend Trade Secrets Act an individual will not be held criminally or civilly liable under any federal

or state trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and (ii) solely for the purpose of reporting or investigating a suspected violation of law, or (B) is made in a complaint or other document filed in a lawsuit or other proceeding if such filing is made under seal. Further, an individual who files a lawsuit alleging retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the individual's attorney and use the trade secret information in the court proceeding if the individual (1) files any document containing the trade secret under seal and (2) does not otherwise disclose the trade secret, except pursuant to court order. Employee understands that any disclosure by Employee of the Company's trade secrets not done in good faith consistent with the above may subject Employee to substantial damages, including punitive damages and attorneys fees.

**(f)** **Legally Compelled Disclosure.** Nothing in this Agreement is intended to prohibit disclosure by Employee of information that is required to be disclosed pursuant to any applicable law, court order, or other governmental body or administrative or other agency. Employee agrees to notify the Company as promptly as reasonably practicable after Employee receives a request for any such disclosure of Confidential and Proprietary Information and agrees, upon request by the Company, to reasonably cooperate (at the Company's expense) with the Company's lawful efforts to challenge or limit such disclosure.

**4.** **Non-Solicitation.** Employee agrees to the following non-solicitation covenants during Employees employment with the Company and for one year after employment is terminated for any reason by either party:

**(a)** **Customer Non-Solicitation.** Employee shall not, whether directly or indirectly, solicit, communicate with or otherwise contact any of the Company's customers with whom Employee had material contact during Employee's employment with the Company, for the purpose of conducting any business with them which is substantially similar to the business conducted or anticipated to be conducted by the Company during Employee's employment with the Company. "Material contact" means (a) actual contact with customers—such as through the provision of services or sales visits or calls—(b) coming to know confidential information about a Company customer—such as by obtaining pricing and sales information, or (c) directing or coordinating other employees in calling, servicing, or soliciting customers.

**(b)** **Employee Non-Solicitation.** Employee shall not, directly or indirectly, solicit or induce—or encourage another entity or person to solicit or induce—any person employed by the Company or any person retained by the Company as an independent contractor with the Company to terminate an employment relationship or contract with the Company.

**(c)** **Interference with Business.** Employee shall not, whether directly or indirectly, undertake any act with the intent to disrupt, impair or interfere with the business of the Company in any way, whether by way of interfering with or disrupting its relationships with customers, agents, representatives, contractors, or suppliers, or otherwise.

(d) **Confidential Information and Trade Secret Protection.** Employee warrants that the restrictions in 4 will not prevent Employee from earning a living, and that they are necessary to protect the confidential information and/or trade secrets of the Company, as Employee's solicitation would necessarily involve Employee's use of the Company's confidential information and/or trade secrets.

5. **Protectable Interests.** Employee acknowledges and agrees that (1) complying with the restrictions contained in this Agreement will not prevent Employee from earning a living, and (2) such restrictions are necessary and reasonable (including, without limitation, with respect to geographic scope and duration) to protect the Company's valid interests (including, without limitation, relationships with customers, goodwill, the protection trade secrets and other of Confidential and Proprietary Information, protection from unfair competition, and other protectable interests).

6. **No Conflicting Obligation.** Employee represents that Employee's performance of all the terms of this Agreement and as an employee of the Company does not and will not breach any agreement to keep in confidence information acquired by Employee in confidence or in trust prior to Employee's employment by the Company. Employee represents and agrees that Employee has not entered into, and will not enter into, any agreement either written or oral in conflict herewith.

7. **Legal and Equitable Remedies.** Employee hereby agrees and acknowledges that any breach or threatened breach of this Agreement by Employee will result in irreparable harm to the Company for which there will be no adequate remedy at law. Consequently, in the event of such breach or attempted breach, the Company shall be entitled to receive an injunction, without bond and without proof of actual damages, to prevent any further breach of this Agreement by Employee and/or obtain other specific performance or equitable relief necessary to enforce the Company's rights under this Agreement, to the fullest extent permissible under applicable law, in addition to all other remedies available in law or at equity.

8. **General Provisions.**

(a) **Governing Law.** The validity, interpretation, construction and performance of this Agreement, is governed by the laws of Texas. Employee hereby expressly consents to the personal jurisdiction of the state and federal courts located in Travis County, Texas for any lawsuit filed there against Employee by the Company arising from or related to this Agreement.

(b) **Waiver.** A failure to enforce any provision of this Agreement shall not be deemed a waiver of that provision or any other provision. No waiver by either party at any time of any breach of this Agreement by the other party will be deemed a waiver of any preceding or succeeding breach nor shall it be construed as a waiver of any other provisions or conditions of this Agreement. No waiver of any provision of this Agreement shall be effective unless made in writing signed by Employee and, on behalf of the Company, by the Chief Executive Officer, and such waiver shall be

effective only in the specific instance and for the specific purpose stated in the writing. The Company shall not be required to give notice to enforce strict adherence to all terms of this Agreement.

**(c)** **Entire Agreement.** This Agreement sets forth the final, entire, and exclusive understanding of the parties with respect to the subject matter hereof and supersedes and merges all prior agreements of the parties, whether oral or written. No provision of this Agreement may be amended, modified, waived or discharged unless such amendment, modification, waiver or discharge is agreed to in writing, and is signed by Employee and, on behalf of the Company, by its Chief Executive Officer.

**(d)** **Severability; Modification.** If any provision, term, covenant or obligation of this Agreement, or its application, is held invalid, unenforceable, or unlawful, such invalidity, unenforceability or unlawfulness, shall not affect the other provisions, terms, covenants or obligations of this Agreement, or their application, which all shall remain valid and enforceable in full force and effect to the extent permitted by law. Further, if a court or other adjudicative body finds any covenant of this Agreement to be unenforceable with respect to a jurisdiction, the parties agree that the court shall amend such obligations for the protection of Company's business to the minimum extent necessary to render the provision enforceable and that the Agreement shall be enforced within such jurisdiction as so amended.

**(e)** **No Right to Employment.** Nothing in this Agreement shall be interpreted to confer to Employee any right to be employed by the Company or otherwise interfere in any way with Employee's or Company's right to terminate Employee's employment for any reason or no reason, with or without cause, in accordance with any applicable agreement and governing law.

**(f)** **Tolling.** If Employee violates the Agreement, the period of restriction as set forth above in 4 and **Error! Reference source not found.**, is tolled during any period of Employee's violation and all restrictions shall automatically be extended by a period of time equal to the period of time the Employee is in violation of any such restrictions, if the Company seeks enforcement after learning of Employee's violation.

**(g)** **Successors and Assigns.** This Agreement will be binding upon Employee's heirs, executors, administrators, and other legal representatives and will be for the benefit of the Company, its successors, and its assigns.

**(h)** **Survival.** The provisions of this Agreement shall survive the assignment of this Agreement by the Company to any successor in interest or other assignee.

**(i)** **Section Headings.** The section headings appearing in this Agreement have been inserted for the purpose of convenience and reference only and shall not limit or affect the meaning or interpretation of this Agreement in any way whatsoever.

**(j)** **Notices.** Any notices required or permitted hereunder shall be given to the appropriate party at the address specified below (or at such other address as the party shall specify in writing by notice delivered in accordance with this Section (j)). Such notice shall be deemed given upon personal delivery to the appropriate address or, if sent by certified or registered mail, 5 days after the date of mailing.

**(k) Notification of New Employer.** In the event that Employee leaves the employ of the Company, to the extent permitted by law, Employee hereby consents to the notification of Employee's new employer of Employee's rights and obligations under this Agreement and acknowledges that Company may send a copy or a redacted copy of this Agreement to Employee's new employer. Employee has carefully read the Agreement and understands and accepts all of its terms.

The parties have duly executed this Agreement effective as of the Effective Date.

ACCEPTED AND AGREED TO:

Stephen Hoelscher

Dated: 2/4/2021

ACCEPTED AND AGREED TO:

Amergent Hospitality Group Inc., a Delaware corporation

By: Michael D. Pruitt
Name: Michael D. Pruitt
Its: Chief Executive Officer

Dated: February 4, 2021

**Exhibit 14.1**

**PRINCIPAL EXECUTIVE AND SENIOR FINANCIAL OFFICERS CODE OF ETHICS**

1. **Covered Officers/Purpose of the Code.** This Code of Ethics (the "Code") for AMERGENT HOSPITALITY GROUP INC. (the "Company") applies to the Chief Executive Officer, Chief Financial Officer and Chief Accounting Officer (the "Covered Officers") and those performing similar functions, for the purpose of promoting:

   - honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
   - full, fair, accurate, timely and understandable disclosure in reports and documents that the Company files with, or submits to, the Securities and Exchange Commission ("SEC"), and in other public communications made by the Company;
   - compliance with applicable laws and governmental rules and regulations;
   - prompt internal reporting of violations of the Code to an appropriate person or persons identified in the Code; and
   - accountability for adherence to the Code.

   Each Covered Officer should adhere to a high standard of business ethics and should be sensitive to situations that may give rise to actual as well as apparent conflicts of interest.

2. **Administration of the Code.** The Code shall be administered by the Chief Financial Officer (the "Code Officer"). In the absence of the Code Officer, his or her designee shall serve as the Code Officer, but only on a temporary basis.

3. **Actual and Apparent Conflicts of Interest. Overview.** A "conflict of interest" occurs when a Covered Officer's private interest interferes with the interests of, or his/her service to, the Company. For example, a conflict of interest would arise if a Covered Officer, or a family member, receives improper personal benefits as a result of the Covered Officer's position with the Company.

   The following list provides examples of conflicts of interest under the Code, but these examples are not exhaustive. The overarching principle is that the personal interest of a Covered Officer should not be placed improperly before the interest of the Company.

   Each Covered Officer must:

   - not use personal influence or personal relationships improperly to influence investment decisions or financial reporting by the Company particularly where the Covered Officer or a family member would benefit personally to the detriment of the Company;
   - not cause the Company to take action, or fail to take action, for the personal benefit of the Covered Officer or a family member rather than the benefit of the Company;

- not retaliate against any other Officer or any employee of the Company or their affiliated persons for reports of potential violations that are made in good faith; and

- not use material non-public knowledge of portfolio transactions made or contemplated by the Company to trade personally or cause others to trade personally in contemplation of the market effect of such transactions.

There are some potential conflict of interest situations that must be approved by the Code Officer, after consultation with legal counsel. Those situations include, but are not limited to:

- service as director on the board of any public for-profit company; and

- any ownership interest in, or any consulting or employment relationship with, any supplier, vendor or customer of the Company.

There are some potential conflict of interest situations that should be discussed with the Code Officer, if material. Those situations include, but are not limited to:

- receipt of any gift of more than nominal value, a cash payment in any amount, a preferred personal investment opportunity, or other thing of more than de minimis value from any person or entity that does business, or is seeking to do business with the Company; and

- receipt of any entertainment from any company with which the Company has current or prospective business dealings, unless such entertainment is business-related, reasonable in cost, appropriate as to time and place, and not so frequent as to raise any question of impropriety.

It is not the intent of this Code to prohibit the ordinary courtesies of business life, such as token gifts or modest entertainment incidental to a business relationship.

**4. Disclosure and Compliance.** Each Covered Officer should:

- be familiar with the laws and regulations generally applicable to the Company;

- not knowingly misrepresent, or cause others to misrepresent, facts about the Company to others, whether within or outside the Company, including to the directors and auditors, whether internal or external, and to governmental regulators and self-regulatory organizations;

- to the extent appropriate within his/her area of responsibility, consult with other officers and employees of the Company with the goal of promoting full, fair, accurate, timely and understandable disclosure in the reports and documents filed with, or submitted to, the SEC or other governmental authorities and in other public communications made by the Company; and

- promote compliance with the standards and restrictions imposed by applicable laws, rules and regulations.

5. **Reporting and Accountability.** Each Covered Officer must:

   - upon adoption of the Code (or after becoming a Covered Officer), affirm in writing to the Board that he/she has received, read and understands the Code;
   - annually thereafter affirm to the Board compliance with the requirements of the Code;
   - notify the Code Officer promptly if he/she knows of any violation of this Code; and
   - respond to the director and officer questionnaires circulated periodically in connection with the preparation of disclosure documents for the Company.

   The Code Officer shall maintain records of all activities related to this Code.

   The Company will follow these procedures in investigating and enforcing this Code:

   - The Code Officer will take all appropriate action to investigate any potential violations reported to him/her;
   - If, after such investigation, the Code Officer believes that no violation has occurred, no further action is required;
   - Any matter that the Code Officer believes is a violation will be reported to the Audit Committee;
   - If the Audit Committee concurs that a violation has occurred, it will inform and make a recommendation to the Board, which will consider appropriate action, which may include review of, and appropriate modifications to, applicable policies and procedures; notification to the Chief Executive Officer; or a recommendation to dismiss the Covered Officer;
   - The Audit Committee will be responsible for approving waivers in its sole discretion; and
   - Any changes to or waivers of this Code will, to the extent required, be disclosed as provided by SEC rules.

6. **Other Procedures.** This Code shall be the sole code of ethics adopted by the Company for the purposes of Section 406 of the Sarbanes-Oxley Act and the rules and forms applicable to companies subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act of 1934 thereunder. Insofar as other polices or procedures govern or purport to govern the behavior or activities of the Covered Officers who are subject to this Code, they are superseded by this Code to the extent that they overlap or conflict with the provisions of this Code.

7. **Amendments.** Any amendment to this Code must be approved or ratified by the Board.

8. **Confidentiality.** All reports and records prepared or maintained pursuant to this Code will be considered confidential and shall be maintained and protected accordingly. Except as otherwise required by law or this Code, such matters shall not be disclosed to anyone other than the Board, the Covered Officers, the Code Officer, outside audit firms and legal.

**Exhibit 21.1**

| Name | Jurisdiction of Incorporation | Percent Owned |
|---|---|---|
| **AMERGENT HOSPITALITY GROUP, INC.** | **DE, USA** | |
| American Roadside Burgers, Inc. | DE, USA | 100% |
| American Burger Ally, LLC | NC, USA | 100% |
| American Burger Morehead, LLC | NC, USA | 100% |
| American Burger Prosperity, LLC | NC, USA | 50% |
| American Roadside Burgers Smithtown, Inc. | DE, USA | 100% |
| BGR Acquisition, LLC | NC, USA | 100% |
| BGR Franchising, LLC | VA, USA | 100% |
| BGR Operations, LLC | VA, USA | 100% |
| BGR Acquisition 1, LLC | NC, USA | 100% |
| BGR Annapolis, LLC | MD, USA | 100% |
| BGR Arlington, LLC | VA, USA | 46% |
| BGR Columbia, LLC | MD, USA | 100% |
| BGR Michigan Ave, LLC | DC, USA | 100% |
| BGR Mosaic, LLC | VA, USA | 100% |
| BGR Old Keene Mill, LLC | VA, USA | 100% |
| BGR Washingtonian, LLC | MD, USA | 46% |
| Capitol Burger, LLC | MD, USA | 100% |
| BT Burger Acquisition, LLC | NC, USA | 100% |
| BT's Burgerjoint Rivergate LLC | NC, USA | 100% |
| BT's Burgerjoint Sun Valley, LLC | NC, USA | 100% |
| LBB Acquisition, LLC | NC, USA | 100% |
| Cuarto LLC | OR, USA | 100% |
| LBB Acquisition 1 LLC | OR, USA | 100% |
| LBB Hassalo LLC | OR, USA | 80% |
| LBB Platform LLC | OR, USA | 80% |
| LBB Capitol Hill LLC | WA, USA | 50% |
| LBB Franchising LLC | NC, USA | 100% |
| LBB Green Lake LLC | OR, USA | 50% |
| LBB Lake Oswego LLC | OR, USA | 100% |
| LBB Magnolia Plaza LLC | NC, USA | 50% |
| LBB Multnomah Village LLC | OR, USA | 50% |
| LBB Progress Ridge LLC | OR, USA | 50% |
| LBB Rea Farms LLC | NC, USA | 50% |
| LBB Wallingford LLC | WA, USA | 50% |
| LBB Downtown PDX LLC | OR, USA | 100% |
| Noveno LLC | OR, USA | 100% |
| Octavo LLC | OR, USA | 100% |
| Primero LLC | OR, USA | 100% |
| Quinto LLC | OR, USA | 100% |
| Segundo LLC | OR, USA | 100% |
| Septimo LLC | OR, USA | 100% |
| Sexto LLC | OR, USA | 100% |
| Jantzen Beach Wings, LLC | OR, USA | 100% |
| Oregon Owl's Nest, LLC | OR, USA | 100% |
| West End Wings LTD | United Kingdom | 100% |

| Name | Jurisdiction of Incorporation | Percent Owned |
|---|---|---|
| ***Inactive or Sold Entities*** | | |
| American Roadside Cross Hill, LLC | NC, USA | 100% |
| American Roadside McBee, LLC | NC, USA | 100% |
| American Roadside Southpark LLC | NC, USA | 100% |
| Avenel Financial Services, LLC | NV, USA | 100% |
| Avenel Ventures, LLC | NV, USA | 100% |
| BGR Cascades, LLC | VA, USA | 100% |
| BGR Chevy Chase, LLC | MD, USA | 100% |
| BGR Dupont, LLC | DC, USA | 100% |
| BGR Old Town, LLC | VA, USA | 100% |
| BGR Potomac, LLC | MD, USA | 100% |
| BGR Springfield Mall, LLC | VA, USA | 100% |
| BGR Tysons, LLC | VA, USA | 100% |
| BT's Burgerjoint Biltmore, LLC | NC, USA | 100% |
| BT's Burgerjoint Promenade, LLC | NC, USA | 100% |
| Chanticleer Advisors, LLC | NV, USA | 100% |
| Chanticleer Finance UK (No. 1) Plc | United Kingdom | 100% |
| Chanticleer Investment Partners, LLC | NC, USA | 100% |
| Dallas Spoon Beverage, LLC | TX, USA | 100% |
| Dallas Spoon, LLC | TX, USA | 100% |
| DineOut SA Ltd. | England | 89% |
| Hooters Brazil | Brazil | 100% |
| Tacoma Wings, LLC | WA, USA | 100% |
| Chanticleer r South Africa (Pty) Ltd. | South Africa | 100% |
| Hooters Emperors Palace (Pty.) Ltd. | South Africa | 88% |
| Hooters On The Buzz (Pty) Ltd | South Africa | 95% |
| Hooters PE (Pty) Ltd | South Africa | 100% |
| Hooters Ruimsig (Pty) Ltd. | South Africa | 100% |
| Hooters SA (Pty) Ltd | South Africa | 78% |
| Hooters Umhlanga (Pty.) Ltd. | South Africa | 90% |
| Hooters Willows Crossing (Pty) Ltd | South Africa | 100% |
| JF Franchising Systems, LLC | NC, USA | 56% |
| JF Restaurants, LLC | NC, USA | 56% |

**Exhibit 22(II)**

AMERGENT HOSOPITALITY GROUP INC.

AFFILIATE GUARANTEES

Oz Rey, LLC holds a first priority secured note with a principal balance of $4,037,889, guaranteed by all of Amergent's subsidiaries. Oz Rey's security interest is subordinate only to certain interests of holders of Series 2 Preferred stock.

**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: April 15, 2021

*/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, Steven Hoelscher, certify that:

1. I have reviewed this Annual Report on Form 10-K of Amergent Hospitality Group Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under my supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 15, 2021

*/s/ Steven Hoelscher*

Steven Hoelscher
Chief Financial Officer
(Principal Financial Officer)

**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, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Michael D. Pruitt, Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge and belief:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

AMERGENT HOSPITALITY GROUP INC.

Date: April 15, 2021

By: /*s/ Michael D. Pruitt*
Michael D. Pruitt
Chief Executive Officer
(Principal Executive Officer)

**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, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Steven Hoelscher, Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge and belief, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

AMERGENT HOSPITALITY GROUP INC.

Date: April 15, 2021

By: */s/ Steven Hoelscher*
Steven Hoelscher
Chief Financial Officer
(Principal Financial Officer)